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Neighbours launch legal battle against Mount Pleasant Cemetery over who really owns the land

Area residents say the 1,200 acres it and other cemeteries sit on rightfully belong to the public.



Margot Boyd, left, Pamela Taylor and Lorraine Tinsley, board members of Friends of Toronto Public Cemeteries, are taking Mount Pleasant Group of Cemeteries to court, claiming the public, not the corporation, owns the 1,200 acres of land the cemeteries occupy. They want the province to investigate how Mount Pleasant is governed. (SAMANTHA BEATTIE / TORONTO STAR)

By **SAMANTHA BEATTIE** Staff Reporter

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Neighbours of one of Toronto's most significant green spaces are challenging the corporation that for decades has claimed to own it. Mount Pleasant Cemetery and nine other locations across the GTA totalling more than 1,200 acres rightfully belong to the public, not Mount Pleasant Group of Cemeteries, they say.

Friends of Toronto Public Cemeteries, along with Councillor Kristyn Wong-Tam, are set to face off in court this summer against the not-for-profit corporation.

They want a judge to declare that Mount Pleasant Group of Cemeteries belongs to the public as a trust and a charitable organization that must be governed by appointed or elected trustees, according to court documents. And they want the province to delve into the corporation's finances and board of directors to determine if it has violated legislation from 1826 that originally declared it a public trust.

"I love the cemetery's deep tranquillity and the sense it's a shared, sacred space that's rich with the history of Toronto," said Lorraine Tinsley, a board member of Friends of Toronto Public Cemeteries, who has lived near Mount Pleasant since 2000 and walks there weekly. "We need to exercise stewardship and take care of it for future generations."

Mount Pleasant Group of Cemeteries' spokesperson Rick Cowan said they have always encouraged the public to enjoy the green space of the 10 cemeteries.

"Our only requirement is that people respect the space they are in and recognize others may be there grieving."

When asked about the legal proceedings launched by the neighbourhood group, Cowan said it would be inappropriate to comment on a case before the courts, but that it "involves the interpretation of legislation from (the mid-1800s) and whether that legislation impacts how the Mount Pleasant Group's board is constituted."

Margot Boyd, who has been a vocal member of the neighbourhood group, lives in a house that backs onto Mount Pleasant Cemetery. She has spent countless hours reading books under a mature pine, jogging along the weaving path, or walking from headstone to headstone with her three young sons.

"For the people who live around here, this is our New York Central Park," said Boyd, adding if the judge rules in the corporation's favour she "will be personally devastated.

"I will burst into tears and worse if we lose Mount Pleasant Cemetery."

The neighbourhood group contends Mount Pleasant Group of Cemeteries is a charity, and the province should treat it as such.

In 2006, the corporation was advised it was considered a charitable organization by the province's Office of the Public Guardian and Trust, said the office's legal counsel Nicholas Hedley in an affidavit filed with the court. The provincial body that, according to its website, "plays an important role in protecting charitable property," took no further steps when Mount Pleasant Group didn't comply.

The corporation has several aspects that "complement its charitable character," including its role in leading cemetery innovation, providing park-like settings and possessing historically recognized monuments, said Hedley.

In a responding affidavit, Mount Pleasant Group vice-president Glen Timney said the corporation is different from cemeteries with charitable status in that it doesn't depend on donations and its 10 sites generate enough revenue to take care of its property and buildings.

Last year, the corporation brought in \$86 million in revenue, according to a financial statement [published on its website](#). Its assets totalled more than \$560 million. Like most cemeteries in Ontario, it is exempt from paying income tax and like all cemeteries in the province is exempt from paying municipal property tax.

If it were a charity, Mount Pleasant Group's finances would be under much greater scrutiny, said Toronto estate lawyer Daniel Nelson, who is not involved in the case.

"Given the vast amounts of money involved, this is millions and millions of dollars, let's be more transparent about whether this is a public trust or not," Nelson said.



Area residents enjoy the tranquility and green space of Mount Pleasant Cemetery. (VINCE TALOTTA/TORONTO STAR)

When Mount Pleasant Cemetery was founded in 1826 as the first non-denominational burying ground in Toronto, it was set up as a public trust and therefore belonged to the public and was overseen by the province, the neighbourhood group says in a factum filed with the court.

Trustees were appointed through a public process legislated by the province (much like the board of the Royal Ontario Museum) and they expanded beyond the original 205-acre site, just north of St. Clair Ave. E., to Prospect, Necropolis, Pine Hills cemeteries and others, according to the factum.

But in the late 1980s, “for reasons unknown, the trustees changed course,” the factum says.

The corporation no longer sought public input into trustee appointments, or held elections, as they’re required to as a public trust, the neighbourhood group says. The trustees renamed themselves directors and in the 2000s denied a trust existed, and made decisions without adhering to the proper governing processes, they say. Those allegations have not yet been tested in court.

Mount Pleasant Group maintains ever since it became a corporation in 1871 and “transferred all relevant property previously held by trustees to the new corporation” it has had the right to change its “nomenclature,” according to an affidavit by its president Glen McClurry.

The neighbourhood group has a history of [challenging the corporation](#). In 2012, Mount Pleasant Cemetery announced it would upgrade the incinerators in its crematorium to what it deemed to be the most clean and efficient system in North America, eliminating almost 100 per cent of emissions and particulate matter.

However, residents, including Tinsley and Boyd, wanted the [crematorium removed](#) entirely in fear it released toxins detrimental to their health.

Wong-Tam, whose ward borders Mount Pleasant Cemetery, went to the Environmental Review Tribunal in 2013 to try to stop the cemetery from upgrading its incinerators. Her application was turned down because of lack of evidence that the new incinerators would harm the environment, the Star reported.

That same year, the neighbourhood group, now with more than 130 members, launched the current legal proceeding.

“When I learned about the governance issues, I realized it might be our best bet at tackling the inappropriateness of industrial incinerators in public spaces,” said Tinsley.

Wong-Tam did not respond to a request for comment, but did write in her affidavit that she is acting as a resident of Toronto, not as a representative of the city or council.

“Maintaining public assets in the public realm is a matter close to my heart ... I, along with other residents of Toronto, have an interest in Mount Pleasant Cemetery and a right to vote on who should manage (Mount Pleasant Group),” Wong-Tam’s affidavit says. “Neither of these rights appear to be acknowledged by (the corporation).”

Boyd said while she wouldn’t be interested in becoming a trustee, she’d like to have the opportunity to elect someone who represents her interests.

While the corporation allows the public to use its cemeteries’ expansive green space for recreation, it could reverse that decision at any time, said Pamela Taylor, another board member of Friends of Toronto Public Cemeteries. If the cemeteries are recognized as a public trust, it would be a way to guarantee the gates are kept open indefinitely.

But Cowan says the corporation has no plans to change its policies around public access and will continue to keep the properties open during business hours for “passive recreational use.”

The case will be heard at the Ontario Superior Court of Justice as an estate matter in late August. Also named as respondents are the Ministry of the Attorney General and the Public Guardian and Trustee. The province did not respond to a request for comment.

The issue is also slated to come up at city council next week when Councillor Josh Matlow introduces a motion requesting that staff report back to management committee in July on the city’s interest in the legal proceeding.

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