

**IN THE MATTER OF THE EMBALMERS AND FUNERAL DIRECTORS ACT
R.S.N.S. 1989, CHAPTER 144**

and

Wil-Rent Enterprises Limited O/A Forest Haven Memorial Gardens (2005)

NOTICE OF DECISION

Re: Decision Regarding Crematorium Licence #21-1488507

This Notice sets out the decision of the Registrar regarding the Crematorium Licence #21-1488507 held by Wil-Rent Enterprises Limited O/A Forest Haven Memorial Gardens (2005) ("Forest Haven") under the *Embalmer and Funeral Directors Act* (the "Act").

INTRODUCTION

A letter was sent to David Wilton on behalf of Forest Haven on January 17, 2022, which outlined allegations that Forest Haven contravened subsection 32C(1) of the Act. The letter notified Forest Haven that because of these allegations, a hearing would be scheduled to consider whether Forest Haven did contravene the Act and, if so, whether to cancel or suspend Forest Haven's Crematorium licence pursuant to clause 29(d) of the Act.

An in-person hearing was held on March 11, 2022, regarding the crematorium licence. Mr. Wilton attended with Forest Haven's legal counsel, Mr. William P. Burchell.

At the hearing, Mr. Wilton and Mr. Burchell were given the opportunity to listen to the testimony given by witnesses [REDACTED] and Nikki DeWolfe Consumer Protection Officer for Service Nova Scotia and Internal Services, and to ask questions of each witness.

In addition, Mr. Wilton was given the opportunity to call witnesses to testify on behalf of Forest Haven. Mr. Wilton called [REDACTED], Compassionate Body Removal Services (CBRS), to give evidence, and Mr. Wilton gave evidence himself. At the end of the hearing, Mr. Wilton was invited to provide written submissions to the Registrar, and Mr. Burchell immediately provided two documents that he said were to be considered as Forest Haven's written submissions. One document was called "Bullet Points" and a second document was called "Responses to Itemized Complaints".

ISSUE

Clause 29(d) of the Act provides that the Registrar may cancel or suspend a funeral home licence if the licensee has contravened this Act or the regulations, stating as follows:

- 29** The Registrar may cancel or suspend a funeral home licence where
- (d) the licensee has contravened this Act or the regulations;

The hearing considered whether Forest Haven contravened clauses 32C(1)(b) and/or (c) of the Act, which provide as follows:

Duties of funeral home licence holder

- 32C (1)** Every person who holds a funeral home licence shall
- (b) ensure that every person transporting human remains is satisfied as to the identity of the remains at the time of initial pickup and at delivery to the intended destination; and
 - (c) create and follow a documented standardized process to ensure that human remains and cremated remains are continuously identified, from when the remains are picked up by a third-party transport service or are received by the funeral home and until the remains are released to the next of kin.

BACKGROUND

On December 15, 2021, Service Nova Scotia and Internal Services was advised that Forest Haven had cremated the wrong person on [REDACTED].

Our office was informed that there was a mix-up between two deceased individuals who were at the Cape Breton Regional Hospital (the "Hospital") awaiting pick up by their respective funeral homes.

CBRS, the third-party transport service hired by Forest Haven to transfer the human remains for [REDACTED] from the Hospital to Forest Haven, instead transferred the human remains for [REDACTED] to Forest Haven where they were cremated.

[REDACTED] was to be transferred to Sydney Memorial Garden to be embalmed for a family visitation and was instead cremated in error by Forest Haven.

EVIDENCE AND FINDINGS OF FACT

[REDACTED] provided a document titled "Protocol for a removal of remains at CBRH", which was attached to the Notice of Hearing as Exhibit 6 and supported by photographs of the Hospital logbook that were attached to the Notice of Hearing as Exhibit 5.

The information provided by [REDACTED] was that if the Nova Scotia Medical Examiner's office (ME) is involved to investigate a death, they assign a unique ME case number to the deceased. The ME case number is written on the outside of the ME body bag and a wire tag (with a distinct tag number) locks the bag to secure the remains. After the remains arrive at the Hospital, the ME case number and tag number are written in the morgue logbook next to the name of the deceased. A funeral home or transport service can remove the ME remains and deliver them to the intended funeral home after they provide a medical certificate of death to the Hospital and the ME sends a release form to the Hospital.

When a funeral home or their transport service arrives at the Hospital to remove the remains, they review the logbook, find the name of the individual they are to pick up and their ME case number and cross reference it to the ME number on the outside of the body bag.

The excerpt from the Hospital logbook, which was attached as Exhibit 5 to the Notice of Hearing, indicates that [REDACTED] had an assigned ME case number on the bag of

██████████ and tag number ██████████. The Hospital logbook identified that ██████████ remains were to be released to Forest Haven CBRS.

The excerpt from the Hospital logbook also indicates that ██████████ had an assigned ME case number on the bag of ██████████ and a tag of ██████████. The Hospital logbook identified that ██████████ remains were to be released to Sydney Memorial Chapel.

██████████, the employee from CBRS who transported the remains on behalf of Forest Haven, testified that when he arrived at the Hospital on ██████████, he provided the name, registration, date of birth, and the ME case number for ██████████ to the security guard staffing the Hospital morgue. He further testified that the security guard gave him a body, which was in an ME body bag. The excerpt from the Hospital logbook (Exhibit 5 attached to the Notice of Hearing) shows that ██████████ signed on the line with ██████████ name and ME case number ██████████. However, he left the Hospital with a body bag labelled with ME case number ██████████.

██████████ confirmed in his testimony, and I find as fact, that he did not check to verify that the ME case number on the body bag matched the ME case number for ██████████ as listed in the Hospital logbook, and he also failed to check that the ME case number on the body bag matched the ME case number that he had originally provided to security when he arrived at the Hospital.

Mr. Wilton testified that the policy of Forest Haven Memorial Gardens is that it is the responsibility of the funeral director to open the body bag and check the ID on the wrist before a body is cremated. However, in this case, he confirmed that the funeral director in charge, Joe Curry, did not open the body bag to check the ID of the deceased person delivered to the funeral home, and as a result, ██████████ was cremated in error.

I find as a fact that neither the funeral director nor any other funeral home employees took any steps to verify the identity of the remains when they were delivered to the funeral home or before they were cremated. Furthermore, Mr. Wilton did not provide any evidence indicating that Forest Haven's policy requiring the funeral director to open the body bag and check the wrist ID was documented in writing or that this policy was clearly communicated to Mr. Curry. In fact, Mr. Wilton testified that since the event, he put in place new checks and balances because he did not want to have this to happen to any other person.

During their inspection at Forest Haven Memorial Gardens on December 16, 2021, Wanda Benoit and Nikki DeWolfe, consumer protection officers, asked Mr. Wilton, Ms. Michelle Wilton, and Mr. Curry to provide Forest Haven's documented standardized process of the continuous identification of human remains, as required by clause 32C(1)(c) of the Act and a requirement at every funeral home routine inspection. No one at the funeral home provided the consumer protection officers with this document. In the Cremation Inspection Report, (section 4 of Exhibit 1, which was attached to Notice of Hearing), Wanda Benoit confirmed this item as non-compliant.

At the hearing, Mr. Wilton testified that Forest Haven does have a process in the form of a computer system called the Nexus program. Mr. Wilton's submission document with the title "Bullet Points" indicates that they document all stages of the process from the arrival of a body to the return of the cremated remains to the family, and that they maintain both a paper file as well as a computerized record keeping mechanism. It is the Registrar's understanding that the Nexus program which Mr. Wilton referred to at the hearing is the computerized record keeping

system referred to in the "Bullet Points" document that he provided. The "Bullet Points" document describes the steps that Forest Haven follows when they record and maintain cremation records.

Additional Submission by Mr. Wilton

Mr. Wilton made submissions during the hearing that there should be changes made to the procedures of the Medical Examiner's Office and the Cape Breton Regional Hospital, and after the hearing he provided a document from the Bereavement Authority of Ontario "Removals of Deceased from Hospitals and Long-Term Care Facilities" for my review. He requested that I forward it to the Minister of Service Nova Scotia and internal Services as ideas for future changes. As I explained during the hearing, our department does not have authority over the procedures of Cape Breton Regional Hospital or the Medical Examiner's Office, therefore his submissions related to these areas are not relevant to my decision about the funeral home's crematorium licence.

ANALYSIS

Did Forest Haven contravene clause 32C(1)(b) of the Act?

Clause 32C(1)(b) of the Act provides as follows:

- 32C (1)** Every person who holds a funeral home licence shall
- (b) ensure that every person transporting human remains is satisfied as to the identity of the remains at the time of initial pickup and at delivery to the intended destination;

To comply with s. 32C(1)(b), Forest Haven was required to ensure that CBRS was satisfied as to the identity of the remains at the time of initial pickup and at delivery to the intended destination.

Mr. Wilton submitted that verifying that the deceased's identity matched the ME case number on the body bag and the tag number is the responsibility of the Hospital, and that [REDACTED] was satisfied as to the identity of the remains because he presented the death certificate and Hospital verification to the Hospital security guard at the time of pick up. Mr. Wilton submitted that the assurance of identity comes from the Hospital, and that [REDACTED] relied on the contents in the bag being those of [REDACTED] because that is the name of the deceased whom he asked the Hospital security guard to provide from the morgue.

Mr. Wilton further submitted that [REDACTED] had no means of checking the ME case number and tag number with any cross-reference materials, and that the funeral home had no responsibility to further verify the identity of the remains.

I do not accept Mr. Wilton's submission that [REDACTED] had no means to check the ME case number and cross reference it with other materials. To the contrary, as noted earlier in my decision, [REDACTED] testified that he provided the ME number to security at the Hospital, and the excerpt from the Hospital logbook has [REDACTED] signature on the line containing [REDACTED] name and ME case number.

I accept that the Hospital security guard provided the wrong body to [REDACTED] and that this

was the origin of the chain of events that led to the wrongful cremation of [REDACTED]. However, I find that simply relying on the Hospital security guard to provide the requested body, without taking any further steps to satisfy oneself as to the identity of the body, is not sufficient to comply with s. 32C(1)(b) of the Act.

The ME case numbers are written on the outside of the body bag and are also written in the Hospital logbook that must be signed by the person picking up the remains. [REDACTED] signed the logbook next to the ME case number [REDACTED], but he left the Hospital with a body bag that had ME case number [REDACTED] written on it, and he admitted that he did not check to verify if the ME case number matched the number of [REDACTED].

I find that to be satisfied as to the identify of the remains at the time of pick up, it is not sufficient for the person picking up the remains to merely take the body bag brought to him by security staff at the Hospital. Rather, it was [REDACTED] responsibility to check that the number written on the body bag matched the ME case number in the Hospital logbook before he signed for the body and removed it.

Furthermore, Forest Haven is responsible for ensuring that the person receiving the remains at the time of delivery to the funeral home is satisfied as to the identify of the remains.

Mr. Wilton submitted that it would have been Mr. Curry's responsibility, as the funeral director in charge of Forest Haven, to take steps to correctly identify remains when they arrived at the crematorium, by opening the body bag to check the ID on the wrist. However, Mr. Curry did not take any such steps and instead relied solely on CBRS for identification of the remains. Forest Haven failed to have a process in place to ensure that the funeral director in charge knew that it was his responsibility to take steps to correctly identify the remains.

Mr. Burchell submitted at the hearing that Forest Haven, by retaining the services of a body removal service and by hiring a funeral director with a current licence, exercised its due diligence and should not be responsible for what transpired.

I do not agree with that submission. Under s. 32C(1)(b) of the Act, Forest Haven, as the holder of the funeral home licence, is responsible for ensuring that the body removal service took steps to satisfy itself as to the identify of the remains picked up at the Hospital and that the funeral director took steps to satisfy himself as to the identity of the remains prior to cremation. Forest Haven failed to ensure that CBRS and the funeral director understood that they were each responsible for the identification of human remains.

As a result of all of the above, I find that Forest Haven contravened s. 32C(1)(b) of the Act.

Did Forest Haven contravene clause 32C(1)(c) of the Act?

Clause 32C(1)(c) of the Act provides as follows:

- 32C (1)** Every person who holds a funeral home licence shall
- (c) create and follow a documented standardized process to ensure that human remains and cremated remains are continuously identified, from when the remains are picked up by a third-party transport service or are received by the funeral home and until the remains are released to the next of kin.

During the inspection, the consumer protection officers asked Mr. Wilton, Ms. Michelle Wilton and the funeral director in charge, Joe Curry, for a copy of the funeral home's documented standardized process for the continuous identification of human remains. None of them provided a copy of a documented standardized process to the consumer protection officers.

During the hearing, Mr. Wilton submitted that Forest Haven had a documented process in the form of the Nexus computer program. After the hearing, Mr. Wilton submitted a document called "Bullet Points" that sets out how Forest Haven maintains a paper and standard file, including all documentation related to the cremation process. He submitted that he viewed this as Forest Haven's documented standardized process for the continuous identification of human remains. The document includes a statement that when the remains are received at the crematorium, the funeral director does the identification of the remains and issues the cremation registry number for those remains. I find that other than this statement, the document does not include any additional identification of human remains requirements that would be expected for a funeral home that completes cremations for other funeral homes and that uses a third-party transfer service. Therefore, I find that the document submitted as a standardized process does not provide for the continuous identification of remains and does not meet the requirements of s. 32C(1)(c) of the Act.

Furthermore, I find that the requirement of s. 32C(1)(c) for a funeral home to create a "documented standardized process" [emphasis added] means that the funeral home must have set out its standardized process in writing. In addition, the document called "Bullet Points" was not provided to the consumer protection officers at the time of the inspection, and this leads me to conclude that it was not created until after the inspection.

The evidence shows Forest Haven made two specific errors that led to the mistaken cremation of [REDACTED]. The first error was when CBRS transferred a body with the incorrect ME case number on the bag and delivered it to Forest Haven, and the second error was when the funeral director in charge did not check the ID of the deceased before cremation.

Because Forest Haven Memorial Gardens did not have a documented standardized process of the continuous identification of human remains, it is reasonable to deduct that neither [REDACTED] nor Mr. Curry had received direction from Forest Haven as to their responsibility for identifying remains. [REDACTED] improperly relied on security to identify the remains when he removed the incorrect body from Cape Breton Regional Hospital, and Mr. Curry improperly relied on [REDACTED] for the identity of the remains. If Forest Haven had created and provided these two individuals with a documented standardized process for identifying remains, there is a strong possibility that [REDACTED] would not have been cremated in error.

For all of the reasons outlined above, I find that Forest Haven Memorial Gardens contravened s. 32C(1)(c) of the Act because the funeral home did not have and did not follow a documented standardized process to ensure that human remains and cremated remains are continuously identified, from when the remains are picked up by a third-party transport service or are received by the funeral home and until the remains are released to the next of kin.

Suspension of Licence

As a result of the contraventions of s. 32C(1)(b) and (c) of the Act, Forest Haven's crematorium licence will be suspended for two months, effective April 28, 2022. This decision is based on the serious consequences of Forest Haven's contraventions, resulting in [REDACTED] wrongful

cremation on [REDACTED].

[REDACTED] was to be traditionally viewed in a casket by his [REDACTED] coming from [REDACTED] and his [REDACTED] from [REDACTED], but because he was cremated in error, they did not have the opportunity to say goodbye to their [REDACTED] and [REDACTED].

This is a devastating incident and a family should not have to go through this because of mistakes that could have been avoided if Forest Haven followed the requirements under the Act.

When a crematorium in Nova Scotia previously cremated a person in error, the Registrar suspended the crematorium's license for 30 days. After that occurred, in 2018 the provincial government made amendments to strengthen the Act to help prevent this type of error from happening again. Those amendments to the Act included adding the new Section 32C to require funeral homes and crematoriums to label remains, ensure that every person transporting human remains is satisfied as to the identity of the remains, and to create and follow documented standardized processes to ensure the continuous identification of human remains.

The Department of Service Nova Scotia and Internal Services provided notice to all funeral homes in the province, including Forest Haven, of these changes in the Act. As a licensed funeral home in Nova Scotia, Forest Haven is required to comply with the Act and its regulations and Forest Haven should have been aware and followed the new requirements.

Given that the previous incident that resulted in a 30-day suspension of a different crematorium licence occurred before s. 32C was added to the Act, I find that now that s. 32C has been added to the Act and that Forest Haven nonetheless contravened that provision and cremated the wrong body in error, a lengthier suspension is warranted.

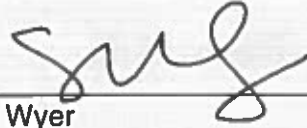
Given my concerns about Forest Haven's failure to have a documented standardized process to ensure the continuous identification of human remains, Forest Haven's licence will extend past the 2 months and will not end on June 28, 2022, unless on or before that date, Mr. Wilton provides the Registrar with Forest Haven's documented standardized process to ensure the continuous identification of human remains. If Mr. Wilton fails to provide the required document on or before June 28, 2022, the licence suspension will continue until Mr. Wilton has provided this document to the Registrar and the Registrar has confirmed receipt in writing.

CONCLUSION

I am satisfied that Forest Haven contravened clauses 32C(1)(b) and 32C(1)(c) of the Act. As a result of these contraventions, under clause 29(d) of the Act, I am suspending Forest Haven's crematorium licence for a period of two months, commencing on April 28, 2022, and ending on June 28, 2022.

However, the licence suspension will extend past the 2 months and will not end on June 28, 2022, unless on or before that date, Mr. Wilton provides the Registrar with Forest Haven's documented standardized process to ensure the continuous identification of human remains. If Mr. Wilton fails to provide the required document on or before June 28, 2022, the licence suspension will continue until Mr. Wilton has provided this document to the Registrar and the Registrar has confirmed receipt in writing.

Dated this 21st day of April 2022.



Kelly Wyer
Registrar of Embalmers and Funeral Directors