

Managing Older Cemeteries

➤ **To: AMCTO Zone 5
Executive**

BAO | Bereavement
Authority of
Ontario

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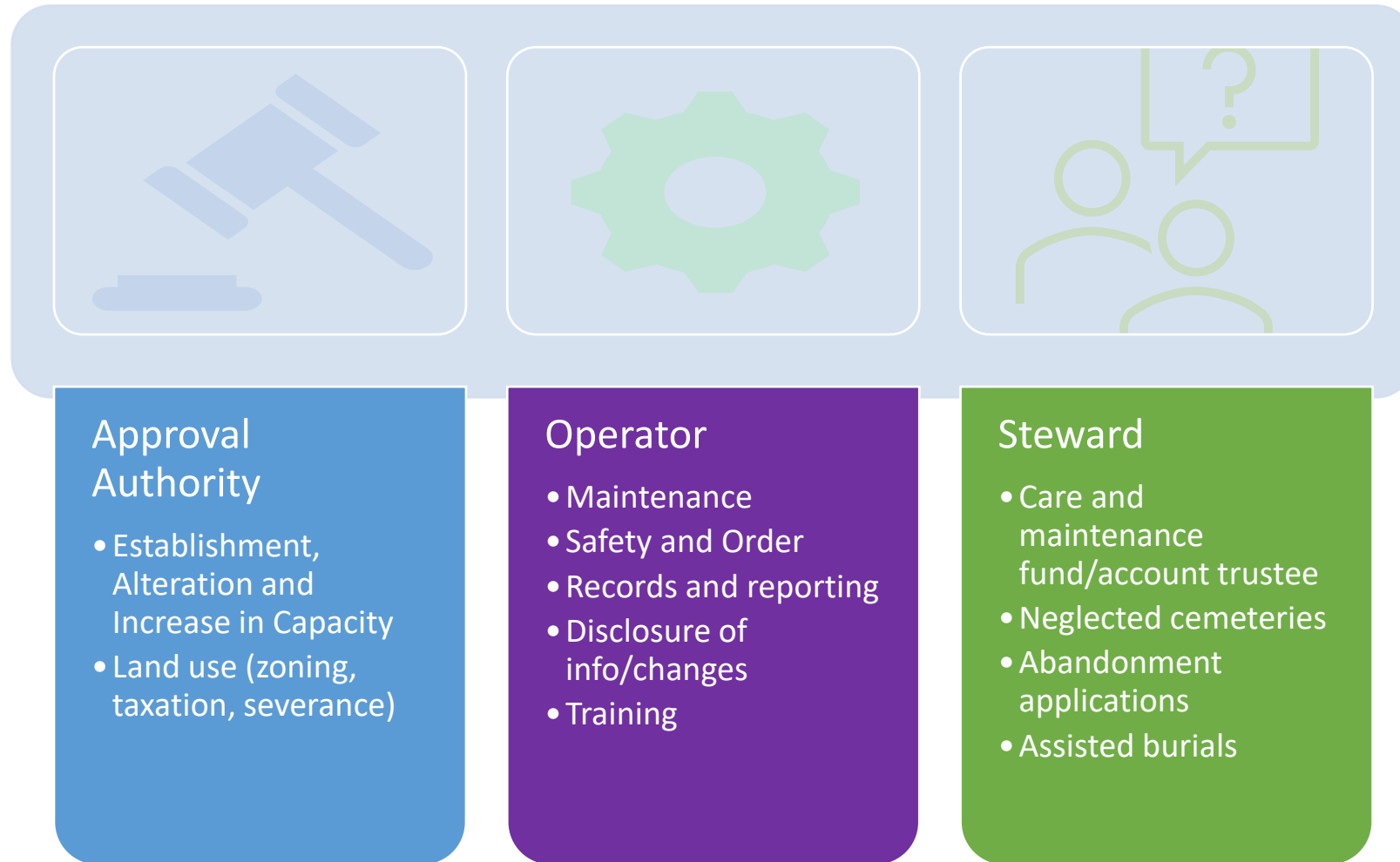
About the Bereavement Authority of Ontario

- Government delegated authority and not-for-profit corporation administering provisions of the Funeral, Burial and Cremation Services Act, 2002 (FBCSA)
 - Overseen by Ministry of Public and Business Service Delivery and Procurement
 - Separate from the Office of the Chief Coroner, Ministry of the Environment, Ministry of Citizenship and Multiculturalism, the OACFP, OPGT etc.
- Licenses and regulates:
 - Funeral establishment operators, directors and preplanners
 - Cemetery, crematorium and alternative disposition operators
 - Transfer service operators
 - Bereavement sector sales representatives across Ontario
- Wholly funded by licensee fees (not tax dollars)

Learning Objectives

- Today we will discuss:
 - Role of the municipality under the *Funeral, Burial and Cremation Services Act, 2002* (FBCSA)
 - Abandonments, transfers, and sales of older cemeteries
 - Common challenges with older cemeteries
 - Common inquiries and complaints about cemeteries
 - Operational opportunities for municipalities for managing older cemeteries

Role of the Municipality under the FBCSA



Cemetery Abandonments

- Municipalities can be *ordered* by the Ontario Superior Court to take on operation of a cemetery under certain circumstances*
 - Certain parties, including the land owner and the ministry's Registrar can apply to the court to have the cemetery declared to be abandoned
 - Municipality must take on the operation of the cemetery, and can seek title transfer of the cemetery
 - Costly and time-consuming



Cemetery ~~Abandonments~~ Transfers

- How can you make the process easier for YOU?
 - Consider a *voluntary* transfer of operations to avoid the court process
 - Consider negotiating for:
 - Severance of cemetery lands from non-cemetery lands on the same property (create separate parcels) where feasible
 - If non-cemetery lands are to be sold, negotiate a percentage of the sale to go to the municipality taking on the cemetery lands
 - Demolition of aging buildings where possible in advance of taking on the cemetery
 - Ensure that title transfer for the property takes place
 - Defunct land owner? – seek title transfer once abandonment application is resolved

Cemetery “Transfers” of Operations

- If the municipality is already an operator licensed by the BAO, the cemetery site can be added to their licence
- If the site is “inactive” (ie. there are no unexercised interment rights), they may be able to complete a short-form licensing application with no fee



Operators' Responsibilities

- **Maintain** quiet, dignity and good order of the cemetery
- Ensure public **safety** and access
- Keep accurate, up to date **records** (operational and financial)
- Submit annual licensure **reports** and financial reporting
- **Disclose** information as required to demonstrate compliance
- **Notify** the Registrar of any changes within 15 days (e.g. ownership, operator, address, contact info, officers/directors/trustees, shares and share distribution)
- **Train** staff/delegates – licensee is liable!

Cemetery Sales

When **selling** lands that contain a cemetery, consider:



- Need to be explicit in communicating to buyer that these are cemetery lands with **restricted land use**
- Tax* implications for cemetery lands
 - Acceptable/permissible use: bereavement activities only
- All lands on the property are cemetery unless formally severed from the balance of the property *after* the boundaries are *confirmed*
- Older cemetery boundaries are notoriously unreliable: should not be assumed
 - Movement of headstones, cairn creation, loss of records, clandestine activities, paupers' graves etc.
- Partial closure⁺ of cemetery lands is costly, complex, and difficult to achieve if there are interments in the lands to be closed

Cemetery Sales

- When buying, vesting, or completing title transfer of lands that contain a cemetery, consider:
 - Zoning challenges: cemetery lands cannot be used for non-bereavement-related commercial purposes
 - Licensing records
 - Active or inactive? – are there unexercised interment rights?
 - Past compliance issues?
 - Records of layout, boundaries?
 - Condition of the cemetery – public safety risks?
 - Finances of the cemetery – care and maintenance funds? Operating funds?

Challenges with Older Cemeteries



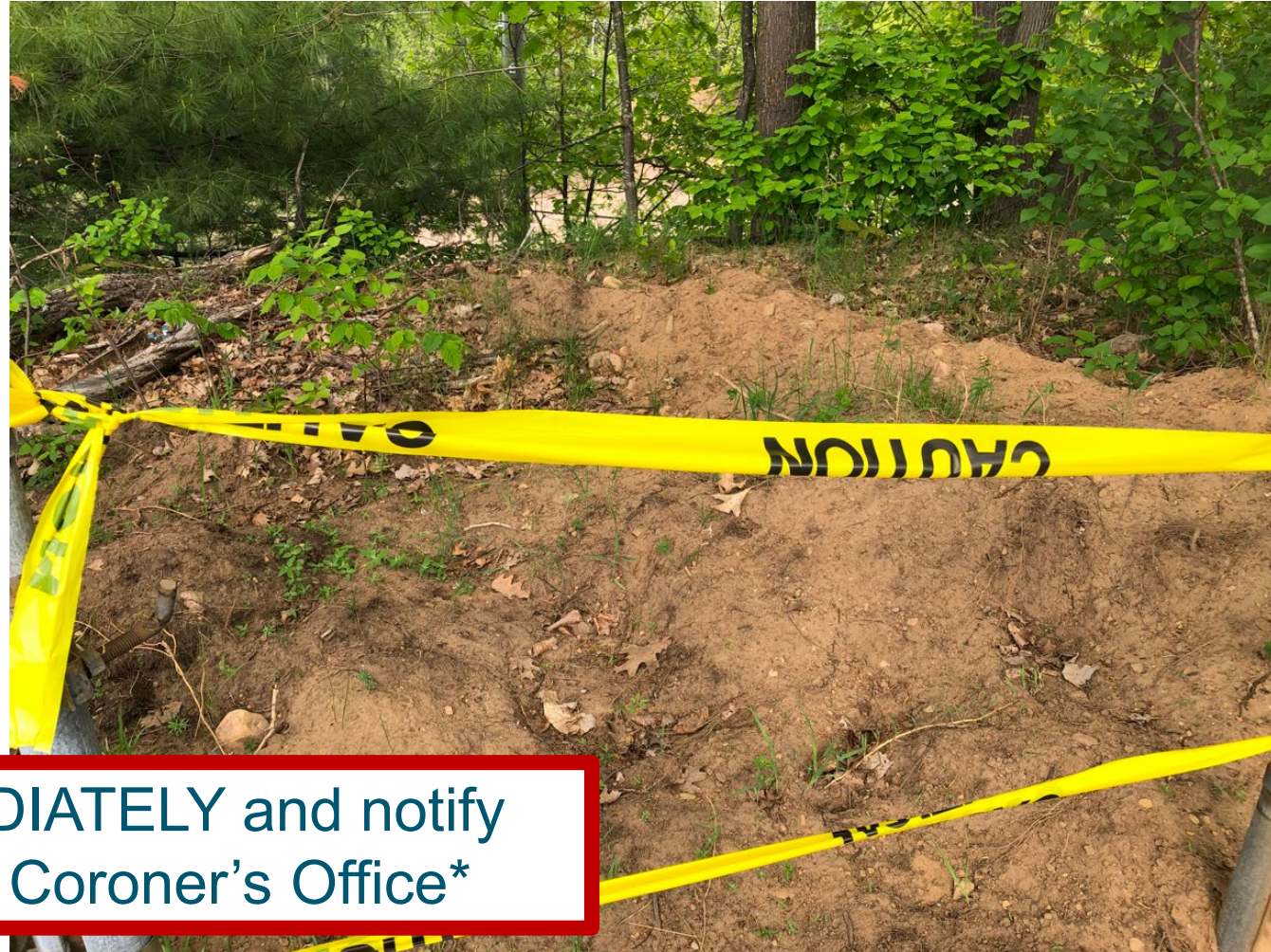
- Maintenance
 - Sometimes poorly maintained with ill-defined boundaries
 - Encroachment or inappropriate use
 - Aging buildings (e.g. churches) also located on the property
- Records
 - May be lacking in formal (or any) records
 - Unmarked interments?
 - Unclear boundaries?

Older Cemeteries: Help with Funds

- Cemetery operator is often the trustee (for amounts less than \$50K)
- The municipality may act as trustee:
 - For a cemetery owned by municipality
 - Upon request of the operator
- A trustee of a care and maintenance fund/account shall pay the income from the fund, after deducting the trustee's fees, to the cemetery operator
- Trust Agreements relevant to the CMF/A are held on file with BAO

Dealing with Neglected Cemeteries in your Municipality (not owned by the Municipality)

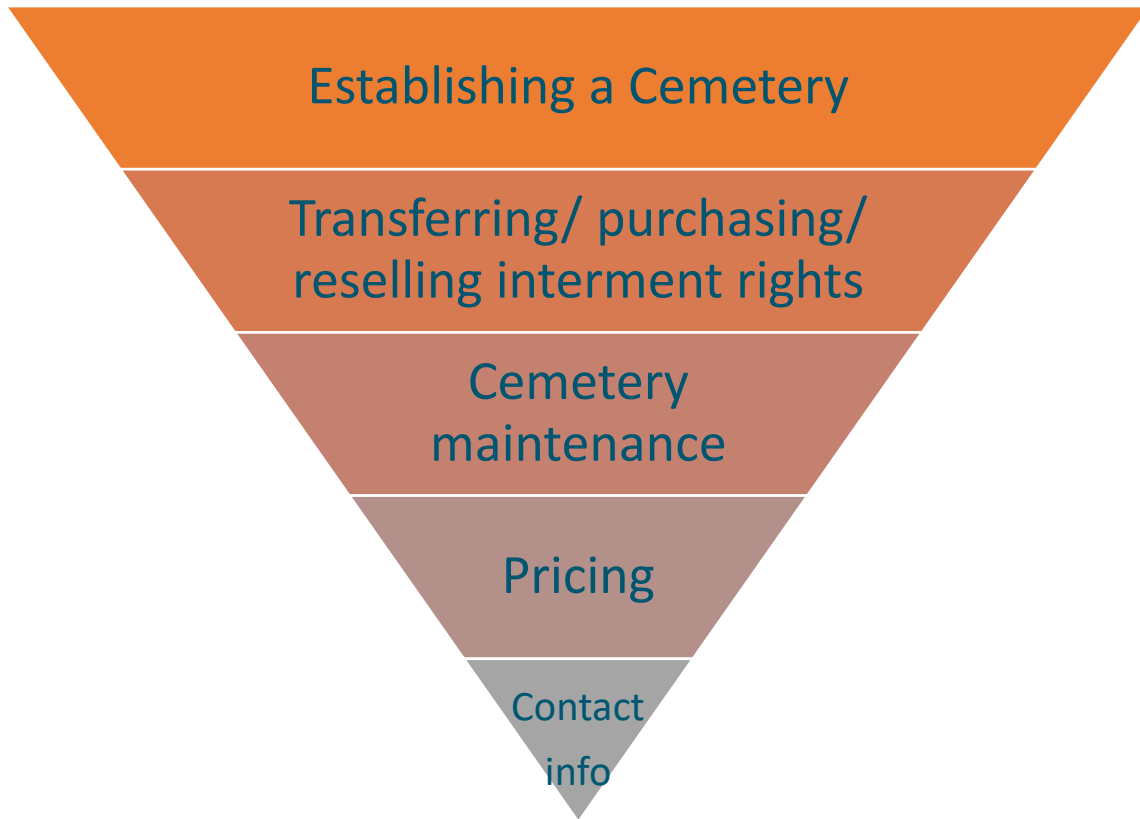
- Municipalities can...
 - Order that an operator restore a cemetery to good order/repair
 - Complete the repair, and charge the operator
- When working in old, poorly-managed, or neglected cemeteries, what do you do if you encounter unmarked human remains?



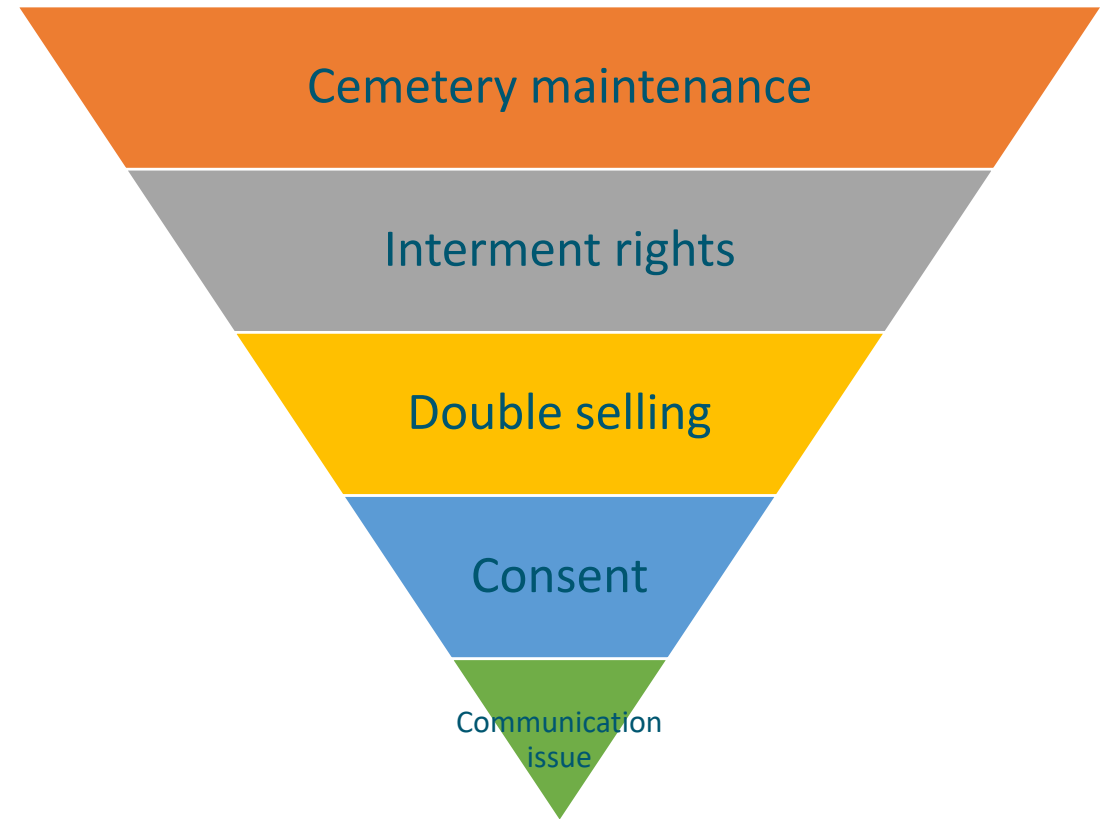
**STOP IMMEDIATELY and notify
the BAO and Coroner's Office***

BAO: Cemetery Issues FY 2024-25

Top 5 Inquiries*



Top 5 Complaints~



Operational Opportunities

- Some older cemeteries can present opportunities for a municipality
 - Trustee fees for holding funds in trust
 - Re-activation/monetization of inactive cemeteries
 - Consider (archaeological) assessment of records and lands to find:
 - Unused lots – can seek lot abandonment with the Registrar to re-sell the lot
 - Unused lands (ie. lands proven to be free of interments)
 - Can seek partial closure and sell severed lands for other uses
 - Can re-monetize these lands with columbariums or scattering gardens, or sell interment lots

Reminder: Care and Maintenance Fund/Account Requirements

- CMF/A purpose is to generate income for the care and maintenance of the cemetery in perpetuity
- Amount charged is prescribed amount or percentage of the price of interment or scattering rights and on the size of the marker/monument*

Every cemetery operator who sells, assigns or transfers interment rights or scattering rights or who permits the interment of human remains or the scattering of cremated remains in the cemetery shall have a care and maintenance fund (or account)

NOTE: Municipalities are exempt re: new cemeteries, and inactive cemeteries may have CMF requirements waived

Recap: today we learned about...



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Thank you!



TheBAO.ca



LifeLine licensee newsletter <https://thebao.ca/lifeline/>

Beyond consumer magazine <https://thebao.ca/beyond-bao-magazine/>



Consumer Information Guide

<https://thebao.ca/for-consumers/consumer-information-guide/>



General Inquiries

Info@TheBAO.ca

647-483-2645

Toll-Free: +1 844-493-6356



Appendix A: CMF/A

The BAO's online C&M calculator is available at this page:

<https://thebao.ca/calculator/>

Contribution Type	Contribution Amount (effective January 1, 2022)
In-ground graves that are 2.23 m ² (24 ft ²) or larger	\$290 or 40% of price (whichever is greater)
In-ground grave that is smaller than 2.23 m ² (24 ft ²)	\$175 or 40% of price (whichever is greater)
Tomb, crypt or compartment in a public mausoleum	\$830 or 20% of price (whichever is greater)
Niche or compartment in a public columbarium	\$165 or 15% of price (whichever is greater)
Scattering ground for which there will be only one scattering rights holder	\$115 or 40% of price (whichever is greater)
Scattering ground for which there will be more than one scattering rights holder	\$30 or 15% of price (whichever is greater)
Scattering ground for which there will be no scattering rights holder	\$30
A private mausoleum provided or constructed by a person other than the cemetery operator is installed in a cemetery	\$575 multiplied by the number of tombs, crypts, compartments or 20% of the sum of specified prices (whichever is greater)
A private columbarium provided or constructed by a person other than the cemetery operator is installed in a cemetery	\$115 multiplied by the number of niches and compartments or 15% of the sum of specified prices (whichever is greater)
To establish a cemetery	\$165,000
Flat marker measuring less than 1,116.13 cm ² (173 in ²)	\$0
Flat marker measuring at least 1,116.23 cm ² (173 in ²)	\$100
Upright marker measuring 1.22 m (4 ft) or less in height and 1.22 m (4 ft) or less in length, including the base	\$200
Upright marker measuring more than 1.22 m (4 ft) in either height or length, including the base	\$400