

BOARD OBTAINS OFFICIAL MARKS

FACT SHEET

The Board of Funeral Services of Ontario is the statutory body that regulates the provision of funeral services and transfer services in Ontario. The Board's regulatory activity includes the licensing and regulation of funeral directors, funeral establishments, transfer services and transfer service operators. This includes the prevention of unauthorized practice and the prosecution of those improperly holding themselves out to be licensed. For example, under section 19 of the *Funeral Directors and Establishments Act*, no unlicensed person can imply that he or she is eligible to act as a funeral director or operate a funeral establishment or transfer service. The Board can prosecute such individuals in Provincial Offences Court or by seeking an injunction from the Superior Court of Justice.

One of the major themes of the *Funeral Directors and Establishments Act* is to permit consumers to exercise an informed and free choice. This goal cannot be achieved if unlicensed persons are permitted to mislead or confuse the public by using terms, titles and designations associated with regulated activities.

The Board has learned of a problem in another profession where a professional association obtained "official mark" status under the *Trade-marks Act* for certain professional terms, titles and designations. (An "official mark" is somewhat similar to a registered trade-mark, and can be obtained by a public authority to prevent confusion or misrepresentation to the public.) However, use of these professional terms, titles and designations was already restricted by provincial statute to persons registered with the regulatory body. The professional association represented that its members could use the designations even if they were not registered with the statutory regulator. It was apparently the association's view that even though the provincial legislation prohibited anyone from using the designation unless registered, federal official mark status took precedence over provincial legislation.

In another incident, an international body based in the United States attempted to register a trade-mark corresponding to designations protected by provincial statute. The American body withdrew its application when the provincial statutory regulators objected.

As a result of these and other similar events, a number of statutory regulators have sought and obtained official mark status for the terms, titles and designations related to their regulatory activities. In this way, there can be no dispute about the effectiveness of the provincial statutory restrictions against improper holding out, or use of titles. Accordingly, the Board has obtained federal official mark status for terms, titles and designations that if used by unlicensed persons could, in some circumstances, amount to improper holding out. The terms protected are: FUNERAL DIRECTOR; FUNERAL ESTABLISHMENT; FUNERAL HOME; FUNERAL SERVICE; FUNERAL CENTRE; FUNERAL CHAPEL; TRANSFER SERVICE; VISITATION CENTRE; CREMATION CENTRE and CREMATION SERVICE.

The purpose of the Board's action is to maintain and protect the integrity of its regulatory process, and to protect those licensed persons who wish to use these terms, titles and designations in the course of practising their profession. As we have clearly outlined from the beginning, the Board will continue to permit licensed persons to use the terms, titles and designations in an appropriate manner. (In fact, official marks cannot be enforced retroactively to prevent the use of terms previously adopted and used.) Also, the Board will not charge a fee to anyone for use of these official marks. However, those who are unlicensed (or not appropriately licensed) will be prohibited from using these terms, titles and designations in a manner that would confuse or mislead the public. **This initiative is intended to preserve the Board's regulatory jurisdiction, not to expand it.**

The Board recognizes that official marks are granted under a federal act. The Board is considering an appropriate means of co-operating with regulatory bodies outside of Ontario to permit them to benefit from these official marks. The Board does not want anyone to profit from the regulatory use of these official marks. The Board is also considering the possibility of transferring its rights to these official marks to a national body.

The Board wishes to assure licensees and others that obtaining these official marks will help the Board protect both the public and the integrity of the licences that it grants. Licensees should see no change in the way that they operate their business. This step by the Board should assist them in communicating clearly and without confusion to the public.

A few common questions that have been asked to date and their answers are set out below.

How will the Official Marks affect me and my business?

If you are carrying on activities that you are licensed to perform, you will continue to operate in the same fashion that you always have.

I have been using one or more of the terms for some time now. Will I have to change the name of my business or change the way that I advertise?

If you began using the terms before the official marks were published on November 29, 2000, then under the *Trade-marks Act* the Board's rights to these official marks will not affect such continued use.

If our Act already protects titles, why is getting official marks necessary?

The *Funeral Directors and Establishment Act* is provincial legislation, while the *Trade-marks Act* is federal legislation. There is a concern that if there is an inconsistency between the provincial (*Funeral Directors and Establishment Act*) and federal legislation (*Trade-marks Act*) that the federal legislation might take precedence. This step by the Board protects the titles both provincially and federally so that no inconsistency can arise. This step gives additional legal certainty to all users of the titles, including you, our licensees.