Department of Government Services

3.2.4 Prepaid Funeral Services (2002 Annual Report, Part 2.12)

Introduction

In 2002, we performed a review of the prepaid funeral services program implemented by Government and administered by the Trade Practices and Licencing Division of the then Department of Government Services and Lands. The *Prepaid Funeral Services Act* was assented to on 12 May 2000 and came into force on 22 December 2000. *Regulations* under the *Act*, the *Prepaid Funeral Services Regulations*, also came into force on 22 December 2000. The *Act* is intended to protect consumers who have entered into prepaid funeral contracts from financial loss in the event of the failure of a funeral home. The *Act* also establishes a Consumer Protection Fund for Prepaid Funeral Services (Assurance Fund) to reimburse consumers who lose their investment due to the failure of a funeral home. Our objective was to determine Government's progress on the implementation of this new prepaid funeral services program. From our review we concluded:

- Very little progress had been made by the Department with the implementation and administration of the prepaid funeral services program. With the exception of two letters issued to funeral homes during June 2001 regarding licensing and the Assurance Fund, there was little to no follow-up performed by the Department.

- The Department did not establish policies and procedures for the program and did not hire a full-time employee to administer the program until January 2002.

- As of March 2002, only 28 of 91 funeral homes in the Province had submitted licence applications. Of these 28, 27 were licensed although only 4 of these homes had fully complied with all requirements of the *Prepaid Funeral Services Act* and *Regulations*. In addition, while all 27 licensed funeral homes had paid their required licence fee, 13 had not paid the required Assurance Fund assessment.

- A total of $137,830 was paid from the Assurance Fund bank account from its establishment on 6 April 2001 to 31 March 2002. These payments were for claims arising from the failure of a funeral home in Port aux Basques in November 2000. At that time, 88 consumers had purchased prepaid funerals from the funeral home valued at a total of $492,790. The $137,830 paid from the Fund related to 23 of the 88 contracts. Although the *Act* did not

come into effect until December 2000, an amendment was made in May 2001 to retroactively honor claims against funeral homes as though the *Act* had come into effect on 1 November 2000. However, the failed funeral home was never licenced under the *Act* and therefore no authority existed under the A*ct* to make these payments.

Update

In October 2004, we contacted the Department of Government Services requesting an update as to the progress on the comments and recommendation included on our 2002 report. The information provided by the Department in response to our request is outlined below.

2002 Recommendation

The Department should increase its activity regarding the implementation and administration of the Prepaid Funeral Services Act *and* Regulations.

Action Taken

The Department indicated that it has developed a Policies and Procedures Manual which provides detailed instructions on the procedures to be followed in the administration of the *Act* and *Regulations*. Topics covered in this document include the processing of license applications and annual filings, administration of payments to and from the Consumer Protection Fund for Prepaid Funeral Services (the Fund) and management of the related accounting and administrative routines.

The Department also indicated that administration of the *Act* was hampered as a result of staffing challenges in 2003-04. The financial administrator, the individual with primary administrative oversight responsibility, left his position in August 2003. As a result of hiring restrictions, the position was unable to be filled and remained vacant throughout the balance of the fiscal year. Division management staff continued to provide basic custodial oversight, consisting mainly of receipting and depositing license and Fund payments received, and processing claims for payment out of the Fund. The inability to fill this position precluded the completion of any major new initiatives or the improvement of known operational inefficiencies.

In the budget for 2004-05 presented in March 2004, the financial administrator position was eliminated and responsibility for the management of this area was transferred to the newly created Financial Services Regulation Division. The Licensing and Enforcement Section of the Division has the responsibility for administering the *Prepaid Funeral Services Act* and *Regulations*.

The Department further indicated that the process of obtaining licensing applications and supporting documentation and issuing licenses has now been substantially completed. All outstanding applications for licenses have been processed and either licenses have been issued or the operator has been advised in writing of deficiencies in the application documentation which must be remedied before a license can be issued.

It was also indicated that the decision to seek a license as a seller of prepaid funeral services is totally under the control of the funeral home operator. Should a funeral home decide it does not wish to sell prepaid funeral contracts, as defined in the *Act*, it is not compelled to seek a license. Thus, the voluntary nature of the process means that statistics on the number of licenses issued are not meaningful in evaluating the status of the licensing process. All funeral homes which have decided to seek a license and have submitted appropriate documentation have been licensed.

Over the near term, the Department indicated that it intends to write all unlicensed operators in the Province requesting information on their prepaid funeral activity as at the coming into force of the *Act*, and currently, to confirm that their decision against seeking a license is acceptable in light of the legislative requirements. Should it be established that certain of these funeral homes should have been licensed, the Department will take corrective action including the collection of all funds due the Department and the Fund on a retroactive basis.

Since April 2004, the Department indicated that it has begun the process of tightening the management and administration of payments and related reporting for Fund transactions. An initial in-depth review of all license files was completed to assess compliance with the provisions of the *Act*. Where deficiencies or inconsistencies were noted, the Department has written to each individual operator requesting clarification or further information. The Department has begun to receive replies to these enquiries and it is in the process of resolving the issues identified.

The Department indicated that it has continued to pay claims related to the failure of the Port aux Basques funeral home from the Fund. The resolution of the question of whether the *Act* provides authority for such payments has not yet been achieved, but the issue has been referred to legal counsel for the Department.