

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

("Class Action")
SUPERIOR COURT

No:

Pedro Gregorio
7353 Dunver, Verdun,
Quebec H4H 2H6

Applicant

-vs-

La Fabrique de la Paroisse Notre-Dame de
Montreal "FPND"
424 rue Saint-Sulpice
Montreal, Quebec
H2Y 2V5

APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION, TO OBTAIN THE STATUS OF REPRESENTATIVES.

APPLICANT RESPECTFULLY SUBMIT:

1. Class description:

"For excessive misrepresented plot fees"

Holders of funeral contracts (or their assigns) and/or pertaining to a deceased person who was charged, directly or indirectly, for a funeral plot contract which was "in perpetuity" by Fabrique de la Paroisse Notre-Dame de Montréal, or burial services at Notre Dame des Neiges cemetery from September 9, 2021 until the publication of Notices to members.

3.3 Term of the Concession

3.3.1 *Term Not Exceeding 100 Years* – The funerary sites are conceded for a fixed period not exceeding 100 years. The abandonment of the Cemetery entails cancellation of the concession without indemnity by either party. The concession is renewable on the terms and conditions then in force.

8. On August 29, 2023, representative Pedro Gregorio learned for the first time that defendants' claim to the effect that they were obliged by law to limit their in perpetuity contracts to 100 years was false. It is only from that date that he was aware of the Defendant cemetery's deception. Prescription therefore begins to run only from that date."

9. Applicant Pedro Gregorio therefore represents two classes of Québec plot consumers:

1: persons or their legal representatives, that purchased and in perpetuity plot contract the term of which has been reduced to not more than 100 years; and

2: persons or their legal representatives that were denied the right to purchase an in-perpetuity plot contract, or a contract exceeding 100 years.

10. The information provided by the cemetery is a gross misrepresentation and contradicts, *inter alia*, sections 40-42 of the Québec *Consumer Protection Act* obliging complete disclosure and truthful advertising communications and further contradicts the Québec *Charter* right to information as provided by law.

Other relevant legislation includes:

CPA provisions:

216. Aux fins du présent titre, une représentation comprend une affirmation, un comportement ou une omission.

217. La commission d'une pratique interdite n'est pas subordonnée à la conclusion d'un contrat.

227.1. Nul ne peut, par quelque moyen que ce soit, faire une représentation fausse ou trompeuse concernant l'existence, l'imputation, le montant ou le taux des droits exigibles en vertu d'une loi fédérale ou provinciale.

228. Aucun commerçant, fabricant ou publicitaire ne peut, dans une représentation qu'il fait à un consommateur, passer sous silence un fait important.

Quebec Charter:

[44.](#) Every person has a right to information to the extent provided by law.

[49.](#) Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.

11. It is also imperative that the loss of cultural heritage in the form of historic gravestones or monuments that have not been paid and would be removed by the cemetery for that reason after a hundred years be protected under the *Cultural Property Act*, see **Exhibit R-7B The Cultural Property Act Brochure**. Being 100 years or older these monuments are an important part of our history. There are also many monuments of artistic, historical and monetary value which are at risk, see **Exhibit R-7A Thieves Target Cemetery Art in Quebec**.

12. Given the contractual duty of good faith provided for by article 1375 C.C.Q., which includes the duty to properly inform, Respondent is in flagrant breach for misinforming the Representative and class members of the legal implication of the change in law:

[1375.](#) The parties shall conduct themselves in good faith both at the time the obligation arises and at the time it is performed or extinguished (See *Ponce c Societe d'investissement Rheaume Ltee*, 2021 QCCA 1363).

13. Representative Pedro Gregorio therefore seeks monetary compensation for the difference between a 99-year contract and a contract in perpetuity, which is currently estimated to be half the price of the contract, as well as exemplary and punitive damages for intentional misrepresentation and intentional breach of his and his father's charter right to full and complete information, those damages being \$13,000.

14. Representative Pedro Gregorio has no conflict of interest with any other class members, namely all persons who purchased perpetual plots and the term has been reduced and seeks to act on their behalf, which would be an efficient use of Judicial resources.

Principal Questions of fact and law to be dealt with collectively:

1. Does the unilateral modification of the term of the contract between September 9, 2021 and the date of notice constitute a fault generating contractual liability on the part of FPNM toward the designated representative or class members?
2. Did the wrongful acts mentioned in Question 1 cause damages to the class representative or class members?
3. If so, what kind of damages i.e. (partial) refund of the fees paid to FPNM, other compensatory damages, moral damages, exemplary damages or punitive damages?
4. Where applicable, what should be the proportion of the partial refund? Where applicable, what amount should be awarded as moral, exemplary or punitive damages?

Conclusions sought in the class action

1. Allow the action of the representative;
2. Condemn the respondent to reimburse the representative as monetary compensatory damages the fifty percent (50%) of the total amount paid to the Respondent for the funeral arrangement contract, with interest at the legal rate, the whole retroactively to the closing date of the contract;
3. Condemn the respondent to pay the representative the sum of \$13,000 as moral damages for his stress and inconvenience;
4. Condemn the respondent to pay the representative the sum of \$13,000 as exemplary and punitive damages;
5. Condemn the respondent to reimburse to each class member, as compensatory damages, 50% of the total amounts paid to the respondent for each funeral arrangement contract, the whole with interest at the legal rate and retroactively to the closing date of the contract;
6. Condemn the Respondent to reimburse to each class member, as moral damages, and for stress and inconvenience the sum of \$13,000;
7. Order the collective recovery of all claims of the representative and the class members;
8. Order the respondent to deposit the total amount of the damages at the office of the clerk of the Superior Court within 30 days of the final judgement to be rendered;
9. Condemn the respondent to pay the amounts above claimed with interest at the legal rate since authorization of the class action, plus the additional indemnity provided for by

section 1619 of the Civil Code of Québec;

10. Condemn the respondent to pay any other compensation deemed just and reasonable;

NOTICE TO DEFENDANT
(Art. 119 C.C.P.)

TAKE NOTICE that the Petitioner has filed this application in the office of the Superior Court of the judicial district of Montreal. To file an answer to this application, you must first file an appearance, personally or by advocate, at the courthouse of Montreal, located at 1 Notre Dame Street East, Montreal, Quebec within 10 days of service of this motion.

If you fail to file an appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the 10-day period.

If you file an appearance, the application will be presented before the Court on a date and in a room to be determined by the Court. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding, unless you make a written agreement with the Plaintiff's advocate on a timetable for the orderly progress of the proceeding.

In support of the Motion, Plaintiff alleges the following Exhibits, provided on a USB key:

- Exhibit R-1A: Contract Narciso Gregorio May 9, 1987
- Exhibit R-1B: Excerpt from Contract Narciso Gregorio May 9, 1987
- Exhibit R-1C: Contract Norberto Gregorio May 3, 2019
- Exhibit R-1D: Payment for Norberto Gregorio May 3, 2019
- Exhibit R-2A: Email to Cimetièrè NDG from Pedro Gregorio
- Exhibit R-2B: Email from Anshley Ligonde - Cimetièrè NDG
- Exhibit R-3A: Laws and Regulations Cimetièrè NDG
- Exhibit R-3B: Excerpt 3.3.1 from Laws and Regulations Cimetièrè NDG
- Exhibit R-4A: Regulations from Cimetièrè NDG web site Jan 22, 2014 english ver
- Exhibit R-4B: Regulations from Cimetièrè NDG web site Jan 22, 2014 French version
- Exhibit R-5: Mission statement from Cimetièrè NDG web site and location
- Exhibit R-6: Perpetual care Sherbrook Malvern cemetery definition
- Exhibit R-7A: Thieves target cemetery art in Quebec
- Exhibit R-7B: The Cultural Property Act brochure

Montreal Quebec this 9th day of September 2024

Charles O'Brien
Lorax Litigation