

What You Need to Know if You Have a Cemetery

While churches with cemeteries are more common in eastern parts of Canada than western, many of them have historic roots dating back to before church union. Regardless of their age or stage, cemeteries need to be managed, and congregations have an obligation to ensure this occurs now and into the future.

Provincial/Territorial Legislation

All cemeteries and crematoria are regulated by provincial or territorial legislation. Recent legislation in some provinces has expanded to include memorial gardens—dedicated spaces for burying or spreading ashes. It is important that congregations be aware of this legislation and how it impacts them. This same legislation affects what happens to a cemetery should it be sold or, in the case of a church property, a portion of the land is sold. Current legislation is listed at the end of this file.

Church Board/Trustees vs. Cemetery Board/Trustees

A governance structure needs to be in place to oversee the functioning of the cemetery and to ensure necessary local and provincial requirements are met. If the cemetery is using the name of the United Church in any way, there needs to be accountability of this governing body to a court of the church. Here are three different governance models:

- **Church Trustees:** Under this model, the existing trustees also act as trustees of the cemetery. Possibly the easiest model, these trustees are accountable to the official board/church council. Finances for the cemetery must be clearly identified as being related to the operation of the cemetery property, particularly in terms of revenue related to the sale of plots and burials, or donations and payments to the perpetual trust fund.
- **Cemetery Trustees:** Under this model, the trustees are accountable to the church board. Tracking of finances is still very important.
- **Separate Cemetery Board:** Under this model, property ownership comes into play. If the board is to own the property, then they most likely need to be incorporated. Accountability then moves to the Conference if a United Church affiliation is to be maintained.

What Happens When the Congregational Structure Changes

Where a cemetery exists in conjunction with congregational property, it is important to understand what happens if the congregational structure changes. This may be due to either amalgamation or closure, but how governance and accountability for the cemetery continues must be considered.

- **Amalgamation:** Property belonging to congregations that amalgamate flows automatically through to the new congregational structure. The governing structure that was in place before amalgamation continues as well. Trustees continue to take instruction from and be accountable to the board/council of the newly formed congregation. New trustees may be named in due course by the newly formed congregation.

If the cemetery board was separate from other trustee boards, they continue as is, taking direction from and being accountable to the new board/council.

- **Closure:** When a congregation closes, ideally provisions for the cemetery are made before the closure. This includes identifying a governing body if one does not already exist separate from the congregational board/council or trustees. Arrangements may

be made with the local municipality, another church, or a community organization to assume operations. An agreement to transfer the perpetual care fund to the new operating body may be an incentive for the group to take on ownership. If the congregational property is to be sold, a portion of the sales may also be designated for the ongoing maintenance of the cemetery.

If the cemetery is part of the congregational property, it may be necessary to sever the land in order to be able to sell the congregational property. It is important to check local legislation around this; don't assume it is a simple transaction.

Abandoned Cemeteries

Legislation is in place that identifies what happens with regard to the upkeep and maintenance of an abandoned cemetery. Usually the local municipality becomes responsible for it. However, if a connection to the church can be established, the Conference may become responsible. Even though the congregation may be long gone, the United Church continues to exist as an entity. In these situations, being able to offer an incentive, such as the perpetual trust fund, to the municipality may convince them to take on responsibility. It is important to carry liability insurance for such properties until ownership is transferred to another party.

Public Guardian and Trustees Act

In addition to legislation related to cemeteries, cemetery trustees and boards are also accountable through the Public Guardian and Trustees legislation in most provinces. Check provincial/territorial legislation to understand fully the obligations of trustees.

Provincial and Territorial Legislation

Prov	Name	URL
BC	Cremation, Interment and Funeral Services Act	www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_04035_01
AB	Cemeteries Act - General Regulation	www.gp.alberta.ca/1266.cfm?page=1998_249.cfm&ieq_type=Regs&isbncln=9780779763719
	Crematory Regulation	www.gp.alberta.ca/documents/Regs/1998_248.pdf
SK	The Cemeteries Act	www.gp.gov.sk.ca/documents/English/Statutes/Statutes/C4-01.pdf
MB	The Cemeteries Act	web2.gov.mb.ca/laws/statutes/ccsm/c030e.php
ON	Funeral, Burial and Cremation Services Act	www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_02f33_e.htm
QC	Cemetery Companies Act	www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_40/C40_A.html
NB	Cemetery Companies Act	www.gnb.ca/0062/PDF-regs/94-129.pdf
NS	Cemetery and Funeral Services Act	http://nslegislature.ca/legc/statutes/cem_funs.htm
PE	Cemeteries Act	www.gov.pe.ca/law/statutes/pdf/c-02.pdf
NL		
YT	Cemeteries and Burial Sites Act	www.gov.yk.ca/legislation/acts/cebusi.pdf
NT	Coroners Act	www.justice.gov.nt.ca/pdf/ACTS/Coroners.pdf
NU		