

**THE NEED TO INCLUDE INTO THE SCOTTISH GOVERNMENT' S  
CHANGES TO STATUTORY LAW REGARDING BURIALS AND CREMATIONS  
THE CRIMINAL OFFENCE  
OF INDIGNITY AGAINST OUR DEAD**

### **Summary**

Many of the other countries which were formerly part of the British Empire have extended English common law and made obvious in their statutes that it is a criminal offence to commit an indignity upon the dead. An example is Section 182 of the Canadian Criminal Code (R.S., 1985, c, C-46) which states that,

**“Every one who**

**(a) neglects, without lawful excuse, to perform any duty that is imposed on him by law or that he undertakes with reference to the burial of a dead human body or human remains, or  
(b) improperly or indecently interferes with or offers any indignity to a dead human body or human remains, whether buried or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.”**

The only suggestion I would make for refining the above wording, is to make it a criminal offence for anyone to inject embalming chemicals or cut into a body for that or any other purpose, without the prior and signed consent of the person who has "lawful control" over the care of the body and its destiny. I refer to this issue near the end of this submission.

My understanding is that the Ministry of Justice has no immediate plans to amend burial legislation in England & Wales. I urge legislators in Scotland to adopt the same principle as Canada and include the same or very similar wording as the above. Had the same or similar wording been incorporated somewhere in the legislation in England, my experience of dealing with the police would have been very different, over the way an undertaker dealt with the body of my son. The undertaker claimed to have buried with my son a bag, possibly a waste disposal bag, containing “heavily blood stained clothes” which has continued to cause me great anxiety for more than eight years. I continue struggling with the possibility of arranging an exhumation to put my mind to rest and so my son can rest in the same grave or elsewhere, in peace and dignity.

What follows is a detailed description of the events which I experienced. Additional information can be found in the submission of the Alice Barker Trust, in one of its email attachments entitled, 'Avoidable torment of Teresa Evans'. I hope the description below will help persuade legislators in Scotland to ensure the common law offence is clearly set out in a new statute, so the police and prosecutors can be in no doubt, as to when that aspect of criminal law has been broken by anyone. Should that happen, then at the very least, it may send a warning to those providing funeral services and anyone else working closely with the bodies or our dead, to take extra special care and thus reduce the risks of causing medium to long-term complicated grief reactions.

### **History of Events**

In December 2006 I lost my son Boyd aged just 20 in tragic and unexpected circumstances. He had been a passenger in a vehicle which was involved in a collision. He was recovered from the vehicle and died an hour later in Staffordshire Royal Infirmary's A & E department. Police

investigating the incident informed me that all of my son's belongings would be returned to me at our home in Milton Keynes when their investigations were concluded. I was informed that a coroner had ordered a post-mortem on the body of my son and that the funeral could go ahead immediately after. My son's burial took place later in the same month. Boyd's friend who was the driver of the vehicle, died at the scene of the incident and being of the Jewish faith was buried the day following his post-mortem.

In late January 2007 the Staffordshire police had completed their investigations. The mother of Boyd's friend and I agreed that the police could take our sons' belongings to her home so that we could support each other through the experience. Like me she had wanted to retrieve all of her son's personal possessions which were close to him on that fatal evening. She took receipt of the blood stained jacket which her son had been wearing when he died. Later, his brother treasured and wore it most days. I discovered that my son's mobile phone, weekend bag and contents of that bag were present, but not the clothing he had been wearing when he had taken his last breath surrounded by strangers. Whether soiled or unsoiled, I wanted every item which had been close to my son's body when he died. I began making enquiries. I discovered that hospital staff were initially prepared to lie in order to justify the missing items of clothing but when I requested a formal investigation the hospital eventually produced a piece of paper which revealed that the clothing had without my knowledge or consent, been handed to the undertaker which I now know I did not need to employ. The items and their condition were not properly specified. The record simply revealed one bag of clothing. I have long been deeply troubled by my suspicion that a waste bag was used and it felt and still feels as though staff had treated my son like a vagrant.

When I approached the undertaker his wife informed me that the items had been thrown away. I became irate. She told me that her husband would call me. He did so 2 days later and explained that he had been forced into "making an unenviable decision" and that he had placed the bag "containing heavily blood stained clothing" beneath my son's body in his coffin. To-date I am unable to describe how it feels not knowing whether my son has been laid to rest in a manner which is wholly unacceptable and emotionally disturbing to me. Days are few where I do not wonder whether I should have my son's body exhumed so that he can be laid to rest in the way I had intended ... as though lying on his own bed at home. The only reason why I have not yet decided whether to arrange an exhumation, is that I feel I would be responsible for imposing an indignity upon him and particularly if his coffin disintegrates.

I ranted at the undertaker. I explained that he had no right to make decisions without my explicit consent and if what he was telling me was true, then he had committed an indignity upon my son which deeply offended me. I believe the undertaker had taken a couple of days before getting back to me, to give him time to think of the best excuse, to prevent the police from intervening and prosecuting.

I telephoned the local police who immediately concluded that this was a civil matter and that I should contact Trading Standards. I had the distinct impression that the police couldn't be bothered to investigate my complaint. Trading Standards viewed my complaint as a breach of contract and whilst technically it was, I did not seek compensation. I needed the undertaker to be prosecuted.

I am not convinced that contract law would have provided a remedy. The case of *Vigers v Cook 1918-19* established that a funeral contract is unique contract and the component parts cannot be separated off. Contract Law makes provision to seek a remedy and compel specific performance in some circumstances. A decree for specific performance commands the defendant

to perform his or her part of a contract after a breach has been established. It is issued only in cases where the subject matter of a contract is unique, meaning of unusual benefit to the other party, and ordinary money damages aren't sufficient. At that time, I did not want the undertaker to pay compensation in order that I would have the funds to exhume my son. Also, I wasn't entirely convinced that the undertaker was being truthful and the uncertainty about exactly how my son has been laid to rest continually causes me great anxiety.

Unable to obtain appropriate legal representation, I was not aware at that time that a private prosecution would have been possible, had I been one of those with deep pockets. Because of "funeral poverty" as referred to in the consultation document, I had to surrender my life insurances to help pay for my son's burial. Lack of information on DWP Funeral Payments resulted in my not receiving a sum for the exclusive burial rights to my son's grave. That issue I later had raised in parliament, to help protect others who are eligible for such payments. Details of that Parliamentary Adjournment Debate is recorded in Hansard and can be viewed here, <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110426/debtext/110426-0004.htm#11042712000002>

Regarding the undertaker, I felt I had no option other than act as litigant in person and seek redress through the small claims court for breach of contract. As a consequence, I made mistakes in my particulars of claim which eventually forced me to accept a large reduction in order for the judge to agree a hearing date. The local press reported my case to be the most remarkable ever to be heard in Milton Keynes County Court. Having been forced to accept an out of court settlement of £400 which fell far short of the cost if I need to exhume my son's coffin, I didn't feel as though justice had been done. The BBC heavily edited the film which I agreed to, in order to serve the public interest but it portrayed my experience as an isolated incident. The undertaker later changed company name and is still trading. It is of little or no consequence that he is not a member of a trade association and my reasons are set out below.

I acknowledge that the police do not generally become involved in civil contractual matters, but they ought to when theft or imposing an indignity upon the dead is central to the issue. Had the police conducted an investigation the undertaker may have admitted that he had thrown the items away and as the property legally became my own, he should have been held accountable by law enforcers for theft.

Prior to losing my son and close family members before him, I was not aware that the law in England & Wales and I believe Scotland, does not impose a duty on anyone to hire an undertaker under any circumstances. Those experiences resulted in my desk top campaign for the English government to use physical and online literature designed for the newly bereaved, to make clear their legal rights on related matters. My web address is [www.evansaboveonline.co.uk](http://www.evansaboveonline.co.uk).

I have had some successes in and outside of Parliament. The Department of Works and Pensions and the Ministry of Justice, now make obvious in literature that no one is forced to hire an undertaker, but regrettably neither has gone anything like far enough. Despite the likelihood that the majority of the public will hire an undertaker when someone close to them dies, government and many voluntary sector organisations still fail to produce guidance about what members of the public are legally able to do for themselves.

My campaign has attracted the attention of many members of the public who have contacted me to share their experiences about how undertakers they hired had offended them by showing little respect to those close to them who had died. Obviously, because of confidentiality I am unable to reveal the names of those individuals.

Complaints vary a great deal. One which stands out is embalming without consent and I have suggested a solution after the wording in the Canadian statute mentioned at the start of this submission. What is apparent is that the vast majority of those who have contacted me hired undertakers who are members of a trade association and complainants have been forced to pursue their concerns via the association's arbitration route. In cases of criminal indignity, that cannot be a satisfactory solution.

Arbitrators make decisions on contract and consumer law and any award will invariably be a small discount on the final bill. As a confidentiality clause is often demanded, the press, members of the public and staff in relevant public services never hear of or learn from such complaints. Also, the Office of Fair Trading, (which investigated because of complaints received from MPs about undertakers), concluded that most people are too upset to complain and want to put the whole affair behind them. The OFT said, "the industry should not take too much comfort from the low complaints figures" at that time.

My campaign has also attracted the attention of some members of the legal profession. I was approached by a barrister who now lectures on related law. He expressed the view that I may have cause to sue local police for not upholding my human rights by refusing to investigate my complaint about the undertaker I had hired. When I eventually managed to secure an appointment with a law firm which appeared willing to look at my complaint about the police, (a) the police claimed that they could not now investigate as I had sued the undertaker for "theft" which was not the position, and (b) that my complaint served no public interest. If the last point is true then this submission to the government in Scotland has nothing to contribute to the public interest. I disagree with the conclusion of the police and gained the impression that they will find any escape route, simply to minimise their workloads.

When the law firm became involved, it appeared that I was time barred from bringing a human rights case against the police. By contrast, I am reliably informed that there is no time bar on initiating a prosecution for a common law offence, such as a clear indignity against the body of someone who has died and there is no maximum penalty. I am also reliably informed that if made a statutory offence, there would be a time bar and a maximum penalty for that offence.

I have not yet discovered why Canada and other countries considered it necessary to use statute law to extend the common law offence of indignity but there was obviously a reason for doing so. I urge legislators in Scotland to do the same and to draw to the attention of the police and Trading Standards for Scotland, the changes when made.

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April 24<sup>th</sup> 2015.