

## **Fact Sheet**

### **Mount Pleasant Group of Cemeteries (MPGC) and Litigation Brought by “Friends of Toronto Public Cemeteries” (FOTPC)**

#### **Context:**

Litigation is pending in the Ontario Superior Court of Justice, brought by FOTPC against MPGC, the Public Guardian and Trustee (PGT) and the Province of Ontario. Inaccurate statements have been made, and incorrect information has been circulated, in support of that litigation. MPGC hopes that this fact sheet will go some way to clearing up the misinformation and misunderstandings associated with this matter.

#### **About MPGC:**

A Special Act in 1826 authorized five individuals, called “Trustees”, to purchase 6 acres of land to create and operate a burial ground which was open to all the inhabitants of the town of York, ensuring all citizens had choice and a place to be buried. In 1849 another Special Act was passed to put in place special rules on how to replace these individuals as they died or resigned. In 1871, however, the Province did away with the framework of having individuals personally responsible for the cemeteries, and instead created a new non-profit corporation, now called MPGC. The property previously held by the individuals was transferred to MPGC, and the individuals became what we would now call the first “directors” of the corporation.

The original five Trustees started with the six acre Potter’s Field cemetery in 1826, and MPGC has since grown to 10 cemeteries across the GTA, five of which are located within the City of Toronto. Collectively, MPGC’s GTA cemeteries comprise 1,200 acres in which more than 600,000 people have been laid to rest. Except for the original \$300 raised from individual donations in 1826 to buy the first six acre plot, MPGC has accomplished all of this without recourse to government funding or public fundraising.

MPGC, like the individual trustees before it, has always operated under and honoured the mandate and obligations laid down in those early pieces of legislation.

#### **What is the litigation about?**

The case before the Ontario Superior Court of Justice is about two legal issues involving the interpretation of two kinds of legislation. It is not about anything else. The two issues are as follows:

- a. First, there is a dispute as to whether or not MPGC carries on activity that is “charitable” in the legal sense of the word. This requires an interpretation of the Charities Accounting Act (CAA). MPGC and PGT have “agreed to disagree” about this for many years, and the issue has never been pressed because PGT has acknowledged that MPGC does a good job and does not require more rigorous oversight. FOTPC now argues that MPGC is a “charity”, because it wants the Court to order PGT to look into MPGC using powers available only under the CAA. However, PGT has told the Court that it sees no reason to look into MPGC’s operations or financial records.
- b. Second, there is a dispute about whether MPGC’s corporate directors should be elected using rules for replacing individual trustees established in 1849, before MPGC was created, or according to Ontario’s Corporations Act. If the 1849 rules apply, any Toronto “householder” could call a meeting to fill a vacancy on MPGC’s board, meaning that each vacancy could require a mini-municipal election.

#### **What is the litigation not about?**

Statements made by FOTPC and others might lead one to think that the litigation would address or resolve other issues. Some of these are corrected below. However, to summarize, the litigation is not about:

1. Public access to MPGC’s cemeteries
2. MPGC’s funeral (visitation) centres or crematoria
3. The dissolution of MPGC or its cemeteries

## What are the facts?

### 1. MPGC is NOT subsidized by taxpayers:

The City of Toronto does not subsidize MPGC. Due to the unique legislated perpetual maintenance responsibilities, no cemeteries in Ontario pay municipal taxes. MPGC does pay commercial property tax on the land on which its Funeral Centres reside.

95% of cemeteries in Ontario (like MPGC) do not pay income tax. The 5% who do pay income tax are for-profit, commercially-run operations where the shareholders benefit based on the success of the organization.

MPGC has never received grants, funding, or land from any level of government.

### 2. Public access to cemeteries is not at risk:

The litigation started by FOTPC has nothing to do with public access to MPGC's cemeteries. And suggestions made by FOTPC that MPGC is planning to cut off access to these green spaces are simply made up. The Mount Pleasant cemetery in Toronto, for example, has been open to the public for almost 150 years and MPGC has no plans to change that. An MPGC and City of Toronto legal agreement is registered on title guaranteeing public access through the cemetery.

### 3. MPGC is a highly-regulated organization:

Municipal governments regulate zoning, planning, land use and the building of structures on cemetery lands. Provincially, the Funeral Burial and Cremation Services Act, R.S.O 2002 (FBCSA) regulates how cemeteries, funeral establishments, crematoriums, and transfer services must conduct themselves. In addition, in 2016 the Province of Ontario established the Bereavement Authority of Ontario (BAO), a non-profit delegated administrative authority, to license and oversee all bereavement service operations in Ontario and to administer the provisions of the FBCSA. To ensure Ontario's consumers are protected, in addition to annual filing and re-licensing requirements, the BAO conducts unannounced industry inspections. MPGC has been inspected on numerous occasions and found to be 100% compliant.

In addition, MPGC annually files with the BAO, the PGT, and the CRA audited financial trust fund statements as well as any information on any trust account or trust fund that is required to be established under the FBCSA. Like all other corporations, our activities are also governed by the Corporations Act, the Occupational Health and Safety Act, the Consumer Protection Act, and the Environmental Protection Act, to name a few.

### 4. The Value of MPGC's Assets is not \$2 Billion:

As of March 31, 2017, MPGC's total assets were \$861 Million. The vast majority of the assets (\$607 Million) are held in our Care and Maintenance and Prepaid Trust Funds which are managed by our Trustee, CIBC Trust, who has full control, supervision, and authority over the Funds.

The claim that MPGC lands are worth \$1.3 billion is also incorrect. Such a value assumes, incorrectly, that MPGC's cemetery lands are developable for commercial, residential or industrial purposes. They are not - developed cemeteries have no commercial value and MPGC carries them at cost for accounting purposes.

Finally, MPGC uses its revenues and assets only to fulfil its statutory mandate. It pays no dividends and makes no distributions to its members.

### 5. Legislated Cemetery Trust funds:

Most of MPGC's assets are tied up in trust funds pioneered by MPGC and now mandated by the Province.

Care and Maintenance Trust Fund - The cemetery business is unlike any other. Each cemetery in Ontario has a legislated responsibility to care for its properties in perpetuity. No other industry has this responsibility. In accordance with the FBCSA, all cemeteries are required to establish a separate Care and Maintenance trust fund. A fixed portion of the revenue received from the sale of an interment right must be deposited in the Care and Maintenance Fund. The capital cannot be removed by the cemetery operator. Only income earned on the capital may be released by the Trustee to the cemetery operator to pay for the maintenance costs of the cemetery.

MPGC is one of very few cemetery operators in all of North America which has sufficient financial assets within its Care and Maintenance fund (+\$400 Million) to continue to maintain its properties in perpetuity without becoming a financial burden on the municipalities in which it is located.

Prepaid Trust Fund - If a cemetery chooses to sell services in advance of need, it is also required to establish a Prepaid Trust Fund. 100% of all revenues from people purchasing cemetery and funeral services in advance of need are held in a Prepaid Trust fund until that product or service is delivered.

The Trustee of the above funds must be a corporation registered under the Loan and Trust Corporations Act (Ontario). The Trustee has full control, supervision, and authority over the Trust Funds, not the cemetery or its Board of Directors.

#### **6. MPGC is not about to dissolve:**

MPGC was created 147 years ago and has grown in scope and scale as the GTA has expanded over the years. It has no plans or need to dissolve, and speculation to the contrary is simply made up.

Moreover, the assertion that the City of Toronto and the Province could “lose” the value of the cemetery assets on a dissolution is incorrect. Ownership of the cemetery properties has always rested with MPGC, and never the City or the Province. In the unlikely event that MPGC were to ever dissolve or go bankrupt, the cemeteries (including all of the associated assets) would become the responsibility of the various municipalities in which the cemeteries are located. This outcome is mandated by the FBCSA and applies to every cemetery in the Province and is reflected in MPGC’s Corporate By-law 52. MPGC members would not receive any benefit upon dissolution.

Finally, In Ontario, the FBCSA requires that every interment right be sold in perpetuity, and places very stringent requirements on how to “Close” a cemetery. In other words, cemeteries would never simply “disappear.”

#### **7. Corporate restructuring and Mount Pleasant Memorial Services (MPMS) – what happened?**

MPGC and Canadian Memorial Services (CMS) went through a corporate reorganization in 1997. Its principal feature was the creation of a “services” company (MPMS) to provide centralized administrative services such as finance, marketing and human resources to the two operating companies. MPGC transferred nothing but administrative services to MPMS, and kept all other assets (including all cemetery properties and related trust funds), liabilities and responsibilities. CMS transferred nothing to MPMS.

Subsequent provincial legislative changes in 2012 permitted the corporate structure to be simplified, so a further corporate reorganization occurred in 2013. MPMS was wound up, and its responsibilities, employees, assets and liabilities were transferred back to MPGC. MPGC then entered into a service agreement with CMS to provide administrative services on a cost recovery basis. As before, there was no change to the status or objects of either company, each of which retained all existing assets and liabilities.

FOTPC has suggested, without checking, that MPGC transferred its cemeteries back and forth with MPMS. That suggestion is misinformed and untrue. As a simple review of the land title records shows, MPGC has owned its cemeteries continuously since 1871. MPGC cemetery properties were never transferred to or owned by MPMS or anyone else.