

Digital Government and Service NL
Proposed Amendments to the Embalmers and Funeral Directors Act, 2008
What We Heard
October 2021

Introduction

Digital Government and Service NL (DGSNL) is responsible for the **Embalmers and Funeral Directors Act, 2008** (the Act). This legislation was first enacted in 1975. In 2008, it was repealed and replaced with the current Act, which came into force on January 1, 2010. Aside from minor amendments in 2012 and 2013, the Act has not been substantially reviewed since proclamation.

The Act provides for self-regulation through the establishment of the Embalmers and Funeral Directors Board of Newfoundland and Labrador to regulate the embalmer and funeral director occupations. The Board is responsible for establishing licensing requirements for embalmers, funeral directors and funeral homes; reviewing applications and issuing licences; establishing educational standards, conducting examinations and overseeing continuing education; and taking disciplinary action. Regulatory authority with respect to other operational aspects of embalming, funeral, burial and crematoria services industry rests with the Department of Health and Community Services, under the **Health and Community Services Act**.

Occupational self-regulation exists to protect the public when there is a substantial risk of harm to consumers if the service is performed improperly. Allowing an occupation to self-regulate provides a reduced cost to taxpayers because the expenses of regulation are borne by the self-regulating association and recovered from practitioners. The proposed amendments would increase the regulatory powers of the Board and may improve consumer protection in the funeral services industry.

DGSNL sought feedback from industry stakeholders regarding the proposed legislative changes. Starting on July 2, 2021, through the engageNL portal, stakeholders were invited to complete an online questionnaire with their observations and suggestions about proposed changes to the Act. Written submissions were also accepted. The original deadline for feedback was July 30, 2021; however, this was extended to September 10, 2021.

In total, 32 completed questionnaires were submitted through the engageNL portal during the consultation period. Thirteen per cent of respondents identified themselves as apprentices; 25 per cent as embalmers, funeral directors or both; 28 per cent as funeral home operators/owners, crematorium operators/owners or both; 28 per cent as consumers or concerned citizens; and six per cent did not fit within any of the above noted categories. Additionally, DGSNL received directly 10 written submissions from funeral home operators/owners.

Issue 1: Standards of Practice

Authority for self-regulation usually includes the ability to set standards of practice. This authority does not exist for the Embalmers and Funeral Directors Board. Amendments proposed provide the Board with authority to establish and enforce standards of practice (i.e. minimum standards regarding how licensees are to perform their specific duties).

Fifty-three per cent of respondents agreed or strongly agreed with this proposal, 44 per cent disagreed or strongly disagreed, while 3 per cent were unsure. Respondents were asked to elaborate on their position. For those who replied, comments included:

- Legislative bodies with education in the applicable industry must regulate and implement standards of practice.
- Changes should only be considered in consultation with industry and using an arm's length process for establishing rules and guidelines.
- Business owners questioned the need for an onerous regulatory process and suggested they know how to run their businesses.

Issue 2: Continuing Education Requirements

Paragraph 10(1)(a) of the Act gives the Board, subject to ministerial approval, authority to make regulations about courses of training and educational requirements for the licensing of embalmers and funeral directors. However, the Act does not provide the Board with the explicit authority to prescribe continuing education requirements for licensees. Such authority is a common practice for most self-regulated occupations. The proposed amendments grant the Board this power.

Fifty-three per cent of respondents agreed or strongly agreed with this proposal, while 47 per cent disagreed or strongly disagreed. Respondents were asked to elaborate on their position. For those who replied, comments included:

- National standards should be followed.
- Training should be provided by a professional association.
- Industry should be consulted on training opportunities and/or have the ability to choose training courses.
- Previous continuing education opportunities were described as inadequate, outdated and not beneficial to licensees.

Issue 3: Duties of Apprentices and Licensees

Duties are different from standards of practice. Duties refer to the activities a licensee can do, while standards refer to the level of performance of those duties. The Board does not currently have authority to establish and enforce the specific duties of apprentices, embalmers, funeral directors, and funeral homes. Granting this authority would assist the

Board with enforcement activities by clearly defining which duties must be completed by licensees and, therefore, not performed by unlicensed persons.

Fifty-three per cent of respondents agreed or strongly agreed with this proposal, while 41 per cent disagreed or strongly disagreed. Six per cent of respondents were unsure. Respondents were asked to elaborate on their position. For those who replied, comments included:

- Duties should be determined and implemented in consultation with industry.
- Funeral homes vary in size and operate differently. Larger homes have more staff with specific responsibilities compared to smaller homes, where fewer staff perform a variety of duties.
- Employers should have the right to assign staff their duties.

Issue 4: Funeral Services and Supplies

In paragraph 2(b) of the Act, an ‘embalmer’ is defined as a person who engages in the practicing of ‘embalming’, defined in paragraph 2(c). The definition of ‘funeral director’ in paragraph 2(d) references the provision of ‘funeral supplies and services’; however, ‘funeral supplies and service’ is not defined in the Act. An amendment to the Act to define funeral supplies and services will enhance continuity and clarity in the Act. Stakeholders were asked what should be included in this definition.

Comments received included:

- Funeral planning, transportation, filing and signing necessary documentation, consultation with grieving families.
- Everything that is provided by a funeral home.
- Items sold or offered in connection with a funeral or alternative to a funeral of final disposition.
- All related services – transportation, embalming, cremation, visitation, religious ceremony, death announcement, flowers, caskets or urns, purchasing of graveyard plots, burial services, headstones, candles, and transportation.
- Funeral supplies and services should not be defined.
- No way to define this and enforce it when people can shop online for urns, monuments and even caskets from those not involved in the funeral industry in any capacity.

Issue 5: Additional Categories of Licensees

Proposed amendments include the addition of three new categories of licensees to the Act: Funeral Pre-Planners, Support Attendants, and Crematoria. The rationale for the first two categories of licensees is to establish professionalism levels and educational requirements for those assisting licensees without any formal training. The rationale for crematoria licensing is to distinguish operational licensing for a crematoria from the operation of a funeral home.

(a) Funeral Pre-Planner License

A Funeral Pre-Planner would be accountable to a licensed Funeral Director and their duties would include meeting with families to pre-arrange funerals; discussing all levels of services available; discussing payment options prior to the selection of any service or products; determining preferred flower selections and donations; and obtaining all necessary information. Respondents were asked whether a Funeral Pre-Planner licence should be added to the Act.

Fifty-three per cent of respondents disagreed or strongly disagreed, while 31 per cent agreed or strongly agreed and 16 per cent were unsure. Respondents against the proposal were asked to elaborate on their position. For those who replied, comments included:

- Funeral pre-planner licence is not necessary, and should not be added to the Act.
- This is part of a funeral director's job. A separate role is not required.
- Each funeral home has its own procedures in place.
- It is an unnecessary, additional cost for funeral homes.

For those who agreed or strongly agreed, they were asked what would be the appropriate educational and training requirements for a Funeral Pre-Planner Licence. Suggestions included:

- Six months training under a licenced funeral director and employed by a licenced funeral home.
- Financial planning, knowledge of life insurance, CPP benefits, income support benefits.
- Business training.
- Training on products that are available and current trends/options for burials.

Feedback was requested on the impact that this proposal may have on people currently working in the industry without an embalmer or funeral director licence. Comments included:

- Formal training would now be required.
- Current employees should be grandfathered into their positions; experience should be considered.
- Anyone impacted should be offered any new mandatory courses free of charge.
- This will hamper people's ability to do their job, which they may know how to do better than anyone officially trained.

(b) Support Attendant License

A Support Attendant would be accountable to a licenced Funeral Director and their duties would include removing deceased individuals from the place of death; assisting a funeral director at a funeral service/committal; assisting an embalmer during an embalming procedure; assisting with property maintenance; and assisting with graveside preparation. Respondents were asked whether a Support Attendant licence should be added to the Act.

Fifty per cent of respondents disagreed or strongly disagreed, while 38 per cent agreed or strongly agreed and 12 per cent were unsure. Respondents against the proposal were asked to elaborate on their position. For those who replied, comments included:

- Questioning the need/purpose for a support attendant licence and what training would be available.
- Support attendants are trained by and work under the direction of licensed owner/operator/funeral director.
- Duties such as cleaning cars, mowing grass, digging graves, and wheeling a stretcher do not require a licence.

For those who agreed or strongly agreed, they were asked what would be the appropriate educational and training requirements for a Funeral Pre-Planner Licence. Suggestions included:

- Six months training under a licenced funeral director and employed by a licensed funeral home.
- Mandatory courses on ethics.
- There should not be a specific educational level. Roles vary location to location.

Feedback was requested on the impact that this proposal may have on people currently working in the industry without an embalmer or funeral director licence. Comments included:

- Current employees should be grandfathered into their positions; experience should be considered.
- Licence should apply to new hires.

(c) Crematoria License

Currently, the only reference to crematorium in the Act is in subsection 12(4) which states “[a] crematorium where human remains are disposed of shall not be operated except by a person who holds a licence to practice as a funeral director.” However, cremation is becoming the main means of disposition; therefore, consideration is being given to a separate licence under the Act for the operation of a crematorium. Respondents were asked whether they agreed with this proposal.

Fifty-six per cent of respondents disagreed or strongly disagreed, while 38 per cent agreed or strongly agreed and 6 per cent were unsure. Respondents were asked to elaborate on their position. For those who replied, comments included:

- There is no need to overregulate the industry and add subcategories of licences that are not required.
- Funeral homes and crematoria should fall under same umbrella of licensing.
- Some felt a crematoria licence should only be issued to a licensed operator of a funeral home.
- It should be a separate licence because one does not need to own a licensed funeral home to operate a crematorium. Without a separate licence, how would a crematorium that is separate from a funeral home be licensed?

Feedback was requested on the impact that this proposal may have on current owners or operators of crematoria. Comments included:

- Grandfather in current employees working in crematoria.
- Crematoria should still be operated by a licensed funeral director and under a licensed funeral home.

Issue 6: Other Comments

Respondents were asked if they had any other comments or suggestions for changes to the **Embalmers and Funeral Directors Act, 2008**. Comments included:

- Students completing courses online who have worked in the industry should be able to immediately write the provincial licensing exams, rather than having to complete an apprenticeship.
- Apprenticeship requirements should be completed currently with educational requirements.
- Labour mobility needs to be reviewed such that educational requirements are the same across Canada.
- The Board needs to hold more meetings and have more input from industry.
- Better communication between the Board and industry is needed (sharing copies of Board meeting minutes was suggested).
- If adding crematoria legislation, consideration should be given to including crematoria for pets.
- In other provinces, the Board and industry association are one entity, which makes everyone accountable. There is no industry association in NL.
- There is no representation on the Board for employees, as current members are all owners.
- More choices are required for continuing education, suitable to today's industry.
- A clearly defined order of Next of Kin should be included in the Act, along with a definition of spouse. This would assist with determining the legal authorizing party when there are multiple siblings.
- Proposed amendments are not required at this time.

Conclusion

Based on the feedback from the consultations on the proposed amendments to the **Embalmers and Funeral Directors Act, 2008**, there seems to be divergent opinions and perspectives on many of the proposed amendments and additional engagement with industry stakeholders may be required to ensure DGSNL has a clear understanding of opinions expressed. For example, on the continuing education requirements, responses indicated that national standards should be followed. However, a jurisdictional scan indicates there are no national standards; each province establishes their own educational requirements. In addition, there is a wide breadth of responses for questions such as the definition of services and supplies and, often, feedback does not include substantial comments as rationale for those that may have indicated agreement or strong

agreement to the questions. As such, further clarification may be required. DGSNL appreciates all of the feedback received in response to the consultation process and looks forward to further engagement opportunities.