

Establishment of a Cemetery

ADVISORY ONLY

The Public Utilities Board (Board) administers *The Cemeteries Act* (Act) in Manitoba. This advisory note is intended to assist readers in understanding some of the requirements of the Act.

A cemetery is defined as a place for the burial of dead human bodies, other human remains, or a place in which either dead human bodies or other human remains have been buried. Once a burial has occurred, the owner of the land on which the burial has taken place takes on a minimum of three obligations, for:

1. good order (record keeping) and repair;
2. ensuring adequate drainage; and
3. fencing.

If these obligations are not met, the owner of the land can be prosecuted and fined. These three obligations are perpetual in nature, so anyone considering burying a human body or other human remains should consider very carefully the implications of the actions, as by so doing the owner may very well have established a cemetery and, by so doing, have accepted a never-ending liability or obligation.

Traditionally, cemeteries are owned by municipalities, religious denominations or businesses. However, a cemetery can also be on privately owned property that is not, at least in its entirety, meant to function as a cemetery; yet, there is no current legislated requirement to either register a caveat on the land or include a provision related thereto on the title of the land.

Generally, cemeteries on private land, that is lands not primarily intended to serve as cemeteries, are to be discouraged. Usually, as time progresses the land changes hands, and the new owners, having no emotional interest in the land as a “cemetery” often deny access to others whose deceased loved ones are buried there.

Structures for the holding of cremains, i.e. the ashes that remain once a human body has been cremated, are described as a columbarium. Structures built for the purpose of containing deceased human bodies are called mausoleums. Both columbariums and mausoleums are most often located on a cemetery, and, again, are governed by the same rules and obligations as a cemetery. The general view is that such structures are best located on cemetery property; in the case of for-profit entities, they must be.

The Public Utilities Board licenses for-profit cemeteries, mausoleums, and columbariums and the rules governing these interment facilities. The rules relate to overseeing the proper functioning of these interment facilities, approving contracts issued for sale, lease or renting of space for interment, and securing trust funds set up for the perpetual care of a cemetery, may be found in Part III of *The Cemeteries Act*.

For those desiring to create and operate a cemetery, the recommended practices include:

1. First, check with the municipality, and attain prior approval from the municipality, ensuring the property is properly zoned, etc.
2. Separate the portion of the land to be used as a cemetery from the title, ensuring it is separate and distinct property.
3. Place the cemetery near a road allowance, to ensure easy access at all reasonable times for those who wish to visit the cemetery.
4. Establish and post the rules and regulations that will govern the cemetery, and take care to ensure that the rules are fair, reasonable and enforceable.
5. Immediately establish a perpetual care trust fund; the investment income from that fund is to maintain the cemetery in perpetuity. Amounts to be deposited in the trust fund are to be determined based on the size of the cemetery and the cost of lots sold. The trust fund should be invested in safe investments, i.e. certainty of access to the funds should override consideration of the potential rates of return.
6. In Ontario, legislation requires an initial minimum contribution of \$100,000 to a trust fund. Consideration should be given to retaining some of the investment income generated in the fund, to allow for the growth of the fund.
7. Establish good record keeping, i.e. a registry. This will help future generations in their searches for loved ones and seeking genealogical information. At a minimum, this must comply with Part I of the Cemeteries, Crematories and Perpetual Care Funds Regulation 302/87R, under *The Cemeteries Act*.
8. Ensure the property is adequately drained; poor drainage can create problems for maintenance and environmental concerns.
9. Obtain liability and property insurance adequate to meet the needs of the cemetery. Damage can occur through regular maintenance or by vandalism.
10. Register the cemetery with both the Board and the municipality, and advise both agencies of any changes in ownership.
11. Ensure reporting to the Public Utilities Board is kept up to date.
12. Increase the trust fund through the allocation of a percentage of future sales of plots, niches, lots, etc. A healthy trust fund will best ensure the necessary funding required for perpetual maintenance, while easing the stress of future generations of owners. Maintenance of proper and complete accounting records of the trust account is required so as to be able to submit to Passing of Accounts before the Public Utilities Board, as required.
13. Establish and document a process to maintain the cemetery in perpetuity, e.g. a maintenance committee is generally a good idea. Establish bylaws, schedule regular meetings and address current issues.
14. Examine ways to keep maintenance costs to a minimum. For example, a cemetery with monuments flush to the ground generally requires less maintenance, as a mower can proceed over them, or a green cemetery. Some “Green Cemeteries” do not allow markers using instead the Global Positioning System technology, for example, for identification and adopt a “restore to nature” philosophy.

The scattering and storage of cremated remains (cremains) does not in itself, create a cemetery. However, in cases where scattering or storage is not in a cemetery, the expectations of the deceased (when alive) and/or those of the next of kin are very important.

There may be instances where the now-deceased or the deceased loved ones believe and/or expect the area where the scattering took place will be treated in a similar fashion as a cemetery. In these cases, for all intents and purposes, the area could be, from a moral perspective, considered a cemetery (though perhaps not in law). And, the scattering of cremains should only occur with the permission of the landowner, and be performed discreetly.

If you have any questions contact the Board; staff will be pleased to answer questions and help address your concerns.

To reiterate, establishing a cemetery is a significant commitment, and before establishing a cemetery the obligations then assumed need to be carefully considered.