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Court rules public has right to oversee Mount Pleasant and other GTA cemeteries

By **DAVID RIDER** City Hall Bureau Chief Thu., Jan. 3, 2019

Mount Pleasant Group of Cemeteries is a charitable trust, not a private corporation, and its board controlling 500 hectares of GTA green space and more than a half-billion dollars in assets must open to outsiders, a judge has ruled.

Justice Sean Dunphy of Ontario's Superior Court of Justice sided with Moore Park residents who sued MPGC, which has grown from a pre-Confederation burial site, bought with public donations, to [10 cemeteries](#), funeral homes including "The Simple Alternative" chain, and four crematoria.



Margot Boyd, left, says she is "elated" that the cemeteries will be subject to public oversight. She is pictured here with Pamela Taylor, centre, and Lorraine Tinsley, fellow members of Friends of Toronto Public Cemeteries. (SAMANTHA BEATTIE / TORONTO STAR FILE PHOTO)

“We’re elated — this has been a true David and Goliath fight and it’s a huge victory that 1,222 acres of what is really our urban forest will remain under public purview,” said Margot Boyd, a Mount Pleasant cemetery neighbour and member of Friends of Toronto Public Cemeteries that launched the lawsuit with City Councillor Kristyn Wong-Tam acting as a private citizen.

“We’re certainly gratified that the judge has upheld the law. It’s been a five-year battle.”

Noting the dispute focused on very old statutes, MPGC spokesperson Rick Cowan said: “We are disappointed in the court’s ruling and will appeal the decision. The first step in that process is to apply for a stay of the court’s decision.

“Unfortunately, it would not be appropriate to comment further about the decision at this time.”

The city’s first non-denominational burial ground was established in 1826 when residents of what was then York passed the hat at meetings and, for \$300, bought six acres just outside town, at what is now Yonge and Bloor Sts. Other local graveyards were either Roman Catholic or Anglican.

But “Potters Field” was deemed “something of a nuisance” by residents of the growing village of Yorkville, the ruling states, so remains were moved and a new non-denominational cemetery, Toronto Necropolis, established beside what is now Riverdale Farm.

The trust added Mount Pleasant Cemetery in 1876, followed by others in Toronto and eventually more in Vaughan, Pickering, Richmond Hill, Brampton and Oshawa.

Dunphy rejected MPGC’s argument that it was within its rights in the 1980s to stop following rules set in 1849 for trustee selection. New board members were to be advertised in the Ontario Gazette with the possibility of a public meeting where an alternative candidate could be selected. The Ontario Gazette is the provincial government’s official publication for legislative decisions and public notices.

By 1989 trustees, calling themselves directors, set a maximum of 10 directors serving a maximum of three four-year terms.

The public-meeting provision and maximum of seven trustees are “awkward” for a modern metropolis but still apply, the judge said, because the Ontario government never rescinded them.

“The Act has not been complied with since 1987 and all of the current directors of MPGC have been appointed since that time. It follows that none of the current directors of MPGC has been validly appointed,” wrote Dunphy in the judgment released Tuesday.

Dunphy ordered that the seven longest-serving members of the current board be appointed to a new one, but that they advertise the fact and allow the residents to demand a public meeting where other trustee candidates could be considered.

The judge’s ruling that MPGC is a charitable trust, if it stands, could open MPGC to more government and public scrutiny.

The board in 1991 rebuffed a request by the provincial Public Guardian and Trustee for financial statements under the Charities Account Act, arguing it was not charity and operated under the provincial Corporations Act.

In court MPGC later argued it 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. It is, like most cemeteries in Ontario, exempt from paying income tax and like all Ontario cemeteries it pays no municipal property taxes.

In 2014, the ruling states, MPGC had a “care and maintenance” trust fund from sale of burial rights of \$349 million, plus a fund of \$113.5 million in money prepaid for future services, a \$3.9-million endowment fund from families who paid for supplemental care, and a “general fund” of \$63.4 million. Those assets don’t include land where approximately 600,000 people are buried.

The judge also found that MPGC overstepped trust rules — that land be only a “cemetery or cemeteries or places for burial of the dead” — by opening “visitation centres” and funeral homes.

Dunphy ordered MPGC to pay legal costs for both sides but did not grant a request for a formal investigation of MPGC by the Public Guardian and Trust[ee].

“MPGC is not a runaway train,” the judge wrote. “There is no basis to conclude that its trustees — even if invalidly appointed — have acted in bad faith even if I have

concluded that they acted in error.

“They have not gone rogue. There is no reason to expect that directions of the court would not be followed.”

Wong-Tam, whose previous ward bordered Mount Pleasant Cemetery, welcomed the ruling but said the judge should have ordered an immediate investigation of MPGC’s finances.

“Unlike the LCBO and even the Ontario Lottery (Corp.) there are no revenues going back to the provincial government, even though (MPGC) is a trust held in ownership on behalf of the people of Ontario,” she said.

With files from Samantha Beattie. David Rider is the Star’s City Hall bureau chief and a reporter covering Toronto politics. Follow him on Twitter: [@dmriderr](https://twitter.com/dmriderr)