

**Chapter 13 CEMETERY BY-LAWS
OF THE ARCHDIOCESE OF KINGSTON**

**PROVINCE OF ONTARIO
CEMETERY REGULATIONS -
APPENDIX A**

Archdiocese of Kingston

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CEMETERY REGULATIONS

Legend

O. Reg. 30/11 — Ontario Regulations 30/11
FBCSA — Funeral, Burial and Cremation Services Act 2002

Price Lists

Availability¹

1. Provide a copy to every person who requests it.
2. Provide a list near the entrance to the operator's premises that is clearly visible and available for taking.
3. Provide a clearly visible notice that a copy of the price list is available to any person upon request.
4. Information on pricing shall be available to persons making inquiries in person, by telephone or in writing.
5. Provide an electronic version of the price list if the operator maintains a website through which a person may enter into a contract.

Typographical format

1. Plain language.
2. 10 point font or larger type. ²

Operator, information

At the beginning of the price list, include the following:³

1. Operator's name.
2. Operator's business name if it is different from the operator's name.
3. Address, telephone number of the business location.
4. The position, address and telephone number of the person in charge of operations at the business location.

The format of the price list

1. The price list should include every licensed supply and service that operator generally provides.⁴
2. For each licensed supply or service, indicate:⁵
 - a. A description of the supply or service to identify it with certainty, including its size, colour, material, brand name, model name and number.
 - b. The price.
 - c. The tax included in the price or that is applicable in addition to the price.
 - d. Whether the supply is available for rent.
 - e. The price as fixed or unit charge as the case may be.
 - f. Whether there are any minimum prices for the particular supply or service.
 - g. Its effective date. The contract shall be always up-to-date.
3. The price list shall indicate the purchase of tied products and services, if applicable, from the following list:⁶

¹O. Reg. 30/11, s. 68

²O. Reg. 30/11, s. 54

³O. Reg. 30/11, s. 59

⁴O. Reg. 30/11, s. 55 (1)

⁵O. Reg. 30/11, s. 55 (2)

⁶O. Reg. 30/11, s. 56

Column 1	Column 2
Use of vehicle	Drivers
Use of equipment	Staff services
Use of facilities where the purchaser wants food served	Catering services
Funeral and transfer services	Professional and staff services
Use of facilities	Staff services
Embalming or other preparation of the deceased	Use of facilities necessary to embalm or otherwise prepare the deceased

4. Indicate price for the following product or service which must be at cost:⁷
- a. Supplies and services related to inspecting the location for the installation of a marker or foundation.
 - b. Supplies and services related to constructing a foundation.
 - c. Supplies and services related to installing or setting a marker.

Which supplies or services to include on the price list

1. Packages:⁸
 - a. The package price.
 - b. Price of each individual item if sold separately outside of package.
2. For funeral and transfer services, indicate prices for the following:⁹
 - a. Professional and staff services related to coordinating ceremonies and preparing documentation.
 - b. With regard to visitations, ceremonies and receptions: staffing services, use of facilities, catering and any other supplies and services.
 - c. Services related to preparing the remains of a deceased person, including: embalming, use of facilities, removal of pacemakers and radioactive implants, and any other related supplies or services.
 - d. Services related to transporting the remains of a deceased person, including the use of any vehicle and assistance of any additional staff.
 - e. Any other supplies or services related to funeral and transfer services.
3. The prices of caskets, urns, other burial containers, vaults or grave liners; any other licensed supplies and services related to these items.¹⁰
4. For cemetery supplies and services, indicate the following:¹¹
 - a. Prices for interment of one adult grave, one child grave, one in the veterans section, one cremation grave, and any other in-ground burial interment right.

⁷O Reg. 30/11, s. 57

⁸O Reg. 30/11, s. 60

⁹O Reg. 30/11, s. 61

¹⁰O Reg. 30/11, s. 62

¹¹O Reg. 30/11, s. 63

- b. Prices for containers monuments and all applicable services to their usage.
 - c. Prices for interment related services, including variations due to season, holiday or lat hours.
 - d. Prices scattering rights and related services.
 - e. Regarding markers and burials, indicate:
 - The right to erect a marker and its associated limitations as to type.
 - The number of dead human bodies, cremated remains or the combination of both suitable in the interment right.
 - Whether the interment right is suitable for burials at multiple depths.
 - F If there are more than three different prices for a type of interment right, indicate the lowest and highest prices for that type of interment right and; indicate that a complete list is available upon request.
 - g. Indicate the amount of contribution to the Care and Maintenance Fund.
5. For monuments, markers and their installation, indicate prices for:¹²
- a. A representative sample of the upright and flat markers available.
 - b. Constructing a foundation.
 - c. Installing an upright marker and setting a flat marker.
 - d. Inspecting the installation of a marker or foundation.
 - e. Marking the location where a marker is to be installed.
 - f. Any supplies and services related to markers and their installation.
 - g. The contribution to the Care and Maintenance fund due by the person and the cemetery operator. Note that the cemetery operator must make this contribution whether it receives that amount (aReg. 30/11, s. 53(10)).
6. Indicate available funding, payment or financing options, and that additional information is available on request.¹³
7. Provide the name and addresses for the following if the operator is not a municipality or religious organization:¹⁴
- a. Any business located within 100 kilometres that shares the same operator as this business location.
 - b. Any business located within 100 kilometres that are controlled directly or indirectly by anyone who exercises direct or indirect control of this business location.

Other duties

Deliver an excerpt of the prices related to inspection, construction, installation or setting of a marker or foundation to those persons who have delivered markers to the cemetery within the previous 12 months. Include also the operator's name, business name, contact information and person in charge of operations at the business location. This shall be done 30 days before the effective date of any changed price.¹⁵

¹² O. Reg. 30/11, s. 65

¹³ . Reg. 30/11, s. 66

¹⁴ O. Reg. 30/11, s. 67

¹⁵ O. Reg. 30/11, s. 69

Contracts

General Requirements

Every contract for licensed supplies and services shall include the following:¹⁶

1. It shall be written in plain language in 10 point or larger type.
2. It shall contain the following information:
 - a. A unique and sequential ID number.
 - b. The date of the contract.
 - c. The name, address and telephone number of each party to the contract, as well as the operator's business name if it is different, and the operator's licence number.
 - d. The name and address of each recipient if different from the purchase, and the date of birth of each recipient, if known.
 - e. The person who negotiated the contract on behalf of the operator and their licence number if they have one.
 - f. A description of all supplies and services and their prices. The description should be sufficiently detailed to permit identification. The description should include any customization, model number or any other identification.
 - g. A description of when and how the supplies or services will be provided.
 - h. If applicable, the address or location where the supplies or services will be provided.
 - i. If the operator recommends supplies or services from a third party, a statement describing the consideration and benefits the operator will receive if the purchaser contracts supplies or services with the third party. This statement shall include the name of every person who receives these considerations or benefits.
 - j.. The total price payable under the contract including all taxes, any other payments owing by the purchaser minus any discounts.
 - k. The amount to be paid on signing the contract and details about any payment schemes and their charges.
 - l. Interest or fees on late or deficient payments, including their method of calculation. Also the rights and duties of the purchaser and operator related to the cancellation of the contract for non-payment.
 - m. Terms of any warranties to the supplies or services and whether these warranties survive completion of the contract.
 - n. When the operator needs to substitute a different supply or service for the one agreed, the operator will inform the purchaser of the proposed substitution and its value; the operator shall inform the purchaser of the cancellation rights and determine if the purchaser wants to cancel it; the operator shall not increase the purchase price after the substitution if the contract is not cancelled.
 - o. The name of any person other than the purchaser who may cancel the contract and under what circumstances,
 - p. The name of every person other than the purchaser who is entitled to receive refund or payment under the contract otherwise payable to the purchaser; also the circumstances under which the refund or payment is to be made.
 - q. How the amount of any refund or payment is to be made and the reason and amount for any deduction to the refund or payment.

¹⁶ O. Reg. 30/11, s. 121

- r. All cancellation, refund and return policies in addition to the rights of purchasers under 0. Reg. 30/11, s.121 (3). [this section]
- 3. When there is agreement that certain supplies and services not provided by the operator but by a third party, the contract shall contain:
 - a. A description of the supplies and services that the operator will arrange from other suppliers.
 - b. Acknowledgement that the operator is acting on behalf of the purchaser.
 - c. An estimate of the anticipated price.
 - d. The purchaser's acknowledgement and agreement of responsibility to pay the supplier directly at prices at the time the supplies or services are provided.
- 4. Disclosure if any licenced supply in the contract was previously used.
- 5. If the licenced supplies or services are provided as a package, then the contract shall describe:
 - a. The package price.
 - b. The price of each supply and service if it were sold separately and not as part of the package.
 - c. The total price of the items in (b).
 - d. Any savings, if any, from purchasing the supplies and services as a package.
- 6. If any of the supplies are to be stored and treated as delivered at the time of storage, then the contract shall contain:
 - a. The purchaser's agreement to the storing or arranging of storage.
 - b. The purchaser's agreement that the supply is being treated as provided at the time the supply is placed in storage. [Affects FBCSA, s. 44 and 0. Reg. 30/11, s. 81.]
 - c. A statement that the purchaser's agreement to place the supply in storage affects the cancellation rights and refund entitlements, including how the rights are affected.

Exemptions

There is exemption from the enforceability provisions of subsections 40(1) and (2) of FBCSA, sections 41, 42, 43 and 44 of FBCSA, and sections 121, 123 and 128 of 0. Reg. 30/11 when:¹⁷

- 1. A licence is not required to sell the supply or service.
- 2. The supplies and services are purchased separately from licenced supplies and services.
- 3. Total purchase does not exceed \$250.
- 4. The supply is not stored by the operator.

It is prohibited to divide a contract of value greater than \$250 into separate contracts of value less than \$250 for the purpose of triggering this exemption.

Contracts for interment

Include in the contract:¹⁸

- 1. Name and address of the holder or intended holder of the rights.
- 2. Price of the interment right.
- 3. The following details:
 - a. Location and dimension of each lot.
 - b. The number and type of interment permitted in each lot.

- c. In the case of a private mausoleum or columbarium, the number of niches, crypts or compartments.
 - d. Any limitations or restrictions on exercising the interment right.
4. When the rights certificate shall be provided to the purchaser if not at the time the contract is made.
 5. Payment under the contract is applied first to the rights before the purchase of any other supplies or services under the contract.
 6. The amount of the Care and Maintenance contribution to the lot.
 7. Restrictions contained in the cemetery by-laws relating to markers, lot decorations and private structures.
 8. Information about resale or transfer of interment rights including any restrictions or obligations under the cemetery by-laws or otherwise.
 9. Any restrictions or requirements in the cemetery by-laws regarding the purchase of supplies or services from the operator.

Delivery of contract¹⁹

The purchaser receives a copy of the contract as signed by the purchaser at the time of purchase.

The contract can be delivered personally, by registered mail or another method in which the operator can prove receipt by the purchaser.

Contract Enforceability

To be enforceable, contracts must meet the following requirements:²⁰

1. It is written, signed by both parties and complies with the regulations.
2. The contract sets out the purchaser's cancellation rights under the FBCSA.
3. The contract sets out all the supplies and services to be provided and the price charged for each of them.
4. The operator delivers a signed copy of the contract in the prescribed manner.
5. The purchase of interment rights requires the operator to deliver to the purchaser:
 - a. A copy of the by-laws of the cemetery and written notice whether the by-laws permit the purchaser to resell the rights to a third party.
 - b. A description of the location of the lot.
6. Other prescribed requirements.

Cancellation of an unenforceable contract

If the contract requirements are not met, the purchaser may cancel the contract at any time by giving written notice of cancellation. The operator shall refund all amounts received within 30 days of receiving the notice. The cancellation rights apply even though licenced supplies and services under the contract have been delivered or performed.²¹

The operator shall also pay to the purchaser the greater of any income earned on the money or that would have been earned on the money had it been deposited as required by the regulations.²²

¹⁷ O. Reg. 30/11, s. 122

¹⁸ O. Reg. 30/11, s. 126

¹⁹ O. Reg. 30/11, s. 127

²⁰ FBCSA, s. 40 (1)

²¹ FBCSA, ss. 41 (1), (2) and (3)

²² O. Reg. 30/11, s. 1

Upon receiving written notice of cancellation of an unenforceable contract, the operator shall give the purchaser a written notice of the purchaser's obligations to return the delivered supplies and the effect failure to comply will have on the right to a refund.²³ See below.

The operator is exempt from refund of delivered supplies and services if the purchaser does not return the delivered supplies nor has taken reasonable care of it, or if the grounds on which the contract is not enforceable have not caused any disadvantage to the purchaser, or if it would be inequitable to refund the delivered supplies or services,²⁴

If the operator refuses to refund the amounts received after receiving cancellation notice of an unenforceable contract, the purchaser may bring an action in court to recover the amounts paid under the contract together with costs if the purchaser.²⁵

Under a contract cancellation in this situation, the purchaser shall return delivered supplies if the supplies were taken possession by the purchaser rather than having been sent²⁶, or permit the operator to repossess them or deal with them in a prescribed manner. The purchaser shall take reasonable care of the licenced supplied delivered to the purchaser?' The purchaser's obligations shall be performed within 30 days after the day the purchaser gives notice of cancellation of an unenforceable contract and during the operator's normal business hours?"

Repossession of delivered supplies does not apply when supplies contain human remains or the supplies are perishable, consumable or have been distributed or cannot be used.²⁹

30-day Cooling-Off Period

1. A purchaser can cancel an enforceable contract up to 30 days after the last of the enforceability requirements are met. The cancellation is done in writing.³⁰

The operator shall refund all money received under the contract within 30 days.

This right to cancellation applies even though licenced supplies and services have been provided.

Upon cancellation of an enforceable contract within the 30 day cooling-off period, the purchaser shall return the supplies to the operator, take reasonable care of these supplies, permit the supplies to be repossessed by the operator, or deal with them in a prescribed manner.

²³ O. Reg. 30/11, s. 137 (3)

²⁴ O. Reg. 30/11, s. 137 (2)

²⁵ FBCSA, s. 40 (2)

²⁶ O. Reg. 30/11, s. 138 (1) (b)

²⁷ FBCSA, s. 41 (4)

²⁸ O. Reg. 30/11, s. 138 (2)

²⁹ O. Reg. 30/11, s. 138 (1) (a)

³⁰ FBCSA, s. 42

2. An operator shall not provide any of the licenced supplies or services under the contract within 30 days after the day the contract is made unless the purchaser consents to their provision.³¹ The circumstances for delivery of supplies and services within 30 days include:³²
 - a. Their requirement for the disposition of human remains within the 30 day period.
 - b. Their requirement for the co-ordination and provision of rites or ceremonies related to human remains within the 30 day period.
 - c. Their exemption as detailed in O. Reg. 30/11 s. 122, which are those supplies and services that do not need to be licenced and the value of the contract is less than \$250.
3. Interment rights are exempt from the "no delivery within 30 days" regulation (FBCSA, s. 43).³³
4. A valid consent requires the operator giving written notice, before the consent is given, containing the following:³⁴
 - a. The operator is prohibited by legislation from providing supplies and services within 30 days unless purchaser gives consent to their provision.
 - b. If consent is given to receive licenced supplies and services within the 30-day cooling-off period, the purchaser is no longer entitled to cancel the contract with respect to those licenced supplies and services.
5. If the purchaser consents to the provision of licenced supplies and services within the 30-day cooling-off period, the following apply:³⁵
 - a. The purchaser can still cancel the contract for those supplies and services for which consent was given but have not been provided. The amount of refund is as described in O. Reg. 30/11, ss. 4142, less a prescribed amount.
 - b. Supplies and services that have been consented for provision and have been provided cannot be cancelled. The purchaser can still cancel the contract with respect to those supplies and service not yet provided and the refund shall subtract the value of those supplies and services already provided with the purchaser's consent.
6. The cost of activities related to a customized supply that was requested within the 30-day cooling-off period, but not yet provided, may be deducted from the refund due a cancellation of contract.³⁶ The operator shall describe orally, or in writing if requested, the expenses incurred in these activities.³⁷
7. The purchaser is entitled to cancellation rights as per the 30-day cooling period for those supplies and services which are provided without their consent within this period.³⁸
8. Consent can be revoked any time before the provision of the licenced supplies and services. This is accomplished by giving written notice.³⁹ The notice shall:⁴⁰
 - a. Be signed and dated by the purchaser.
 - b. Describe the date of the contract, its identification number or code, and the licenced supplies or services for which the purchaser is withdrawing request, unless the purchaser is withdrawing request for all the licenced supplies and services that were requested to be provided.

³¹ FBCSA, s. 43

³² O. Reg. 30/11, s. 139 (1)

³³ O. Reg. 30/11, s. 139 (5)

³⁴ FBCSA, ss. 43 (3) & 43 (4)

³⁵ FBCSA, s. 43 (5)

³⁶ O. Reg. 30/11, s. 139 (2)

³⁷ O. Reg. 30/11, s. 139 (3)

³⁸ FBCSA, s. 43 (6)

Other Cancellation Rights

1. The purchaser can cancel the contract after the 30-day cooling-off period but before the contract is fully performed by the operator. This applies for supplies and services other than interment and scattering rights.⁴¹

This requires written notice.

Exemptions to this right of cancellation include private structures or private scattering ground.

The purchaser may keep part or all of the supplies already delivered under the contract or return them to the operator.

The refund due a cancellation shall occur within 30 days of receiving the notice. The amount of refund shall be all money received if none of the licenced supplies or services have been provided; any supplies or services that have been provided shall be subtracted from the money received under the contract.

Licensed supplies to be returned to the operator shall be held with reasonable care.

There shall be no refund for the portion covered by goods customized to the purchaser's specifications or any expenses incurred in relation to the provision of such goods.

2. The cancellation rights under O. Reg. 30/11, ss. 41, 42 and 44 apply to any contracts made under the Act on the day the sections come into force. Cancellation rights provided by previous legislation continue to apply to any contracts to which they applied before ss. 41, 42 and 44 of O. Reg. 30/11 came into force.⁴²
3. Section 45 of Ontario Regulations 30/11 provides cancellation by other persons as may be prescribed.
4. In the contract, the purchaser may transfer the rights to cancel the contract and receive a refund under ss. 41, 42, 43 and 44 of the FBCSA. See O. Reg. 30/11, s. 144 for further details."

³⁹ FBCSA, s. 43 (7)

⁴⁰ O. Reg., s. 139 (4)

⁴¹ FBCSA, s. 44

⁴² FBCSA, s. 46

⁴³ O. Reg. 30/11, s. 144

Interment Sale

1. If sale of interment rights are prohibited by cemetery by-laws, then in addition to any cancellation rights under FBCSA, ss. 41 and 42, the rights holder may at any time cancel the contract under which the rights were purchased by giving the cemetery written notice of the cancellation."

The operator will repurchase the interment rights by the greater amount between all money received under the contract or the market value of the interment rights on the day the operator receives the notice of cancellation.

The market value is the price on the operator's price list. If the price is not on the price list, then according to the regulations (see O. Reg. 30/11, s. 142).

Refund to occur within 30 days of receiving the notice of cancellation.

This cancellation right applies also to any contract that was made before FBCSA came into force.

2. The operator may subtract from the refund due the cancellation of interment rights under FBCSA, s. 47(5) the amount the operator contributed to the cemetery's Care and Maintenance Fund made under O. Reg. 30/11 s. 87.⁴⁵

If the price of the interment rights is not set out in the price list, the market value will be taken from an equivalent or better lot located in the same cemetery or, if this is not available in the same cemetery, from another cemetery in the same geographic location and that is similar in size, religious affiliation and whether it is for profit or not for profit.

3. Note that cancellation of interment rights within the 30-day cooling-off period or of unenforceable contracts requires the operator to return all money received for the interment right, whereas repurchase of interment right under FBCSA, s. 47(5) permits the operator to deduct the contribution to the Care and Maintenance Fund.

Interment Sale

The interment rights certificate shall describe the lot, its price and information related to rights or restrictions of its use. Please see O. Reg. 30/11, s. 163 for full details.

⁴⁴ FBCSA, s. 47 (5)

⁴⁵ O. Reg. 30/11, s. 142