

CITATION: *The City of Quinte West v. Trustees of the Methodist Church*, 2025 ONSC 3878
COURT FILE NO.: CV-24-126
DATE: 2025/06/30

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:)
)
The Corporation of the City of Quinte West)
Applicant) Jennifer Ng, for the Applicant
)
– and –)
)
)
Trustees of the Methodist Church and)
Trustees of the Fourth Congregation of)
Sidney Congregation of the Wesleyan) No one appearing for the Respondents
Methodist Church in Canada)
Respondents)
)
) **HEARD:** March 4, 2025, by video
conference and, thereafter, in
writing

2025 ONSC 3878 (CanLII)

REASONS FOR DECISION

CORTHORN J.

Introduction

[1] The applicant municipality (“the Municipality”) seeks relief related to cemetery lands known as the “Stone Church United Cemetery” (“the Cemetery Lands”). For several decades, the Cemetery Lands have been managed by a board of directors. As a result of the death of board members over time, there remain two individual directors. Since the late 1990s one of those two remaining directors, Jack Rushnell, has taken steps to have the operation and ownership of the Cemetery Lands taken over by the Municipality.

[2] The ownership of the Cemetery Lands is addressed in two deeds. The earlier of the two deeds is dated in 1858. Pursuant to that deed, the respondent Trustees of the Fourth Congregation of Sidney Congregation of the Wesleyan Methodist Church in Canada were registered on title as the owners of the Cemetery Lands.

[3] The more recent of the two deeds is dated in 1921. Pursuant to that deed, the respondent Trustees of the Methodist Church were registered on title as the owners of the Cemetery Lands. The Trustees of the Methodist Church remain on title as owners of the Cemetery Lands.

[4] As a result of Mr. Rushnell's efforts, since 2017, the Municipality has expended municipal funds on grass cutting and other maintenance of the Cemetery Lands. The Municipality does not require a court order to expend municipal funds in that manner; it does, however, require a court order to facilitate a transfer of the title to the Cemetery Lands.

[5] There are practical reasons why it is in the public interest for title to the Cemetery Lands to be transferred to the Municipality. Historically, plots within the Cemetery were sold with a deed to the plot or plots granted to the purchaser. There may be as many as sixty plots yet to be claimed by individuals holding deeds to plots. The members of the board of directors and the Municipality seek certainty that the Municipality will be able to honour those deeds.

Procedural History of the Application

[6] In the notice of application, the Municipality requests two forms of procedural relief in addition to the declaratory and other relief related to title to the Cemetery Lands.

a) Dispensing with Service of the Applicants' Materials on the Respondents

[7] The Municipality requests an order dispensing with the requirement to serve the respondents with the application materials (i.e., the application record and, if required, a factum). On two occasions, the hearing of the application was adjourned to permit the Municipality to file better evidence in support of its request for that relief: *City of Quinte West v. Trustees of the Methodist Church et al.*, Belleville, (9 April, 2024 and 14 May, 2024), Court File No. CV-24-126.

[8] It was not until the Municipality appeared for the third time on the return of the application that an order was made dispensing with the requirement to serve the respondent with the application materials: *The City of Quinte West v. Trustees of the Methodist Church et al.*, Belleville, (5 March 2025), Court File No. CV-24-126 ("the *Third Endorsement*").

b) Dispensing with the Requirement to File a Factum

[9] The Municipality requests an order dispensing with the requirement to file a factum. That relief was not addressed on either of the Municipality's first or second appearances on the return of the application. The request for this element of the procedural relief requested was addressed in March 2025, following the Municipality's third appearance on the return of the application.

[10] In March 2025, the court required that additional evidence be filed before it considers this component of the procedural relief requested and before it considers the declaratory and other substantive relief requested. The court ordered the Municipality to file evidence as to the response from a non-party whom the Municipality was required by statute to serve with the application record. As explained at paras. 17-22 of the *Third Endorsement*,

- pursuant to s. 101.1(3) of the *Funeral, Burial and Cremation Services Act, 2002*, S.O. 2002, c. 33 (“the *Act*”), the Municipality was required to serve the application materials on “the registrar” as defined in that statute (“the Registrar”);
- under the *Act*, the Deputy Minister of Government Services appoints registrars and deputy registrars;
- the notice of application is not addressed to the Registrar; and
- on the March 2025 appearance on this application, the Municipality did not address the issue of service of documents on the Registrar.

[11] The order made at para. 25 of the *Third Endorsement* required the Municipality to file additional materials related to the Registrar’s entitlement to service of the application materials. Pending receipt of the additional materials, the court deferred its consideration of the requests for the second component of the procedural relief and the substantive relief.

[12] In late March 2025, the Municipality served the requisite documents on the Registrar. Thereafter, the Municipality filed a supplementary record, which includes evidence of the Registrar’s response to service of the applicants’ materials. The additional evidence includes an affidavit from a non-lawyer employee of the Municipality’s lawyers of record.

[13] In the latter half of April 2025, the non-lawyer employee received an email from the General Counsel and Privacy Officer for the Bereavement Authority of Ontario (“BAO”). In his email, that individual confirms that “the Registrar takes no position on this application.”

[14] I pause to note that the BAO’s authority is derived from the *Safety and Consumer Statutes Administration Act, 1996*, S.O. 1996, c. 19. Pursuant to that statute and the regulations under it, the BAO is designated as the sole administrative authority for the purpose of administering the provisions of the *Act*.

[15] With the Registrar taking no position on the application, the court now considers the remaining procedural issue. As noted at para. 23 of the *Third Endorsement*, the legal and factual issues to be determined on this application are not complex. It is proportionate, efficient, and cost-effective to dispense with the requirement to deliver a factum.

[16] I turn, then, to the substantive issues to be determined on this application.

Disposition

[17] For the reasons that follow, the Municipality is entitled to a declaration that the Cemetery Lands are abandoned within the meaning of the *Act*, to a declaration of ownership of the Cemetery Lands, and to the ancillary relief required to facilitate the transfer, to the Municipality, of ownership of those lands.

[18] A copy of these reasons and the order issued and entered pursuant to them shall be served on the Registrar.

Analysis

a) The Relevant Statutory Provisions

[19] The Municipality relies on ss. 101.1(1) and (2) of the *Act*. When those subsections of the *Act* are read together, the Municipality is a person entitled to apply to a judge of this court for a declaration that the Cemetery Lands are abandoned because the owner (a) “cannot be found or is unknown”, and (b) “is unable to maintain” the Cemetery Lands.

b) The Evidence

[20] In an affidavit sworn in November 2024, the Municipality’s Deputy City Clerk & Accessibility Co-ordinator, Louise Smith, sets out the history of the Municipality’s involvement in the operation of the Cemetery Lands. As a result of the efforts of Mr. Rushnell, in approximately 2017, the Municipality took over responsibility for the maintenance and management of the Cemetery Lands.

[21] There is no evidence from Ms. Smith or anyone else on behalf of the Municipality to support a finding that anyone on behalf of one or both of the respondent organizations has ever approached the Municipality regarding the Cemetery Lands.

[22] In his affidavit, also sworn in November 2024, Mr. Rushnell attests to his involvement as a member of the board of directors for almost six decades. Mr. Rushnell addresses the sale, by the United Church, of lands adjacent to the Cemetery Lands on which the church is situated. The individuals who purchased that property in the 1960s converted a portion of the church to a residence and lived in the converted church. The church property was sold again in 1997. Following that sale, Mr. Rushnell began his efforts to have the Municipality take over maintenance and management of the Cemetery Lands.

[23] Mr. Rushnell's evidence includes that, throughout his approximately six decades of involvement with the board of directors, he has never been aware of any individuals or entities who have expressed an interest in the Cemetery Lands. Similarly, he has never been advised by another board member (past or present) of any expression of interest of that kind from an individual or entity. Mr. Rushnell has no familiarity with either of the respondent organizations; he has never met anyone identifying themselves as affiliated in any way with one or both of the respondent organizations. Last, Mr. Rushnell confirms that he is not aware of any other parties expressing an interest in the cemetery or the Cemetery Lands.

[24] For almost a decade, the BAO has treated the Municipality as the entity mandated to report to the BAO on an annual basis and to provide any public notifications required related to the Stone Church United Cemetery. In addition, for the past four years, the Ministry of the Attorney General, through the Office of the Public Guardian and Trustee, has directed the Stone Church United Cemetery's annual T5 Statement of Investment Income and Statement of Account to the Municipality.

c) Relief Granted

[25] Based on the sale of the church property, the historical operation and management of the Cemetery Lands, the manner in which the BAO and the Ministry of the Attorney General treat the Municipality, and the historical lack of any expression of interest in the Cemetery Lands, I find that the Cemetery Lands are "abandoned" within the meaning of the *Act*.

[26] The Municipality is entitled to,

- a) the declaratory relief it requests regarding the abandonment of the Cemetery Lands,
- b) the declaratory relief it requests regarding ownership of the Cemetery Lands, and
- c) the ancillary relief it requires to facilitate the transfer, to the Municipality, of ownership of the Cemetery Lands.

Costs

[27] There shall be no order as to costs on this application.

Madam Justice Sylvia Corthorn

Released: June 30, 2025

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