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This document is ***not*** the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the ***Table of Public Acts*.**

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CHAPTER C-2

CEMETERIES ACT

1. In this Act

Definitions

(a) "person" includes any society, institution, owners or managers of cemeteries or burying grounds, and cemetery companies;

person

(b) "Minister" means the Minister of Justice and Public Safety and Attorney General;

Minister

(c) "Order in Council" means an Order in Council passed by the Lieutenant Governor in Council providing for the proper investment of moneys received by the Minister under the provisions of this Act and the use and application of the income thereof. R.S.P.E.I. 1974, Cap. C-2, s.1; 1980, c.2, s.3; 1983, c.1, s.6; 1985, c.3, s.1; 1993, c.29, s.4; 1997,c.20,s.3; 2000,c.5,s.3; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.

Order in Council

2. All moneys received and held or controlled by any person for the purpose of permanent investment and for the use and application of the income thereof for the perpetual maintenance or upkeep of any grave or graves or burying plots in any cemetery or burying ground shall be held by that person upon public trust, and that person shall be held accountable for the proper and legal administration thereof to the Minister on behalf of the government of this province and of the persons interested in the legal employment thereof for the perpetual upkeep of said graves or plots. R.S.P.E.I. 1974, Cap. C-2, s.2; 1980, c.2, s.3.

Perpetual maintenance, moneys held in trust

3. Moneys received by any person and moneys bequeathed by any testator to be applied for the purpose of the perpetual upkeep or maintenance of any grave or cemetery plot shall within twelve months after the receipt of the money or the death of the testator be reported by the person receiving the moneys or testamentary representative to the Minister. R.S.P.E.I. 1974, Cap. C-2, s.3; 1980, c.2, s.3.

Moneys to be reported to Minister

4. Every person liable under this Act to account to the Minister for trust moneys shall upon demand of the Minister made upon him or his accredited manager, agent or representative, produce before him all books of accounts, records, documents or papers relating to his cemetery business and particularly to trust moneys and every such person shall file with the Minister a plan showing the location and number, if any, of each grave or plot of land for which said trust moneys have been received. R.S.P.E.I. 1974, Cap. C-2, s.4; 1980, c.2, s.3.

Production of documents

Penalties

5. Any prosecution against any person for the non-application or misapplication of trust moneys mentioned in this Act or for any breach of this Act may be commenced on the information of the Minister before a Supreme Court judge or a provincial court judge and a penalty not exceeding $1,000 or imprisonment not exceeding one year may be imposed upon such person. R.S.P.E.I. 1974, Cap. C-2, s.5; 1975, c.27, s.5; 1975, c.78, s.3; 1980, c.2, s.3.

Statement of gifts and payments made

6. The Minister may demand from any person liable under this Act to account to the Minister for trust moneys, a statement of all gifts and payments made to such person for the general maintenance and upkeep of a cemetery and such person shall forthwith furnish to the Minister a detailed statement of the receipts and of the expenditure thereof, and should such person refuse or neglect to comply with any such demand he shall be liable to like penalty as prescribed in section 5. R.S.P.E.I. 1974, Cap. C-2, s.6; 1980, c.2, s.3.

Church or church society, application of Act to

7. Notwithstanding anything to the contrary in this Act, the provisions hereof shall not apply to moneys received by or deposited with any church or society connected with a church in this province to be used for the perpetual upkeep of any grave or plot in a cemetery, but any such church or society may deposit with the Minister any moneys so held by it to be employed by the Minister under the provisions of this Act, and on payment of the moneys to the Minister the church, or society is released of the trust imposed upon it. R.S.P.E.I. 1974, Cap. C-2, s.7; 1980, c.2, s.3; 2015,c.36,s.12.

Board of directors, appointment

8. Where any person cannot be found or is unknown or is unable to maintain the cemetery under his or its control or management or refuses or neglects to properly maintain the cemetery, the Lieutenant Governor in Council may by Order in Council appoint a board of directors of not more than seven nor less than three members to administer the affairs of the cemetery. R.S.P.E.I. 1974, Cap. C-2, s.8.

Board of directors, powers

9. Upon the appointment of a board of directors referred to in section 8 the cemetery shall thereafter be vested in the board and the board shall have the control and management of the cemetery and shall be responsible for the maintenance thereof in the same manner and to the same extent as the person in whom the cemetery was originally vested. R.S.P.E.I. 1974, Cap. C-2, s.9.

Transfer of assets to board of directors

10. All moneys held by any person in respect of such cemetery shall be considered to be vested in the board and such person shall immediately thereafter transfer to the board all moneys, investments, funds or securities representing the same and any or all books of account in relation thereto. R.S.P.E.I. 1974, Cap. C-2, s.10.

11. The board shall keep proper records, accounts, documents and papers in relation to the cemetery business conducted by it and shall furnish annually to the Minister a detailed account of the funds so held in trust and of the application made of the income therefrom. R.S.P.E.I. 1974, Cap. C-2, s.11; 1980, c.2, s.3.

Proper records of cemetery to be maintained

12. Notwithstanding anything herein contained the powers contained in section 8 shall not be exercised unless written complaint shall be made to the Lieutenant Governor in Council by not less than five persons interested in such cemetery and the upkeep of graves or plots therein, and upon the investigation of the circumstances as may be considered necessary to verify the grounds of complaint. R.S.P.E.I. 1974, Cap. C-2, s.12.

Written complaint to precede establishment of board of directors

13. The books and accounts of all persons operating a cemetery shall be open at all times to audit by the Auditor General. R.S.P.E.I. 1974, Cap. C-2, s.13; 1980, c.10, s.21.

Audit by Auditor General

14. (1) Except as hereinafter provided no person or corporation shall establish, operate or maintain a cemetery for gain or profit.

Operation for gain or profit

(2) It shall be lawful for any person or corporation to establish, operate and maintain a cemetery within this province for gain or profit if the person or corporation sets aside and pays over to a trust company authorized to carry on business in this province, not less than seventy-five per cent of the money paid in respect of the purchase price of each burial plot sold within one month from the date of the payment, or any payment on account thereof, of the purchase price of each burial plot.

Operation for gain or profit, lawful where

(3) The payment to a trust company of the seventy-five per cent referred to in subsection (2) is the sole responsibility of the person or corporation operating a cemetery; the moneys so paid to a trust company shall be held by it on a perpetual trust for the care and maintenance of the cemetery and the money shall be invested and reinvested in such securities and other property as at such time shall be proper investments under the provisions of the *Trustee Act* R.S.P.E.I. 1988, Cap. T-8, or in which an insurer might invest its surplus funds and reserve under the provisions of the *Canadian and British Insurance Companies Act* R.S.C. 1985, Chap. I-12.

Trust company responsibility, and how moneys to be managed

(4) A trust company may deduct from the revenue of the invested funds and retain as compensation for its services for the management of the investments annually a sum equal to five per cent of the gross income collected by it together with the sum equal to one-fifth of one per cent of the fair value of the principal sum so invested, but not less than $200 in any one year.

Compensation of trust company for services

Agreement to pay over net revenues

(5) A trust company may enter into an agreement with a person or corporation operating a cemetery for gain or profit to pay over the net revenues from the investments semi-annually to the person, firm or corporation lawfully in actual possession, management or operation of the cemetery at the time each semi-annual payment is due and the trust company is not further responsible to see to the application of semi-annual payments. R.S.P.E.I. 1974, Cap. C-2, s.14.

Submission of documents to Minister

15. A person or corporation operating, establishing or maintaining a cemetery for gain or profit shall upon the request of the Minister submit all books, documents, contracts and other matters relating thereto to the Minister who shall approve of the prices charged for burial plots and other burial services provided by such person or corporation and all articles or services required to be purchased or obtained by any burial plot holder. 1956, c.1, s.1; 1980, c.2, s.3.

Prohibition, embalming

16. (1) No person or corporation engaged in the establishment, operation or maintenance of a cemetery for gain or profit shall either directly or indirectly be engaged in the business of undertaking, embalming, funeral direction or other matters relating to interment except in so far as the same relates to the establishment, operation and maintenance of a cemetery.

Prohibition, sale of monuments

(2) No person or corporation engaged in the establishment, operation or maintenance of a cemetery for gain or profit shall either directly or indirectly be engaged in the business of the manufacture or sale of grave monuments or tombstones or other markers. R.S.P.E.I. 1974, Cap. C-2, s.16.

License to operate cemetery for gain

17. No person or corporation shall establish, operate or maintain a cemetery for gain or profit unless such person or corporation shall have obtained a license to do so from the Minister; the license to be in the form which may be prescribed by the Minister and shall be granted in payment of an annual license fee of $10. R.S.P.E.I. 1974, Cap. C-2, s.17; 1980, c.2, s.3.

Unused plots, use of

18. (1) Notwithstanding the sale of any cemetery lot or plot heretofore made, any unused plot or part thereof may be used for burial purposes, where either from death or removal from the province or failure of heirs the plot or part thereof is reasonably likely to remain permanently unused.

Idem

(2) The board of directors may also make use of any unused plot or part thereof where the cost of maintenance of the plot and headstone has not been paid and is in arrears for a period of five years. R.S.P.E.I. 1974, Cap. C-2, s.18.

Disinterment

19. (1) Notwithstanding any Act, custom, rule or regulation respecting the interment of dead bodies, where it is considered necessary to disinter any 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 may be deemed proper.

Minister, powers

(2) Where the Minister considers it expedient for the purpose of an inquiry as to the cause of death or for the purpose of any criminal proceeding that a body should be disinterred he may exercise the powers mentioned in subsection (1).

Coroner, order to disinter

(3) A coroner who has issued his or her warrant for the holding of an inquest upon a dead body may direct it to be disinterred. R.S.P.E.I. 1974, Cap. C-2, s.19; 1993, c.29, s.4; 1997,c.20,s.3; 2006,c.29,s.58.

Powers of board of directors

20. The board of directors has power to maintain in a proper manner all burial plots and headstones in such cemetery and to collect all reasonable charges for so doing from the plot or grave owner or his estate the reasonable charges to be deemed to be a debt due the board of directors from the plot owner. R.S.P.E.I. 1974, Cap. C-2, s.20.