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c 47 Cemeteries Act

Ontario
CHAPTER 47

The Cemeteries Act

1. In this Act,

(a) "Cemeteries Advisory Board" means the advisory board heretofore established under the regulations made under a predecessor of this Act;

(b) "cemetery" means land that is set apart or used as a place for the interment of the dead or in which human bodies have been buried;

(c) "columbarium" means a structure designed for the purpose of storing the ashes of human remains that have been cremated;

(d) "crematorium" means a building fitted with the proper appliances for the purpose of the cremation of human remains, and includes everything incidental or ancillary thereto;

(e) "Department" means the Department of Health;

(f) "inspector" means an inspector designated under this Act;

(g) "local board" means the local board of health of a municipality in which it is proposed to establish or in which there is a cemetery;

(h) "mausoleum" means a building or other structure used as a place for the interment of the dead in sealed crypts or compartments;

(i) "Minister" means the Minister of Health;

(j) "owner" means a person who owns, controls or manages a cemetery, mausoleum or columbarium;

(k) "perpetual care" means the preservation, improvement, embellishment and maintenance in perpetuity in a proper manner of lots and plots in a cemetery or of compartments in a mausoleum or columbarium;
"perpetual care funds" means the funds and property received by an owner for the purpose of providing perpetual care generally of a cemetery, mausoleum or columbarium or of any particular part thereof;

"regulations" means the regulations made by the Lieutenant Governor in Council under this Act.

2. The Minister may designate one or more officers of the Department to be inspectors for the purposes of this Act and the regulations with such powers and duties as the regulations prescribe. 1954, c. 6, s. 2, part.

3. The Lieutenant Governor in Council may make regulations respecting the Cemeteries Advisory Board and prescribing its powers and duties. 1954, c. 6, s. 2, part.

4. Where the provisions of a general or special Act conflict with the provisions of this Act or the regulations, the provisions of this Act and the regulations prevail. 1954, c. 6, s. 2, part.

5. No cemetery shall be established or enlarged, and no crematorium, columbarium or mausoleum shall be established, enlarged, altered or used, until the approval of the Department has been obtained in the manner hereinafter provided. 1960, c. 7, s. 1.

6. An application for such approval shall be made in writing to the council of the municipality, and the applicant shall submit therewith a detailed plan and description in duplicate of the land proposed to be acquired or used for cemetery, crematorium, columbarium or mausoleum purposes, together with such other information as the regulations require. R.S.O. 1950, c. 46, s. 3; 1957, c. 7, s. 2; 1960, c. 7, s. 2.

7. The application and one of the duplicates of the plan and description of the land and all other material filed with the application shall be transmitted to the Department together with a statement of the opinion of the council of the municipality thereon. R.S.O. 1950, c. 46, s. 4; 1957, c. 7, s. 3.

8. No application for the establishment or enlargement of a cemetery to be operated for gain or profit shall be approved unless the owner has set aside for perpetual care the amount prescribed by the regulations. 1957, c. 7, s. 4, part.
9.—(1) The approval of the Department shall be by order in writing signed by the Minister or Deputy Minister and shall contain a sufficient description of the cemetery, crematorium, columbarium or mausoleum proposed to be established or of the land that is to be annexed to it.

(2) The order may be registered in the proper registry or land titles office, and upon its registration the cemetery, crematorium, columbarium or mausoleum may be established or enlarged as the order directs.

(3) The approval of the Department may be revoked by an order in writing signed by the Minister or Deputy Minister, and thereafter the land mentioned in the order shall not be used for the interment of the dead until a further approval has been issued. R.S.O. 1950, c. 46, ss. 5, 59 part, amended.

10. No cemetery that is to be operated for gain or profit shall be used for the interment of the dead until approval of the Department therefor has been obtained. 1957, c. 7, s. 4, part.

11. Every person who establishes, enlarges or uses a cemetery, or who establishes, enlarges, alters or uses a crematorium, columbarium or mausoleum, without the approval of the Department, is guilty of an offence and on summary conviction is liable to a fine of not less than $100 and not more than $500. R.S.O. 1950, c. 46, ss. 6, 59 part, amended.

12. The expenses of the Department shall be paid by the applicant. R.S.O. 1950, c. 46, s. 7.

13.—(1) No person shall offer for sale or sell lots in a cemetery unless,

(a) he is licensed so to do under the regulations; and

(b) the provisions of the sale contracts have been approved by the Minister.

(2) This section does not apply in respect of the sale of lots in a cemetery or class of cemetery exempt therefrom under the regulations. 1954, c. 6, s. 2, part.

14. The provisions of this Act designated by the regulations apply mutatis mutandis to crematoria, columbaria and mausolea. 1960, c. 7, s. 3.
Regulations 15.—(1) The Lieutenant Governor in Council may make regulations,

(a) respecting the burial, disinterment, removal and disposal of the bodies or other remains of deceased persons;

(b) respecting the plans, surveys, arrangement, condition, care, sale and conveyancing of lots, plots and other cemetery grounds and property;

(c) respecting the erection, arrangement and removal of tombs, vaults, monuments, gravestones, markers, copings, fences, hedges, shrubs, plants and trees in cemeteries;

(d) fixing the amount and type of bond or insurance that shall be furnished or carried by persons selling cemetery lots;

(e) requiring owners of cemeteries to permit the planting, installation and erection of cemetery supplies by owners of lots and such other persons and upon such conditions as the regulations prescribe;

(f) defining cemetery services and cemetery supplies for the purposes of the regulations;

(g) governing and regulating the charges for the sale and care of lots and for cemetery services and supplies;

(h) regulating or restricting or prohibiting the sale or offering for sale of cemetery lots and prescribing the method, manner and conditions under which cemetery lots may be sold or offered for sale;

(i) respecting the collection, amounts to be collected and investment of funds for perpetual care and maintenance of cemeteries;

(j) requiring the filing or registration of plans of cemeteries and prescribing the contents and details of the plans and requiring that burials be made in accordance with the plan;

(k) requiring that the by-laws, rules or regulations made by the owners of cemeteries be approved by the Minister;

(l) requiring information with regard to cemeteries and the care and management thereof to be furnished to the Minister;
(m) requiring cemetery owners to supply financial and other information prescribed by the regulations to owners of cemetery lots and such other persons as the regulations prescribe;

(n) prescribing the amount of money that shall be set aside for perpetual care by the owner, and regulating the method and manner of the computation of the amount of money so to be set aside, and prescribing the matters or things in and about the cemetery, columbarium or mausoleum upon which the owner may expend the income from perpetual care funds;

(o) requiring and prescribing records in connection with the establishment, maintenance and operation of cemeteries to be kept by owners, and prescribing the times at which the records shall be submitted to the Minister and the information that shall accompany the records;

(p) prescribing the powers and duties of inspectors;

(q) requiring the licensing of persons who offer for sale or sell lots in a cemetery and prescribing the terms and conditions upon which a licence may be issued, the fees payable therefor, the form and term thereof, and the terms and conditions upon which any such licence may be renewed, suspended or revoked;

(r) exempting any cemetery, mausoleum or columbarium or any class thereof from the application of section 13, 27, 28 or 29, and any cemetery that is not operated for gain from any other provisions of this Act, and prescribing the conditions under which such cemetery, mausoleum or columbarium or any class thereof shall be exempt therefrom, and any such regulation may have a retroactive effect;

(s) classifying cemeteries, mausolea and columbaria; and

(t) designating the provisions of this Act that shall apply mutatis mutandis to crematoria, columbaria and mausolea,

and any such regulation may be general in its application or may be made applicable specially to any particular locality or cemetery. R.S.O. 1950, c. 46, s. 8 (1); 1953, c. 12, s. 1; 1954, c. 6, s. 3; 1957, c. 7, s. 5, amended; 1960, c. 7, s. 4.
(2) Every person who contravenes any of the provisions of the regulations is guilty of an offence and on summary conviction is liable to a fine of not more than $100 for a first offence and not more than $500 for any subsequent offence. R.S.O. 1950, c. 46, s. 8 (2).

16.—(1) It is the duty of the local board and it has power,

(a) to enter into and upon and to visit and inspect any cemetery within the limits of the municipality and to examine and inquire into the condition of the cemetery;

(b) to see that the provisions of this Act and the regulations are observed and to enforce their observance by prosecution for the penalties imposed by this Act;

(c) to call for and collect such statistical and other information as the Department requires with regard to cemeteries and the care and management thereof;

(d) to report to the Department from time to time upon the enforcement and administration of this Act;

(e) to see that every cemetery is properly fenced, kept clear of weeds and otherwise cared for in a proper manner and in accordance with this Act and the regulations.

(2) Any of the powers conferred upon a local board by subsection 1 may be delegated to any person by the local board.

(3) Where the Lieutenant Governor in Council is of opinion that a cemetery is being supervised and managed in a proper manner by a municipal council, board of park management or cemetery board, he may exempt it from any of the provisions of this section. R.S.O. 1950, c. 46, s. 9.

17. The treasurer of the municipality shall forthwith upon demand pay the amount of any account for services performed under the direction of the local board or for any expenditure incurred by or on behalf of the local board in carrying out the provisions of this Act or the regulations, after the board has by resolution approved the account and after a copy of the resolution certified by the chairman and secretary has been filed in the office of the treasurer. R.S.O. 1950, c. 46, s. 10.
18. In territory without municipal organization, any of the powers conferred upon a local board by this Act may be exercised by the Department, any medical officer of health or any sanitary inspector. R.S.O. 1950, c. 46, s. 11.

19. The Lieutenant Governor in Council may appoint any person to investigate and report upon the conditions of any cemetery and the conduct of its affairs or those of any corporation or trust or individual being the owner or in control of a cemetery, and to examine and audit the books of account of any cemetery, and any person so appointed has all the powers that may be conferred upon a commissioner under The Public Inquiries Act. R.S.O. 1950, c. 46, s. 12.

20. All lots or plots in a cemetery when numbered and conveyed as burial sites or lots are indivisible, but may afterwards be held and owned in undivided shares. R.S.O. 1950, c. 46, s. 13.

21. When a lot in a cemetery or a compartment in a mausoleum or columbarium has been sold for a burial site or for a deposit therein of human remains, it is not necessary to register the conveyance nor shall such lot or compartment be affected by any judgment, execution, mortgage or encumbrance. R.S.O. 1950, c. 46, s. 14.

22. The owner of a cemetery may repurchase any lot previously sold or conveyed or any part of such lot in which no interment has been made. R.S.O. 1950, c. 46, s. 15.

23.—(1) The owner may take and hold by grant, assign, devise, bequest or otherwise any money or securities and apply the same in preserving, improving and embellishing the cemetery, upon the condition and in consideration of assuming and undertaking the duty and obligation of preserving and maintaining in a proper manner in perpetuity any particular lot, tomb, monument or enclosure in the cemetery or in any other cemetery or burying ground in the same municipality or in any other municipality in the same county or district, and any person may make such grant, assignment, devise or bequest upon such condition and for such consideration.

(2) The owner may also take and hold by grant, assignment or devise from the owner thereof any lot in the cemetery for the purpose of maintaining it in perpetuity or otherwise in the manner and subject to the provisions of the instrument of grant, assignment or devise.
(3) The owner may agree to preserve and maintain in a proper manner in perpetuity the particular lot, tomb, monument or enclosure in any cemetery designated in such grant, assignment, devise, bequest or agreement.

(4) Personal representatives or trustees may pay over and transfer money or securities in their hands that they are authorized or directed to apply for or toward the purposes mentioned in this section.

(5) For the purpose of securing the due performance of such agreement, the owner shall invest the money received under the agreement in the same manner as trustees are authorized to invest trust money and out of the income of such investment perform his obligations under the agreement.

(6) Every executor and trustee of an estate, the testator or settlor of which has provided money or other property for the care and upkeep of a plot or plots or other part of a cemetery, and the registrar of the surrogate court from which probate issues, shall notify the owner of the cemetery of the amount of money or other property so provided for the care and upkeep or other benefits conferred upon the cemetery immediately upon the issue of probate or when the executor or trustee assumes the burden of the administration of the estate.

(7) The owner may call upon an executor or trustee of the estate of a testator or settlor who has bequeathed or set aside or provided any money or other property for the purpose of the upkeep or care of any lot or plot or part of a cemetery of such owner for the payment or delivery over to the owner of such money or property to be invested as hereinafter provided, the income thereof to be used by the owner as provided in the will of the testator or instrument of the settlor, and on default the owner may take out an appointment from the surrogate judge of the county in which the cemetery is situate directing the executor or trustee to appear before him at such time and place as he appoints, and upon the hearing, pursuant to such appointment, the judge has authority to direct payment or delivery over to the owner of such money or property or make such other disposition thereof in the premises as to him seems proper in order to carry out fully the intention of the testator or settlor as set forth in his will or other instrument, and the costs of and incidental to the application are in the discretion of the judge.

(8) Where the amount of the money or the value of the property directed to be delivered over to the owner is $200 or
less, the order may be filed in the division court of the division in which the executor, trustee or settlor resides, and, in all other cases, in the county court of the county in which the executor, trustee or settlor resides, and, when so filed, the order may be enforced in like manner as a judgment of the court in which it is filed.

(9) The owner shall not make any charge in connection with the erection of monuments, tombstones or vaults, except and what may not be a reasonable charge for opening graves and constructing the foundations, or erecting monuments, tombstones or vaults where the erecting is done by the owner.

(10) Where money has been deposited with a chartered bank in Ontario to provide a fund to furnish revenue by way of interest or otherwise for the perpetual upkeep of a lot, the bank may pay the money to the owner for the purposes for which it was deposited, to be dealt with according to this Act, and the owner may give an effectual release to the bank upon receiving the money. R.S.O. 1950, c. 46, s. 16.

24.—(1) Where an owner sells or transfers a lot in a cemetery or a compartment in a mausoleum or columbarium, he shall set aside in trust for perpetual care, out of the amount received on the sale or transfer, such amount as the regulations prescribe.

(2) Where the amount received on the sale or transfer is not sufficient to provide the amount prescribed by the regulations or if nothing is received on the sale or transfer, the owner shall forthwith make up the deficiency so as to provide the amount so prescribed.

(3) Where the owner is entitled to retain perpetual care funds, he shall invest the amount so set aside or, where he is not entitled to retain perpetual care funds, he shall pay over the amount so set aside as provided in this Act. 1960, c. 7, s. 5 (1).

(4) The owner shall, out of the income of such investment, preserve and maintain in a proper manner in perpetuity all lots in the cemetery, or compartments or crypts in the mausoleum or columbarium, as the case may be, and the owner may, out of such income, preserve and maintain tombs, monuments and enclosures and such other matters or things in or about the cemetery, mausoleum or columbarium as are prescribed by the regulations. 1960, c. 7, s. 5 (2).
25. Every owner of a cemetery shall keep such records in connection with the establishment, maintenance and operation of the cemetery as the regulations require and shall submit the records to the Minister at such times and with such information as the regulations prescribe. 1953, c. 12, s. 2, part.

26. Such officers of the Department as the Minister may appoint to inspect the books and records kept by owners in respect of the establishment, maintenance and operation of cemeteries, shall for the purpose of inspection have access to all such books and records at all reasonable times. 1953, c. 12, s. 2, part.

27.—(1) Every owner shall pay over all perpetual care funds that have heretofore and that hereafter come into his possession to the Public Trustee or to a trust company registered under The Loan and Trust Corporations Act within one month from the day on which the funds come into his possession or within such further period of time as the regulations provide. 1954, c. 6, s. 5, part; 1960, c. 7, s. 6.

(2) The Public Trustee or trust company shall invest the perpetual care funds as prescribed by section 28 and pay the income therefrom to the owner for the purposes of perpetual care.

(3) Where the owner has paid over perpetual care funds under subsection 1, all perpetual care funds thereafter received by the owner shall be paid over to the Public Trustee or to the trust company, as the case may be, to be dealt with in like manner.

(4) Where the owner has paid over the perpetual care funds to a trust company in accordance with subsection 1 or 3, the owner, with the approval of the Minister, may direct the trust company to transfer any such funds to another trust company referred to in subsection 1 or to the Public Trustee. 1954, c. 6, s. 5, part.

(5) Where the owner has paid over the perpetual care funds to the Public Trustee in accordance with subsection 1 or 3, the owner, with the approval of the Minister, may direct the Public Trustee to transfer any such funds to a trust company referred to in subsection 1. 1957, c. 7, s. 7.

(6) Perpetual care funds that have been paid over to the Public Trustee or a trust company under this section shall not be returned to the owner but shall form a trust in the possession of the Public Trustee or the trust company.
(7) This section does not apply to the perpetual care Exemption funds of a cemetery, mausoleum or columbarium or any class thereof that is exempt from this section under the regulations. 1954, c. 6, s. 5, part.

28.—(1) Every owner entitled to hold perpetual care Investment of funds, the Public Trustee or a trust company shall invest perpetual care funds in the same manner as a trustee is authorized to invest trust funds under The Trustee Act. R.S.O. 1960, 1954, c. 6, s. 5, part; 1960, c. 7, s. 7 (1).

(2) Except as otherwise provided in this Act or the regulations, the owner, Public Trustee or a trust company, pending the investment of perpetual care funds or pending the payment over of such funds to the Public Trustee or a trust company in the case of an owner not entitled to hold perpetual care funds, may deposit them during such time as is reasonable in the circumstances in any chartered bank of Canada, or in the Province of Ontario Savings Office, or in any trust company or loan corporation that is registered under The Loan and Trust Corporations Act. 1954, c. 6, s. 5, part; 1960, c. 222, c. 7, s. 7 (2).

(3) This section does not apply to the perpetual care funds Exemption of a cemetery, mausoleum or columbarium or any class thereof that is exempt from this section under the regulations. 1954, c. 6, s. 5, part.

29.—(1) For the purposes of sections 30 to 37, "owner" interpretation, includes a trust company to which perpetual care funds have been paid.

(2) Every owner shall forthwith submit to be passed, examined and audited, by the judge of the surrogate court for the county or district in which his cemetery, mausoleum or columbarium is located, accounts of his dealings with perpetual care funds that have come into his hands since the 1st day of January, 1952, but this subsection does not apply to any owner whose accounts with respect to such funds have been so passed since the 1st day of January, 1955.

(3) On a passing of accounts, the judge may require the owner,

(a) to submit additional accounts or information with respect to perpetual care funds; and

(b) to make a full disclosure and accounting of all perpetual care funds that have come into the possession of the owner at any time.
(4) Where a cemetery, mausoleum or columbarium is hereafter established, the owner shall, within five years after its establishment, submit to be passed, examined and audited by the judge, accounts of his dealings with perpetual care funds.

(5) This section does not apply to perpetual care funds of a cemetery, mausoleum or columbarium or any class thereof that is exempt from this Act under the regulations. 1954, c. 6, s. 5, *part*, amended.

30. After the first passing of accounts under section 29 or a predecessor thereof, the owner shall submit his accounts with respect to perpetual care funds to be passed, examined and audited at intervals not exceeding five years from the date of the order made on the last previous passing of accounts.

31. The judge of the surrogate court for the county or district in which a cemetery, mausoleum or columbarium is located may direct a passing of accounts of perpetual care funds at any time. 1954, c. 6, s. 5, *part*.

32. Where for any reason the judge deems it expedient, he may from time to time, after notice has been given to the Public Trustee of an application to extend the time for passing accounts, extend the time prescribed by section 29 or 30 for a period not exceeding two years. 1954, c. 6, s. 5, *part*.

33.—(1) Except as provided in subsection 2, the provisions of *The Surrogate Courts Act* and the rules made thereunder and of *The Trustee Act* with respect to the passing of accounts of an executor, administrator or trustee apply *mutatis mutandis* to the passing of accounts under this Act, but the owner shall not be allowed any compensation for his care, pains and trouble and his time expended in and about the perpetual care funds, and any agreement made by the owner as defined in clause j of section 1 with respect to the payment to a trust company or to the Public Trustee for services in connection with funds entrusted to the trust company or to the Public Trustee may be reviewed and passed upon by the judge on a passing of accounts. 1954, c. 6, s. 5, *part*; 1957, c. 7, s. 8.

(2) Notice of the passing of accounts shall be served only upon the Public Trustee unless the judge otherwise directs. 1954, c. 6, s. 5, *part*.

34. If, upon the passing of accounts, the judge finds that the owner has been guilty of a breach of trust or has in his
hands perpetual care funds that are not immediately required for perpetual care purposes, or has failed to set aside the proper amount for such purposes, he may direct that the funds or a part thereof be paid to the Public Trustee or to a trust company, or make such order as he deems necessary to compel compliance with this Act or the trust in question. 1954, c. 6, s. 5, part; 1960, c. 7, s. 8.

35. An owner shall from time to time furnish the Public Trustee with such information with respect to perpetual care funds as the Public Trustee requires. 1954, c. 6, s. 5, part.

36. The Public Trustee shall be deemed to be a person having an interest in perpetual care funds. 1954, c. 6, s. 5, part.

37. In addition to the powers, rights and obligations created by this Act, the provisions of the general law either statutory or otherwise apply to an owner or trust company with respect to any perpetual care funds in his hands to the same extent as they are applicable to a trustee having funds or property in his hands for charitable purposes. 1954, c. 6, s. 5, part.

38. Where an action has been commenced by debenture holders whose debentures are charges against the assets of a cemetery and perpetual care funds paid to the owner of the cemetery have not been set aside as required by this Act and the regulations and a receiver has been appointed by order of the court, the Lieutenant Governor in Council may, notwithstanding this Act and the regulations, fix the amount to be set aside for perpetual care. 1957, c. 7, s. 9.

39. The owner of a cemetery that is not operated for gain or profit may maintain any lot, tomb, monument or enclosure that is not being properly maintained by or on behalf of the owner thereof, and the reasonable charges for so doing are a debt due by the lot owner to the owner of the cemetery. R.S.O. 1950, c. 46, s. 18.

40.—(1) If additional land is required for the enlargement of a cemetery and the council of the municipality in which the land is situate by by-law declares that in the opinion of the council the owner should, for that purpose, have power to expropriate any adjacent land described in the by-law, and if the Department certifies that in its opinion the proposed enlargement is for the public advantage and convenience and ought to be permitted, the owner, upon registering the by-law and certificate in the proper registry or land titles office, in respect of the land described in the by-law, possesses
the powers conferred upon the council of a local municipality by *The Municipal Act*.

(2) Where the owner, not being a municipal corporation, desires to proceed under this section, proceedings for expropriation may be initiated by notice. R.S.O. 1950, c. 46, s. 19.

### 41.
Subject to this Act and to the regulations, the owner may make regulations for laying out and selling lots and managing the cemetery, for regulating burials therein, the removal of bodies therefrom, the erection or removal of tombs, monuments, gravestones, vaults, copings, fences, hedges or other permanent improvements therein, the planting, placing and removal of trees, shrubs and plants in the grounds, and otherwise generally respecting the use of the grounds, and for the execution of conveyances of lots or plots in the cemetery. R.S.O. 1950, c. 46, s. 20.

### 42.
The owner may borrow money for the purpose of laying out, making and improving roads in the cemetery, and for that purpose may mortgage all his estate, right and interest in the cemetery, but nothing in this section authorizes the mortgagee or any one claiming under him to use or deal with the cemetery in a manner inconsistent with the continued use of it as a cemetery or inconsistent with any provision of this Act for the preservation and protection of it for cemetery purposes. R.S.O. 1950, c. 46, s. 21.

### 43.—(1) The owner shall,

(a) keep and maintain fences about the cemetery sufficient to prevent dogs, cattle and other animals from straying therein;

(b) keep the cemetery and the buildings and fences thereof in good order and repair; and

(c) see that all burials in the cemetery are conducted in a decent and orderly manner, and that quiet and good order are at all times maintained therein.

(2) Where there is no person resident in the municipality in which a cemetery is situate in charge of it, the cemetery shall be deemed non-resident land within the meaning of *The Weed Control Act*.

(3) Every default in complying with subsection 1 constitutes an offence for which the owner on summary conviction is
liable to a fine of not more than $10 and $5 for every day during which the default continues. R.S.O. 1950, c. 46, s. 22, amended.

44. Every owner shall construct all necessary sewers and drains in and about the cemetery for draining it and keeping it dry, and may whenever necessary connect any such sewer or drain with an existing sewer with the consent in writing of the municipal corporation or other body or the person owning or controlling the highway, lane or other public communication, or the land of which any part is to be opened up for that purpose, doing as little damage as possible and restoring the same to as good condition as before the opening was made. R.S.O. 1950, c. 46, s. 23.

45.—(1) The owner shall not cause or suffer any offensive matter from the cemetery to be brought to or flow into any river, spring, well, stream, canal, reservoir, aqueduct, pond or watering place.

(2) Every contravention of subsection 1 constitutes an offence for which the owner on summary conviction is liable to a fine of not more than $50, and in addition is liable for any damage caused thereby to any person having a right to use such water. R.S.O. 1950, c. 46, s. 24.

46.—(1) The owner shall not cause or suffer any dead body to be interred in a vault or otherwise under or within fifteen feet of the outer wall of a church, chapel or other building in the cemetery.

(2) Every contravention of subsection 1 constitutes an offence for which the owner on summary conviction is liable to a fine of not more than $50. R.S.O. 1950, c. 46, s. 25.

47.—(1) The owner shall not permit any burial therein until he has been registered as the owner of the cemetery with the Registrar General, through the division registrar of the municipality in which the cemetery is situate.

(2) Every contravention of subsection 1 constitutes an offence for which the owner on summary conviction is liable to a fine of not more than $50. R.S.O. 1950, c. 46, s. 26.

48. Where the owner neglects to keep a cemetery in good order or to erect or maintain fences as required by this Act, the local board may give notice to him to do so, specifying in the notice what he is required to do, and if he does not within one month after the notice comply with such require-
49. Sections 5, 6, 7, 9, 11, 13, 15, 16, 17, 19, 41, 44 and 45 apply *mutatis mutandis* to mausolea in the same manner as they apply to cemeteries. 1957, c. 7, s. 10.

50.—(1) Where no interment has been made in a plot for more than twenty years and the plot owner has not maintained and kept it in a proper state of repair for more than five years or has made default for more than five years in payment of the maintenance charges referred to in section 39, a judge of the county or district court of the county or district, on the application of the owner of the cemetery and after notice has been given as provided by subsection 2 and on being satisfied that the facts are as above set out, may authorize the owner of the cemetery to sell and convey that part of the plot in which no interment has been made, and the proceeds of any such sale, except as otherwise provided in subsection 3, shall be invested and the income derived therefrom shall be applied to the perpetual care and maintenance of that part of the plot in which an interment has been made.

(2) Where to the knowledge of the owner of the cemetery the plot owner resides in the county or district, notice of the application shall be delivered to him personally or sent to his address by registered mail at least four days before the time fixed for hearing the application, and, where he resides in some other county or district in Ontario and his place of residence is known by the owner of the cemetery, the notice shall be sent to the address of his residence by registered mail at least ten days before the time fixed for the hearing, and, where the place of his residence is not in Ontario or is unknown, the judge may direct what notice, if any, shall be given.

(3) Where the owner of a cemetery that is not operated for gain or profit maintains a fund for the perpetual care of the cemetery and plots or parts of plots are sold under this section, the owner shall apply the proceeds received from the sale, or so much as are available, in the following order and priority:

*Firstly.*—In reduction or satisfaction of all arrears due to the owner for the maintenance charges referred to in subsection 1.
Secondly.—In providing for the perpetual care of that part of the lot in which an interment has been made.

Thirdly.—Any balance remaining to be carried to the credit of the perpetual care fund maintained by the cemetery. R.S.O. 1950, c. 46, s. 28.

51. Where the owner of a cemetery is an incorporated company or a municipal corporation, it shall provide graves for strangers and for the indigent free of charge, but an incorporated company is not bound to do so in the case of an indigent except upon the certificate of a member of the council of the municipality or of a minister or clergyman that the relatives of the deceased are poor and cannot afford to purchase a lot in the cemetery. R.S.O. 1950, c. 46, s. 29.

52.—(1) The dead body of a person who has died of smallpox, scarlet fever, measles, diphtheria, croup, bubonic plague, cholera, epidemic cerebro spinal meningitis, or epidemic anterior poliomyelitis shall not be disinterred, except for the purpose of transportation or re-interment and in conformity with the regulations.

(2) No such dead body shall be transported by railway, steam or other vessel, or other public conveyance unless prepared in the manner provided by the regulations and enclosed in a hermetically sealed coffin that shall not be subsequently opened. R.S.O. 1950, c. 46, s. 30.

53.—(1) No dead body shall at any time be disinterred or removed from the grave, place of burial or vault, other than a receiving vault, except under and subject to the regulations and under the supervision and direction of the medical officer of health.

(2) The certificate of the medical officer of health that this Act and the regulations have been complied with shall be affixed to the coffin or other receptacle containing the dead body before its removal from the cemetery.

(3) Every person who disinters or removes a dead body from a grave, place of burial or vault, except as hereinbefore provided, and every person who conveys or transports any such body in contravention of this Act is guilty of an offence and on summary conviction is liable to a fine of $100. R.S.O. 1950, c. 46, s. 31.

54. Every human body interred in a cemetery that is not placed or buried in a private vault so constructed as to...
prevent the escape of noxious or unhealthful gases therefrom shall be buried so that the outside cover or shell of the coffin or other receptacle is at least three feet beneath the natural surface of the ground, and the coffin or other receptacle shall be immediately covered with at least three feet of earth. R.S.O. 1950, c. 46, s. 32.

55.—(1) Notwithstanding anything in this Act, where it is deemed necessary to disinter a dead body for the purpose of a judicial proceeding, the court in which the proceeding is pending may direct its disinterment under and subject to such conditions as to reinterment as are deemed proper. R.S.O. 1950, c. 46, s. 33 (1).

(2) Where the Attorney General deems it expedient for the purpose of an inquiry as to the cause of death or for the purpose of a criminal investigation or proceeding that a body should be disinterred, he may exercise the powers mentioned in subsection 1. R.S.O. 1950, c. 46, s. 33 (2); 1958, c. 8, s. 1.

(3) A coroner who has issued his warrant for the holding of an inquest upon a dead body may direct it to be disinterred. R.S.O. 1950, c. 46, s. 33 (3).

56. Where the Department reports in writing that a cemetery is so situated that, owing to the want of proper facilities for drainage or from any other cause, it has become or is likely to become dangerous to the health of the inhabitants of the locality or that for any other reason it is expedient that it should be closed, the Lieutenant Governor in Council may declare it to be closed and thereupon no further interments shall take place therein. R.S.O. 1950, c. 46, s. 34.

57.—(1) Where a cemetery has been closed by the Lieutenant Governor in Council and the owner of the cemetery establishes to the satisfaction of the Lieutenant Governor in Council that it is expedient that the bodies therein should be removed therefrom, the Lieutenant Governor in Council may direct such removal in the manner and according to the procedure provided by this section. R.S.O. 1950, c. 46, s. 35 (1).

(2) Before the application for an order under subsection 1 is granted, the owner shall give notice of the application,

(a) once a week for four successive weeks in The Ontario Gazette;
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(b) once a week for four successive weeks in a newspaper having general circulation in the locality in which the cemetery is situate; and

(c) by registered letter addressed to every plot owner in the cemetery whose address is known or can be ascertained by the owner. 1959, c. 10, s. 1.

(3) After the making of the order, the owner shall forthwith give notice thereof by publication once a week for at least two successive weeks in The Ontario Gazette and in a newspaper having general circulation in the locality in which the cemetery is situate, or, if there is no such newspaper, then in a newspaper in the county or district town, that he will, at the expiration of thirty days from the publication of the last of such notices, disinter and remove the bodies and reinter them in the place described in the notice, which shall be in some cemetery in the same or in an adjacent municipality.

(4) At the expiration of the time fixed by such notice, any bodies not removed by the relatives or friends of the deceased may be removed by the owner at his own expense, and when removed shall be reinterred by him in the cemetery mentioned in the notice.

(5) Sections 52, 53 and 54 apply to such disinterment, removal and re-interment.

(6) The owner shall remove all monuments or headstones or other stones marking the graves in which bodies so removed are buried, and shall re-erect or replace them in the cemetery to which the bodies are removed.

(7) If the owner satisfies a judge of the county or district court of the county or district that he has removed from the cemetery and reinterred as provided in this Act all the remains which with the exercise of reasonable diligence he has been able to find buried in the cemetery, the judge may certify that this section has been complied with and the certificate may be registered in the proper registry or land titles office.

(8) The certificate when so registered is conclusive evidence that the owner has removed from the land therein described all the remains there buried, and thereafter the land shall be deemed not to be a cemetery within the meaning of this Act, but may be sold, leased or otherwise disposed of and dealt with by the owner as if it had not been a cemetery. R.S.O. 1950, c. 46, s. 35 (3-8).
58. Where a cemetery has been closed by the Lieutenant Governor in Council and the owner does not proceed as provided by section 57, the Lieutenant Governor in Council may authorize any person to exercise the powers of the owner in respect of a removal directed by the Lieutenant Governor in Council and every expense incurred by such person in so doing is a debt due and owing from the owner to the Crown in right of Ontario. R.S.O. 1950, c. 46, s. 36.

Prohibitions

59.—(1) No person shall,

(a) wilfully destroy, mutilate, deface, injure or remove any tomb, monument, gravestone or other structure placed in a cemetery, or any fence, railing or other work for the protection or ornament of a cemetery, or of any such tomb, monument, gravestone or other structure or of any lot in a cemetery;

(b) wilfully destroy, cut, break or injure any tree, shrub or plant in a cemetery, or wilfully injure, destroy or deface any building or structure or any road, walk or other works in a cemetery;

(c) play at any game or sport in a cemetery;

(d) discharge firearms in a cemetery, except at a military funeral;

(e) wilfully and unlawfully disturb persons assembled for the purpose of burying a body in a cemetery; or

(f) commit a nuisance in a cemetery.

(2) Every person who contravenes any of the provisions of subsection 1 is guilty of an offence and on summary conviction is liable to a fine of not less than $4 and not more than $40.

(3) No person shall bring any dog, goat or cattle within the limits of a cemetery, and every person so doing is guilty of an offence and on summary conviction is liable to a fine of not more than $20.

(4) Every person who contravenes subsection 1 or subsection 3 is also liable in an action in the name of the owner of the cemetery or of a burial plot upon which the damage is done or other unlawful act committed to pay all damages occasioned by his unlawful act and, when recovered, the damages shall be applied under the direction of the owner of the cemetery for the reparation and reconstruction of the property destroyed. R.S.O. 1950, c. 46, s. 37.
60. Where the owner of a cemetery cannot be found or where the cemetery is unknown or is unable to maintain it, the council of the local municipality in which the cemetery is situate shall maintain it and the corporation of the local municipality shall for the purposes of this Act be deemed to be the owner of the cemetery. R.S.O. 1950, c. 46, s. 38.

61. The council of a local municipality may, with the approval of the Lieutenant Governor in Council, pass a by-law,

(a) for expropriating land in the municipality for the establishment of a cemetery; or

(b) for expropriating a cemetery situate in the municipality or in an adjacent township or in unorganized territory,

and Parts XV and XVI of The Municipal Act apply mutatis mutandis to the exercise of such powers of expropriation. 1953, c. 12, s. 3.

62.—(1) Where a local municipality has expropriated a cemetery, the municipality may, with the approval of the Minister,

(a) convey the cemetery to trustees elected in the manner provided by section 73 or to a company incorporated for the purpose of operating a cemetery upon such trusts as the council of the municipality deems proper; and

(b) assign to such trustees or company any money or securities held by the municipality for the purpose of providing for perpetual care of graves, lots, gravestones or fences in the cemetery.

(2) Where a municipality has conveyed a cemetery to trustees under this section, section 73 applies mutatis mutandis.

R.S.O. 1950, c. 46, s. 40.

63.—(1) Subject to sections 5 to 59 and to the regulations, the council of every local municipality and the trustees of every police village may pass by-laws for,

(a) making an annual or other grant of money to the owner of a cemetery situate in the municipality or the police village, or in any adjacent municipality or police village;
(b) regulating funerals and the interment of the dead;

(c) acquiring land in the municipality or in the police village or in an adjacent township or in unorganized territory for a cemetery, or for the enlargement of an existing cemetery of which the municipality or police village is the owner;

(d) selling or leasing parts of such land for the purpose of interment in family vaults or otherwise, and fixing the terms on which the land shall be conveyed or leased and held;

(e) the maintenance, management, regulation and control of any cemetery that is owned by the corporation or the trustees whether situate in or outside the municipality or police village. R.S.O. 1950, c. 46, s. 41 (1).

(2) The authority given to make by-laws under clause e of subsection 1 includes authority to provide for the removal or re-arrangement of any monument or gravestone or other structure in any cemetery that the municipality or the police village, as the case may be, has been charged with maintaining under section 60. 1960, c. 7, s. 9.

(3) No such by-law comes into force or takes effect until it has been approved in writing by the Department. R.S.O. 1950, c. 46, s. 41 (2).

64. The council of every urban municipality and the trustees of every police village may pass by-laws for prohibiting the interment of the dead in the municipality or police village. R.S.O. 1950, c. 46, s. 42.

65. The owner of an existing cemetery or of any land held for cemetery purposes may sell or transfer it to any municipal corporation, or the trustees of any police village, and, if it has not been used for burial purposes, the corporation may sell it and acquire other land in lieu of it. R.S.O. 1950, c. 46, s. 43.

66. The council of a city or town for which there is a board of park management established under *The Public Parks Act* may by by-law transfer the control and management of a cemetery vested in the corporation of the municipality to such board, and thereafter the cemetery is vested in the board of park management and the board has the control and management of the cemetery and is responsible for its maintenance in the same manner and to the same extent as a municipal
corporation owning and maintaining a cemetery under this Act. R.S.O. 1950, c. 46, s. 44.

67. The council of a city or town owning or controlling a cemetery situated either in or outside the limits of the city or town may by by-law transfer the control and management of the cemetery to a board consisting of not less than three nor more than seven persons who shall hold office during the pleasure of the council and may by the by-law define the duties and powers of such board. R.S.O. 1950, c. 46, s. 45.

68. — (1) The council of a township may by by-law appoint a board consisting of not less than three nor more than seven persons who shall hold office during the pleasure of the council, and may by by-law provide that the board shall have and may exercise in the municipality all the powers and perform all the duties of a municipal council with respect to cemeteries in the township, including the powers and duties mentioned in section 60.

(2) Such a board is a corporation with the name of “The Cemetery Board of the Township of (insert name of township)” and the ownership and control of the cemeteries owned or controlled by the corporation of the township are vested in the board.

(3) The council of a village has the like powers as are conferred on townships by subsections 1 and 2 not only with respect to cemeteries in the village but also as to cemeteries outside the village owned and controlled by the corporation of the village. R.S.O. 1950, c. 46, s. 46.

69. — (1) The council of every county shall appoint a committee to be known as “The (insert name of county) War Memorial Committee” to take charge of monuments, tablets and other memorials established or erected in the county in commemoration of the nursing sisters, officers and men of Her Majesty’s forces who served, were wounded, killed or died during any war, except only such monuments, tablets and other memorials as are being cared for by municipalities, churches or other organizations.

(2) The committee shall be composed of five persons of whom two shall be members of the county council and the members of the committee shall serve without remuneration. R.S.O. 1950, c. 46, s. 47.

70. — (1) Where ten or more inhabitants of a township or part of a township desire to take a conveyance of land for a cemetery not for the exclusive use of any particular religious
body, they may appoint trustees to whom, and their successors appointed in the manner provided by the conveyance, the land may be conveyed.

(2) Such trustees and their successors in perpetual succession, by the name expressed in the conveyance, may take, hold and possess the land in trust for the uses and purposes mentioned therein and may maintain and defend actions for the protection thereof and of their property therein.

(3) Not more than ten acres shall be held in trust under any such conveyance. R.S.O. 1950, c. 46, s. 48.

71. Where trustees have been appointed to take a conveyance of land for cemetery purposes in a township or village and have acquired land in the township or village for cemetery purposes and there is in the township or village other land that has been used as a cemetery and no provision has been made for the appointment of trustees for such last-mentioned land and there is no person upon whom the duty of maintaining and caring for the land rests and the owner of such land is absent or unknown, the Ontario Municipal Board, upon the application of the trustees and after the giving of such public notice as the Board deems sufficient, may make an order vesting such last-mentioned land in the trustees and, upon the registration of the order in the proper registry or land titles office, the land vests in the trustees and they have and shall perform the same powers and duties with respect thereto as with respect to other lands conveyed to them for cemetery purposes. R.S.O. 1950, c. 46, s. 49.

72. Where a road allowance that has not been opened for travel passes through lands used for cemetery purposes or separates or lies between lands used for cemetery purposes and other lands vested in the trustees under section 71, or conveyed to them, the Ontario Municipal Board, upon the application of the trustees and after notice to the council of the municipality and upon being satisfied that it is in the public interest that the road allowance should be closed and that the part thereof that passes through or is adjacent to the cemetery lands should be vested in the trustees, may make an order closing the road allowance and vesting so much thereof as passes through or adjoins the cemetery lands in the trustees, and, upon the registration of the order in the proper registry or land titles office, the lands described in the order vest in the trustees for cemetery purposes. R.S.O. 1950, c. 46, s. 50.

73.—(1) Where land has been set apart or sold for cemetery purposes and used as a cemetery and no provision has been made for the appointment of trustees of the cemetery,
or where there is no person upon whom the duty of taking care of and maintaining a cemetery rests, the owners of plots therein may elect trustees in the manner provided in this section.

(2) Three or more of such owners may call a meeting for the purpose of electing trustees by notice (Form 1) to be published once a week for two successive weeks in a newspaper published in the local municipality in which the cemetery is situate, or, if no newspaper is published in the local municipality, then in the newspaper published nearest to the local municipality.

(3) The date of the meeting shall not be less than two weeks from the date of the last publication of the notice.

(4) At the time and place named in the notice, the plot owners present shall elect from among themselves some person to act as chairman and a person to act as secretary for the meeting.

(5) After the election of the chairman and secretary, the plot owners present shall elect from among themselves three persons to be trustees of the cemetery.

(6) After the election of the trustees, the chairman and secretary shall certify as to the election (Form 2).

(7) The certificate shall be made in triplicate and one of them, with an affidavit of execution in the form prescribed by *The Registry Act*, shall be registered in the proper registry or land titles office, and one of them shall be filed with the clerk of the local municipality in which the cemetery is situate, and the other of them shall be delivered to the trustees.

(8) Upon the registration of the certificate, the cemetery is vested in the trustees so appointed and their successors, subject to any deed or other instrument setting it apart for cemetery purposes or conveying it or any plot therein for cemetery purposes and subject to the rights of any person who may have theretofore purchased plots in the cemetery and subject to this Act.

(9) The trustees elected and their successors shall be deemed to be the owners of the cemetery.

(10) Where a vacancy occurs in the office of trustee, whether originally elected or elected to fill a vacancy, his successor shall be elected and his election shall be certified and the certificate shall be registered in the manner hereinbefore provided in subsection 7. R.S.O. 1950, c. 46, s. 51.
Adjoining cemeteries

74.—(1) Where adjoining cemeteries are owned by separate boards of trustees or companies, they may appoint trustees to whom and to their successors, appointed in the manner provided by the conveyance, all or any of the land vested in the appointing bodies may be conveyed, and the same may be conveyed accordingly and the trustees appointed by such conveyance and their successors in perpetual succession, by the name expressed in the conveyance, may take, hold and possess the land thereby or thereafter conveyed to them as a site for a cemetery and for the enlargement of an existing cemetery, and maintain and defend actions for the protection thereof and of their property therein.

(2) Instead of appointing trustees as provided by subsection 1, the cemeteries may be conveyed to and vested in the company or in one of the companies upon such trusts, if any, as the appointing bodies deem proper. R.S.O. 1950, c. 46, s. 52.

Cemeteries may be vested in company

75. The powers of an owner of a cemetery shall be deemed to extend to and include the provision and maintenance of crematoria and columbaria and the disposal of the bodies of deceased persons by cremation, and the provision of such fixtures, appliances and facilities as are deemed necessary in order that the cremation may be carried on in accordance with accepted scientific principles. R.S.O. 1950, c. 46, s. 53.

Establishment of crematoria

Regulation of cremation and disposal of ashes

76. The owner may, subject to approval of the Lieutenant Governor in Council, frame by-laws, rules and regulations for the reception and cremation of the bodies of deceased persons, for the deposit of ashes remaining therefrom in a suitable columbarium or for otherwise disposing of them, and for the fees and rates to be charged. R.S.O. 1950, c. 46, s. 54.

Medical certificate

77. No body shall be cremated unless a certificate and permit similar to that now required for burial have been produced nor within forty-eight hours after death, unless death has been occasioned by a communicable disease subject to quarantine and placard according to The Public Health Act and the regulations made thereunder, and so certified by a duly qualified medical practitioner, in which case a duly constituted local board of health may order that the body of the deceased be cremated forthwith. R.S.O. 1950, c. 46, s. 55.

Coroner's certificate

78.—(1) No body shall be cremated unless a certificate in the prescribed form, signed by a coroner of the municipality in which the death took place, has been deposited with the
owner, which certificate shall contain the statement that the
cause of death has been definitely ascertained and that there
exists no reason for further inquiry or examination.

(2) Where the death took place outside Ontario, the certificate required by subsection 1 may be issued by a coroner of the municipality in which the body is to be cremated. R.S.O. 1950, c. 46, s. 56.

79. The owner has the right to refuse to cremate in any case without assigning reasons. R.S.O. 1950, c. 46, s. 57.

80. The Lieutenant Governor in Council may make such regulations as are deemed advisable for the better carrying out of this Act. R.S.O. 1950, c. 46, s. 58.

81. Every person who contravenes any provision of this Act or the regulations for which no other penalty is provided shall incur a fine of not less than $5 and not more than $100 recoverable under The Summary Convictions Act. R.S.O. 1950, c. 46, s. 60.

82.—(1) Every fine recovered under this Act, where the prosecution is by or at the instance of the corporation of a municipality, or the local board, or the medical officer of health or other health officer of the municipality, shall be paid to the treasurer of the municipality in which the offence was committed for the use of the local board.

(2) Where the prosecution is at the instance of the Department of Ontario or of a provincial officer or where the offence was committed in territory without municipal organization, the fine shall be paid to the Treasurer of Ontario. R.S.O. 1950, c. 46, s. 61.
FORM 1

(Section 73 (2))

Take notice that a meeting will be held at (naming a place in the local municipality in which the cemetery is situate) at.........................
in the .....................of.....................on the ...... day of ........
19....., at the hour of .............o'clock in the .....................
noon, for the purpose of electing trustees for the cemetery (here insert description of land sufficient for the purpose of registration and name or designation, if any, of the cemetery). The owners of plots are requested to attend the meeting.

Dated at ..................... the........................... day
of ....................., 19.....
A.B., C.D., E.F.,
Plot Owners.

R.S.O. 1950, c. 46, Form 1.

FORM 2

(Section 73 (6))

We hereby certify that at a meeting of the owners of plots in the cemetery (here insert description of land sufficient for the purpose of registration and the name or designation, if any, of the cemetery),.....................
of....................., held pursuant to the
provisions of The Cemeteries Act, at.....................on the ...... day of....................., 19....., the following persons were elected trustees of the cemetery:

A.B., ....................., of.....................
C.D., ....................., of.....................
E.F., ....................., of.....................

(insert occupation and place of residence of each trustee).

Witness: 
Chairman
Secretary

R.S.O. 1950, c. 46, Form 2.