

LAW AMENDMENTS COMMITTEE

Red Chamber, Province House

Monday, September 24, 2018



**Bill #32 - Body Armour Control Act**

- 3:00 p.m.
1. Superintendent Brenda Young  
*Nova Scotia Chiefs of Police*
  2. Richard Doyle  
*Five Star Bailiff & Civil Enforcement Services*

**Bill #38 - Residential Tenancies Act (amended)**

- 3:00 p.m.
3. Kevin Russell  
*IPOANS*

**Bill #39 - Cemetery and Funeral Services Act (amended) and Embalmers and Funeral Directors Act (amended)**

- 3:30 p.m.
4. Gary Bennett

**Bill #27 - Animal Protection Act (amended)**

*Deferred from previous meeting*

**Bill #29 - Labour Standards Code (amended)**

*Deferred from previous meeting*

**Bill #42 - Vital Statistics Act (amended)**

*No representation*

**Bill #44 - Change of Name Act (amended)**

*No representation*

**Bill #45 - Senior Citizens' Property Tax Rebate Act**

*No representation*

**Bill #48 - An Act to Amend Various Statutes Administered by Service Nova Scotia**

*No representation*



September 24, 2018

Nova Scotia Legislature  
Law Amendments Committee

Via email: [legc.office@novascotia.ca](mailto:legc.office@novascotia.ca)

Dear Committee Members,

RE: Bill 39 amendments.

I respectfully request your kind consideration of the following:

**Amendment 8** - Not necessary to include "~~cremation services~~".

**Rational:** Currently the *Embalmers and Funeral Directors Act* reads, "(e) "funeral home" means an establishment or facility, by whatever name called, offering or providing funeral merchandise or services to the public;" Funeral homes (funeral service provider) provide primarily, funeral services to the public and secondarily, funeral merchandise - both required and optional. Cremation is a disposition choice that the funeral home acquires or directly provides through their own crematory for the purchaser. Similarly, inhumation (body burial) is a disposition choice that the funeral home arranges with a cemetery for the purchaser. Cremation and inhumation are the most common choices of disposition requested. Assisting the purchaser to obtain a cremation service is not a separate specialty but falls within the current mandate, providing funeral services and merchandise. The *Embalmers and Funeral Directors Regulations*, Subsection 18, provide the minimum requirements for operating a funeral home, giving all equal opportunity to make a choice based upon a full service offering that is not limited. To my knowledge, no one is authorized under the *Act* to provide a limited, direct disposition (via cremation) only, offering to consumers. Disposition is only the necessary method to respectfully dispose of a dead human body, a small, but necessary part of the service provided by funeral service professionals.

**Amendment 12 - 32 (C) (a)** - Please **edit the amendment** and **remove** "*regardless whether the remains are being transported by a third-party transport service;*" and add a clause assigning the responsibility stated therein directly to the third-party provider.

**Rational:** Third-party transfer services operate independently of funeral homes. The relationship is service for fee. A funeral home may attempt to dictate policy to the transfer provider and has the power to disassociate but cannot enforce actions at a remote location. Taking responsibility



from the provider and placing with the funeral home will not prevent mistakes, especially if no repercussions (under the Act) will impact the third-party provider. However, a third-party provider, held accountable by law should be more cautious and methodical when performing a transfer for a client funeral home. No amount of punitive action or stringent penalties will suffice the damage done when a blatant, grievous mistake is made. The transfer service needs to bear the responsibility for their actions or lack thereof.

**Amendment 12 - 32 (C) (a)** – To the clause “ensure that every person transporting human remains is satisfied as to the identity of the remains at the time of initial pickup and at delivery to the intended destination; and”, please qualify “satisfied”.

Rational: Funeral home representatives, including third-party contractors, receive dead human bodies from hospitals, other healthcare facilities, medical examiner service, private residences and other locations. Most times the individual(s) completing the transfer do not know the deceased and take the word of the person who meets them when receiving the deceased person. Please add the following qualifications for “qualify”.

- a. Identification labeling by Nova Scotia Health Authority Hospitals, and or, statement to the identity of the deceased by a representative of the hospital will satisfy the clause 32 (C) (a).
- b. Identification labeling by Nova Scotia Medical Examiner Service, and or, statement to the identity of the deceased by a representative of the Nova Scotia Medical Examiner Service will satisfy the clause 32 (C) (a).
- c. Identification labeling by other Nova Scotia Health Care facilities, and or, statement to the identity of the deceased by a representative of the other Nova Scotia Health facilities will satisfy the clause 32 (C) (a).
- d. Identification given by a next of kin, friend, police officer or other person attending a death not in a licensed Nova Scotia facilities, at a residence or other location will satisfy clause 32 (C) (a) and permit transfer of the dead human body.

All participants in care given following a death bear a responsibility to confirming the identity of a dead human body, especially those licensed by the province and tasked with confirming identity prior to funeral home involvement. Similarly, attending a residence or other location, someone has contacted the funeral home requesting services and the funeral home is relying on that person’s identification of the deceased.

**Amendment 12 - 32 (C) (1) (c).** Please amend the amendment, perhaps as follows, “create and follow a documented standardized process to ensure that a dead human body is continuously identified from when the body is picked up by a third-party transport service or are received by the funeral home until the body is interred in a cemetery, cremated or transferred to another funeral service provider outside the province and for cremated remains to be continuously identified, from when the remains are picked-up received by a third-party transport service or by the funeral home and until the cremated remains are interred in a cemetery or released to the next of kin.”



Rationale: Within the province the most common forms of disposition of a dead human body are inhumation (burial in the ground) or cremation ("*disposal of a dead body by incineration in a crematorium*", *Vital Statistics Act*, Subsection 2 (g)). According to the acts both types of disposition are complete processes. Labeling "cremated remains" as "human remains" suggest that the resulting ash from the cremation process be treated as a dead human body. As so, the current practice of giving ashes back to families (next of kin) and permitting division, placement in jewelry, storage in private residences and placement throughout would be a very serious violation to the treatment of "human remains". Therefore in order to remove this violation, I request that **subsection 2(h) of the Cemetery and Funeral Services Act be struck (~~-h~~)** "*human remains*" *includes cremated human remains;*) and any reference to "human remains" be changed to "dead human body" pursuant to its use in the *Embalmers and Funeral Directors Act (i.e., subsection 2(c))*. Further, to remove any ambiguity, **please add** subsection 2(i) to the Cemetery and Funeral Services Act, **defining cremated remains** as - (i) "cremated remains" are a disposed human body. This definition would be in keeping with the *Vital Statistics Act*, Subsection 2(g) where no further disposition is required.

The amendment as presented states, "*until the remains are released to the next of kin.*" The only part of a dead human body that is released to "next of kin" is the result of disposition, are ashes (a tangible memory, not a person) or a hair clipping. Dead human bodies are not given back to the "next of kin" they are interred in a cemetery, unless the interpretation is that burial in a cemetery is considered release to "next of kin", however, the actual release is to the care of the cemetery operator.

#### **Request for inclusion into the applicable Act or Acts:**

1. **Please include a definition of "next of kin"** - Many individuals die each year without a Last Will and Testament. Those with Wills, a good percentage are not updated and many are not probated. Many times, the "next of kin" is a relative, sometimes a friend or executor, who is willing to become the purchaser and take care of the funeral arrangements/expense. Many times, after services have been arranged with the purchaser or completed, an individual claiming to be an executor or next of kin emerges. Many do not wish to be involved for numerous reasons, financial responsibility a factor. However, depending upon the family dynamic or "hidden" Last Will and Testament, the risk to funeral homes, relying on the instruction of the person assuming the responsibilities of "next of kin" is palpable.
2. **Please include clause protecting funeral homes and Funeral Directors when taking the word of an individual or individuals representing the deceased as "next of kin"**. Again, most clients looked after by funeral homes are intestate. The societal structure that existed not so long ago has changed. More and more family structures are fragmented and it seems death brings out the worst, not best. Many times funeral services for deceased persons would not be had if left up to the person(s) who should be responsible. Will you please **insert a clause protecting funeral homes** when entering into a service/merchandise provision agreement with the purchaser, where the funeral home is responsible to the purchaser only and not everyone who emerges after the fact? This would protect the purchaser and funeral



home when Funeral Director Statements of Death are issued, as there would be an understanding of whom the Statements are to be issued and/or released.

Perhaps a clause stating the following may be included:

**“Funeral homes may rely on the instruction given by the purchaser, including the identification of the deceased, and are responsible to provide funeral services and merchandise as agreed. All documentation is to be in the purchasers name and issued, where required, to the same unless otherwise instructed by the purchaser.”**

Further, this clause would protect Funeral Homes when relying on the identification of the deceased by the purchaser (next of kin). There are instances where the “next of kin” do not recognize their relative or miss identify.

3. May a clause be **added** to the applicable Act to identify the **methods of identification** that may be used? Perhaps as follows:

**The following methods of identification may be used:**

- a. **Physical identification of the deceased**
- b. **A photo of the deceased**
- c. **Identification provided by the Nova Scotia Health Authority**
- d. **Identification provided by the Nova Scotia Medical Examiner Service**
- e. **Identification provided by Police**

Not every dead human body may be physically identified. In instances of trauma, post-mortem examination, decay, etc., physical identification will not be possible without embalming preparation which may not be wished by the “next of kin” / purchaser. If identification from health authorities, medical examiner or policing services is acceptable, possible psychological risks to individual(s) required to physically view will be minimized. Please also consider instances where visual identification is impossible and reliance upon the findings of the medical examiner is all that exists.

4. Please **include** a subsection in the *Cemetery and Funeral Service Act* that gives recourse to funeral homes when cremated remains are abandoned at the funeral home.

Suggested: **“Any cremated remains not claimed by the next of kin from a funeral home after one year of the date of cremation may be released by the funeral home. The funeral home will bear no responsibility for the cremated remains after the one-year period.”**

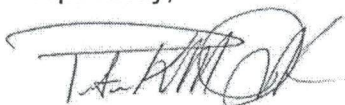
Since funeral homes are tasked with the responsibility of identity continuity and care, there needs to be a limitation or termination point. Funeral homes, unless registered as, are not classified as “cemetaries” and are not “permanent” structures as defined in the *Cemetery and Funeral Services Act*, Subsection 2 (c). Every year funeral homes are left with abandoned cremated remains and no legal recourse exists to effect resolution. By changing the definition of “cremated remain” to reflect its identity as a complete, disposition of a dead human body will greatly assist funeral homes to not be perpetually caring for abandoned cremated remains.

**P&K MACDONALD**  
FUNERAL HOME LIMITED

The funeral service profession bears a herculean responsibility when assisting individuals suffering the loss of a loved one. Our profession toils in a tangible world seeking to make a positive intangible difference which directly impacts society. As the penalties for errors become more stringent, it is imperative that responsibilities are fairly assigned and, protection is given to funeral service providers permitting them to preform confidently within their scope of practice.

Thank you for your kind consideration.

Respectfully,



Peter K. MacDonald,  
Owner  
Funeral Director and Embalmer





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Phone: (902) 863-2984  
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www.clcurry.com

**C. L. Curry**  
**Funeral Services Ltd.**  
Antigonish, Nova Scotia

Nova Scotia Legislature  
Attn: Law Amendments Committee  
Province House  
1726 Hollis Street  
Halifax, NS B3J 2Y3

September 24, 2018

To Whom It May Concern:

I write with respects to Bill 39, which seeks to amend the Cemetery and Funeral Services Act and the Embalmers and Funeral Directors Act.

I applaud the government for striving towards creating safeguards to ensure the protection of the public due to error or misconduct. I believe the amendments proposed in Bill 39 will, for the most part, help to create a greater confidence in the funeral profession.

That said, I do have concerns with the proposed Subsection 29(2) of the Cemetery and Funeral Services Act which states:

(2) Subject to subsection (4), an individual who is guilty of an offence under subsection (1) is liable on summary conviction to a fine of not less than \$1,000 and not more than \$25,000 or to imprisonment for a period of up to two years, or to both a fine and imprisonment.

(3) Subject to subsection (4), a corporation that is guilty of an offence under subsection (1) is liable on summary conviction to a fine of not less than \$3,000 and not more than \$300,000.

And for the same reasons, I have concerns regarding Section 34 of the Embalmers and Funeral Directors Act, which is proposed to state:

(1A) Subject to subsections (1C) and (1D), an individual who is guilty of an offence under subsection (1) is liable on summary conviction to a fine of not less than \$1,000 and not more than \$25,000 or to imprisonment for a period of up to two years, or to both a fine and imprisonment.

(1B) Subject to subsections (1C) and (1D), a corporation that is guilty of an offence under subsection (1) is liable on summary conviction to a fine of not less than \$3,000 and not more than \$300,000.

While I am not troubled whatsoever with the maximum fines outlined in these cases, I do not feel comfortable with the provision of a *minimum* fine.

*Chuck and Joanne Curry*

"CANADIAN INDEPENDENT"

By setting a minimum fine, the court would be obligated to levy this fine regardless of the circumstances surrounding the offense, and irrespective of how minor the offense may be. By instituting this minimum, it may inadvertently intimidate a licensee or business into not following through on his, her, or its rights of due process if the minimum fine is \$1000 (or \$3000). It is not difficult to conceive of a situation where Service Nova Scotia feels there has been an infraction, and a licensee disagrees but chooses not to fight the allegation because not only is it simply easier to comply, it is a lot less costly.

I would propose that you eliminate the minimum fines that do not relate to a specific offense outline within the Acts. The maximum fines given provide adequate deterrence, and removing the minimum provides the courts with the flexibility they should have to handle each case on its own merits.

On a less important point, Section 34A is propose to state:

34A A prosecution for an offence under this Act may not be commenced more than three years after the later of

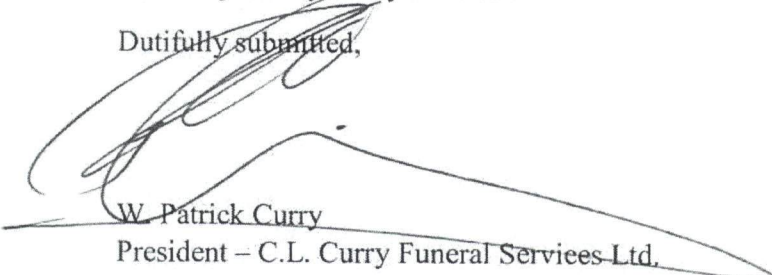
(a) the date on which the offence was committed; and

(b) the date on which the evidence of the offence first came to the attention of the Registrar.

I cannot conceive of a situation where the evidence of offence would first come to the attention of the Registrar *before* the offence was committed. 34A, as written, seems redundant.

I thank you for the opportunity to provide my input, and I thank you for the work you are doing to strengthen our profession. I will make myself available to you, should you have any desire to follow up on any of my comments.

Dutifully submitted,



W. Patrick Curry

President – C.L. Curry Funeral Services Ltd.

cc., Alan MacLeod, Jr. – President, Funeral Service Association of Nova Scotia  
cc., Adam Tipert – Chair, Nova Scotia Board of Registration of Embalmers and Funeral Directors



DEFERRED

**Bill #39**  
**Cemetery and Funeral Services Act (amended) and**  
**Embalmers and Funeral Directors Act (amended)**

CHANGE RECOMMENDED TO THE LAW AMENDMENTS COMMITTEE

**PAGE 3** - add after Clause 9:

10 Chapter 144 is further amended by adding immediately after Section 14 the following Sections:

14A By-laws made by the Board pursuant to Section 14 must permit the Board, persons making a complaint and persons about whom a complaint is made to

- (a) be represented by counsel at the hearing of complaints; and
- (b) hear and question all evidence presented.

14B By-laws made by the Board pursuant to Section 14 must provide that

- (a) both the person making the complaint and the person about whom the complaint is made may be present;
- (b) the testimony of witnesses must be under oath; and
- (c) participation by witnesses, other than their examination or cross-examination, is at the discretion of the Chairman of the Board.

**Renumber Clauses 10 to 16 as 11 to 17.**

**LAW AMENDMENTS COMMITTEE**

**Red Chamber, Province House**

**Monday, October 1, 2018**

**Bill #58 - Municipal Government Act (amended) and  
Halifax Regional Municipality Charter (amended)**

- 3:00 p.m.
1. Nathan Rogers  
*Licensed Professional Planners Association of Nova Scotia (LPPANS)*
  2. Mayor Jeff Cantwell, Town of Wolfville  
*Nova Scotia Federation of Municipalities*

**Bill #49 - Gaming Control Act (amended)**

- 3:30 p.m.
1. Sue Birge  
*Responsible Gambling Council in Toronto ON*
  2. Jon Kelly
- 4:00 p.m.
3. Chris Roberts  
*Casino Nova Scotia*
  4. Jamie Wiebe

**Bill #55 - Region of Windsor and West Hants Municipality Act**

- 4:30 p.m.
5. Anna Allen, Mayor  
Louis Coutinho, CAO  
*Town of Windsor*
  6. Mayor Jeff Cantwell, Town of Wolfville  
*Nova Scotia Federation of Municipalities*

**Bill #58 - Municipal Government Act (amended) and  
Halifax Regional Municipality Charter (amended) (continued)**

- 5:00 p.m.
3. John Traves, Counsel or Kelly Denty  
*Halifax Regional Municipality*
  4. Victor Oulton  
Henry Vissers  
*Nova Scotia Federation of Agriculture*



**Bill #39 - Cemetery and Funeral Services Act (amended) and  
Embalmers and Funeral Directors Act (amended)**

*Deferred from previous meeting*

**Bill #51 - Halifax Convention Centre Act (amended)**

*No representation*

**Bill #63 - Nova Scotia Provincial Exhibition Commission Act (repealed)**

*No representation*

**Bill #67 - Securities Act (amended)**

*No representation*

WITHDRAWN

**Bill #39**  
**Cemetery and Funeral Services Act (amended) and**  
**Embalmers and Funeral Directors Act (amended)**

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