

# *The Funeral and Cremation Services Act*

*being*

Chapter F-23.3\* of the *Statutes of Saskatchewan, 1999* (effective November 1, 2001) and as amended by the *Statutes of Saskatchewan, 2002, c.R-8.2; 2004, c.65; 2009, c.T-23.01; and 2010, c.B-12 and c.19 and 20.*

**\*NOTE:** Pursuant to subsection 33(1) of *The Interpretation Act, 1995*, the Consequential Amendment sections, schedules and/or tables within this Act have been removed. Upon coming into force, the consequential amendments contained in those sections became part of the enactment(s) that they amend, and have thereby been incorporated into the corresponding Acts. Please refer to the Separate Chapter to obtain consequential amendment details and specifics.

## **NOTE:**

**This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.**



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**CHAPTER F-23.3**  
An Act respecting Funeral Services, Cremation  
Services and Transfer Services

PART I  
**Short Title and Interpretation**

**Short title**

**1** This Act may be cited as *The Funeral and Cremation Services Act*.

**Interpretation**

**2** In this Act:

- (a) **“assurance fund”** means the Prepaid Funeral Services Assurance Fund continued pursuant to subsection 84(1);
- (b) **“authorized decision-maker”** means the person mentioned in section 91;
- (c) **“buyer”** means a person who enters into one of the following contracts with an owner:
  - (i) a prepaid contract;
  - (ii) a contract for funeral services or cremation services that is not prepaid;
- (d) **“bylaws”** means the valid bylaws of the council;
- (e) **“contract beneficiary”** means the individual:
  - (i) who is named in a prepaid contract; and
  - (ii) on whose death funeral services or cremation services or both are to be provided pursuant to that prepaid contract;
- (f) **“council”** means the Funeral and Cremation Services Council established pursuant to section 23;
- (g) **“cremated human remains”** means human bone fragments that remain after cremation;
- (h) **“cremation”** means the technical process of using heat to reduce human remains to bone fragments;
- (i) **“cremation services”** means all services related to cremation that are provided by an owner and includes the supply of goods incidental to those services, but does not include the sale of interment rights in lots, tombs, niches, crypts, compartments or vaults;
- (j) **“crematorium”** means a building or part of a building fitted with equipment for the purpose of cremation and includes everything incidental or ancillary to the building or part of a building;

- (k) “**crematorium technician**” means a person who performs cremations;
- (l) “**embalmer**” means an individual who engages in embalming;
- (m) “**embalming**” means the preservation of human remains, in whole or in part, by the external or internal application of chemicals, fluids or gases that are intended for that purpose and includes any surgical procedures to initiate or complete the process of preserving human remains;
- (n) “**financial institution**” means a bank, a credit union that is incorporated, continued or registered pursuant to *The Credit Union Act* or a trust corporation or loan corporation that is licensed pursuant to *The Trust and Loan Corporations Act*;
- (o) “**funeral director**” means an individual who for a fee or other remuneration provides or directs the provision of funeral services;
- (p) “**funeral home**” means a facility at which funeral services are provided;
- (q) “**funeral services**” means the co-ordination of rites and ceremonies with respect to human remains, the care and preparation of human remains for interment or cremation and the supply of goods and services incidental to the co-ordination, care and preparation, but does not include the sale of interment rights in lots, tombs, niches, crypts, compartments or vaults;
- (r) “**human remains**” means a dead human body, but does not include cremated human remains;
- (s) “**licensee**” means a person to whom a licence has been issued pursuant to this Act;
- (t) “**memorial society**” means a body corporate that is incorporated, continued or registered pursuant to *The Non-profit Corporations Act, 1995* or *The Co-operatives Act, 1996* for the purpose of co-ordinating the acquisition of funeral services, cremation services and transfer services by its members and that is designated in the regulations;
- (u) “**minister**” means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (v) “**owner**” means the owner of a funeral home, crematorium or transfer service and includes any other person or class of persons that may be prescribed in the regulations;
- (w) “**prepaid contract**” means a contract, other than a contract of insurance issued by an insurer licensed pursuant to *The Saskatchewan Insurance Act*, under which, in consideration of full or partial payment made in advance, an owner undertakes to provide future funeral services or cremation services or both with respect to a contract beneficiary who is alive at the time the contract is made and includes:
- (i) a prepaid deposit contract, where the final price of the goods and services set out in the contract is not guaranteed in the contract and funds are left in trust with the owner to be used towards the eventual costs of funeral services or cremation services for the contract beneficiary; and

- (ii) a prepaid guarantee contract, where the final price of the goods and services set out in the contract is guaranteed in the contract and funds are left in trust with the owner to be used to provide funeral services or cremation services set out in the contract for the contract beneficiary;
- (x) “**registrar**” means the registrar appointed pursuant to subsection 29(1);
- (y) “**salesperson**” means an individual employed, appointed or authorized by an owner to sell prepaid contracts on the owner’s behalf;
- (z) “**superintendent**” means the Superintendent of Funeral and Cremation Services appointed pursuant to section 110 and includes any Deputy Superintendent of Funeral and Cremation Services appointed pursuant to that section;
- (aa) “**transfer service**” means a service respecting transporting human remains and completing any necessary documentation respecting the disposition of human remains, but does not include services provided pursuant to *The Ambulance Act*.

1999, c.F-23.3, s.2.

## PART II Licences

### Licence required

- 3(1) No person shall act as an embalmer or funeral director, or provide funeral services, without holding a licence to do so.
- (2) No person shall own a funeral home, crematorium or transfer service without holding a licence to do so.
- (3) No person shall sell or offer for sale prepaid contracts for or on behalf of an owner without holding a licence as a salesperson.
- (4) No person shall act as the manager of a funeral home unless that person is licensed as a funeral director.

1999, c.F-23.3, s.3.

### Exemptions from licensing

- 4(1) Subsection 3(1) does not apply to:
  - (a) a student of embalming or funeral directing who is enrolled in an education program and who is providing services that are prescribed in the bylaws;
  - (b) a person who practises the profession, trade or calling that he or she is licensed or authorized to practise pursuant to any other Act; or
  - (c) with respect to embalming, a person who is authorized by the Head, Department of Anatomy and Cell Biology, College of Medicine, University of Saskatchewan.
- (2) The following persons may provide funeral services, other than embalming or transfer services, without a licence:

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- (a) a family member of a deceased, or any other person, who is not in the business of providing funeral services or transfer services and who does not receive a fee or other remuneration for providing funeral services or transfer services;
- (b) any other person or class of persons prescribed in the regulations.

1999, c.F-23.3, s.4.

**Memorial societies exempt from licensing**

**5** For the purpose of this Act, a memorial society may, without holding a licence:

- (a) act as the agent of its members in co-ordinating the acquisition of funeral services, cremation services and transfer services;
- (b) accept membership fees from its members for co-ordinating the acquisition of funeral services, cremation services and transfer services for its members; and
- (c) enter into contracts with an owner on behalf of the memorial society's members for the provision by the owner of all or any of funeral services, cremation services or transfer services.

1999, c.F-23.3, s.5.

**Application for licence**

**6** A person who wishes to obtain or renew a licence or have a licence reinstated shall:

- (a) apply to the council in the form provided by the council;
- (b) pay the fee prescribed in the bylaws;
- (c) provide the council with an address for service in Saskatchewan and, in the case of an applicant who is or intends to be an owner, the address of the person's registered office in Saskatchewan;
- (d) produce evidence satisfactory to the council that the person has complied with the provisions of this Act, the regulations and the bylaws with respect to the category of licence for which the application is being made;
- (e) where the application is for a licence as an embalmer or funeral director, provide evidence satisfactory to the council that the person meets the qualifications as an embalmer or funeral director that are set out in this Act, the regulations and the bylaws;
- (f) where the application is for a licence as the owner of a funeral home, crematorium or transfer service, provide the name of the individual responsible for the management of the funeral home, crematorium or transfer service;
- (g) where the application is for a licence as the owner of a funeral home, crematorium or transfer service, pay any assessment prescribed in the bylaws for the assurance fund;
- (h) where the application is for a licence as a salesperson, provide evidence satisfactory to the council that the applicant meets the qualifications set out in the bylaws; and
- (i) comply with any other requirements that may be set out in the bylaws.

1999, c.F-23.3, s.6.

**Corporation as applicant**

- 7(1) In an application for a licence, a corporation shall state:
- (a) the name of the officer or director of the corporation who will be responsible for directly communicating with the council; and
  - (b) where the corporation intends to carry on business under a business name, its business name.
- (2) A licence issued to a corporation must:
- (a) be issued either:
    - (i) in its corporate name; or
    - (ii) in the case of a corporation mentioned in clause (1)(b), in its business name; and
  - (b) indicate on the licence or attachments to the licence the name of the officer or director designated pursuant to clause (1)(a).

1999, c.F-23.3, s.7.

**Issuance of licence**

- 8(1) After receiving and reviewing an application and any other information required to be submitted, the council may:
- (a) subject to section 9, issue, renew or reinstate a licence; or
  - (b) refuse to issue, renew or reinstate a licence if, in the opinion of the council:
    - (i) the applicant or, in the case of a corporate applicant, the applicant's officers or directors cannot reasonably be expected to be financially responsible in the matter for which the licence is sought;
    - (ii) the past conduct of the applicant or, in the case of a corporate applicant, the applicant's officers or directors affords reasonable grounds for believing that the applicant will not carry on business in accordance with this Act, the regulations and the bylaws and with integrity and honesty;
    - (iii) the applicant has made a material misstatement in the application for the licence or in any of the information or material submitted to the council with the application for the licence;
    - (iv) the applicant has been convicted of misrepresentation or fraud or is dishonest or, in the case of a corporate applicant, the applicant's officers or directors have been convicted of misrepresentation or fraud or are dishonest; or
    - (v) it is not in the public interest to issue, renew or reinstate the licence.
- (2) The council shall not refuse to issue, renew or reinstate a licence without giving the applicant an opportunity to make written representations to the council.

1999, c.F-23.3, s.8.

**Qualifications of applicants for embalming, funeral directing**

9(1) In this section:

(a) **“education program in Saskatchewan”** means an education program for embalming and funeral directing that is offered in Saskatchewan and has been approved by the council;

(b) **“education program outside Saskatchewan”** means an education program for embalming and funeral directing that is offered outside Saskatchewan but is recognized and approved by the council as being equivalent to an education program in Saskatchewan.

(2) The council may issue a licence to practise as an embalmer or a funeral director if the council is satisfied that the applicant:

(a) is of good character;

(b) has complied with the bylaws respecting the qualifications for licensing; and

(c) has successfully completed an education program in Saskatchewan or an education program outside Saskatchewan and has passed examinations that are:

(i) prescribed and conducted pursuant to the bylaws; or

(ii) recognized by the council as being equivalent to examinations prescribed and conducted pursuant to the bylaws.

(3) Notwithstanding subsection (2), the council may issue a licence to practise as an embalmer or a funeral director if the council is satisfied that the applicant:

(a) is of good character;

(b) has complied with the bylaws respecting the qualifications for licensing; and

(c) is registered as the equivalent of an embalmer or a funeral director in good standing pursuant to the legislation of another jurisdiction in Canada or the legislation of a jurisdiction outside Canada that is recognized by the council.

1999, c.F-23.3, s.9; 2010, c.19, s.12.

**Examinations for embalming, funeral directing**

10(1) The examinations mentioned in clause 9(2)(c) that are conducted pursuant to the bylaws are to be controlled by the University of Saskatchewan.

(2) The Senate of the University of Saskatchewan may, after consultation with the council, make rules prescribing the subjects of examinations and fees payable by applicants for examinations and governing the conduct of examinations.

(3) Examinations are to be held at a place and time fixed by the Senate of the University of Saskatchewan.

1999, c.F-23.3, s.10; 2010, c.19, s.12.

**Terms of licence**

11(1) When issuing, renewing or reinstating a licence, the council may impose any terms that it considers appropriate.

(2) At any time after a licence is issued, renewed or reinstated, the council may, after giving the licensee an opportunity to make written representations, do all or any of the following:

- (a) amend, modify or vary terms imposed on a licence;
- (b) impose new terms on a licence;
- (c) repeal terms imposed on a licence and impose new terms in their place.

(3) No licensee shall fail to comply with the terms imposed on his or her licence.

1999, c.F-23.3, s.11.

#### **Temporary licence**

12(1) The council may issue a temporary licence to an applicant who does not comply with the requirements specified in this Act, the regulations and the bylaws if, in the opinion of the council, special circumstances, as set out in the bylaws, exist.

(2) No person practising under a temporary licence shall fail to comply with the bylaws governing persons practising under temporary licences.

1999, c.F-23.3, s.12.

#### **Licence not transferable**

13 No licence is transferable.

1999, c.F-23.3, s.13.

#### **Protected title**

14(1) No person other than a licensed embalmer shall use the title “embalmer” or the abbreviation “LE” or any word, title or designation, or abbreviation of any word, title or designation, to imply that the person is a licensed embalmer.

(2) No person other than a licensed funeral director shall use the title “funeral director” or the abbreviation “LFD” or any word, title or designation, or abbreviation of any word, title or designation, to imply that the person is a licensed funeral director.

1999, c.F-23.3, s.14.

#### **Admission of students**

15(1) In this section, “**student**” means a student of embalming or funeral directing.

(2) The council may register a person as a student where that person applies to the council and produces the evidence set out in the regulations and the bylaws.

(3) A person whose application to be registered as a student is refused:

- (a) may request the council to review the application; and
- (b) has the right to appear before the council in person in support of the application.

(4) The council shall make bylaws respecting the review mentioned in subsection (3).

(5) Part V applies, with any necessary modification, to students.

1999, c.F-23.3, s.15.

**Delegation**

**16(1)** The council may delegate to the registrar the power to register students or to issue licences but may not delegate the power to issue licences pursuant to section 70.

(2) Where the council delegates its power to register students or to issue licences, the exercise of that power by the registrar is deemed to be an exercise of the power by the council.

(3) The council may impose any terms that it considers appropriate on a delegation of its power, and the registrar shall comply with those terms in exercising that power.

(4) A person who is aggrieved by a decision of the registrar made pursuant to a delegated power may apply to the council to review that decision.

(5) On a review pursuant to subsection (4), the council may:

- (a) substitute its own decision for that of the registrar;
- (b) direct the registrar to reconsider the decision in accordance with directions that the council considers appropriate; or
- (c) confirm the registrar's decision.

(6) On a review pursuant to subsection (4), the applicant has the right to appear in person before the council in support of the application, and may be represented by counsel at the applicant's expense.

1999, c.F-23.3, s.16.

**Further information**

**17(1)** The council or the registrar may request an applicant for a licence, a licensee, an applicant to be registered as a student or a student:

- (a) to submit, within a time specified by the council or the registrar, any information or material that the council or registrar may reasonably require to determine whether to issue a licence or to register an applicant as a student or to determine whether to suspend or cancel or otherwise deal with a licence or registration; and
- (b) to verify any information or material that has been submitted or that is to be submitted to the council.

(2) An applicant, licensee or student must comply with a request made pursuant to subsection (1).

1999, c.F-23.3, s.17.

**Display of licences**

**18(1)** Except as otherwise provided in the regulations, every licensee who owns a funeral home, crematorium or transfer service shall display his or her licence in a conspicuous place on each premises owned by the licensee.

(2) Every licensee shall make his or her licence available for inspection by any person on request of that person.

1999, c.F-23.3, s.18.

**Notification by council**

**19** The council shall:

- (a) notify an applicant or licensee, in writing, of the council's decision respecting any matter mentioned in section 8, 11, 12 or 15 or subsection 16(5);
- (b) provide written reasons for that decision; and
- (c) provide the applicant or licensee with information respecting the right of appeal pursuant to section 61.

1999, c.F-23.3, s.19.

### PART III Owners

**Office and records of owner**

**20(1)** Subject to section 21, every owner shall maintain an office in Saskatchewan:

- (a) that is registered with the council and that contains the records required by subsection (2), the bylaws and the council; and
- (b) from which the owner conducts business.

(2) Every owner shall keep proper and adequate records at the owner's office in Saskatchewan respecting all of the owner's sales in accordance with the requirements set out in the bylaws.

1999, c.F-23.3, s.20.

**Exemption for non-Saskatchewan owner**

**21** The council may exempt an owner whose head office is outside Saskatchewan from maintaining an office in Saskatchewan or from keeping the records mentioned in section 20 in Saskatchewan if the owner:

- (a) applies to the council in the manner prescribed in the bylaws for an exemption;
- (b) files with the council:
  - (i) a consent in a form that is satisfactory to the council to allow the superintendent or a person authorized in writing by the superintendent to enter the premises where the records required by section 20 are kept and to inspect and remove the records to Saskatchewan; and
  - (ii) an undertaking in a form that is satisfactory to the council to pay the reasonable costs incurred pursuant to this section by the superintendent or a person authorized in writing by the superintendent; and
- (c) satisfies the council that it is not contrary to the public interest to do so.

1999, c.F-23.3, s.21.

**Notice of changes**

**22(1)** Every owner shall notify the council in writing of any of the following not later than 10 business days after its occurrence:

- (a) a change in the ownership of the owner's funeral home, crematorium or transfer service;
- (b) a change in the business name of the owner;

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- (c) a change in the owner's address for service;
  - (d) any other change that may be prescribed in the regulations.
- (2) If an owner discontinues its operation or merges with another owner, the owner shall notify the council not later than 10 business days after the discontinuance or merger.

1999, c.F-23.3, s.22.

**PART IV**  
**Funeral and Cremation Services Council**

**Council established**

- 23(1)** The Funeral and Cremation Services Council is established as a corporation.
- (2) The council shall:
- (a) carry out the powers and fulfil the responsibilities imposed on the council pursuant to this Act and the regulations; and
  - (b) manage and conduct the business of the council.
- (3) The council may hold any real and personal property that it considers necessary to carry out its powers and fulfil its responsibilities.

1999, c.F-23.3, s.23.

**Council not agent of Crown**

- 24** The council is not an agent of the Crown, and its powers granted by this Act are to be exercised in its own right only.

1999, c.F-23.3, s.24.

**Composition of council**

- 25(1)** On the coming into force of this section, the council is to consist of:
- (a) four individuals appointed by the Lieutenant Governor in Council after consultation with those consumers and organizations that the Lieutenant Governor in Council considers interested; and
  - (b) six individuals appointed by the Lieutenant Governor in Council after consultation with funeral and cremation services industry organizations.
- (2) The members of the council mentioned in clause (1)(a) hold office as follows:
- (a) one, as designated by the Lieutenant Governor in Council, for a period not exceeding one year and until a successor is appointed;
  - (b) one, as designated by the Lieutenant Governor in Council, for a period not exceeding two years and until a successor is appointed;
  - (c) two, as designated by the Lieutenant Governor in Council, for a period not exceeding three years and until their successors are appointed.
- (3) The members of the council mentioned in clause (1)(b) hold office until a meeting of licensees is held, at which time six members of council are to be elected by the licensees.

- (4) After the holding of elections mentioned in subsection (3), the council is to consist of:
- (a) four individuals appointed by the Lieutenant Governor in Council after consultation with those consumers and organizations that the Lieutenant Governor in Council considers interested; and
  - (b) six individuals elected, in accordance with this Act, the regulations and the bylaws, by individuals who are licensees.
- (5) No licensee may exercise more than one vote, regardless of the number of licences held by the licensee.
- (6) The members of the council mentioned in clause (1)(a) may be reappointed for up to two additional three-year terms.
- (7) The council shall pay to the members of the council any remuneration and reimbursement for expenses that may be prescribed in the bylaws.

1999, c.F-23.3, s.25.

**Qualifications and resignations of members**

- 26(1)** A member of the council elected by the licensees or appointed by the Lieutenant Governor in Council is qualified to hold office only as long as the member is a resident of Saskatchewan.
- (2) Subject to subsection 25(6), a member of the council appointed by the Lieutenant Governor in Council holds office until a successor is appointed and is eligible for reappointment, but is not eligible to hold office for more than two consecutive three-year terms.
- (3) At least one member of the council elected by the licensees must be a licensee who is an embalmer.
- (4) No person is eligible to be elected as a member of the council by the licensees if:
- (a) the person is an employee of an owner or an owner; and
  - (b) at the time of the election or after the election, there are or would be one or more other elected members who are employees of the owner or employees of another licensee that is affiliated or associated, within the meaning of *The Business Corporations Act*, with that owner.
- (5) A member of the council elected by the licensees may resign by giving written notice of his or her resignation to the council.
- (6) A member of the council appointed by the Lieutenant Governor in Council may resign by giving written notice of his or her resignation to the minister.
- (7) The resignation of a member of the council is effective on the date stated on the written notice or, if no date is stated:
- (a) in the case of a resignation of a member elected by the licensees, on the date the written notice is received by the council; or
  - (b) in the case of a resignation of a member appointed by the Lieutenant Governor in Council, on the date the written notice is received by the minister.

1999, c.F-23.3, s.26.

**Vacancies**

**27(1)** When a vacancy occurs in the membership of the council elected by the licensees, the remaining members of the council may appoint another licensee to fill the vacancy until the earlier of:

- (a) the expiry of the term of office of the member; and
- (b) the date on which a member is elected to fill the vacancy in accordance with this Act, the regulations and the bylaws.

(2) A vacancy in the membership of the council does not impair the power of the remaining members of the council to act.

(3) If the licence of a member of the council elected by the licensees is suspended, the member's powers and duties as a member are suspended for the same period.

(4) If the licence of a member of the council elected by the licensees is cancelled, the member ceases to be a member on the day the licence is cancelled.

1999, c.F-23.3, s.27.

**Chairperson and vice-chairperson**

**28(1)** The members of the council shall elect one of their number as chairperson and one as vice-chairperson.

(2) Where the chairperson is absent or the office of chairperson is vacant, the vice-chairperson shall act as chairperson and may exercise all of the powers and shall perform all of the duties of the chairperson.

1999, c.F-23.3, s.28.

**Registrar, officers and employees**

**29(1)** The council shall appoint a registrar.

(2) The council may:

- (a) appoint any other officers that are authorized by the bylaws; and
- (b) engage any employees that it considers necessary to carry out the duties and functions of the council.

(3) Subject to this Act, the regulations and the bylaws, the council shall determine the duties, responsibilities and remuneration of employees of the council.

1999, c.F-23.3, s.29.

**Agreements**

**30** The council may enter into any agreements that it considers necessary for exercising its powers or carrying out its duties pursuant to this Act.

1999, c.F-23.3, s.30.

**Committees**

**31(1)** The council may establish any committees that are provided for in the bylaws or that it considers necessary.

(2) The council may appoint any individuals to any committees that it establishes.

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- (3) Subject to this Act, the regulations and the bylaws, the council, on any terms that it may determine, may delegate any of its powers or duties to a committee:
  - (a) that is provided for by this Act or the bylaws; or
  - (b) that is established pursuant to subsection (1).
- (4) The council shall not delegate the power to make bylaws.
- (5) Subject to this Act, the regulations and the bylaws, a committee may establish its own procedures.

1999, c.F-23.3, s.31.

**Temporary borrowing**

- 32(1) Subject to subsection (3), the council may borrow, by way of temporary loans, bank overdraft or line of credit from any financial institution or from any person or corporation, on any terms, any sums that the council may require to carry out its responsibilities.
- (2) Any instrument that may be necessary with respect to borrowing money or obtaining advances by way of temporary loans may be executed in any manner that the council may determine.
- (3) The total amount of time from the date a sum is borrowed to the date that the sum is repaid is not to exceed three years unless otherwise authorized in writing by the superintendent.

1999, c.F-23.3, s.32.

**Meetings of licensees**

- 33(1) The council shall call an annual meeting of licensees in accordance with the bylaws.
- (2) The council may call a special meeting of the licensees for the transaction of the business that may be specified in the resolution of the council authorizing the special meeting.
- (3) The council shall call a special meeting of licensees on the written request made to the registrar by at least 10 licensees specifying the purpose for which the meeting is to be called.
- (4) The council shall call and hold the special meeting requested pursuant to subsection (3) within 30 days after the receipt of the request by the registrar.
- (5) An annual or special meeting is to be held at a time and place determined by the council in accordance with the bylaws.
- (6) The registrar shall send a notice of an annual or special meeting to each licensee at least 14 days before the meeting.
- (7) The procedure at an annual or a special meeting is to be determined by bylaw.

1999, c.F-23.3, s.33.

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**Annual report**

**34** In each fiscal year of the council and according to requirements established by the superintendent, the council shall prepare and submit to the superintendent an annual report that:

- (a) contains an audited financial statement summarizing the income and expenditures of the council for the previous fiscal year;
- (b) states the number of students and the number of licensees in each licence category as at the end of the previous fiscal year;
- (c) states the number of persons in each category:
  - (i) who were refused a licence or registration during the previous fiscal year and the reasons for each refusal; and
  - (ii) whose licences or registrations were suspended, cancelled or made subject to terms during the previous fiscal year and the reasons for the action taken;
- (d) contains a list of members and officers of the council as at the end of the previous fiscal year; and
- (e) contains any other information that the superintendent may require.

1999, c.F-23.3, s.34.

**Register**

**35(1)** In accordance with the bylaws, the council shall keep a register in which the name and address of every licensee and student are recorded.

- (2) The register is to be:
  - (a) kept at the head office of the council; and
  - (b) open for inspection by all persons, without fee, during normal office hours of the council.
- (3) A certificate purporting to be signed by the registrar and stating that a named person was or was not, on a specified day or during a specified period, a licensee or a student, or an extract from the register that is certified by the registrar, is admissible in evidence as proof, in the absence of evidence to the contrary, of its contents without proof of the registrar's appointment or signature.

1999, c.F-23.3, s.35.

**Council's power to inspect records**

**36(1)** The council or a person authorized in writing by the council may, at any reasonable time, inspect the records of a licensee to determine all or any of the following:

- (a) if the amount of funds being held in trust is the amount for which the licensee is accountable;
- (b) if the licensee is maintaining its records as required by this Act, the regulations and the bylaws;
- (c) if the licensee is complying with this Act, the regulations and the bylaws.

- (2) The person making the inspection may demand the production of the records of the licensee with respect to which the inspection is being made.
- (3) A licensee shall make its records available for inspection to a person mentioned in subsection (2).

1999, c.F-23.3, s.36.

#### **Bylaws**

**37** Subject to this Act and the regulations, the council may make bylaws:

- (a) prescribing the seal of the council;
- (b) providing for the execution of documents by the council;
- (c) respecting the banking and financial dealings of the council;
- (d) fixing the fiscal year of the council and providing for the audit of the accounts and transactions of the council;
- (e) providing for the receipt, management and investment of contributions, donations or bequests;
- (f) respecting the management of the property of the council;
- (g) respecting the composition of the members elected to the council pursuant to subsection 25(3);
- (h) governing procedures for the election of individuals to the council and prescribing their terms of office;
- (i) respecting officers of the council;
- (j) prescribing the duties of members, officers and employees of the council;
- (k) prescribing the organization, powers and procedures of the council and regulating the council in the performance of its duties;
- (l) establishing any committees that the council considers necessary, prescribing the manner of election or appointment of members to those committees and prescribing procedures for those committees;
- (m) prescribing the remuneration and reimbursement for expenses for members of the council and members of committees;
- (n) respecting the reporting and publication of decisions and reports of the council and committees;
- (o) respecting the calling, holding and procedures of meetings of the council and annual and special meetings of licensees;
- (p) prescribing the forms to be used by licensees or students;
- (q) establishing categories of licences, licensees and students and prescribing the rights and responsibilities of each category;
- (r) respecting special circumstances for the purposes of section 12;
- (s) respecting records to be kept by licensees and students;
- (t) respecting applications for exemptions pursuant to section 21;
- (u) providing for the charging of fees for any services provided by the council;

- (v) respecting joint participation by the council with any educational institution or any person, group, association, organization or body corporate having goals or objectives similar to those of the council;
- (w) prescribing a code of ethics for licensees and students;
- (x) prescribing the form, content and maintenance of the register and the information to be provided by licensees and students for the purposes of the register;
- (y) prescribing procedures governing licensing and registration of students;
- (z) prescribing procedures for reviews pursuant to subsection 16(4);
- (aa) respecting the qualifications, standards and tests of competency for obtaining a licence or for registration as a student;
- (bb) prescribing the amounts of licence and other fees payable to the council, including prescribing the times of payment and penalties for late payment;
- (cc) prescribing terms and conditions of licences or registrations as students;
- (dd) prescribing the expiry date for licences or registrations as students;
- (ee) setting standards of professional conduct, competency and proficiency of licensees or students;
- (ff) setting standards regarding the manner and method of practice of licensees or students;
- (gg) prescribing the minimum amount of liability protection that licensees are required to obtain;
- (hh) prescribing procedures for:
  - (i) the review and investigation by and recommendations of the investigation committee respecting complaints alleging that a licensee or student is guilty of professional misconduct or professional incompetence;
  - (ii) hearings by the discipline committee of complaints alleging that a licensee or student is guilty of professional misconduct or professional incompetence;
- (ii) prescribing the circumstances under which applicants for licences are required to attend re-entry education programs and courses and approving programs and courses for that purpose;
- (jj) prescribing or establishing classes, lectures, courses of study, systems of training, periods of service and examinations for licensees, applicants for licences or for students;
- (kk) setting standards for continuing education and the participation of licensees and students in continuing education;
- (ll) governing the reinstatement of licences or registrations as students after cancellation;
- (mm) setting requirements for maintenance of a licence or registration as a student;

- (nn) governing the inspection and regulation of the premises and equipment used for embalming;
- (oo) governing the inspection and regulation of the premises and equipment used in cremation;
- (pp) governing the approval of educational programs for the purpose of licensing embalmers and students of embalming and prescribing terms and conditions for initial or continued approval of those programs;
- (qq) governing the approval of educational programs for the purpose of licensing funeral directors and students of funeral directing and prescribing terms and conditions for initial or continued approval of those programs;
- (rr) governing the approval of educational programs for crematorium technicians and students of crematorium operations and prescribing terms and conditions for initial or continued approval of those programs;
- (ss) governing the qualifications of crematorium technicians employed by any owner of a crematorium;
- (tt) requiring reports from licensees and students with respect to activities relating to their licences or registrations and prescribing the content of those reports;
- (uu) respecting the registration of students;
- (vv) establishing assessments for the assurance fund to be paid by applicants for a licence as an owner of a funeral home or a crematorium;
- (ww) respecting the approval of examinations for applicants for a licence;
- (xx) prescribing any other matter or thing that the council is required to prescribe in the bylaws.

1999, c.F-23.3, s.37.

**Filing of bylaws**

**38(1)** Within 30 days after making a bylaw or an amendment to a bylaw pursuant to section 37, the council shall:

- (a) file with the superintendent two copies, certified by the registrar to be true copies, of:
  - (i) the bylaw made by the council; or
  - (ii) the amendment to a bylaw together with two copies of the bylaw, certified by the registrar to be true copies, to which the amendment relates; and
- (b) provide a copy of the bylaw or amendment to each licensee or student to whom the bylaw or amendment relates.

(2) Within 30 days after receiving a bylaw or amendment pursuant to clause (1)(a), the superintendent shall, unless the superintendent does not approve the bylaw or amendment, file with the Director of Corporations:

- (a) a copy, certified by the registrar to be a true copy, of the bylaw or amendment; and
- (b) where an amendment to a bylaw is filed pursuant to subclause (1)(a)(ii), a copy, certified by the registrar to be a true copy, of the bylaw to which the amendment relates.

1999, c.F-23.3, s.38; 2010, c.B-12, s.31.

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**Effective date of bylaws**

**39(1)** All bylaws and amendments to bylaws filed by the superintendent with the Department of Justice take effect on:

- (a) the day the bylaw or amendment is filed with the Director of Corporations; or
- (b) a future date stated within the bylaw or amendment.

(2) Unless confirmed at a special meeting by a majority of licensees present at the meeting, a bylaw or amendment has force only until the next annual meeting following its filing with the Director of Corporations, and if not confirmed at that annual meeting, the bylaw or amendment ceases to be in force.

1999, c.F-23.3, s.39; 2010, c.B-12, s.31.

**Amendments and repeals of bylaws**

**40(1)** Where the superintendent considers it to be in the public interest, the superintendent may request the council to:

- (a) amend or repeal a bylaw; or
- (b) make a new bylaw.

(2) Where the council fails to comply with a request of the superintendent pursuant to subsection (1), within 60 days after that request, the superintendent:

- (a) may amend or repeal a bylaw or make a new bylaw in accordance with the request; and
- (b) shall:
  - (i) maintain a copy of the bylaw or amendment or repeal of a bylaw on file;
  - (ii) deliver a copy of the bylaw or amendment or repeal of a bylaw to the council; and
  - (iii) file with the Director of Corporations:
    - (A) a copy, certified by the superintendent to be a true copy, of the bylaw, amendment or repeal of a bylaw; and
    - (B) in the case of an amendment to or repeal of a bylaw, a copy, certified by the superintendent to be a true copy, of the bylaw to which the amendment or repeal relates.

(3) Failure to comply with this section or section 38 does not, of itself, invalidate a contract made pursuant to this Act.

1999, c.F-23.3, s.40; 2010, c.B-12, s.31.

**Review by Legislative Assembly**

**41(1)** One copy of all bylaws filed with the Director of Corporations pursuant to section 38 or 40 is to be laid before the Legislative Assembly by the minister responsible for the administration of *The Business Corporations Act* in accordance with *The Tabling of Documents Act, 1991*.

(2) Where any bylaw laid before the Legislative Assembly is found by the Assembly to be beyond the powers delegated by the Legislature or in any way prejudicial to the public interest, the bylaw ceases to have any effect and is deemed to have been revoked.

1999, c.F-23.3, s.41; 2010, c.B-12, s.31.

**Record of revocation and notification**

42(1) Where it appears from any Votes and Proceedings of the Legislative Assembly that any bylaw has ceased to have effect, the Clerk of the Legislative Assembly shall immediately:

- (a) forward two copies of the Votes and Proceedings to the Director of Corporations; and
- (b) advise the Director of Corporations that the copies are forwarded pursuant to this subsection.

(2) On receipt of the copies mentioned in subsection (1), the Director of Corporations shall immediately:

- (a) file one of the copies with the bylaw to which it relates;
- (b) forward the other copy to the superintendent; and
- (c) advise the superintendent that the copy is forwarded pursuant to this subsection.

(3) On receipt of the copy mentioned in subsection (2), the superintendent shall advise the council of the decision of the Legislative Assembly.

1999, c.F-23.3, s.42; 2010, c.B-12, s.31.

## PART V Discipline of Licensees

**Interpretation re discipline provisions**

42.1 In this Part, “licensee” includes a former licensee.

2010, c.20, s.28.

**Proceedings against former licensees**

42.2(1) No proceedings conducted pursuant to this Act shall be commenced against a former licensee more than two years after the day he or she became a former licensee.

(2) For the purposes of this section, a proceeding is commenced when the investigation committee, pursuant to section 46, is requested by the council to consider a complaint or is in receipt of a written complaint alleging that a licensee is guilty of professional misconduct or professional incompetence.

2010, c.20, s.28.

**Professional misconduct**

43 Professional misconduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is professional misconduct within the meaning of this Act if:

- (a) it is harmful to the best interests of the public, licensees or the council;
- (b) it tends to harm the standing of the funeral and cremation services industry in the opinion of the public;

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(c) it is a breach of this Act, the regulations or the bylaws or any terms to which the licensee's licence is subject; or

(d) it is a failure to comply with an order of the investigation committee, the discipline committee, the council or the superintendent.

1999, c.F-23.3, s.43.

**Professional incompetence**

**44** Professional incompetence is a question of fact, but the display by a licensee of a lack of knowledge, skill or judgment or a disregard for the welfare of members of the public served by the funeral and cremation services industry of a nature or to an extent that demonstrates that the licensee is unfit to continue to be licensed or to provide one or more services ordinarily provided by licensees is professional incompetence within the meaning of this Act.

1999, c.F-23.3, s.44.

**Investigation committee**

**45(1)** The investigation committee is established consisting of at least three persons appointed by the council.

(2) No member of the discipline committee is eligible to be appointed as a member of the investigation committee.

1999, c.F-23.3, s.45.

**Investigation**

**46** Where the investigation committee is requested by the council to consider a complaint or is in receipt of a written complaint alleging that a licensee is guilty of professional misconduct or professional incompetence, the investigation committee shall:

(a) review the complaint;

(b) as soon as is practicable, notify the licensee that an investigation is being conducted; and

(c) investigate the complaint by taking any steps it considers necessary, including summoning before it the licensee whose conduct is the subject of the complaint.

1999, c.F-23.3, s.46.

**Written report**

**47(1)** On completion of its investigation, the investigation committee shall make a written report to the discipline committee recommending:

(a) that the discipline committee hear and determine the formal complaint set out in the written report; or

(b) that no further action be taken respecting the matter under investigation.

(2) The formal complaint set out in a written report may relate to any matter disclosed in the complaint mentioned in section 46 or the investigation.

(3) A report signed by a majority of the investigation committee is the decision of that committee.

- (4) The investigation committee shall provide, or cause the registrar to provide, a copy of a written report recommending that no further action be taken to:
- (a) the council;
  - (b) the person, if any, who made the complaint mentioned in section 46; and
  - (c) the licensee whose conduct is the subject of the complaint mentioned in section 46.

1999, c.F-23.3, s.47.

**Interim suspension**

- 48(1) Where the investigation committee is of the opinion that, on the basis of the allegations or the nature of the case, the licensee's licence should be suspended pending the outcome of the investigation or hearing, it may, with the prior approval of the council, apply to the superintendent for an order temporarily suspending the licence of a licensee whose conduct is the subject of an investigation or against whom a formal complaint has been made.
- (2) On receipt of an application pursuant to subsection (1), the superintendent may make the order requested.
- (3) An order of suspension made pursuant to subsection (1) expires on the earliest of:
- (a) 90 days from the date of the order;
  - (b) the date of a report of the investigation committee that recommends that no further action be taken;
  - (c) where the discipline committee finds that a licensee is not guilty of professional misconduct or professional incompetence, the day of its decision; and
  - (d) where the discipline committee finds that a licensee is guilty of professional misconduct or professional incompetence, the day that an order is made pursuant to section 56.

1999, c.F-23.3, s.48.

**Discipline committee**

- 49(1) The discipline committee is established consisting of at least five persons appointed by the council, at least one of whom must be a member of the council appointed by the Lieutenant Governor in Council pursuant to clause 25(1)(a) or (4)(a).
- (2) No member of the investigation committee is eligible to be appointed as a member of the discipline committee.
- (3) Where the licensee whose conduct is the subject of a hearing is an embalmer, at least one member of the discipline committee must be a licensed embalmer.
- (4) Subject to subsection (3), the absence or inability to act as a member of the discipline committee by a member of the council appointed pursuant to this section or the failure to appoint a member of the council pursuant to this section does not impair the ability of the other members of the discipline committee to act.
- (5) Subject to this Act, the regulations and the bylaws, the discipline committee may make rules regulating its business and proceedings.

1999, c.F-23.3, s.49.

**Formal complaint**

**50(1)** Where a report of the investigation committee recommends that the discipline committee hear and determine a formal complaint, the registrar shall, at least 14 days before the date of the hearing:

- (a) send a copy of the formal complaint to the licensee whose conduct is the subject of the hearing; and
- (b) serve notice of the date, time and place of the hearing on the licensee whose conduct is the subject of the hearing.

(2) The investigation committee shall prosecute or direct the prosecution of the formal complaint, but its members shall not participate in any other manner in the hearing of the complaint, except as witnesses when required.

1999, c.F-23.3, s.50.

**Conduct of discipline hearing**

**51(1)** The discipline committee shall hear the formal complaint and shall determine whether or not the licensee is guilty of professional misconduct or professional incompetence, notwithstanding that the determination of a question of fact may be involved, and the discipline committee need not refer any question to a court for adjudication.

(2) The person, if any, who made the complaint mentioned in section 46:

- (a) is to be advised orally or in writing by the registrar of the date, time and place of the hearing; and
- (b) subject to section 55, is entitled to attend the hearing.

(3) The discipline committee may employ, at the expense of the council, any legal or other assistance that it considers necessary, and the licensee whose conduct is the subject of the hearing may be represented by counsel at the licensee's expense.

1999, c.F-23.3, s.51.

**Failure to attend**

**52** Where the licensee whose conduct is the subject of the hearing fails to attend the hearing, the discipline committee, on proof of service of the notice mentioned in section 50, may proceed with the hearing in the licensee's absence.

1999, c.F-23.3, s.52.

**Evidence**

**53(1)** The testimony of witnesses is to be under oath or affirmation administered by the chairperson of the discipline committee.

(2) The discipline committee may accept any evidence that it considers appropriate and is not bound by rules of law concerning evidence.

(3) At a hearing by the discipline committee, there is to be full right:

- (a) to examine, cross-examine and re-examine all witnesses; and
- (b) to present evidence in defence and reply.

(4) On application and payment of the appropriate fee by any of the following, the local registrar of the Court of Queen's Bench at any judicial centre shall issue a *subpoena ad testificandum* or *subpoena duces tecum*:

- (a) a licensee whose conduct is the subject of a hearing pursuant to this Act;
- (b) a member of the investigation committee;
- (c) a member of the discipline committee.

(5) Where a subpoena issued pursuant to subsection (4) is disobeyed, the proceedings and penalties are those applicable in civil cases in the Court of Queen's Bench.

1999, c.F-23.3, s.53.

#### **Different charge**

**54(1)** If, during the course of a hearing, the evidence shows that the licensee whose conduct is the subject of the hearing may be guilty of a charge different from or in addition to any charge specified in the formal complaint, the discipline committee shall notify the licensee of that fact.

(2) If the discipline committee proposes to amend, add to or substitute the charge in the formal complaint, the discipline committee shall adjourn the hearing for any period that the discipline committee considers sufficient to give the licensee an opportunity to prepare a defence to the amended formal complaint, unless the licensee consents to continue the hearing.

1999, c.F-23.3, s.54.

#### **Hearings to be public**

**55(1)** Subject to subsection (2), the discipline committee shall conduct all hearings in public.

(2) The discipline committee may exclude members of the public and the person who made the complaint from any part of the hearing where the discipline committee is of the opinion that evidence brought in the presence of the person or persons to be excluded will unduly violate the privacy of a person other than the licensee whose conduct is the subject of the hearing.

1999, c.F-23.3, s.55.

#### **Disciplinary orders**

**56(1)** Where the discipline committee finds a licensee guilty of professional incompetence or professional misconduct, it may make one or more of the following orders:

- (a) an order that the licensee's licence be cancelled;
- (b) an order that the licensee's licence be suspended for a specified period;
- (c) an order that the licensee's licence be suspended pending the satisfaction and completion of any terms and conditions specified in the order;
- (d) an order that the licensee may continue to be licensed only under terms and conditions specified in the order, which may include, but are not restricted to, the following:
  - (i) an order that the licensee not do specified types of work;
  - (ii) an order that the licensee successfully complete specified classes or courses of instruction;
  - (iii) an order that the licensee obtain medical treatment, counselling or both;

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- (e) an order requiring the licensee to pay restitution to any person as compensation for a financial loss suffered by that person as a result of the licensee's professional incompetence or professional misconduct;
  - (f) an order reprimanding the licensee;
  - (g) any other order that the discipline committee considers appropriate.
- (2) Where a licensee does not comply with an order pursuant to clause (1)(e) within 15 business days after the day on which a copy of the order is sent to the licensee, the person named in the order may file a certified copy of the order with the Court of Queen's Bench and enforce the order as if it were a judgment of that court.

1999, c.F-23.3, s.56.

**Fines and costs**

**57(1)** In addition to any order mentioned in section 56, the discipline committee may order:

- (a) that the licensee pay to the council within a fixed period:
    - (i) a fine in a specified amount not exceeding \$5,000 for each finding and \$15,000 in the aggregate for all findings; and
    - (ii) the costs of the investigation and hearing into the licensee's conduct and related costs, including the expenses of the investigation committee and the discipline committee and the costs of legal services and witnesses; and
  - (b) if a licensee fails to make payment in accordance with an order pursuant to clause (a), that the licensee's licence be suspended.
- (2) The registrar shall send a copy of an order made pursuant to section 56 or this section to:
- (a) the licensee whose conduct is the subject of the order; and
  - (b) the person, if any, who made the complaint mentioned in section 46.
- (3) Where a licensee who is an embalmer, funeral director or salesperson is found guilty of professional misconduct or professional incompetence, the registrar shall inform the owner who employs the licensee of the order made against that licensee.

1999, c.F-23.3, s.57.

**Cancellation, etc., of licence on criminal conviction**

**58** The discipline committee may make any order pursuant to section 56 if:

- (a) the licensee has been convicted of an offence pursuant to the *Criminal Code*;
- (b) a report of the investigation committee is made to the discipline committee respecting the conviction mentioned in clause (a);
- (c) the discipline committee has given the licensee an opportunity to be heard; and
- (d) the discipline committee finds that the conduct of the licensee giving rise to the conviction constitutes professional incompetence or professional misconduct.

1999, c.F-23.3, s.58.

**Duty to report**

**59** Where the investigation committee in its investigation pursuant to section 46 or the discipline committee at the conclusion of its hearing pursuant to section 51 believes that the licensee whose conduct is the subject of the investigation or hearing may be guilty of a criminal offence, the investigation committee or the discipline committee:

- (a) may immediately discontinue its investigation or hearing, as the case may be; and
- (b) shall make a report of its findings to:
  - (i) the chairperson of the council;
  - (ii) the superintendent; and
  - (iii) the Deputy Minister of Justice.

1999, c.F-23.3, s.59.

**Suspension where criminal charge laid**

**60** On the application of the council, the Court of Queen's Bench may direct that a licence be suspended pending the disposition of a criminal charge where:

- (a) a criminal charge is laid against the licensee; and
- (b) the licensee has applied to the court for a stay of any disciplinary proceedings against the licensee.

1999, c.F-23.3, s.60.

**Appeal to superintendent**

**61(1)** Within 30 days after the decision or order, or any further time that the superintendent may allow, a decision or order of the council or the discipline committee may be appealed to the superintendent by:

- (a) a person who is the subject of a decision or order pursuant to section 8, 11, 12 or 15 or subsection 16(5); or
  - (b) a licensee who has been found guilty of professional misconduct or professional incompetence or is subject to an order pursuant to section 56 or 57.
- (2) An appeal pursuant to subsection (1) is to be commenced by:
- (a) serving the registrar with a copy of a written application for a hearing; and
  - (b) filing the application with the superintendent.
- (3) Within seven business days after receiving an application for a hearing, the superintendent shall fix a date for a hearing.

1999, c.F-23.3, s.61.

**Documents to be filed by registrar**

**62(1)** On receipt of an application for a hearing pursuant to clause 61(1)(a), the registrar shall file with the superintendent a true copy of the information that was before the council in making its decision and the notification and reasons required to be provided pursuant to section 19.

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(2) On receipt of an application for a hearing pursuant to clause 61(1)(b), the registrar shall file with the superintendent a true copy of:

- (a) the formal complaint sent and notice served pursuant to subsection 50(1) or the report of the investigation committee pursuant to section 59;
- (b) the transcript of the evidence presented to the discipline committee;
- (c) all documents and materials that were before the discipline committee in the making of the decision or order; and
- (d) the decision or order of the discipline committee and any reasons provided by the discipline committee for the decision or order.

(3) The appellant or the appellant's solicitor or agent may obtain from the registrar a copy of the documents filed pursuant to subsection (1) or (2) on payment of the costs of producing them.

1999, c.F-23.3, s.62.

**Decision by superintendent**

**63(1)** On hearing an appeal, the superintendent may:

- (a) dismiss the appeal;
- (b) quash a finding of guilt;
- (c) direct a new hearing or further inquiries by the discipline committee;
- (d) vary the order of the council or discipline committee;
- (e) substitute his or her own decision for the decision of the council or discipline committee;
- (f) order the council to issue, renew or reinstate a licence or register a person as a student; or
- (g) vary any terms imposed by the council or the discipline committee on the appellant's licence or registration.

(2) The superintendent may make any order as to costs that the superintendent considers appropriate.

(3) The council is entitled to be heard, by counsel or otherwise, on the hearing of an appeal and on an application pursuant to section 68.

(4) The superintendent shall provide the appellant and the council with a copy of the superintendent's decision, in writing, including reasons for the decision.

1999, c.F-23.3, s.63.

**Appeal to Court of Queen's Bench**

**64** Within 30 days after the decision or order, the council or a person who is the subject of a decision or order of the superintendent pursuant to section 63 may appeal the decision or order to the Court of Queen's Bench by serving the superintendent and, in the case of an appeal by a person who is the subject of the decision or order, the registrar with a notice of appeal and filing the notice of appeal with a local registrar of the court.

1999, c.F-23.3, s.64.

**Documents to be filed with court**

**65** On receipt of a notice of appeal, the superintendent shall file with the local registrar of the Court of Queen's Bench true copies of:

- (a) all documents and materials that were before the superintendent in the making of the decision or order;
- (b) the superintendent's decision or order; and
- (c) the reasons for the decision pursuant to subsection 63(4).

1999, c.F-23.3, s.65.

**Decision by court**

**66(1)** On hearing an appeal, the Court of Queen's Bench may:

- (a) dismiss the appeal;
- (b) allow the appeal;
- (c) allow the appeal subject to terms;
- (d) vary the decision or order of the superintendent;
- (e) refer the matter back to the superintendent for further consideration and decision; or
- (f) make any other order that the court considers appropriate.

(2) The Court of Queen's Bench may make any order as to costs that the court considers appropriate.

1999, c.F-23.3, s.66.

**Court of Appeal**

**67** The council or a person mentioned in section 64 may appeal a decision or order of the Court of Queen's Bench to the Court of Appeal, on a question of law, within 30 days after the decision or order.

1999, c.F-23.3, s.67.

**Application for stay**

**68(1)** The commencement of an appeal pursuant to section 61 or 64 does not stay the effect of the decision or order appealed from, but, on five days' notice to the other party, the appellant may apply to the Court of Queen's Bench for a stay of the decision or order pending the disposition of the appeal.

(2) The commencement of an appeal pursuant to section 67 does not stay the effect of the decision or order appealed from, but, on five days' notice to the other party, the appellant may apply to the Court of Appeal for a stay of the decision or order pending the disposition of the appeal.

1999, c.F-23.3, s.68.

**Effect of suspension or cancellation**

**69(1)** When a licensee's licence is suspended or cancelled pursuant to this Act, that licensee's rights and privileges, in the case of a suspension, are removed for the period during which the licence is suspended or, in the case of a cancellation, are terminated.

(2) Where an owner's licence is suspended or cancelled pursuant to this Act, the licence of every salesperson employed by that owner is also suspended or cancelled.

1999, c.F-23.3, s.69.

**Licence after cancellation**

**70(1)** A person whose licence has been cancelled pursuant to this Part may apply to the council for a licence.

(2) Subject to the bylaws, on receipt of an application pursuant to subsection (1), the council shall:

- (a) review the application; and
- (b) investigate the application by taking any steps it considers necessary.

(3) On completion of its investigation, the council may:

- (a) where it is satisfied that the person's subsequent conduct and any other facts warrant licensing, order that a licence be issued to the applicant on any terms that the council considers appropriate; or
- (b) by order, refuse to issue a licence to the applicant.

1999, c.F-23.3, s.70.

**Appeal of council's decision**

**71(1)** Where, on an application pursuant to subsection 70(1), the council refuses to issue a licence to an applicant, that applicant, within 30 days after the date of the order, may appeal the order of the council to the superintendent, and the superintendent may allow or disallow the appeal.

(2) On an appeal pursuant to subsection (1), the superintendent shall consider:

- (a) the proceedings before the council on the application pursuant to subsection 70(1);
- (b) the past record of the appellant as shown by the records of the council; and
- (c) the evidence taken before the council and any committee that dealt with the cancellation and the application pursuant to subsection 70(1) and the report of that committee.

(3) Where, on an appeal pursuant to subsection (1) the superintendent refuses to order that an applicant be licensed, the applicant, within 30 days after the date of the order, may appeal the order of the superintendent to the Court of Queen's Bench, and the court may allow or disallow the appeal.

(4) On an appeal pursuant to subsection (3), the Court of Queen's Bench shall consider the matters mentioned in subsection (2).

(5) A person whose application pursuant to subsection 70(1) is refused or whose appeal of a refusal is dismissed may make another application for a licence, based on new information, at any time.

1999, c.F-23.3, s.71.

**PART VI**  
**Prepaid Contracts**

**Interpretation of Part****72** In this Part:

- (a) **“funds”** includes all money received pursuant to a prepaid contract, including all income accrued or earned on that money as prescribed in the regulations;
- (b) **“owner”** means an owner who is required to provide services pursuant to a prepaid contract.

1999, c.F-23.3, s.72.

**Compliance with this Part required****73** Every licensee shall comply with this Part.

1999, c.F-23.3, s.73.

**Funds in trust**

**74(1)** A person who receives funds pursuant to the sale of a prepaid contract shall, immediately on receipt of those funds, pay the funds to the owner who is to provide the funeral or cremation services pursuant to the prepaid contract.

(2) Subject to the regulations, an owner who receives funds paid or collected pursuant to a prepaid contract:

(a) may deduct from those funds the cost, as itemized in the prepaid contract, of goods and services that have been specially ordered under the prepaid contract and that, because of some unique characteristic, personalization or extraordinary cost, cannot be used in the owner's ordinary course of business; and

(b) shall immediately deposit with a financial institution in Saskatchewan a minimum of 85% of the balance of the funds paid or collected pursuant to the prepaid contract.

(3) The moneys deposited pursuant to subsection (2) must be placed in a trust account kept separate and apart from all other moneys or funds in the owner's control.

(4) Where an owner fails to deposit the required funds to a financial institution pursuant to subsections (2) and (3), the owner is liable to make up any deficiency together with interest at a rate set out in the regulations for the period that the funds were not deposited pursuant to subsections (2) and (3).

(5) For the purposes of subsection (4), if the owner is a corporation, the corporation and every director of the corporation are jointly and severally liable.

(6) Every owner shall prepare and submit to the council an annual report, at the times and in the form and containing the contents prescribed in the bylaws, with respect to all trust accounts required to be established by the owner in accordance with this section.

1999, c.F-23.3, s.74.

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**Records**

**75(1)** Every owner shall maintain records with respect to each prepaid contract pursuant to which funds have been deposited in trust pursuant to subsections 74(2) and (3).

(2) The records mentioned in subsection (1) must be:

- (a) in the form prescribed in the regulations or in the bylaws; and
- (b) maintained by the owner for the period prescribed in the regulations.

1999, c.F-23.3, s.75.

**Payment and transfer of funds**

**76(1)** No owner shall withdraw the funds respecting a prepaid contract, including any income from those funds, from the trust account mentioned in subsection 74(3) until the prepaid contract has been:

- (a) fully performed by the owner; or
- (b) cancelled in accordance with this Act.

(2) An owner shall, in accordance with the regulations, transfer the money paid respecting a prepaid contract, including any income from those funds, to the trust account of another owner at the request of a buyer.

1999, c.F-23.3, s.76.

**Mandatory contract provisions**

**77** Every prepaid contract must contain:

- (a) the name and address of the buyer;
- (b) the name, business address, telephone number and, where applicable, facsimile number of the owner;
- (c) the name of the salesperson;
- (d) the date on which the contract is signed;
- (e) a statement of cancellation rights that complies with any requirements set out in this Act and the regulations; and
- (f) any other information that may be prescribed in the regulations.

1999, c.F-23.3, s.77.

**Buyer to receive copy of contract**

**78(1)** An owner shall provide a copy of the prepaid contract to the buyer:

- (a) at the time the contract is signed by the buyer; or
- (b) by registered mail or personal delivery to the buyer within seven business days after the buyer signs the contract.

(2) Subject to subsection (3), where an owner does not comply with subsection (1), the buyer or an authorized decision-maker may cancel the prepaid contract without penalty and with a full refund as calculated in accordance with the regulations.

(3) A buyer or authorized decision-maker may exercise the right to cancel pursuant to this section only during the period commencing on the date the prepaid contract is signed by the buyer and ending on the day that is 30 days after the date on which the buyer receives a copy of the prepaid contract.

1999, c.F-23.3, s.78.

**Limits on assignment of contracts**

**79** No owner shall assign a prepaid contract to another owner unless the council and the buyer have been notified of the assignment in the manner prescribed in the bylaws.

1999, c.F-23.3, s.79.

**Cancellation within specified time**

**80(1)** A buyer or an authorized decision-maker may cancel a prepaid contract:

(a) where the buyer or authorized decision-maker serves a written notice of cancellation on the owner within 10 business days after the day on which the buyer receives a copy of the prepaid contract;

(b) where the owner, unless exempted from licensing pursuant to this Act or the regulations, was not licensed pursuant to this Act at the time that the buyer entered into the prepaid contract and the buyer or authorized decision-maker serves written notice of cancellation on the owner within one year of the day the buyer receives a copy of the prepaid contract; or

(c) where the owner fails to comply with section 77 and the buyer or authorized decision-maker serves a written notice of cancellation on the owner within one year after the day on which the buyer receives a copy of the prepaid contract.

(2) Where an owner receives a written notice of cancellation pursuant to subsection (1), the owner shall, within 15 business days after the day on which the owner receives the notice, pay to the buyer all of the moneys that were paid in relation to the prepaid contract and all income accrued or earned on those moneys as calculated in accordance with the regulations.

(3) For the purposes of this section, where a method of serving the cancellation notice other than personal delivery is used, a notice of cancellation is deemed to be served when sent.

1999, c.F-23.3, s.80.

**Cancellation at any time**

**81(1)** A buyer or an authorized decision-maker may cancel a prepaid contract by giving written notice to the owner from whom it was purchased at any time.

(2) Subject to subsections (3) and (4), where an owner receives a written notice pursuant to subsection (1), the owner shall, within 15 business days after the day on which he or she receives the notice, pay to the buyer all of the moneys that were paid in relation to the prepaid contract and all income accrued or earned on those moneys as calculated in accordance with the regulations.

(3) Where a prepaid contract is cancelled pursuant to this section, the owner may retain from the moneys an administration fee in an amount prescribed in the regulations.

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(4) The owner may deduct the itemized cost of goods from the amount to be refunded pursuant to subsection (2) where:

- (a) the goods have been specially ordered under a prepaid contract and because of some unique characteristic, personalization or extraordinary cost the goods cannot be used in the owner's ordinary course of business; and
- (b) the fact that the goods are being ordered and are not subject to a refund pursuant to this section is disclosed in writing in the prepaid contract.

(5) The owner shall deliver any goods described in clause (4)(a) to the buyer within 15 business days of receiving written notice of cancellation or within the time prescribed in the regulations.

1999, c.F-23.3, s.81.

**Cancellation by owner**

**82(1)** An owner who has sold a prepaid contract may cancel the contract:

- (a) with the written consent of the buyer; or
- (b) by providing 15 business days' written notice to the buyer of the owner's intention to cancel the contract.

(2) Where a prepaid contract is cancelled pursuant to subsection (1), the owner shall, within 15 business days after cancellation, at the option of the buyer:

- (a) pay to the buyer an amount equal to the amount required to provide, at the time of the cancellation, funeral or cremation services of a value equal to or greater than those contracted for; or
- (b) return to the buyer all of the moneys that were paid in relation to the prepaid contract and all income accrued or earned on those moneys as calculated in accordance with the regulations.

1999, c.F-23.3, s.82.

**Owner to provide goods and services**

**83** Where, after the death of a contract beneficiary, the funeral services or cremation services to be provided pursuant to the prepaid contract are not provided because they are not available, the owner shall, at the option of the authorized decision-maker:

- (a) provide funeral services or cremation services of a value equal to or greater than those contracted for, at no additional charge; or
- (b) return all of the moneys that were paid in relation to the prepaid contract and all income accrued or earned on those moneys as calculated in accordance with the regulations within 15 business days after receiving the instructions to return those moneys from the authorized decision-maker.

1999, c.F-23.3, s.83.

PART VII  
**Prepaid Funeral Services Assurance Fund**

**Assurance fund continued**

84(1) The Prepaid Funeral Services Assurance Fund created pursuant to section 6 of *The Prepaid Funeral Services Act*, as that Act existed on the day before the coming into force of section 1 of this Act, is continued.

- (2) There is to be credited to the assurance fund:
- (a) the moneys collected by the levy of an assessment on every owner in accordance with the bylaws;
  - (b) any interest, dividends or other returns earned on investment of moneys in the assurance fund; and
  - (c) any moneys received by the council pursuant to section 87, less the cost of recovering those moneys.

1999, c.F-23.3, s.84.

**Administration of assurance fund**

85(1) The council shall immediately deposit all moneys received pursuant to section 84 in an account in a financial institution in Saskatchewan, separate and apart from any other moneys of the council.

- (2) The council may invest moneys in the assurance fund in investments in which trustees are authorized to invest pursuant to *The Trustee Act, 2009*, and may sell or otherwise dispose of those investments and reinvest the proceeds in similar investments.
- (3) The council may:
- (a) recover any moneys advanced by the council to the assurance fund; and
  - (b) take as a fee for administering the assurance fund any amount that may be set out in the regulations.
- (4) The council may use moneys from the assurance fund only for the purpose of:
- (a) paying claims against an owner arising pursuant to a prepaid contract;
  - (b) paying the premium for a bond maintained by the council for the purposes of subsection 86(2); or
  - (c) any other matter prescribed in the regulations.

1999, c.F-23.3, s.85; 2009, c.T-23.01, s.64.

**Claims on fund**

86(1) In the amounts and in accordance with the circumstances set out in the regulations, the council may make a payment out of the assurance fund to or for the benefit of a person where:

- (a) the person has a claim, arising out of a prepaid contract, that has not been met; and

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- (b) the owner:
  - (i) is or was licensed pursuant to this Act or *The Prepaid Funeral Services Act*, as that Act existed on the day before the coming into force of section 1 of this Act; or
  - (ii) was required to be licensed pursuant to this Act or *The Prepaid Funeral Services Act*, as that Act existed on the day before the coming into force of section 1 of this Act.

(2) The council shall maintain a bond in an amount that it considers necessary to provide coverage against claims arising out of contracts that would have been prepaid contracts if entered into pursuant to this Act and that were entered into before the coming into force of *The Prepaid Funeral Services Act*.

1999, c.F-23.3, s.86.

**Council's rights of subrogation**

87(1) Where a payment is made to a person pursuant to section 86, the council is subrogated in the amount of the payment to any rights or remedies of that person.

- (2) In exercising its rights pursuant to subsection (1), the council may:
  - (a) commence a proceeding to recover the amount of the payment; or
  - (b) join with the person to whom the payment is made to commence a proceeding in the name of that person for recovery of the total amount of the claim.
- (3) On notice that the council has commenced or is commencing a proceeding pursuant to subsection (2):
  - (a) no person shall negotiate a settlement of any claim to the prejudice of the council; and
  - (b) no person to whom payment was made pursuant to section 86 shall interfere in any negotiations for settlement or in the proceeding.
- (4) A person to whom a payment is made pursuant to section 86 shall:
  - (a) assist the council in securing information, evidence and the attendance of any witness; and
  - (b) co-operate with the council in any proceeding.

1999, c.F-23.3, s.87.

**Annual report re assurance fund**

88(1) The council shall:

- (a) not later than 90 days after the end of its fiscal year, prepare a report in the form and manner required by the superintendent respecting the assurance fund and all dispositions made during the preceding fiscal year; and
  - (b) not later than 120 days after the end of its fiscal year, deliver a copy of the report to the minister.
- (2) The report must include an audited financial statement of the assurance fund.

1999, c.F-23.3, s.88.

PART VIII  
General Provisions

**Transportation and storage**

**89** While human remains or cremated human remains are being transported or stored, no person shall handle or care for those remains other than in a respectful manner.

1999, c.F-23.3, s.89.

**Burial permit required**

**90** No person shall:

(a) dispose of human remains except in accordance with *The Cemeteries Act, 1999*; or

(b) subject to the regulations, inter or cremate human remains unless the human remains are accompanied by a burial permit issued pursuant to *The Vital Statistics Act, 1995*.

1999, c.F-23.3, s.90.

**Authorized decision-maker**

**91(1)** Subject to subsections (2) and (3), the person deemed to be the authorized decision-maker with the right to control the disposition of human remains is the person first described in the following clauses who has the capacity to make the decision:

- (a) the executor named in the will of the deceased;
- (b) the spouse of the deceased or a person with whom the deceased cohabited as a spouse in a relationship of some permanence;
- (c) an adult child of the deceased;
- (d) a parent or legal custodian of the deceased;
- (e) an adult brother or sister of the deceased;
- (f) a grandparent of the deceased;
- (g) an adult grandchild of the deceased;
- (h) an adult uncle or aunt of the deceased;
- (i) an adult nephew or niece of the deceased;
- (j) an adult next of kin of the deceased determined on the basis provided by sections 13 and 14 of *The Intestate Succession Act, 1996*;
- (k) another adult person having some relationship with the deceased not based on a family relationship.

(2) In determining who is an authorized decision-maker pursuant to subsection (1):

- (a) persons are to be chosen in the order mentioned in subsection (1); and
- (b) the elder or eldest of the persons in the same category are to be chosen in preference to younger persons in that category.

- (3) For the purposes of subsection (1):
- (a) the relationships listed in clauses (1)(c) to (j) include adoptive relationships; and
  - (b) a person mentioned in clause (1)(k) may not provide written authorization for the cremation of human remains.
- (4) If the person who, pursuant to this section, is deemed to be the authorized decision-maker with the right to control the disposition of human remains is not available or is unwilling to give instructions, the next qualified person is deemed to be the authorized decision-maker.
- (5) If the identity of the deceased is not known, or no one is willing to act, the Minister of Community Resources and Employment may designate a person to be the authorized decision-maker with the right to control the disposition by burial of the deceased person.

1999, c.F-23.3, s.91; 2004, c.65, s.9.

**Written authorization required to provide services**

**92(1)** Subject to subsection (4), no owner of a funeral home shall provide funeral services and no owner of a crematorium shall cremate human remains unless the owner has received written authorization from the authorized decision-maker that is completed in accordance with the bylaws.

- (2) The authorized decision-maker:
- (a) shall warrant in the authorization:
    - (i) the truth of each fact stated in the authorization;
    - (ii) the identity of the human remains that are to be interred or cremated; and
    - (iii) the right to make the authorization; and
  - (b) is personally liable for damage resulting from incorrect facts being set out in the authorization.
- (3) An owner of a funeral home is not liable respecting funeral services and an owner of a crematorium is not liable respecting a cremation made on the basis of the written authorization unless the owner knew or ought to have known that the warranty in the authorization was not true.
- (4) Notwithstanding subsection (1), an owner of a funeral home may accept a verbal authorization to begin funeral services, but must not dispose of the human remains until the owner receives the written authorization required pursuant to that subsection.
- (5) An owner of a crematorium is not required to accept human remains for cremation.

1999, c.F-23.3, s.92.

**Visual identification**

**93** Before a cremation may take place pursuant to a written authorization from the authorized decision-maker, an owner shall ensure that:

- (a) the authorized decision-maker has visually identified the human remains;
- (b) a person designated by the authorized decision-maker who is capable of identifying the human remains has visually identified the human remains; or
- (c) the coroner has identified the human remains.

1999, c.F-23.3, s.93.

**Cremation only in licensed premises**

**94(1)** No person shall cremate human remains except in a crematorium.

- (2) No person shall provide human remains to a crematorium for cremation:
  - (a) if the person knows or ought reasonably to know that the human remains have a pacemaker or other potentially hazardous product implanted in them; or
  - (b) if the person knows or ought reasonably to know that other circumstances prescribed in the regulations are present.

1999, c.F-23.3, s.94.

**Cremation documentation**

**95** No owner of a crematorium shall cremate human remains until the owner has received:

- (a) a written authorization pursuant to section 92;
- (b) either:
  - (i) a burial permit issued pursuant to *The Vital Statistics Act, 1995*; or
  - (ii) a document that is prescribed by law of the jurisdiction in which the death occurred and that is signed by the proper officer authorized by that law; and
- (c) any other documentation that may be prescribed in the regulations.

1999, c.F-23.3, s.95.

**Container requirements**

**96(1)** In this section, “**container**” means a receptacle that is used to cremate human remains.

- (2) Human remains to be cremated must be enclosed in a casket or a container that is sufficient to protect the health and safety of crematorium personnel and the public and that meets the criteria set out in subsection (3).
- (3) For the purposes of subsection (2), the container or casket must prevent leakage, be rigid enough to be handled with ease, be combustible and be suitable for cremation.
- (4) A licensee shall not represent that a casket is required for cremation and shall disclose that a container that meets the requirements of this section is acceptable.

1999, c.F-23.3, s.96.

**Interment fee for storing cremated human remains**

**97(1)** An owner may require payment of an interment fee for storing cremated human remains.

(2) An interment fee pursuant to subsection (1) must be refunded to the authorized decision-maker or person designated by the authorized decision-maker who claims the cremated human remains before they are disposed of pursuant to section 98.

1999, c.F-23.3, s.97.

**Disposition of unclaimed cremated human remains**

**98** Subject to the regulations, cremated human remains that have been stored by an owner and that are unclaimed for a period of one year after cremation may be permanently disposed of:

- (a) by burying them in a common grave;
- (b) by placing them in a niche or compartment in a columbarium; or
- (c) in any manner that may be prescribed in the regulations.

1999, c.F-23.3, s.98.

**Records of owner of crematorium**

**99(1)** The owner of a crematorium shall keep a permanent record of all cremation services that the owner provides, including:

- (a) the name of the deceased;
- (b) the date and place of cremation;
- (c) the disposition of the cremated human remains, if known;
- (d) the name and address of the authorized decision-maker; and
- (e) any other information that may be prescribed in the regulations or the bylaws.

(2) Where an owner discontinues operation of a crematorium, the owner shall, as directed by the council or as provided in the regulations, make adequate provision for the safe keeping of records required to be kept pursuant to subsection (1).

1999, c.F-23.3, s.99.

**Records of owner of funeral home**

**100(1)** The owner of a funeral home shall keep a permanent record of all funeral services and cremation services that the owner provides, including:

- (a) the name of the deceased;
- (b) the date and place of interment or the date and place of cremation;
- (c) the disposition of the cremated human remains, if known;
- (d) the name and address of the authorized decision-maker; and
- (e) any other information that may be prescribed in the regulations or the bylaws.

(2) Where an owner discontinues operation of a funeral home, the owner shall, as directed by the council or as provided in the regulations, make adequate provision for the safe keeping of records required to be kept pursuant to subsection (1).

1999, c.F-23.3, s.100.

**Records of owner of transfer service**

**101(1)** The owner of a transfer service shall keep a permanent record of all transfer services that the owner provides, including:

- (a) the name of the deceased;
- (b) the location to which the human remains were conveyed; and
- (c) any other information that may be prescribed in the regulations or the bylaws.

(2) Where an owner discontinues operation of a transfer service, the owner shall, as directed by the council or as provided in the regulations, make adequate provision for the safe keeping of records required to be kept pursuant to subsection (1).

1999, c.F-23.3, s.101.

**Prohibitions**

**102(1)** No licensee shall:

- (a) represent that any goods or services offered by the licensee are required by law when they are not; or
- (b) charge a fee for providing goods and services not authorized by the buyer unless they are required by law.

(2) No owner shall charge a handling fee for a casket or container within the meaning of section 96 purchased from someone other than the owner, unless the owner charges the same handling fee for caskets and containers sold by the owner.

(3) No person shall make a false or misleading statement in any application pursuant to this Act, in any proceeding conducted pursuant to this Act or in response to any audit, examination, inspection or investigation carried out pursuant to this Act.

1999, c.F-23.3, s.102.

**Solicitations**

**103(1)** No person shall:

- (a) solicit, offer for sale or sell funeral services or cremation services by telephone between 9:00 p.m. and 9:00 a.m.;
- (b) solicit in any manner a resident of a facility that has been designated as a hospital or health centre pursuant to *The Regional Health Services Act*, a residential-service facility as defined in *The Residential Services Act*, a facility designated as a special-care home pursuant to *The Regional Health Services Act*, a personal care home as defined in *The Personal Care Homes Act* or similar institution, without having received a specific request from that resident to do so;
- (c) solicit in a manner that may harass or appear to harass an individual; or
- (d) engage in any other form of solicitation prohibited in the regulations.

(2) No person shall pay or offer to pay to any other person, directly or indirectly, a commission, bonus, rebate or other valuable consideration for recommending that human remains or cremated human remains be taken, or for causing human remains or cremated human remains to be taken, to a particular funeral home or disposed of at a particular crematorium.

(3) Subsection (2) does not prohibit or restrict ordinary business relationships or the use of sales literature or other advertising media.

(4) No person shall pay or offer to pay to any other person, directly or indirectly, a commission, bonus, rebate or other valuable consideration to provide information respecting residents of a facility that has been designated as a hospital or health centre pursuant to *The Regional Health Services Act*, a residential-service facility as defined in *The Residential Services Act*, a facility designated as a special-care home pursuant to *The Regional Health Services Act*, a personal care home as defined in *The Personal Care Homes Act* or similar institution.

1999, c.F-23.3, s.103; 2002, c.R-8.2, s.104 and 119.

**Price list and other information**

**104** A licensee shall:

- (a) keep a current itemized price list of all goods and services offered for sale, in accordance with the regulations;
- (b) if the licensee offers services to the public, have the current itemized price list readily available on the licensee's business premises and accessible to members of the public and provide a copy of it to any person on request; and
- (c) provide to members of the public any other information that may be prescribed in the regulations and in any manner and form that may be prescribed in the regulations.

1999, c.F-23.3, s.104.

**PART IX  
Enforcement**

**Warrants**

**105(1)** Where a justice of the peace or provincial court judge is satisfied by information on the oath of the superintendent, or a person authorized in writing by the superintendent, that there are reasonable grounds to believe that an offence against this Act or the regulations has occurred and that evidence of that offence is likely to be found or that a person required to produce or provide any record or document refuses or neglects to produce or provide that record or document, the justice of the peace or the provincial court judge may issue a warrant to do all or any of the following:

- (a) enter and search any place or premises named in the warrant;
- (b) seize and remove anything that may be evidence of an offence against this Act or the regulations;
- (c) remove, for the purpose of making copies, any records or documents examined pursuant to this section.

(2) With a warrant issued pursuant to subsection (1), the superintendent or a person authorized in writing by the superintendent may:

- (a) enter at any time and search any place or premises named in the warrant;
- (b) open and examine any box, parcel or other receptacle that the superintendent or person authorized in writing by the superintendent finds in the place or premises;

- (c) require the production of and examine any records, documents or property that the superintendent or person authorized in writing by the superintendent believes, on reasonable grounds, may contain information related to an offence against this Act or the regulations;
- (d) remove, for the purpose of making copies, any records or documents examined pursuant to this section; and
- (e) seize and remove from any place or premises searched anything that may be evidence of an offence against this Act or the regulations.

1999, c.F-23.3, s.105.

#### **Offences**

**106** Every person who contravenes any provision of this Act or the regulations is guilty of an offence.

1999, c.F-23.3, s.106.

#### **Penalties**

**107(1)** Every person who is guilty of an offence is liable on summary conviction to:

- (a) in the case of an individual, a fine not exceeding \$5,000, to imprisonment for a term not exceeding 12 months or to both;
- (b) in the case of a corporation, a fine not exceeding \$10,000.

(2) If a corporation commits an offence pursuant to this Act or the regulations, any officer or director of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and liable on summary conviction to the penalties mentioned in this section whether or not the corporation has been prosecuted or convicted.

1999, c.F-23.3, s.107.

#### **Compliance orders and restitution**

**108** Where a person is convicted of an offence, the convicting court may, in addition to any penalty it may impose, do all or any of the following:

- (a) order that person to comply with the provision of this Act or the regulations with respect to which that person was convicted;
- (b) if the court is satisfied that monetary benefits have accrued to the convicted person or another person associated with or related to the convicted person:
  - (i) order the convicted person to pay an additional fine in an amount equal to the amount of the monetary benefits; and
  - (ii) order the convicted person to pay compensation or make restitution to any person to whom the monetary benefits should be paid.

1999, c.F-23.3, s.108.

#### **Limitation on prosecution**

**109** No prosecution for a contravention of this Act or the regulations is to be commenced more than three years after the date the facts on which the alleged contravention is based first come to the knowledge of the council.

1999, c.F-23.3, s.109.

**PART X**  
**Administration**

**Superintendent appointed**

**110(1)** The minister shall appoint a Superintendent of Funeral and Cremation Services, and may appoint any Deputy Superintendent of Funeral and Cremation Services that the minister considers necessary, to supervise the administration of this Act.

(2) The superintendent may require any information or material from the council or members of the council respecting any activity of the council or respecting the administration of this Act or the regulations.

(3) Every decision of the council is subject to review by the superintendent on the superintendent's own initiative or at the request of a person who, in the opinion of the superintendent, has an interest in the decision.

(4) On completion of a review mentioned in subsection (3), the superintendent may direct the council to take any action that the superintendent considers appropriate, and the council shall act in accordance with the superintendent's direction.

(5) The superintendent may charge any fee that he or she considers necessary for services provided pursuant to this Act.

1999, c.F-23.3, s.110.

**Inspection of records**

**111(1)** On the superintendent's own motion or on the complaint of any interested person, the superintendent may:

(a) inquire into or investigate any matter the superintendent considers necessary respecting the administration of this Act or the regulations; or

(b) by order, authorize a person in writing to inquire into or investigate any matter the superintendent considers necessary respecting the administration of this Act or the regulations.

(2) The superintendent or a person authorized in writing by the superintendent may inspect the records of an owner at any reasonable time to determine whether:

(a) the amount of funds held in trust is the amount for which the owner is accountable;

(b) the owner is maintaining the records required by this Act, the regulations and the bylaws;

(c) the owner and any persons employed, appointed or authorized by the owner are complying with this Act, the regulations and the bylaws.

(3) For the purposes of subsections (1) and (2), the superintendent or a person authorized in writing by the superintendent may inquire into:

(a) any negotiations, transactions, loans or borrowing done or made by or on behalf of or in relation to an owner that may be relevant to the inspection; and

(b) any assets, property or things owned, acquired or disposed of in whole or in part by the owner, or by any other person acting on the owner's behalf, that may be relevant to the inspection.

- (4) In an inspection, the superintendent or a person authorized in writing by the superintendent, with the consent of the owner, may:
- (a) at any reasonable time, enter the business premises of an owner and examine any record, book, paper, document or thing found in the premises that may be relevant to a contravention of this Act, the regulations or the bylaws;
  - (b) make copies of any record, book, paper, document or thing examined; and
  - (c) retain any record, book, paper, document or thing examined that may be required for use as evidence.

1999, c.F-23.3, s.111.

**Written request to produce records**

- 112(1) The superintendent or a person authorized in writing by the superintendent may serve a written request on any person, including a director, officer or employee of an owner, requiring that person to produce any records, books, papers, documents or things required to be kept pursuant to this Act, the regulations or the bylaws or related to the business of a person governed by this Act.
- (2) A person on whom a written request is served pursuant to this section shall provide the records, books, papers, documents or things mentioned in the written request within the time specified in the written request.
- (3) For the purposes of producing a readable record from a computer system used by a person on whom a written request is served pursuant to subsection (1), the superintendent or a person authorized in writing by the superintendent may use any computer hardware or software belonging to or used by that person.

1999, c.F-23.3, s.112.

**Copies of records**

- 113(1) Where a record, book, paper, document or thing has been examined, removed, produced or provided pursuant to this Act, the superintendent or a person authorized in writing by the superintendent may make copies of that record, book, paper, document or thing.
- (2) A record, book, paper, document or thing certified by the superintendent or a person authorized in writing by the superintendent to be a copy made pursuant to this section:
- (a) is admissible in evidence without proof of the office or signature of the person making the certificate; and
  - (b) has the same probative force as the original record, book, paper, document or thing.
- (3) The superintendent, or a person authorized in writing by the superintendent, shall ensure that after copies of any records, books, papers, documents or things examined, removed, produced or provided pursuant to this Act are made, the originals are promptly returned to:
- (a) the place they were removed from; or
  - (b) any other place that may be agreed to by the superintendent or a person authorized in writing by the superintendent and the person who produced or provided the records, books, papers, documents or things or from whom they were removed.

(4) If the originals of any record, book, paper, document or thing are to be removed from any premises, the superintendent or a person authorized in writing by the superintendent shall take all reasonable steps to ensure that a copy of the record, book, paper, document or thing is left at the premises to allow business to be carried on.

(5) The person from whom any record, book, paper, document or thing is seized pursuant to this Act is entitled, at all reasonable times and subject to any reasonable conditions that may be imposed by the superintendent, to inspect the record, book, paper, document or thing and to obtain one copy of the record, book, paper, document or thing.

1999, c.F-23.3, s.113.

**Application for receiver**

**114** The superintendent may apply to the Court of Queen's Bench for the appointment of a receiver, receiver-manager, custodian, liquidator or trustee to hold or manage, as the case may be, all or part of the property of a person where:

- (a) the superintendent or a person authorized in writing by the superintendent is about to conduct, is conducting or has conducted an inquiry or investigation pursuant to section 111 with respect to that person;
- (b) criminal proceedings or proceedings with respect to a contravention of this Act, the regulations or the bylaws are about to be or have been instituted against that person and, in the opinion of the superintendent, those proceedings are related to or arise out of a prepaid contract; or
- (c) the person is an owner and the superintendent has reason to believe that the funds in the trust account of that owner are less than the amount for which the owner is accountable.

1999, c.F-23.3, s.114.

**Direction by superintendent**

**115(1)** In any of the circumstances mentioned in section 114, the superintendent may in writing:

- (a) direct any person having on deposit or under his or her control or for safe keeping any funds or securities of a person mentioned in clause 114(a), (b) or (c) to hold those funds or securities;
- (b) direct a person mentioned in clause 114(a), (b) or (c) to refrain from withdrawing funds or securities mentioned in clause (a) from any person who has them on deposit, under control or for safe keeping; or
- (c) direct a person mentioned in clause 114(a), (b) or (c) to hold any funds or securities of buyers or others that he or she has in his or her possession or under his or her control in trust for a receiver, custodian, trustee, receiver-manager or liquidator appointed pursuant to an Act or an Act of the Parliament of Canada or of the Legislature of another province or territory.

(2) A direction by the superintendent pursuant to subsection (1) remains in effect until the superintendent, in writing, revokes the direction or consents to release any particular funds or securities from the direction.

1999, c.F-23.3, s.115.

**Immunity**

**116** No action or other proceeding lies or shall be instituted against the Crown in right of Saskatchewan, the minister, the superintendent, any person authorized by the superintendent, the council, any member of the council, a committee of the council, any member of a committee of the council, the investigation committee, any member of the investigation committee, the discipline committee, any member of the discipline committee, the registrar or any employee of the council for any loss or damage suffered by reason of anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done, by that person or by any of the other persons mentioned in this section, pursuant to or in the exercise or supposed exercise of any power conferred by this Act, the regulations or the bylaws or in the carrying out or supposed carrying out of any responsibility imposed by this Act, the regulations or the bylaws.

1999, c.F-23.3, s.116.

**Service**

**117(1)** Any notice or other document that is required to be served pursuant to this Act, the regulations or the bylaws must be served:

- (a) by personal service made:
  - (i) in the case of an individual, on that individual;
  - (ii) in the case of a partnership, on any partner; or
  - (iii) in the case of a corporation, on any officer or director of the corporation;
- (b) by registered or certified mail addressed to the last known address of the person to be served or, in the case of a corporation, addressed to the registered office of the corporation;
- (c) in the case of a notice to the public, or to persons who are too numerous to be served individually, by publishing the notice in any manner that the superintendent may direct;
- (d) by any other means prescribed by the regulations; or
- (e) in any case where the superintendent is satisfied that it is not practicable to effect service by any of the means mentioned in clauses (a) to (d), by any method that the superintendent may direct.

(2) A notice or document sent by registered mail is deemed to have been served on the seventh day following the date of its mailing unless the person to whom it was mailed establishes that, through no fault of his or her own, the person did not receive the notice or document or received it at a later date.

(3) A notice or document sent by certified mail is deemed to have been served on the date on which it reached the premises to which it is addressed.

(4) Service of a notice or document to be sent by any other means is to be proved in the manner prescribed in the regulations.

(5) A notice or other document required to be served on the superintendent may be served:

- (a) by leaving it at the office of the superintendent with any person appearing to have authority to accept the notice or document;

- (b) by registered or certified mail addressed to the address of the office of the superintendent;
  - (c) by any other means prescribed by the regulations.
- (6) Any person entitled to be served a notice or a document may at any time waive, in writing, service of the notice or document.
- (7) For the purposes of this Act, service of any notice or document may be proved by affidavit or oral evidence given under oath or solemn affirmation by the person claiming to have served it.

1999, c.F-23.3, s.117.

#### Regulations

118 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) prescribing persons or classes of persons who are owners for the purposes of this Act and the regulations;
- (c) prescribing the circumstances pursuant to which owners may sell or offer prepaid contracts;
- (d) prescribing additional requirements to be met by applicants for licences or registration as students;
- (e) respecting the eligibility for membership on the council and prescribing circumstances under which members of council may be removed;
- (f) prescribing restrictions on the power of the council to make bylaws;
- (g) respecting the delegation of the council's powers;
- (h) respecting the keeping of current itemized price lists and other information by owners and the form and manner in which price lists and other information must be disclosed;
- (i) respecting advertising by licensees;
- (j) respecting the records to be kept by licensees and the length of time they are to be kept;
- (k) prescribing the amount of a fee for administering the assurance fund that the council may take;
- (l) respecting prohibited forms of solicitations;
- (m) prescribing the circumstances pursuant to which claims may be made on the assurance fund and the amounts of claims that may be paid from the assurance fund;
- (n) respecting records that licensees must retain respecting prepaid contracts;
- (o) prescribing the conditions pursuant to which owners may withdraw funds deposited in trust accounts established for prepaid contracts;
- (p) prescribing how funds deposited in trust accounts for prepaid contracts may be dealt with by an owner if the funds are not claimed by the buyer;

- (q) respecting the administration, handling and governance of trust accounts;
- (r) prescribing the administration fee that an owner may retain if a prepaid contract is cancelled by a buyer or authorized decision-maker;
- (s) prescribing the manner in which cremated human remains may be disposed of;
- (t) respecting the display of funeral goods at an owner's place of business and the information about funeral goods that must be available to the public;
- (u) prescribing the manner in which notices and documents may be served, including authorizing service using electronic means and governing the manner in which notices and documents may be served electronically, and prescribing the manner in which service may be proved;
- (v) respecting, including prescribing limits respecting, how a licensee may conduct business electronically;
- (w) designating memorial societies for the purposes of this Act;
- (x) exempting any persons or classes of persons from the application of all or any part of this Act, including exempting any persons or classes of persons from the requirement to be licensed or registered pursuant to this Act on any terms and conditions that may be prescribed in the regulations;
- (y) respecting means of service for the purposes of subsection 117(5);
- (z) respecting cremation operations and practices, including prescribing when the human remains of more than one person may be cremated at one time and when cremated human remains of more than one person may be commingled, and prescribing the handling and storage of cremated human remains;
- (aa) prescribing the circumstances in which a burial permit is not required before human remains may be interred or cremated;
- (bb) prescribing funeral services for the purposes of subsection 120(5);
- (cc) prescribing any other matter or thing required or authorized by this Act to be prescribed in the regulations;
- (dd) respecting any other matter or thing the Lieutenant Governor in Council considers necessary or expedient to carry out the intent of this Act.

1999, c.F-23.3, s.118.

## PART XI

### Repeal, Transitional and Coming into Force

**119 Dispensed.** This section makes consequential amendments to another Act. The amendments have been incorporated into the corresponding Act.

**Transitional**

120(1) All bylaws and rules made by the Saskatchewan Funeral Services Association pursuant to *The Saskatchewan Embalmers Act*, as that Act existed on the day before the coming into force of section 1 of this Act, or by the Prepaid Funeral Services Council pursuant to *The Prepaid Funeral Services Act*, as that Act existed on the day before the coming into force of section 1 of this Act, that were in force on the day on which section 1 of this Act comes into force, insofar as they are not inconsistent with any of the provisions of this Act or the regulations:

- (a) remain in force and are deemed to be bylaws made by the council until they are repealed or amended pursuant to this Act; and
- (b) may be dealt with by the council as if they were made pursuant to this Act.

(2) Every person who, on the day before the coming into force of section 1 of this Act, was licensed and whose licence was in good standing pursuant to *The Saskatchewan Embalmers Act* is deemed to have been issued a licence pursuant to this Act to act as an embalmer and funeral director and may be dealt with pursuant to this Act as if that person were licensed pursuant to this Act.

(3) Every person who, on the day before the coming into force of section 1 of this Act, was registered as a contract seller or salesperson pursuant to *The Prepaid Funeral Services Act* and whose registration was in good standing is deemed to have been issued a licence pursuant to this Act to sell prepaid contracts and may be dealt with pursuant to this Act as if that person were licensed pursuant to this Act.

(4) Every person who, on the day before the coming into force of section 1 of this Act, held a valid undertaker's licence issued pursuant to *The Public Health Act* is deemed to have been issued a licence pursuant to this Act to act as a funeral director and may be dealt with pursuant to this Act as if that person were licensed pursuant to this Act.

(5) Every person who, on the day before the coming into force of section 1 of this Act, was engaged in providing in a funeral home the funeral services prescribed in the regulations is deemed to be licensed as a funeral director pursuant to this Act and may be dealt with pursuant to this Act as if licensed pursuant to this Act.

(6) The council is the successor to the Saskatchewan Funeral Services Association, continued pursuant to *The Saskatchewan Embalmers Act*, as that Act existed on the day before the coming into force of section 1 of this Act, and of the Prepaid Funeral Services Council, established pursuant to *The Prepaid Funeral Services Act*, as that Act existed on the day before the coming into force of section 1 of this Act and, for that purpose:

- (a) any assets and liabilities of the Saskatchewan Funeral Services Association and of the Prepaid Funeral Services Council become the assets and liabilities of the council; and
- (b) any action or proceeding by or against the Saskatchewan Funeral Services Association or the Prepaid Funeral Services Council may be continued by or against the council.

(7) A prepaid funeral contract that was entered into pursuant to *The Prepaid Funeral Services Act*, as that Act existed on the day before the coming into force of section 1 of this Act, and that is in force on that day, is continued as a prepaid contract pursuant to this Act and may be dealt with as if entered into pursuant to this Act.

(8) A person who is required to be licensed pursuant to this Act but who was not required to be licensed pursuant to any other Act before the coming into force of section 1 of this Act shall apply to the council for a licence within 90 days after the coming into force of section 1 of this Act and may carry on business without a licence until the person is granted a licence or is notified by the council in writing that the person's application for a licence has been refused.

(9) Where a person was required to maintain a trust account with respect to a prepaid funeral contract pursuant to *The Prepaid Funeral Services Act*, as that Act existed on the day before the coming into force of section 1 of this Act, that person shall:

- (a) if the amount of moneys in the trust account is less than the minimum amount that is required by clause 74(2)(b) of this Act, deposit moneys in the trust account to ensure that the amount of moneys in the trust account meets the requirements of that clause;
- (b) if the amount of moneys in the trust account is more than the minimum amount that is required by clause 74(2)(b) of this Act, retain the moneys in the trust account and shall not reduce the amount of moneys in the trust account.

1999, c.F-23.3, s.120.

**Coming into force**

**121** This Act comes into force on proclamation.

1999, c.F-23.3, s.121.

