

Cemeteries and Monuments Protection Act

CHAPTER 9 OF THE ACTS OF 1998

as amended by

2001, c. 6, s. 99; 2011, c. 13



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CHAPTER 9 OF THE ACTS OF 1998
amended 2001, c. 6, s. 99; 2011, c. 13

**An Act to Provide for
the Protection of Cemeteries
and Monuments**

title amended 2011, c. 13, s. 1.

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Cemeteries and Monuments Protection Act*. 1998, c. 9, s. 1; 2011, c. 13, s. 2.

Interpretation

2 In this Act,

(a) “abandoned cemetery” means a cemetery that is declared to be an abandoned cemetery pursuant to this Act;

(b) “cemetery” means land that is set apart or used as a place for the burial of human remains and, for greater certainty, includes all tombstones, gravemarkers and other monuments located thereon and any buildings or structures located thereon for the permanent placement of human remains;

(c) “Minister” means the Minister of Communities, Culture and Heritage;

(d) “monument” means land or a public structure set aside to commemorate an event, an individual or a group. 1998, c. 9, s. 2; 2011, c. 13, s. 3.

Supervision and management of Act

3 The Minister has the general supervision and management of this Act. 1998, c. 9, s. 3.

MAY 19, 2011

Declaration

- 4 (1) Where the Minister is satisfied that
- (a) a cemetery is no longer being used for the burial or permanent placement of human remains;
 - (b) the owner of the cemetery is unknown, cannot be found or is unable to maintain the cemetery; and
 - (c) the cemetery is not subject to active management,

the Minister may, by order, declare the cemetery to be an abandoned cemetery and permit persons to enter the cemetery and carry out such work as the Minister thinks necessary to restore, preserve and protect the cemetery.

(2) An order made pursuant to subsection (1) is ineffective unless and until the order is deposited in the manner prescribed by the regulations in the registry of deeds for the registration district in which the cemetery is located.

(2A) Where real property has been registered pursuant to the *Land Registration Act*, an order made pursuant to subsection (1) is ineffective unless and until the order is recorded in the register for the parcel established pursuant to that Act in which the real property is located in the manner prescribed by the *Land Registration Act* for the registration district in which the cemetery is located.

(3) No action lies against a person by reason only of acting in accordance with an order made pursuant to this Section. 1998, c. 9, s. 4; 2001, c. 6, s. 99; 2011, c. 13, s. 4.

Right to pass

5 Any person may go on foot upon and across any uncultivated lands or Crown lands for the purpose of visiting a cemetery or monument during daylight hours for purposes usually associated with cemetery or monument visits, as the case may be. 1998, c. 9, s. 5; 2011, c. 13, s. 5.

Power to grant right-of-way

6 (1) Notwithstanding the *Private Ways Act*, any person may present a petition to the Governor in Council pursuant to that Act for an order in council declaring that the person is entitled to acquire under Part I of that Act a right to pass and repass over lands for the purpose of gaining access to an abandoned cemetery from a public street or road and egress from the abandoned cemetery to a public street or road, and the *Private Ways Act* applies to the petition as if the petition were a petition referred to in subsection 2(1) of that Act, except that clause 2(2)(a) of that Act does not apply to the petition.

(2) An order in council pursuant to subsection (1) is ineffective unless and until it is registered in accordance with Section 13 of the *Private Ways Act*. 1998, c. 9, s. 6.

Limitation on use of cemetery

7 (1) No person may use a cemetery for any purpose other than for the burial or permanent placement of human remains or memorialization.

(2) Subsection (1) does not apply to a person who, for valuable consideration, acquires an interest in property without notice that the property is set apart or used as a place for the burial or permanent placement of human remains, unless at the time of the acquisition, an order relating to the property, made pursuant to Section 4, is on deposit in a registry of deeds in accordance with Section 4.

(3) Where real property is registered pursuant to the *Land Registration Act*, subsection (1) does not apply to a person who, for valuable consideration, acquires an interest in property without notice that the property is set apart or used as a place for the burial or permanent placement of human remains, unless at the time of the acquisition, an order relating to the property, made pursuant to Section 4, is recorded in accordance with Section 4 in the register for the parcel established pursuant to that Act. 1998, c. 9, s. 7; 2001, c. 6, s. 99.

Consequences of discovery of human remains

8 (1) Where there is no evidence on the surface of land that the land is a cemetery, but a person discovers, under the surface, human remains, that person shall

- (a) immediately report the discovery to the Minister; and
- (b) except to the extent permitted by the Minister, not carry out any activity that would result in disturbing the remains.

(2) Every person who violates subsection (1) is guilty of an offence against this Act. 1998, c. 9, s. 8.

Offence

9 Every person who desecrates, damages or destroys a cemetery or monument is guilty of an offence against this Act. 1998, c. 9, s. 9; 2011, c. 13, s. 6.

Preservation of existing powers of court

10 Nothing in this Act shall be construed as limiting or modifying the power or authority of a court to order the disinterment and removal of remains from a cemetery and interment of those remains in a suitable location. 1998, c. 9, s. 10.

Penalty

11 Every person who is guilty of an offence against this Act is liable, on summary conviction, to a fine not exceeding twenty thousand dollars or, on default of payment, imprisonment for a period not exceeding two years less a day. 1998, c. 9, s. 11; 2011, c. 13, s. 7.

Regulations

- 12 (1) The Governor in Council may make regulations
- (a) prescribing the manner in which an order made pursuant to this Act shall be deposited and preserved in a registry of deeds;
 - (b) defining any word or expression used but not defined in this Act;
 - (c) respecting any matter deemed necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.
1998, c. 9, s. 12.
