

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

and

Mr. Anthony Facey

NOTICE OF DECISION

RE: Decision Regarding Funeral Director Licence #201671002F1 – Anthony Facey

This Notice sets out the decision of the Board regarding your Funeral Director Licence #201671002F1 under the *Embalmers and Funeral Directors Act* (the “Act”).

BACKGROUND:

A Notice of Inquiry was sent to you on January 23, 2018, which outlined allegations of negligence and professional misconduct in relation to the provision of funeral services for Sandra Bennett (deceased Dec. 20, 2017). The Notice of Inquiry notified you that because of these allegations an inquiry would be scheduled, after which the Board may decide to suspend or revoke your license as a funeral director pursuant to Section 23 of the *Embalmers and Funeral Directors Act*, R.S.N.S. 1989, c. 144.

The Board offered you the opportunity to make a written submission to the Board in advance of the inquiry. You were also given the opportunity to be represented at the inquiry by legal counsel.

The inquiry was held on February 13, 2018 regarding your funeral director licence. You attended with your legal counsel (Mark Knox, Q.C., Knox Law and Andrea MacNevin, MacNevin Law & Mediation). Following the hearing you also provided a written submission to the Board on February 20, 2018.

ISSUE:

Subsection 23(1) of the Act authorizes the Board, after due inquiry, to suspend or revoke the licence of an embalmer or funeral director. In this particular case, an inquiry was held and the Board has reviewed your presentation and responses at the inquiry as well as your written submission. The Board will now consider whether it should revoke or suspend your funeral director licence under subsection 23(1) of the Act and clauses 20(a) and (b) of the *Embalmers and Funeral Directors Regulations* which provide as follows:

- 23 (1)** Subject to the regulations, the Board may, after due inquiry, suspend or revoke the licence of an embalmer, an apprentice embalmer, a funeral director or an apprentice funeral director where at least four members of the Board find that the embalmer, apprentice embalmer, funeral director or apprentice funeral director has been guilty of non-compliance with this Act, the regulations or the bylaws or any misrepresentation, negligence, professional misconduct or fraud.

20 For the purpose of the Act and regulations “professional misconduct” means

(a) personal or professional conduct of a licensed embalmer, apprentice embalmer, funeral director or apprentice funeral director which does not lend dignity to the profession and inspire confidence on the part of the public in the members of the profession;

(b) the conduct of the business of a funeral director in such manner, economically and professionally, as not to reflect credit on the profession and to inspire confidence on the part of the funeral-purchasing public;

FINDINGS OF FACT:

Based on the evidence presented at the inquiry, including a written statement provided by the Wilson family, and the written submissions provided by you and Mr. David Farmer, the Board finds the following facts:

Death of Myrtle Wilson

- Two Serenity Funeral Home staff members arrived in Digby to remove Ms. Myrtle Wilson from the nursing home in a Silver van, at approximately 12:05 am on December 20, 2017. There was no death certificate for Ms. Wilson available. Furthermore, the nursing home did not have any identification bracelet on the deceased and so, therefore, she was put in the removal van without any label or supporting documentation.
- The two staff members made their way back to Berwick, arriving at approximately 1:45 am. Due to the very poor driving conditions, you (Mr. Anthony Facey) directed staff to stay in Berwick for the night, rather than continue to Port Williams to complete the registration and processing of Ms. Wilson.
- The Silver van was parked in the Berwick Chapel garage overnight at approximately 1:45 am with Ms. Wilson still inside the van.

Death of Sandra Bennett

- A call came in from the private home of Ms. Sandra Bennett at approximately 6:30 am on December 20, 2017. Two staff drove the Black van to the home of Ms. Bennett. The removal of Ms. Bennett from her residence, took approximately one half-hour to complete. Ms. Bennett’s body was not labeled.

Ms. Wilson and Ms. Bennett transferred to Port Williams Facilities

- The Black and Silver vans were driven to the Coldbrook office. Once at Coldbrook, a new call was received from the Soldier’s Memorial Hospital in Middleton.
- In preparation for responding to the call from Soldier’s Memorial Hospital, Ms. Bennett’s body was moved from the Black van into the Silver van. Ms. Bennett was placed on the left-hand side, behind the driver’s seat while Ms. Wilson was on the right.
- Apprentice Funeral Director, Ted McCreadie, provided testimony at the hearing that he then placed a hand-written label on each stretcher identifying each decedent. He was confident that he correctly labeled each decedent.

- Staff then took the Black van to Soldier's Memorial Hospital and the Silver van to Port Williams, where licensed funeral director and embalmer Mr. David Farmer had already reported to work.

Placing of Ms. Sandra Bennett in the Crematorium Area

- The Silver van arrived in Port Williams, carrying both Ms. Bennett and Ms. Wilson. Mr. David Farmer was there to remove the bodies. Mr. David Farmer removed the body of Ms. Bennett first, believing it to be Ms. Wilson.
- A written submission provided by Mr. David Farmer stated he "first put the body of Ms. Bennett in the cremation holding room thinking that this was Ms. Wilson." He then "put the body of Ms. Wilson on the prep table to be embalmed, thinking that this was Ms. Bennett".
- The written submission of Mr. David Farmer goes on to explain that he "definitely got them mixed up" and "assumed that Ms. Wilson was the body on the left side of the van because she was the first one picked up and that Ms. Bennett was on the right side because she was picked up later."
- Mr. David Farmer gave testimony that it was his practice to always put the first removal on the left when there were two bodies. He testified that he assumed this had also been the practice of other workers doing removals at Serenity. He testified that he did not see the labels that Ted McCreddie placed on the stretchers.
- The written submission from Mr. David Farmer also acknowledges that he "should have phoned and asked the removal team to come to the crematorium and make positive identification" and that the "two bodies should have been held in our system and not touched until we had positive identification."
- Believing the body to be Ms. Wilson's, Mr. David Farmer brought her to the crematorium area. He knew from the BBM messages, which is a typical way for the Serenity staff to communicate, that Ms. Wilson's family had arranged for her to be cremated.
- Before registering Ms. Wilson in the system and creating a label and tag with her name and ledger number, Mr. David Farmer first went back to the van and retrieved the second body. Believing this to be the body of Ms. Bennett, he then brought the body to the embalming room and placed her on the embalming table.
- Mr. David Farmer then proceeded to enter both decedents into the Port William's registration system, creating a file for each, as well as a label and a tag, which were then attached to the bodies. Serenity Funeral Home has a policy, put in place by Mr. Anthony Facey, that when handling more than one decedent, you must process one body at a time from start to finish, prior to embarking on the next one. In this case, that rule was not followed by Mr. David Farmer.
- Mr. David Farmer then proceeded to cremate the body of Ms. Bennett, which he believed to be the body of Ms. Wilson.
- At the hearing, Mr. David Farmer testified that he was confident at the time that he had correctly identified the bodies even though he did not see a label on either one. Mr. David Farmer admitted that, in hindsight, this was based on assumption, and that he should have verified the identities of the bodies before proceeding.

Service for Ms. Sandra Bennett

- On December 27, 2017, four Serenity staff, including David Farmer and apprentice funeral director Ted McCreddie, reported to work the visitation and service for Ms. Bennett, which was scheduled to begin at 11:00 am.
- Family of the late Ms. Bennett arrived at the funeral home at approximately 10:45 am. Shortly after the family arrived, it was brought to the attention of the staff that the body in the casket was not Ms. Bennett.
- There was a second traditional visitation scheduled for later in the evening of December 27, 2017 at the same location. Ted McCreddie testified that once it was clear that the body in the casket was not Ms. Bennett's, the funeral home staff first thought that the wrong casket had mistakenly been brought to the Berwick Funeral Chapel.
- A phone call was made to Mr. Anthony Facey explaining the circumstances at the funeral home at that point. Mr. Anthony Facey testified that once he became aware of what was happening he immediately made his way to the Port Williams facility and began to cross-reference names with ledger numbers within the registration system of decedents who passed away in a similar time frame to Ms. Wilson and Ms. Bennett.
- The casket containing Ms. Wilson's body was removed from the viewing room and brought to a back room that was described as being "off the kitchen." The doors between the viewing room and the back room were closed.
- Ted McCreddie, David Farmer and Mr. Anthony Facey all testified that once the staff were aware that the wrong body was presented to the family, they first thought that the wrong casket was brought from Port Williams to the Berwick Funeral Chapel because there was a second viewing scheduled for the evening of December 27, 2017.
- The second casket was brought to the Berwick Funeral Chapel from the Coldbrook facility. It was brought into the same back room where the casket containing Ms. Wilson was situated. Ted McCreddie quickly determined that the second casket was not Ms. Bennett. At the same time this occurred a member of the Bennett family made their way into the back room and also found the second casket was not Ms. Bennett. This second casket was not presented to the family as Ms. Bennett nor was the body dressed in Ms. Bennett's clothes.
- Mr. Anthony Facey testified that during his cross-referencing of names and ledger numbers, he came to the conclusion that the only two that did not match up were Ms. Wilson and Ms. Bennett. Upon this realization, Mr. Anthony Facey went immediately to Coldbrook and retrieved the ashes of Ms. Bennett to take them to the service at the Berwick Funeral Chapel.

Service for Ms. Myrtle Wilson

- Ms. Wilson passed away on December 19, 2017 and funeral arrangements were entrusted to the Serenity Lindsay Funeral Home, including cremation. Ms. Wilson was mistakenly embalmed and presented to the Bennett family on December 27, 2017.
- The body of Ms. Wilson was cremated on December 29, 2017. Mr. Anthony Facey testified that he was certain that this was done because he performed the cremation himself. He testified that

following the service held on December 27, 2018, Ms. Wilson's body was not disturbed inside the "blue cloth" casket, which was the casket chosen by the Bennett family for Ms. Bennett.

- A service for Ms. Wilson was conducted by Serenity on December 31, 2017. The Wilson family was also notified of the mistake on December 31, 2017.

Following the Service

- Since the events of December 20, 2017, Mr. Anthony Facey has implemented new policies and procedures with respect to removal and transfer of decedents. This includes the requirement that when receiving a decedent into its care, Serenity Funeral Home staff must place an identification bracelet on the arm or leg of the deceased. This is to be completed before placing the decedent on stretcher at time of pick up from place of death.

ANALYSIS:

Section 23 of the Act – Is Mr. Anthony Facey guilty of negligence or professional misconduct?

As a licensed funeral director you have a duty of care with respect to the remains entrusted to your funeral home for cremation and burial services. The events that occurred between December 20, 2017 and December 31, 2017 were unprecedented, and had a negative impact on all involved, especially the families of Ms. Bennett and Ms. Wilson.

It is the Board's opinion that your conduct, however, was not the cause of the mistake. Based on professional practices, your funeral home had adequate procedures in place regarding body identification. Serenity Funeral Home had a system in place for organizing client information, in order to clearly track the processing of each decedent through from start to finish.

The Board finds that it was not reasonably foreseeable to you that another licensed funeral director, with at least five years' experience in the industry, would proceed with registering, processing and cremating a decedent without first positively identifying those remains.

The Board finds that this is a case involving careless human error and a mistaken assumption on the part of Mr. David Farmer. This has had far-reaching and long-lasting impacts on the loved ones of Ms. Sandra Bennett and Ms. Wilson.

The Board finds your decision to leave the body of Ms. Wilson unattended in the van overnight concerning. However, the Board understands that this decision was made out of concern for safety and staff, as there were severe storm conditions that night. It is the Board's opinion that staff should have been directed to transfer Ms. Wilson's remains into the chapel for care and custody so that it was not left in the vehicle unattended for at least a six-hour period.

You testified that if the staff had continued to the Port Williams facility in the early hours of December 20 with Ms. Wilson, that this incident would not have happened. The Board warns you, that in the future, you give careful consideration to what instructions you give to your staff when fulfilling their professional duties and the lasting impact those decisions may have upon them as individuals and their livelihood.

As a result of all of the above, the Board finds that under the current Act and Regulations, there is no disciplinary action that should be taken against your funeral director license.

CONCLUSION:

The Board is satisfied that:

- Your actions did not violate this Act and Regulations; and
- Your personal actions do not demonstrate that you personally are guilty of negligence or professional misconduct.

As a result, it is the Board's decision to not revoke or suspend your Funeral Director Licence #201671002F1 under the Act. However, the Board will require you to contact the Department of Vital Statistics and correct any errors on the registration for Ms. Bennett pertaining to the location for final disposition. The Board also requires you to contact the Chief Medical Examiner's Office under the Department of Justice and ascertain an "after the fact" permission of cremation for the late Sandra Bennett.

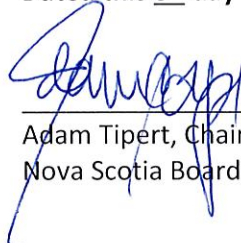
OTHER RECOMMENDATIONS:

The Board is committed to making amendments to its policies to ensure that there is a system in place to protect from an incident like this from happening again. Over the course of this investigation and inquiry it has been highlighted that the Board could be more open and transparent in how complaints are addressed and matters of enforcement are issued. It is clear that there is great public interest in how the funeral profession is regulated in Nova Scotia.

In an effort to address the above, the Board is requesting to work with Service Nova Scotia to implement the following recommendations:

1. Pursue implementation of a legislative requirement that all funeral homes and crematoriums label human remains as soon as they are taken into custody. What transpired has highlighted the need for more stringent regulations around the labeling of human remains prior to the transfer from the place of death.
2. Pursue legislative amendments to increase fine amounts under the Act so they align with other jurisdictions.
3. Review current Board By-laws and appropriate legislation to consider how consumer complaints and the disciplinary process should be made more transparent to the public. The Board has not dealt with an issue of this magnitude before and the result of this event has made it clear that the Board, as a self-regulating body, should take action to consider the needs of the public.
4. This Board will make recommendation to Service Nova Scotia to consider implementing regulations around care and comfort for the transport of bodies.

Dated this 8th day of March, 2018.



Adam Tipert, Chair
Nova Scotia Board of Registration of Embalmers and Funeral Directors