

**Cemetery Closures: Frequently Asked Questions (FAQs)  
for Owners/Operators (2021)**

**Table of Contents**

1. What are the main provisions under the *Funeral, Burial and Cremation Services Act, 2002* that pertain to cemetery closures? ..... 2

2. Why does the Registrar recommend that I get an archaeological assessment done for the cemetery or part of it that I’m applying to close? ..... 2

3. Why do I need to provide the Registrar with a Registered Plan of Survey that shows the legal description of the cemetery property and the cemetery area to be closed? ..... 3

4. How can I ensure that my cemetery closure application is complete so that it can be reviewed in the least amount of time possible?..... 3

5. At what point is a cemetery closure application considered to be complete? ..... 4

6. Why am I being asked about how many grave markers or interments there are in the cemetery. Why does that matter? ..... 4

7. Why should I consider applying to close part of a cemetery before I apply to sever the part proposed to be closed from the rest of the property (for example, because I want to sell the part proposed to be closed)? ..... 5

8. How does the Registrar decide whether or not a cemetery closure is in the “public interest”? What does this mean? ..... 5

9. The cemetery closure application form asks me to describe why the closure is in the public interest. How do I do this? What information should I provide? ..... 6

10. What information is contained in a cemetery closure order? ..... 7

11. I provided notice regarding the proposed closure of a cemetery or part of one that I own or operate, and some people or groups are opposing the closure. Does this mean that my closure application will be unsuccessful? ..... 7

12. The Registrar has recommended to me that I get an archaeological assessment done for my cemetery property. How do I find an archaeologist to do this, and what information will that assessment provide me with? ..... 8

13. How long does it take for the Registrar to evaluate a cemetery closure application? ... 8

14. There are no interments or scatterings in the cemetery or part of it that I would like to close, and I've obtained the consent of all affected interment and scattering rights holders (or, there are none). Do I still have to provide notice to the "prescribed persons"? ..... 8

Additional Questions? Contact the Registrar. .... 9

**1. What are the main provisions under the *Funeral, Burial and Cremation Services Act, 2002* that pertain to cemetery closures?**

Sections 88 to 93 of the [Funeral, Burial and Cremation Services Act, 2002](#) (FBCSA) contain provisions relating to cemetery closures. These provisions set out a process for a cemetery owner to apply to the Registrar to close a cemetery or part of one, including notice requirements, a requirement for the Registrar to consider the public interest, and requirements for the contents of a closure order, for closure certificates, for transfers of care and maintenance fund or account money and for the process for appealing the Registrar's decision to order or refuse to order the closure of a cemetery or part of one.

[Section 165 of Ontario Regulation \(O. Reg.\) 30/11](#) includes requirements for the disposition of a cemetery care and maintenance fund or account on cemetery closing. [Section 172 of O. Reg. 30/11](#) contains additional closing application notification requirements. [Section 173](#) of that regulation includes requirements for transferring records relating to a cemetery to be closed.

**2. Why does the Registrar recommend that I get an archaeological assessment done for the cemetery or part of it that I'm applying to close?**

An archaeological assessment can help determine whether there are human remains where none are currently known to be interred or to determine the historical boundaries of the cemetery. Information about the presence of human remains in the cemetery or part of it sought to be closed influences the closing process notice requirements as well as the contents of a closing order, if made. The precise location and area of the cemetery proposed to be closed are needed to process the application.

Depending on the circumstances, the location or presence of human remains in cemeteries or parts of them, or the boundaries of cemeteries, may be uncertain. This is especially true for old cemeteries. In some cases, record keeping regarding the location of interments in cemeteries has been less than ideal. If records were lost or destroyed over time, it can be difficult for cemetery owners/operators to define the limits of the cemetery, when those are unclear, or to define the area of the cemetery to be closed based on the presence or absence of human remains. Historically, cemetery boundaries may have changed over time (for example, fences

and markers may have been moved) and on occasion people interred their relatives clandestinely immediately adjacent to cemeteries.

Hiring a [professional archaeologist licensed](#) under the [Part VI of the Ontario Heritage Act](#) to assess the subject property's archaeological potential, including its land use history and the potential or actual presence of human remains, should provide you with more specific information regarding the nature and, if needed, limits of the cemetery. A professional licensed archaeologist has the expertise and the authority to help you determine this information, which typically requires detailed research and specialist knowledge to obtain. In general, that information can help the Registrar to better determine whether ordering the closure is in the public interest. That information also may reduce the amount of time required by the Registrar to review your application.

Keep in mind that depending on the circumstances, you may need to get an archaeological assessment done anyway. Completing this work as soon as possible in the closing process might facilitate related approval processes. You should consult with your approval authority for details about its requirements.

### **3. Why do I need to provide the Registrar with a Registered Plan of Survey that shows the legal description of the cemetery property and the cemetery area to be closed?**

When the Registrar issues an order of closure for a cemetery or part of one, the closure order must include a legal description of the land involved. The survey is intended to facilitate certainty as to the location and area of land that is no longer to be a cemetery and, if applicable, the location and area of land that is to remain a cemetery. Without this information, it may be unclear where a cemetery is within a larger property or in relation to neighbouring properties. This can create confusion and additional cost down the road (for example, when severance applications are made, or when development is planned adjacent to the cemetery).

### **4. How can I ensure that my cemetery closure application is complete so that it can be reviewed in the least amount of time possible?**

Before you submit your application, make sure that:

1. You have reviewed the closing process requirements in the [Funeral, Burial and Cremation Services Act, 2002](#) and [Ontario Regulation 30/11](#).
2. You have completely read, understood and filled out all sections of the [application form](#).
3. You have used the full, legal names for the cemetery owner and/or operator and legal description of the property.
4. You have not crossed out any fields in the application form.
5. You have attached all required documentation to the application, including:

- a. A detailed description of why the closure is in the public interest.
- b. A registered plan of survey for the subject property (showing a legal description of the cemetery property and highlighting the area to be closed and, if applicable, the new boundaries and dimensions of the remaining cemetery land).
- c. If applicable, other relevant mapping (for example, map of plots or cemetery layout).
- d. Archaeological assessment report, if any.
- e. If applicable, documentation of compliance with notice requirements (for example, copies of notices made, and any responses to those notices directed to the applicant in place of the Registrar).
- f. If applicable, a copy of the heritage designation under the [Ontario Heritage Act](#) and proof that the designation has been removed or amended.

If you have questions about the application requirements, please [contact the Registrar](#) before applying. Some application requirements, such as what documentation is required, will vary with the circumstances.

## **5. At what point is a cemetery closure application considered to be complete?**

Your application to close a cemetery or part of one is considered complete once the [Registrar](#) has verified you have provided all requested application information to the Registrar. In practice this means that if you submit an application to the Registrar and the Registrar requests additional information, your application is not considered to be complete. In general, incomplete applications will not be processed. If an application is processed with incomplete or incorrect information the application may need to be redone, even if a final decision was made on the application.

## **6. Why am I being asked about how many grave markers or interments there are in the cemetery. Why does that matter?**

The Registrar will use this and the other required information that you provide to determine if the cemetery closure is in the public interest. The numbers of interments and markers in the cemetery, among other information, help the Registrar to determine the potential impacts of the cemetery closing. Providing correct and complete information upfront will help the Registrar to review your application as quickly as possible.

## **7. Why should I consider applying to close part of a cemetery before I apply to sever the part proposed to be closed from the rest of the property (for example, because I want to sell the part proposed to be closed)?**

You should consult with your approval authority for details about its requirements for land severance and do so before making an application to close a cemetery. What follows is general information and is not a substitute for local severance requirements.

In general, in order to get consent to sever land that is currently part of a cemetery from the remainder of a property to form a new lot or parcel of land, at a minimum you will need to define the limits of the property to be severed. This can be tricky to do for those historical cemeteries where interment records are lost or have been destroyed, markers and/or fences have been moved or removed, or clandestine burials may exist. The closing process will clarify cemetery boundaries if it results in part of the cemetery being closed; the remaining cemetery will have newly defined boundaries.

More generally, the outcome of the closing process may affect your ability to sever the property, which may affect your ability to deal with it as you intended (for example, to sell it).

## **8. How does the Registrar decide whether or not a cemetery closure is in the “public interest”? What does this mean?**

The Registrar must determine whether she believes a cemetery closure is in the public interest. In general, that includes considering whether the public is better served by leaving the cemetery or the relevant part of it in place or, if applicable, disinterring and reintering the remains at another cemetery. It is important that you provide complete and accurate information to the Registrar in your application to support this determination.

When determining whether a closure is in the public interest, the Registrar considers the following factors:

1. Compliance with the [Funeral, Burial and Cremation Services Act, 2002](#) (Act), including its regulations
  - whether the proposed closure is compliant with the requirements under the Act;
2. Cemetery maintenance
  - how the maintenance of the cemetery with respect to both its upkeep and its cultural and historical significance would be affected by the closure, including the wishes of the local municipality regarding the cemetery’s preservation;
3. Public safety
  - whether the closure would result in the disturbance or relocation of any interments, features or structures in a way that could potentially pose a health or

other safety risk to the public, and whether refusing to order the closure would pose a public health or safety risk; and

4. Preservation of a cemetery's dignity, quiet and good order
  - how the proposed closure would impact on the dignity, quiet and good order of the cemetery, and how closing or not would affect public access to the cemetery, including to markers, interments, scatterings or interment or scattering rights at the cemetery.

Depending on the circumstances, other factors also may be considered.

## **9. The cemetery closure application form asks me to describe why the closure is in the public interest. How do I do this? What information should I provide?**

It is important that you make a clear argument as to why the closure is in the public interest. Without that clarity, it may be difficult for the Registrar to understand why you are applying to close the cemetery or part of it and what the impact of that closure would be to the community in which the cemetery is located. See [Question 8 in this document](#) for a description of how the Registrar makes a determination regarding the public interest.

In order to demonstrate that a closure is in the public interest, you are encouraged to include detailed answers to the following questions:

1. Why are you seeking the closure?
2. What would happen if the closure application is unsuccessful?
3. What impacts would there be on the community if the cemetery was closed?
4. How would negative impacts, if any, arising from closing or not closing the cemetery or part of it be managed?
5. What benefits to the applicant and community would result from the cemetery closure?
6. How would the closing preserve the quiet, dignity and good order of the cemetery, including, if applicable, the part of it to remain open? If applicable, who would continue to maintain the remaining cemetery or would maintain the elements of the cemetery that are moved to another cemetery? If human remains would need to be moved, how would that be done in a dignified manner?

Depending on the circumstances, other information also may be relevant.

## 10. What information is contained in a cemetery closure order?

[Subsection 88\(7\) of the Funeral, Burial and Cremation Services Act, 2002](#) sets out the information that the Registrar must include in a closure order:

### Order

- (7) In an order to close a cemetery, the registrar shall,
- (a) declare that the cemetery is to be closed and that no other interments or scattering of cremated human remains shall be carried out in the cemetery;
  - (b) order the person named in the order to,
    - (i) disinter all human remains in the cemetery in the manner specified in the order and either reinter the remains in the place and in the manner specified in the order or deal with the remains in whatever other manner that the order specifies,
    - (ii) deal with scattered cremated human remains in the manner specified in the order,
    - (iii) remove any markers and relocate them to a specified place,
    - (iv) provide to any interment rights holders who hold unused interment rights in the cemetery equivalent interment rights in another cemetery and, if necessary, acquire equivalent rights for the purpose,
    - (v) provide to any scattering rights holders who hold unused scattering rights in the cemetery equivalent scattering rights in another cemetery and, if necessary, acquire equivalent rights for the purpose,
    - (vi) do whatever other things the registrar determines are necessary to ensure the dignity and respect of the human remains; and
  - (c) direct, in accordance with the Act and regulations, how money held in a care and maintenance fund or account is to be dealt with. 2002, c. 33, s. 88 (7); 2006, c. 34, Sched. D, s. 60 (2).

## 11. I provided notice regarding the proposed closure of a cemetery or part of one that I own or operate, and some people or groups are opposing the closure. Does this mean that my closure application will be unsuccessful?

Opposition to the proposed closure of a cemetery or part of one does not necessarily mean that your application will be unsuccessful. While the Registrar must consider any submissions relating to the proposed closure, it is ultimately the Registrar who must determine whether she believes the closing is in the public interest, including in view of the factors noted in [Question 8 of this document](#). In making the application, you have an opportunity to address potential opposition to it. This is one reason why it is important to make a clear, evidence-based

argument as to why the closure is in the public interest when you submit your application. This will also help the Registrar to efficiently and effectively review your application.

**12. The Registrar has recommended to me that I get an archaeological assessment done for my cemetery property. How do I find an archaeologist to do this, and what information will that assessment provide me with?**

A list of licensed professional archaeologists can be found through the [Ministry of Heritage, Sport, Tourism and Culture Industries' website](#).

The archaeological assessment report that the archaeologist provides to you may include:

1. A detailed summary of the land use history of the cemetery/property, including review of archival documents and maps.
2. A determination of the potential to find archaeological resources, including unmarked graves, within and, if assessed, immediately outside of, the limits of the cemetery as they are currently defined.
3. Information about the current condition of the property that contains details relevant to the application (for example, information about whether markers been moved and/or whether the fence line or legal limits of the property changed over time).
4. A determination as to whether further archaeological assessment work is recommended beyond a review of historical documents, maps, and a property inspection.

**13. How long does it take for the Registrar to evaluate a cemetery closure application?**

There is no length of time specified under the [Funeral, Burial and Cremation Services Act, 2002](#) for the Registrar to review a cemetery closure application. That said, the Registrar endeavours to provide timely service. If you have inquiries regarding the status of your application, please use the [contact information](#) to receive a status update from the Registrar.

**14. There are no interments or scatterings in the cemetery or part of it that I would like to close, and I've obtained the consent of all affected interment and scattering rights holders (or, there are none). Do I still have to provide notice to the "prescribed persons"?**

No. Notice under [section 88 of the Funeral, Burial and Cremation Services Act, 2002](#) is not required if interments or scatterings have not been made in the cemetery or part of it to be closed and the consent of all affected interment and scattering rights holders has been obtained (or, there are no affected interment and scattering rights holders).



**Additional Questions? Contact the Registrar.**

Registrar, *Funeral, Burial and Cremation Services Act, 2002*

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