



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### **Friends of Toronto Public Cemeteries v. Mount Pleasant Group of Cemeteries - Report on City's Interest**

**Date:** June 15, 2018

**To:** Government Management Committee

**From:** City Solicitor

**Wards:** Wards 22 (St. Paul's) and 23 (Willowdale)

#### **REASON FOR CONFIDENTIAL INFORMATION**

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This report contains advice or communications that are subject to solicitor-client privilege.

#### **SUMMARY**

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This report responds to the decision of City Council in Members Motion 39.12, adopted on April 24, 2018, which requested the City Solicitor to report on the City of Toronto's interest in the legal proceeding Friends of Toronto Public Cemeteries and Kristyn Wong-Tam v. Mount Pleasant Group of Cemeteries, Public Guardian and Trustee, and Ontario Attorney General.

#### **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council direct that the confidential information contained in Confidential Attachment 1 remain confidential in its entirety, as it contains advice which is subject to solicitor-client privilege.

#### **FINANCIAL IMPACT**

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There are no financial impacts arising from this report.

## **DECISION HISTORY**

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### **Approval of Visitation Centre**

On January 24, 2006, Mount Pleasant Group of Cemeteries ("MPGC") applied to the City for site plan approval and tree removal / injury permits in order to build a visitation centre at its location on Mount Pleasant Road, which is located between St Clair Avenue East and Davisville Avenue, west of Bayview Avenue.

On September 25, 2006, City Council decided, among other things, to refuse the site plan approval application and tree removal / injury permit. A copy of this decision is located here:

<https://www.toronto.ca/legdocs/2006/agendas/council/cc060925/te7rpt/cl027.pdf>

On December 8, 2006, the Ontario Municipal Board granted the site plan approval sought by MPGC.

Concurrent to this, a competitor of MPGC, with the support of a local ratepayer's association, applied to the Ontario Superior Court seeking a declaration that the proposed visitation centre was not an "associated use" to the permitted cemetery use referenced in the zoning by-law and the Cemeteries Act, and was therefore not authorized by the zoning by-law. The application was dismissed on March 5, 2007. A copy of this decision is available here: <http://canlii.ca/t/1qss1>

The decision of the Ontario Superior Court was appealed to the Court of Appeal, and was dismissed on November 30, 2007. A copy of this decision is available here:

<http://canlii.ca/t/1tzt0>

### **Approval of Crematoria Operation**

On May 31, 2012, MPGC applied to the Ontario Ministry of the Environment for Amended Environmental Compliance Approval to update its crematoria operation.

On April 24, 2013, the Director of the Ontario Ministry of the Environment issued an Amended Environmental Compliance Approval to MPGC authorizing the replacement of two existing cremation units with one natural gas fired cremation unit equipped with a flue gas treatment system and a continuous monitoring system.

On May 10, 2013, Councillor Wong-Tam, acting in her personal capacity, filed an application for leave to appeal the decision of the Ontario Ministry of the Environment to the Environmental Review Tribunal.

In a decision released on July 8, 2013, the Environment Review Tribunal dismissed the application for leave to appeal, finding the approval granted by the Director of the Ontario Ministry of the Environment did not appear that it "could result in significant harm to the environment."

## **Donation of Land from Mount Pleasant Group to City**

On May 24, 2017, Toronto City Council adopted a report from the Chief Corporate Officer authorizing the City to accept a donation of land from MPGC to the City. The land is municipally known as 101 Senlac Road. It is approximately 23 acres and has an appraised value of \$2.9 million. It was to be used by the City for parkland purposes (the "Senlac Parklands"). The land was to have been conveyed to the City by June 30, 2017. A copy of this decision is available here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.MM29.24>

On June 29, 2017, legal counsel for Friends of Toronto Public Cemeteries ("FTPC") wrote to the City asserting that the City ought not accept the donation of Senlac Parklands from MPGC due to its outstanding litigation against MPGC.

MPGC agreed to extend the date by which the Senlac Parklands would be conveyed to the City, first to July, 2017, then to August, 2017.

On October 30, 2017, the Deputy City Manager, Internal Corporate Services, wrote a report to Government Management Committee recommending that the City cancel its decision to accept the donation of the Senlac Parklands from MPGC due to the outstanding litigation. However, MPGC agreed to further extend the deadline by which the Senlac Parklands would be conveyed to the City. This report was therefore withdrawn. A copy of this decision is available here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.GM23.15>

On March, 2018, Toronto City Council decided to amend its earlier decision to accept the donation of Senlac Parklands such that the deadline for the land to be conveyed would be the earlier of March 30, 2019, or 30 days after the dismissal or settlement of the litigation between FTPC and MPGC. A copy of this decision is available here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.GM25.6>

## **Request for Report on City's Interest in Litigation Involving Mount Pleasant Cemetery**

On April 24, 2018, City Council requested the City Solicitor to report on the City's interest in the legal proceeding between FTPC and MPGC. A copy of that decision is available here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.MM39.12>

## **COMMENTS**

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### **Nature of Relief Sought and Legal Positions in FTPC v. MPGC Litigation**

FTPC commenced the legal proceeding by application in 2013. They named MPGC, the Ontario Public Guardian and Trustee, and the Ontario Attorney General as Respondents in the proceeding. The City was not named as a Respondent.

It is FTFC's position in the litigation that MPGC does not comply with legislation enacted in 1826, 1849 and 1871 which requires that the name of new trustees elected to the Board of Trustees to what was then named the "Cemetery Trust" be published in the Canada Gazette, and that any such newly elected Trustees may have their election superseded at a public meeting.

FTFC also asserts that real property assets of the Cemetery Trust are now improperly held by a differently-named entity called the "Trustees of the Toronto General Burying Grounds." FTFC also seeks declarations regarding the charitable and/or trust status of MPGC and the Cemetery Trust, that the Ontario Public Guardian and Trustee and/or the Attorney General of Attorney have supervisory jurisdiction over the MPGC, and for the Public Guardian to investigate the MPGC.

As noted, the Ontario Attorney General and Ontario Public Guardian and Trustee are also parties to the proceeding along with MPGC and FTFC.

The mandate of the Ontario Public Guardian and Trustee includes acting to protect the public's interest in charities pursuant to the Charities Accounting Act. Based on its factum in the court proceeding, it is the Public Guardian and Trustee's position that:

- MPGC is a charity;
- the real property assets of MPGC are held in trust;
- MPGC's trustees ought to have been elected in accordance with the 1826, 1849 and 1871 statutes relied upon by FTFC, they were not, and therefore there are no properly elected trustees of MPGC holding office;
- new trustees should be elected; and
- while it has jurisdiction to investigate MPGC under the Charities Accounting Act, there are insufficient grounds to suggest that such an investigation is necessary.

It is the position of the Ontario Attorney General that its involvement is unnecessary. It states that its historical role in the supervision of charities has been delegated to the Public Guardian and Trustee, and therefore the involvement of the Attorney General as a second public entity in this matter serves no practical purpose.

Evidence was filed by the parties in 2014, and legal submissions were filed this year, both in accordance with a Court-approved schedule.

The matter is scheduled to be heard by the Court on August 20 - 21, 2018.

### **FTFC's Objection to City Accepting Donation of Senlac Parklands**

On November 9, 2017, the City Solicitor wrote to counsel for FTFC requesting clarification with respect to the reasons for its opposition to the City accepting the donation of the Senlac Parklands, given that the City intended to accept the Senlac Parklands from MPGC to use it for publically-accessible parkland purposes. The response by counsel for FTFC did not address the issue of the City's intended use of the Senlac Parklands for publicly-accessible parkland purposes. FTFC is not seeking any relief, even if granted, that would prohibit MPGC from transacting real estate.

## **City's Real Estate Interests Through Mount Pleasant Cemetery**

The City has an easement for pedestrian access through the Mount Pleasant Cemetery. It connects the Beltline Trail, which runs north of the Don River, through the cemetery, and then north-west to Caledonia. The City also has an easement through the Mount Pleasant Cemetery to accommodate a sewer pipe. The relief sought in the litigation does not affect these easements.

Because Members Motion 39.12 requested the City Solicitor to report on the City of Toronto's interest in a legal proceeding, the balance of this report is addressed in the confidential attachment.

### **CONTACT**

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Christopher Henderson, Solicitor, Litigation  
Tel. No. 416-397-7106  
E-mail: [Christopher.Henderson@toronto.ca](mailto:Christopher.Henderson@toronto.ca)

Bronwyn Atkinson Lawyer, Real Estate Section  
Tel: 416 - 392 - 2261  
Email: [Bronwyn.Atkinson@toronto.ca](mailto:Bronwyn.Atkinson@toronto.ca)

### **SIGNATURE**

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Wendy Walberg  
City Solicitor

### **ATTACHMENTS**

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Confidential Attachment - Confidential Information