CHAPTER 180

Funeral Services Act

1. In this Act,

(a) “Board” means the Board of Funeral Services referred to in section 2;

(b) “embalming” means the preservation of the dead human body, entire or in part, by any means, including the use of chemical substances, fluids or gases ordinarily used, prepared or intended for such purpose, either by the outward application of such chemical substances, fluids or gases on the body or by the introduction thereof into the body by vascular or hypodermic injection or by direct application into the organs or cavities;

(c) “funeral director” means a person licensed under this Act to engage in providing or directing the providing of funeral services and funeral supplies to the public;

(d) “funeral services” means the services usually provided by a funeral director;

(e) “funeral services establishment” means a premises established or maintained for the purpose of providing funeral services or funeral supplies to the public;

(f) “Minister” means the Minister of Health or such other member of the Executive Council to whom the administration of this Act may be assigned;

(g) “Registrar” means the Registrar of the Board;

(h) “regulations” means the regulations made under this Act;

(i) “Review Board” means the Funeral Services Review Board referred to in section 15. 1976, c. 83, s. 1.
2.—(1) The Board of Funeral Services is continued as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Act.

Composition

(2) The Board shall be composed of,

(a) five funeral directors, one of whom is not licensed to establish or maintain and who does not direct the operation of a funeral services establishment, appointed by the Lieutenant Governor in Council; and

(b) three persons who are not licensees under this Act and are appointed by the Lieutenant Governor in Council.

Term of office

(3) The members of the Board shall be appointed to hold office for a term not exceeding three years and may be reappointed for further successive terms but shall not be appointed and reappointed for more than six successive years.

Vacancy

(4) Every vacancy on the Board caused by the death, resignation or incapacity of a member may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the remainder of the term of such member.

Quorum

(5) Three members of the Board, at least one of whom shall be a member appointed under clause (2) (b), constitute a quorum.

Officers

(6) The members of the Board shall appoint from among the members of the Board the chairman, the vice-chairman and the secretary-treasurer of the Board.

Expenses and remuneration of members of Board

(7) The members of the Board,

(a) appointed under clause (2) (a), shall be paid by the Board such expenses and remuneration as are prescribed by the regulations; and

(b) appointed under clause (2) (b), shall be paid, out of the moneys appropriated therefor by the Legislature, such expenses and remuneration as are determined by the Lieutenant Governor in Council.

Annual report

(8) The Board shall deliver to the Minister each year an annual report on the affairs of the Board and the Minister shall submit the report to the Lieutenant Governor in
Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

3. The Board shall appoint a Registrar and may employ such other officers and such clerks and other employees and retain such assistance as is considered necessary and may determine their salary, remuneration and terms and conditions of employment. 1976, c. 83, s. 3.

4.—(1) The objects of the Board are,

(a) to regulate the practices of funeral directors in accordance with this Act and the regulations;

(b) to regulate funeral services establishments in accordance with this Act and the regulations;

(c) to establish, maintain and develop standards of knowledge and skill among funeral directors;

(d) to establish, maintain and develop standards of qualification and practice for the practice of funeral directors;

(e) to establish, maintain and develop standards of qualification for funeral services establishments;

(f) to establish, maintain and develop standards of professional ethics among funeral directors and funeral services establishment licensees;

(g) to administer this Act and perform such other duties and exercise such other powers as are imposed or conferred on the Board by or under this Act or the regulations or by any other Act,

in order that the public interest may be served and protected.

(2) The Board shall,

(a) review the operation of this Act and the regulations and make recommendations to the Minister thereon;

(b) approve or set courses of study and examinations for the qualification of applicants for licences. 1976, c. 83, s. 4.
5.—(1) No person shall engage in or hold himself out as engaging in providing funeral services or funeral supplies or both to the public unless he is licensed as a funeral director under this Act.

(2) No person other than a funeral director shall perform embalming.

(3) For the purposes of subsection (1), proof of the performance of one act in providing funeral services or funeral supplies or both to the public on one occasion is sufficient to establish engaging in providing funeral services or funeral supplies or both to the public.

(4) Subsections (1) and (2) do not apply,

(a) to a student within a training program who is working under the supervision of a funeral director who is physically present;

(b) to a student who is enrolled in a recognized course of funeral services education; or

(c) in a sparsely settled area where a funeral director is not available.

(5) Subsection (2) does not apply to a student of, or a person employed in, a recognized school of medicine or anatomy. 1976, c. 83, s. 5.

6.—(1) The Registrar shall issue a licence as a funeral director to any applicant therefor who is qualified under this Act and the regulations and has passed such examinations as the Board may set or approve, and the Registrar shall refer to the Licensing Committee every application for a licence as a funeral director that he proposes to refuse or to which he considers terms, conditions or limitations should be attached.

(2) The Licensing Committee,

(a) shall determine the eligibility of applicants for licences as funeral directors and may require an applicant to take and pass such additional examinations as the Board may set or approve and pay
such fee therefor as the Licensing Committee fixes or to take such additional training as the Licensing Committee specifies; and

(b) may exempt an applicant for a licence as a funeral director from any licensing requirement.

(3) The Licensing Committee may direct the Registrar to issue or refuse to issue licences as funeral directors subject to such terms, conditions and limitations as the Licensing Committee specifies.

(4) The Licensing Committee may review the qualifications of any funeral director and may impose a further term, condition or limitation on his licence pending the demonstration of such standard of competence through the completion of such experience, courses of study, or continuing education as the Licensing Committee specifies.

(5) The Registrar shall maintain one or more registers in which is entered every person who is licensed as a funeral director, identifying the terms, conditions and limitations attached to the licence, and shall note on the register every revocation, suspension and cancellation of a licence and such other information as the Licensing Committee or Discipline Committee directs.

(6) Every person who was licensed or who held a permit under The Embalmers and Funeral Directors Act, being chapter 144 of the Revised Statutes of Ontario, 1970, immediately before the 5th day of December, 1977 shall be deemed to be licensed as a funeral director under this Act, subject to any condition or limitation to which the licence or permit was subject.

(7) The Registrar may cancel a licence as a funeral director for non-payment of any prescribed fee after giving the licensee at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the Board in respect of any disciplinary action arising out of his professional conduct while a licensee. 1976, c. 83, s. 6.

7.—(1) The Board shall establish and appoint as herein-after provided the following committees,

(a) Executive Committee;

(b) Licensing Committee;

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(c) Complaints Committee;

(d) Discipline Committee,

and may establish such other committees as the Board from
time to time considers necessary.

Vacancies
(2) Where one or more vacancies occur in the membership
of the Board or any committee, the members remaining in
office constitute the Board or the committee so long as their
number is not fewer than the prescribed quorum. 1976, c. 83,
s. 7.

Executive Committee
8.—(1) The Executive Committee shall be composed of
three persons who are members of the Board of whom one
shall be a person appointed under clause 2 (2) (b).

Quorum
(2) Two members of the Executive Committee constitute a
quorum.

Duties
(3) The Executive Committee shall perform such functions
of the Board as are delegated to it by the Board, the by-laws
or this Act and, subject to ratification by the Board at its
next ensuing meeting, may take action upon any other matter
that requires immediate attention between meetings of the
Board, other than to make, amend or revoke a regulation
or by-law. 1976, c. 83, s. 8.

Licensing Committee
9.—(1) The Licensing Committee shall be composed of
three persons who are members of the Board, one of whom
shall be a person appointed under clause 2 (2) (b).

Chairman
(2) The Board shall name one member of the Licensing
Committee to be chairman.

Quorum
(3) A majority of the members of the Licensing Committee
constitutes a quorum. 1976, c. 83, s. 9.

Complaints Committee
10.—(1) The Complaints Committee shall be composed
of three persons who are members of the Board, one of
whom shall be a person appointed to the Board under
clause 2 (2) (b).

Idem
(2) No person who is a member of the Discipline Com-
mittee shall be a member of the Complaints Committee.

Chairman
(3) The Board shall name one member of the Complaints
Committee to be chairman.
11.—(1) The Complaints Committee shall consider and investigate complaints regarding the conduct or actions of any funeral director, but no action shall be taken by the Committee under subsection (2) unless,

(a) a written complaint has been filed with the Registrar and the funeral director whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he may wish to make concerning the matter; and

(b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Committee in accordance with the information it receives may,

(a) direct that the matter be referred, in whole or in part, to the Discipline Committee or to the Executive Committee for the purposes of section 14; or

(b) direct that the matter not be referred under clause (a); or

(c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act or the regulations.

(3) The Committee shall give its decision in writing to the Registrar for the purposes of section 17 and, where the decision is made under clause (2) (b), its reasons therefor. 1976, c. 83, s. 11.

12.—(1) The Discipline Committee shall be composed of three members of the Board, of whom one shall be a person appointed under clause 2 (2) (b).

(2) A majority of the members of the Discipline Committee, of whom one shall be a person appointed under clause 2 (2) (b), constitute a quorum and all disciplinary decisions require the vote of a majority of the members of the Discipline Committee presiding at the hearing, but in the event of a tie vote the chairman shall have a second or casting vote.
Chairman

(3) The Board shall name one member of the Discipline Committee to be its chairman.

Disability of lay member

(4) Where a quorum of the Discipline Committee commences a hearing and the member thereof appointed under clause 2 (2) (b) is unable to continue to act, the remaining members may complete the hearing notwithstanding his absence.

Reference by Board or Executive Committee

(5) Notwithstanding any other provision of this Act, the Board or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or incompetence on the part of a funeral director. 1976, c. 83, s. 12.

Duties of Discipline Committee

13.—(1) The Discipline Committee shall,

(a) when so directed by the Board, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any funeral director;

(b) hear and determine matters referred to it by the Board, Registrar, Executive Committee or Complaints Committee under this Act; and

(c) perform such other duties as are assigned to it by the Board.

Idem

(2) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

(a) consider the allegations, hear the evidence and ascertain the facts of the case;

(b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;

(c) determine whether in respect of the allegations so proved the funeral director is guilty of professional misconduct or incompetence;

(d) determine the penalty to be imposed as herein-after provided in cases in which it finds the funeral director guilty of professional misconduct or of incompetence.

Professional misconduct

(3) A funeral director may be found guilty of professional misconduct by the Committee if,
(a) he has been found guilty of an offence relevant to his suitability to engage in the practice of a funeral director, upon proof of such conviction; or

(b) he has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

(4) The Discipline Committee may find a funeral director incompetent to be incompetent if in its opinion he has displayed in the providing or in directing the providing of funeral services or funeral supplies or in performing or supervising the performing of an embalming, a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates he is unfit to continue in the practice of a funeral director.

(5) Where the Discipline Committee finds a funeral director guilty of professional misconduct or incompetence, it may by order,

(a) revoke the licence of the funeral director;

(b) suspend the licence of the funeral director for a stated period;

(c) impose such restrictions on the licence of the funeral director for such a period and subject to such conditions as the Committee designates;

(d) reprimand the funeral director, and if deemed warranted, direct that the fact of such reprimand be recorded on the register;

(e) impose such fine as the Committee considers appropriate to a maximum of $5,000 to be paid by the funeral director to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;

(f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the Board reimburse the funeral director for his costs or such portion thereof as the Discipline Committee fixes.
(7) Where the Discipline Committee revokes, suspends or restricts a funeral director’s licence on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

(8) Where the Discipline Committee revokes, suspends or restricts a licence on grounds other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

(9) Where the Discipline Committee finds a funeral director guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the funeral director.

(10) Where a proceeding is commenced before the Discipline Committee and the term of office on the Board or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his term of office had not expired or been terminated. 1976, c. 83, s. 13.

14.—(1) In this section,

(a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection (2);

(b) “incapacitated funeral director” means a funeral director suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the funeral director that he no longer be permitted to engage in the practice of a funeral director or that his practice be restricted.

(2) Where the Registrar receives information leading him to believe that a funeral director may be an incapacitated funeral director he shall make such inquiry as he considers appropriate and report to the Executive Committee who may, upon notice to the funeral director, appoint a board of inquiry composed of at least two funeral directors and one member of the Board appointed under clause 2 (2) (b) who shall inquire into the matter.
(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the funeral director to submit to physical or mental examination by such qualified person as the board designates and if the funeral director refuses or fails to submit to such examination, the board may order that his licence as a funeral director be suspended until he complies.

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection (3) to the funeral director about whom the report is made and, if in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Licensing Committee to hold a hearing and may suspend the funeral director's licence until the determination of the question of his capacity becomes final.

(5) The Board, the person whose capacity is being investigated and any other person specified by the Licensing Committee are parties to the hearing.

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings,

(a) where the evidence is required by the Board, at least five days before the hearing commences; and

(b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

(7) The Licensing Committee shall, after the hearing,

(a) make a finding as to whether or not the funeral director is an incapacitated funeral director; and
(b) where the funeral director is found to be an incapacitated funeral director by order,

(i) revoke his licence as a funeral director,

(ii) suspend his licence as a funeral director for such period as the Committee considers appropriate, or

(iii) attach such terms and conditions to the licence as a funeral director as the Committee considers appropriate.

(8) Any party to the proceedings before the Licensing Committee under this section may appeal from its decision or order to the Divisional Court in accordance with the rules of court and the provisions of section 22 apply with necessary modifications as if it were an appeal from a decision or order of the Discipline Committee.

15.—(1) The board known as the Funeral Services Review Board is continued.

(2) The Review Board shall be composed of not fewer than three and not more than seven members who shall be appointed by the Lieutenant Governor in Council and the Lieutenant Governor in Council shall designate one of the members of the Review Board to be chairman and one to be vice-chairman.

(3) No person who is employed in the public service of Ontario or of any agency of the Crown, or who is or has been a member of the governing body of a health discipline or who is or has been licensed under this Act or licensed or registered under any Act governing a health practice shall be a member of the Review Board.

(4) The members of the first Review Board may be appointed for a term of one, two or three years and thereafter appointments and reappointments shall be for a term of three years.

(5) Every vacancy on the Review Board caused by the death, resignation or incapacity of a member, may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the remainder of the term of such member.

(6) A majority of the members of the Review Board constitute a quorum.
(7) The members of the Review Board shall be paid such remuneration and expenses as are determined by the Lieutenant Governor in Council.

(8) The Review Board may prescribe and adopt a seal.

(9) Such employees as are necessary to carry out the duties of the Review Board under this Act shall be employed under the Public Service Act. 1976, c. 83, s. 15.

16.—(1) The Review Board shall,

(a) conduct such hearings and perform such duties as are assigned to it by or under this Act; and

(b) submit an annual report on its activities to the Minister which shall include such additional information as the Minister may require and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

(2) The Review Board may obtain expert or professional advice in connection with a hearing or complaint but the adviser shall be a person independent of,

(a) the parties in the case of a hearing; or

(b) the complainant and the licensee complained against in the case of a complaint,

and in the case of a hearing, the nature of the advice shall be made known to the parties in order that they may make submissions as to the advice. 1976, c. 83, s. 16.

17.—(1) Where the Complaints Committee has made a disposition of a complaint respecting a funeral director in accordance with the provisions of this Act, the Registrar shall send to the funeral director and to the complainant by prepaid first class mail, a copy of the written decision made by the Complaints Committee including reasons therefore, if any, together with notice advising the complainant of his right of review under subsection (2).

(2) A complainant or the funeral director complained against who is not satisfied with the decision made by the Complaints Committee disposing of a complaint, except a decision to refer a matter to the Discipline Committee, may within twenty days of receipt of the written decision
request the Review Board to review the decision and the Review Board shall require the Registrar to transmit to the Review Board within fifteen days of the Review Board's request, a record of the investigation and all such documents and things upon which the decision was based and the Review Board shall review the decision after giving the complainant an opportunity to state his complaint and the funeral director an opportunity to state his answer thereto, either personally, by his agent or in writing. 1976, c. 83, s. 17.

18. Where a complaint respecting a funeral director has not been disposed of by the Complaints Committee within sixty days after the complaint is made, the Review Board upon application therefor may require the Complaints Committee to make an investigation and, where the investigation of the complaint has not been undertaken, completed and reported on to the Review Board by the Committee within sixty days after the Review Board's request, the Review Board shall undertake such investigation and possesses all the powers of investigation that the Complaints Committee or the Registrar has conferred upon it or him in this Act. 1976, c. 83, s. 18.

19.—(1) The Review Board may after review or investigation of a complaint under section 17 or 18, refer the complaint to the Complaints Committee and the Review Board may,

(a) confirm the decision, if any, made by the Complaints Committee;

(b) make such recommendations to the Complaints Committee as the Review Board considers appropriate; or

(c) require the Complaints Committee to take such action or proceedings as the Committee is authorized to undertake under this Act.

(2) A majority of the members of the Review Board constitute a quorum for purposes of investigation or review of a complaint or for a hearing.

(3) The Review Board shall give its decision and reasons therefor in writing to the complainant and the funeral director complained against. 1976, c. 83, s. 19.

20.—(1) Where the Licensing Committee proposes to refuse to grant a funeral director's licence to an applicant, or proposes to attach terms, conditions or limitations to a
licensure, the Registrar on behalf of the Committee shall serve notice of the proposal of the Committee, together with written reasons therefor, on the applicant or licensee and a copy thereof to the Review Board.

(2) Subsection (1) does not apply to a refusal to grant a licence to a person who was previously licensed and whose licence was suspended or revoked as a result of a decision of the Discipline Committee.

(3) A notice under subsection (1) shall inform the applicant or licensee that he is entitled to a hearing by the Review Board or to a review by the Review Board of his application and documentary evidence in support thereof without oral evidence, if he mails or delivers within fifteen days after the notice under subsection (1) is served on him, notice in writing to the Review Board requiring a hearing or such review by the Review Board, as he specifies.

(4) Where an applicant or licensee does not require a hearing or review by the Review Board in accordance with subsection (3), the Review Board shall so notify the Licensing Committee and the Committee may carry out the proposal stated in its notice under subsection (1).

(5) The findings of fact of the Review Board pursuant to a hearing or review shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the Statutory Powers Procedure Act.

(6) The provisions of subsections (2) to (5) and subsections 21 (7) and (8) apply with necessary modifications to proceedings before the Review Board under this section.

(7) The Review Board shall, after the hearing or review,

(a) confirm the proposed decision of the Licensing Committee; or

(b) require the Licensing Committee to permit the applicant to take qualifying examinations or additional training as a condition for licensing, or both as specified by the Licensing Committee; or

(c) require the Licensing Committee to direct the Registrar to register the applicant on any appropriate register subject to such conditions as the Review Board considers appropriate in cases where the Review Board finds that the applicant meets the
requirements for licensing and that the Committee has exercised its powers improperly; or

(d) refer the matter back to the Licensing Committee for further consideration and the Review Board may make such recommendations as it considers appropriate in the circumstances.

(8) The Licensing Committee and the applicant or licensee are parties to proceedings before the Review Board under this section.

(9) Any party to proceedings before the Review Board under this section may appeal from its decision or order to the Divisional Court in accordance with the rules of court and the provisions of section 22 apply with necessary modifications as if it were an appeal from a decision or order of the Discipline Committee. 1976, c. 83, s. 20.

21.—(1) In proceedings before the Discipline Committee, the Board and the funeral director whose conduct is being investigated in the proceedings are parties to the proceedings.

(2) A funeral director whose conduct is being investigated in proceedings before the Discipline Committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(3) Members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Board considering the referral of the matter to the Discipline Committee or at a previous hearing of the Committee, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Committee may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

(4) Notwithstanding anything in the Statutory Powers Procedure Act, hearings of the Discipline Committee shall be held in camera, but, if the person whose conduct is being investigated requests otherwise by a notice delivered to the Registrar before the day fixed for the hearing, the
Committee shall conduct the hearing in public except where,

(a) matters involving public security may be disclosed; or

(b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

(5) The oral evidence taken before the Discipline Committee shall be recorded and, if so required, copies or a transcript thereof shall be furnished only to the parties at their own cost.

(6) Notwithstanding the Statutory Powers Procedure Act, nothing is admissible in evidence before the Discipline Committee that would be inadmissible in a court in a civil case and the findings of the Discipline Committee shall be based exclusively on evidence admitted before it.

(7) No member of the Discipline Committee shall participate in a decision of the committee following upon a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties.

(8) Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the person who produced them, be released to him by the Committee within a reasonable time after the matter in issue has been finally determined. 1976, c. 83, s. 21.

22.—(1) Any party to proceedings before the Discipline Committee may appeal from its decision or order to the Divisional Court in accordance with the rules of court.

(2) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Committee appealed from and may exercise all powers of the Committee and may direct the Committee or the Board to take any action which the Committee or the Board may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the Committee, or the court may refer the matter back to the Committee for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1976, c. 83, s. 22.
23.—(1) A person whose licence as a funeral director has been revoked or suspended for cause under this Act, or whose licence or permit was suspended or cancelled for cause under a predecessor of this Act, may apply in writing to the Registrar for the issuance of a licence as a funeral director or removal of the suspension, but such application shall not be made sooner than one year after the revocation or, where the suspension is for more than one year, one year after the suspension.

(2) The Registrar shall refer the application to the Discipline Committee or, where the revocation or suspension was on the grounds of incapacity, to the Licensing Committee, which shall hold a hearing respecting and decide upon the application, and shall report its decision and reasons to the Board and to the former licensee.

(3) The provisions of this Act applying to proceedings of the Review Board on hearings and review in respect of applications for registration, except subsection 20(9), apply with necessary modifications to proceedings of the Licensing Committee and Discipline Committee under this section. 1976, c. 83; s. 23.

24.—(1) No person shall establish or maintain in any premises a funeral services establishment except under the authority of a licence issued to him in respect of the premises by the Registrar under this Act, and the Registrar may issue a licence for a funeral services establishment subject to such conditions as the Registrar may specify in the licence.

(2) Subject to subsection (3) and section 25, any person who applies in accordance with the regulations for a licence to establish and maintain in a specified premises a funeral services establishment and who meets the requirements of this Act and the regulations is entitled to be issued the licence in respect of the premises.

(3) The Registrar shall not issue a funeral services establishment licence to a corporation unless,

(a) each one of a majority of the directors of the corporation is a Canadian citizen or a resident of Ontario; and

(b) at least one of the directors of the corporation is a funeral director. 1976, c. 83, s. 24.

25. Subject to section 28, the Registrar may refuse to issue a funeral services establishment licence where, in his opinion,
(a) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors affords reasonable grounds for belief that the funeral services establishment will not be operated or maintained in accordance with the law and with honesty and integrity;

(b) the proposed funeral services establishment or its operation would contravene this Act or the regulations or any other Act or regulation or any municipal by-law respecting its establishment or location; or

(c) the equipment and premises are not suitable for the providing of funeral services. 1976, c. 83, s. 25.

26. The Registrar may refuse to renew or may suspend or revoke a funeral services establishment licence,

(a) where any person has made a false statement in the application for the licence or a renewal thereof or in any certificate, report or other document or information that is signed by the licensee or a person authorized by the licensee and that is required to be furnished by this Act or the regulations or any other Act or regulation that applies to the funeral services establishment;

(b) where there is a breach of a condition of the licence;

(c) where the licensee does not comply with this Act or the regulations;

(d) where a change in the officers or directors of any corporation that is a licensee would afford grounds for refusing to issue a funeral services establishment licence under clause 25 (a); or

(e) for any reason that would disentitle the licensee to the issuance of a licence under section 25. 1976, c. 83, s. 26.

27.—(1) Where the Registrar issues a funeral services establishment licence and the licensee is dissatisfied with the conditions thereof prescribed by the Registrar, he may by written notice given to the Registrar and the Review Board require a hearing by the Review Board, and the Review Board shall appoint a time for and hold a hearing.
(2) Following upon a hearing under subsection (1), the Review Board may affirm the conditions prescribed for the licence by the Registrar or may cancel such conditions or may prescribe such other conditions for the licence in the place of those prescribed by the Registrar as it considers proper and such conditions shall be conditions of the licence. 1976, c. 83, s. 27.

28.—(1) Where the Registrar proposes to refuse to issue or renew or to revoke a funeral services establishment licence, the Registrar shall serve notice of his proposal, together with written reasons therefor, on the applicant or licensee, as the case may be.

(2) A notice under subsection (1) shall inform the applicant or licensee, as the case may be, that he is entitled to a hearing by the Review Board if he mails or delivers, within fifteen days after the notice under subsection (1) is served on him, notice in writing to the Registrar and the Review Board requiring a hearing by the Review Board and he may so require such a hearing.

(3) Where the applicant or licensee does not require a hearing by the Review Board in accordance with subsection (2), the Registrar may carry out the proposal stated in the notice under subsection (1).

(4) Where the applicant or licensee requires a hearing by the Review Board in accordance with subsection (2), the Review Board shall appoint a time for and shall hold the hearing any may by order direct the Registrar to carry out his proposal or refrain from carrying out his proposal and to take such action as the Review Board considers the Registrar ought to take in accordance with this Act and the regulations, and for such purposes the Review Board may substitute its opinion for that of the Registrar.

(5) The Review Board may extend the time for the giving of notice requiring a hearing by the applicant or licensee under this section either before or after the expiration of such time where it is satisfied that there are prima facie grounds for granting relief to the applicant or licensee following upon a hearing and that there are reasonable grounds for applying for the extension, and the Review Board may give such directions as it considers proper consequent upon the extension.

(6) Where, within the time prescribed therefor or, if no time is prescribed, before the expiry of the funeral services establishment licence, the licensee has applied for renewal
of the licence and paid the prescribed fee, the licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) where he is served with notice that the Registrar proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing by the Review Board has expired and, where a hearing is required, until the Review Board has made its decision. 1976, c. 83, s. 28.

29.—(1) The Registrar, the applicant or licensee who has required the hearing and such other persons as the Review Board may specify are parties to proceedings before the Review Board under this Act.

(2) Notice of a hearing under section 27 or 28 shall afford the applicant or licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention, as the case may be, of the licence.

(3) Any party to proceedings under section 27 or 28 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(4) Members of the Review Board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Review Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

(5) The oral evidence taken before the Review Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

(6) The findings of fact of the Review Board following upon a hearing shall be based exclusively on evidence admissible
or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

(7) No member of the Review Board shall participate in a decision of the Review Board following upon a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Review Board shall be given unless all members so present participate in the decision.

(8) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to him by the Review Board within a reasonable time after the matter in issue has been finally determined.

(9) Any party to the proceedings before the Review Board may appeal from its decision or order to the Divisional Court in accordance with the rules of court.

(10) Where any party appeals from a decision or order of the Review Board, the Review Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Review Board's record, shall constitute the record in the appeal.

(11) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Review Board and may exercise all powers of the Review Board to direct the Registrar to take any action which the Review Board may direct him to take and as the court considers proper and for such purposes the court may substitute its opinion for that of the Registrar or of the Review Board, or the court may refer the matter back to the Review Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1976, c. 83, s. 29.

30.—(1) A funeral services establishment licence is not transferable.

(2) Where the licensee is a corporation, the corporation shall notify the Registrar in writing within fifteen days of any change in the officers or directors of the corporation. 1976, c. 83, s. 30.
31.—(1) The Registrar may appoint in writing one or more persons as inspectors for the purposes of any section or portion of this Act or the whole or any portion or section of a regulation made under this Act that is referred to in the appointments, and, in an appointment, may limit the authority of an inspector in such manner as the Registrar considers necessary or advisable.

(2) The Registrar shall issue to every inspector a certificate of his appointment and every inspector, in the execution of his duties under this Act and the regulations, shall produce his certificate of appointment upon request.

(3) An inspector may at any reasonable time enter upon the premises of a funeral services establishment to make an inspection to ensure that the provisions of this Act and the regulations are being complied with.

(4) Where an inspector has reasonable grounds to believe that any premises are being used by any person as a funeral services establishment in respect of which there is not a valid licence issued under this Act, the inspector may at any reasonable time enter upon the premises other than a residence of such person to make an inspection for the purpose of determining whether or not the person is in contravention of subsection 24 (1).

(5) Where the Registrar has reasonable grounds to believe that a funeral director has committed an act of professional misconduct or incompetence, the Registrar may by order direct an inspector to make an investigation to ascertain whether such an act has occurred and the inspector shall report the result of his investigation to the Registrar.

(6) For purposes relevant to the subject-matter of an investigation under this section, the inspector making the investigation may inquire into and examine the premises and practice of the funeral director in respect of whom the investigation is being made and may, upon production of his appointment, enter at any reasonable time the premises other than a residence of such person and examine books, records, documents and things relevant to the subject-matter of the investigation, and for the purposes of the inquiry, the inspector has the powers of a commission under Part II of the Public Inquiries Act, which Part applies to such inquiry as if it were an inquiry under that Act.
(7) No person shall obstruct an inspector making an investigation or an inspection under this section or withhold from him or conceal or destroy any book, record, document or thing relevant to the subject-matter of the investigation or inspection.

(8) Where a justice of the peace is satisfied upon an *ex parte* application by the person making an investigation or an inspection under this section,

(a) that the investigation has been ordered and that such person has been directed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation; or

(b) that the inspector has reasonable ground for believing that it is necessary to enter any building, dwelling, receptacle or place to ensure that the provisions of this Act and the regulations are being complied with or to determine whether or not any premises are being used as a funeral services establishment in respect of which there is not a valid licence issued under this Act,

the justice of the peace may, whether or not an investigation or inspection has been attempted under subsection (3), (4) or (6), issue an order authorizing the person making the investigation or inspection, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for the books, records, documents or things referred to in clause (a) or for any books, records, documents or things related to the subject-matter of an inspection for a purpose mentioned in clause (b) and to examine such books, records, documents or things, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation or inspection to make the search at night.

(9) An inspector making an investigation or inspection under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under this section relating to the person whose business is being investigated or inspected and to the subject-matter
of the investigation or inspection for the purpose of making copies of such books, records, documents or things, but such copying shall be carried out with reasonable dispatch and the books, records, documents or things in question shall be promptly thereafter returned to the person whose business is being investigated or inspected.

(10) Any copy made as provided in subsection (9) and certified to be a true copy by the person making the investigation or inspection is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record, document or thing and its contents.

(11) The Registrar shall report the results of an investigation ordered under subsection (5) to the Board or the Executive Committee or to such other committee as he considers appropriate. 1976, c. 83, s. 31.

32.—(1) Every person employed in the administration of this Act, including any person making an inquiry, investigation or inspection under section 31 and any member of the Board or a committee shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry, investigation or inspection under section 31 and shall not communicate any such matters to any other person except,

(a) as may be required in connection with the administration of this Act and the regulations and by-laws or any proceedings under this Act or the regulations;

(b) to his counsel; or

(c) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, investigation or inspection except in a proceeding under this Act or the regulations or by-laws. 1976, c. 83, s. 32.

33.—(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Board may make regulations.
(a) governing applications for licences and renewals of licences;

(b) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;

(c) providing for the expiration and renewal of funeral services establishment licences;

(d) requiring the payment of annual fees by funeral directors and fees for the issuing of licences or any class thereof, for the renewals of licences or any class thereof, for the registration of students, and for examinations and continuing education, including penalties for late payment, and payment for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;

(e) prescribing the qualifications for and conditions of registration of students and governing in-service training for students;

(f) providing for a program of continuing education of funeral directors to maintain their standard of competence and requiring funeral directors to participate in such continuing education;

(g) respecting the duties and authority of the Registrar;

(h) prohibiting the providing or the directing of the providing of funeral services where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;

(i) governing standards of practice for funeral directors and respecting the methods and materials that may be used for embalming;

(j) defining professional misconduct for the purposes of this Act;

(k) providing for the maintenance and inspection of registers of persons licensed to practice as funeral directors, of students and of persons licensed to establish and maintain funeral services establishments;
(l) prescribing the records that shall be kept by funeral directors and by funeral services establishment licensees;

(m) requiring and providing for the inspection and examination of the premises, records and equipment of funeral directors and funeral services establishments;

(n) authorizing persons other than funeral directors to perform specified acts in the providing of funeral services under the supervision or direction of a funeral director;

(o) providing for the compilation of statistical information on the supply, distribution and professional activities of funeral directors and funeral services establishments and requiring funeral directors and funeral services establishment licensees to provide the information necessary to compile such statistics;

(p) respecting the reporting and publication of decisions in disciplinary matters;

(q) prohibiting or governing the advertising of funeral services or funeral supplies and prohibiting or governing the display of funeral supplies to the public;

(r) governing the construction, location, equipment, maintenance, hygienic practices and repair of and additions or alterations to funeral services establishments and governing the information, plans and materials that shall be furnished to the Registrar;

(s) governing the equipment and hygienic practices for the transportation of dead human bodies;

(t) regulating, controlling and prohibiting the use of terms, titles or designations by licensees under this Act in respect of their businesses or practices;

(u) providing for the establishment and operation of an appraisal committee for the purposes of examining and assessing the standards of practice, qualifications and continuing education of licensees under this Act and reporting and making recommendations to the Board and to the Licensing Committee thereon;
(v) prescribing forms and providing for their use;

(w) providing for the exemption of any person from any provision of this Act or the regulations under such special circumstances in the public interest as the Board considers advisable and prescribing conditions that shall attach to such exemptions or to any such exemption;

(x) prescribing the expenses and remuneration of members of the Board for the purpose of clause 2 (7) (a).

(2) Where the Minister requests in writing that the Board make, amend or revoke a regulation under subsection (1) and the Board has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make the regulation, amendment or revocation specified in the request. 1976, c. 83, s. 33.

34.—(1) The Board may pass by-laws relating to the administrative and domestic affairs of the Board not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

(a) prescribing the seal of the Board;

(b) providing for the execution of documents by the Board;

(c) respecting banking and finance;

(d) fixing the financial year of the Board and providing for the audit of the accounts and transactions of the Board;

(e) respecting the calling, holding and conducting of meetings of the Board and the duties of members of the Board;

(f) respecting the calling, holding and conducting of meetings of licensees;

(g) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;

(h) delegating to the Executive Committee such powers and duties of the Board as are set out in the by-law,
other than the power to make, amend or revoke regulations and by-laws;

(i) providing for a code of ethics;

(j) prescribing forms and providing for their use;

(k) providing procedures for the making, amending and revoking of the by-laws;

(l) respecting management of the property of the Board;

(m) respecting the application of the funds of the Board and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;

(n) providing for the entering into arrangements by the Board for licensees respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by licensees and exempting licensees or any class thereof from all or part of any such levy;

(o) respecting membership of the Board in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;

(p) respecting all of the things that are considered necessary for the efficient conduct of the affairs of the Board.

(2) A copy of the by-laws made under subsection (1) and amendments thereto,

(a) shall be forwarded to the Minister;

(b) shall be forwarded to each licensee; and

(c) shall be available for public inspection in the office of the Board.

(3) At any time before or after receiving a copy of a by-law made under subsection (1) or an amendment thereto, the Minister may, by an order in writing, revoke or amend the by-law or amendment, but a by-law or amendment is effective until so revoked or amended and no act done or
right acquired under any such by-law before such revocation or amendment by the Minister is prejudicially affected by the revocation or amendment. 1976, c. 83, s. 34.

Restraining orders

35.—(1) Where it appears to the Board that any person does not comply with any provision of this Act or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the Board may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1). 1976, c. 83, s. 35.

Conditions to funeral director's licence

36.—(1) It is a condition of every licence as a funeral director,

(a) that the licensee not direct the operation of more than one funeral services establishment;

(b) that the licence be posted in a conspicuous place in a part of the funeral services establishment that is open to the public where the funeral director provides or directs the providing of funeral services or funeral supplies to the public;

(c) that the funeral director have his principal place of residence,

(i) in the same municipality as the funeral services establishment where the funeral director provides or directs the providing of funeral services or funeral supplies to the public, or

(ii) in sufficient proximity to such funeral services establishment that the funeral director is able to comply with the standards of practice provided for funeral directors by the regulations.

Conditions to funeral services establishment licence

(2) It is a condition of every licence to establish, operate and maintain a funeral services establishment,

(a) that the operation of the funeral services establishment be under the direction of a funeral director;
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(b) that where the funeral services establishment is operated under a name other than the name of the funeral director who is directing the operation of the establishment, the name of the funeral director shall be stated on all stationery of and in all advertisements by the establishment;

(c) that the funeral services establishment licence be posted in a conspicuous place in a part of the establishment that is open to the public;

(d) where the licensee is a corporation,

(i) that each one of a majority of the directors of the corporation is a Canadian citizen or a resident of Ontario, and

(ii) that at least one of the directors of the corporation is a funeral director. 1976, c. 83, s. 36.

37. No person shall transport a dead human body out of Ontario unless it has been embalmed and prepared for transportation by a funeral director. 1976, c. 83, s. 37.

38.—(1) Every person who is in contravention of subsection 5 (1) or (2) or subsection 24 (1) is guilty of an offence and on conviction is liable for the first offence to a fine of not more than $2,000 and for each subsequent offence to a fine of not more than $2,000 or to imprisonment for a term of not more than six months, or to both.

(2) Every person who, not being a licensee under this Act, uses an occupational designation prescribed or prohibited by the regulations to be used by licensees or any class of licensees under this Act or a like designation is guilty of an offence and on conviction is liable for the first offence to a fine of not more than $1,000 and for each subsequent offence to a fine of not more than $2,000.

(3) Every person who contravenes any provision of this Act or the regulations for which no penalty is otherwise provided is guilty of an offence and on conviction is liable to a fine not exceeding $2,000.

(4) Where a corporation is convicted of an offence under subsection (1), (2) or (3), the maximum penalty that may be imposed upon the corporation is $25,000 and not as provided therein.
(5) Where a corporation has been convicted of an offence under subsection (1), (2) or (3),

(a) each director of the corporation; and

(b) each officer, servant or agent of the corporation who was in whole or in part responsible for the conduct of that part of the business of the corporation that gave rise to the offence,

is a party to the offence unless he satisfies the court that he did not authorize, permit or acquiesce in the offence. 1976, c. 83, s. 38.

39.—(1) Any person who makes or causes to be made any wilful falsification in any matter relating to a register or issues a false licence or a false certificate or document with respect to an entry in a register under this Act is guilty of an offence and on conviction is liable to a fine of not more than $5,000.

(2) Any person who wilfully procures or attempts to procure himself to be licensed under this Act by knowingly making any false representation or declaration or by making a fraudulent representation or declaration, either orally or in writing, is guilty of an offence and on conviction is liable to a fine of not more than $5,000 and every person knowingly aiding and assisting him therein is guilty of an offence and on conviction is liable to a fine of not more than $5,000. 1976, c. 83, s. 39.

40. Where licensing under this Act is required to permit the lawful doing of any act or thing, if in any prosecution it is proven that the accused has done such act or thing, the burden of proving that he was so licensed under this Act rests upon the accused. 1976, c. 83, s. 40.

41. No licensee under this Act is liable to any action arising out of negligence or malpractice in respect of professional services requested or rendered unless such action is commenced within one year from the date when the person commencing the action knew or ought to have known the fact or facts upon which he alleges negligence or malpractice. 1976, c. 83, s. 41.

42. Except where otherwise provided, any notice or document required by this Act to be served may be served personally or by prepaid first class mail addressed to the person to whom notice is to be given at his last known address and, where notice is served by mail, the service shall
be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he, acting in good faith, through absence, accident, illness or other cause beyond his control, did not receive the notice, or did not receive the notice until a later date. 1976, c. 83, s. 42.

43. Any statement containing information from the records required to be kept by the Registrar under this Act, purporting to be certified by the Registrar under the seal of the Board is admissible in evidence in all courts as _prima facie_ proof of the facts stated therein without proof of the appointment or signature of the Registrar and without proof of the seal. 1976, c. 83, s. 43.

44. No action or other proceeding for damages shall be instituted against the Review Board, the Board, a committee of the Board or any member of the Review Board, the Board or committee, or any officers, employees, agents or appointees of the Review Board or the Board for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power. 1976, c. 83, s. 44.