

M A N I T O B A ) Order No. 141/09  
)  
THE PUBLIC UTILITIES BOARD ACT )  
)  
THE CEMETERIES ACT ) October 13, 2009

BEFORE: G. Lane, C.A., Chairman  
M. Girouard, C.G.A., Member  
S. Proven, P.H.Ec., Member

RELEASE OF PERPETUAL CARE FUNDS  
HELD IN TRUST FOR  
HERITAGE MEMORIAL GARDENS INC.

**Summary**

The Public Utilities Board (Board) directs TD Canada Trust (TD) to release perpetual care funds to Heritage Memorial Gardens Inc. (Heritage), as detailed below, in the aggregate amount of \$575.29; \$120.54 to Heritage to reconcile the account and \$454.75 to provide for the requested refund.

Client #	Original Total Deposited into fund	Over (-) / Under (+) Payment	Adjusted Amount of Deposit	Reason
00013	\$412.50	+\$ 12.50	\$425.00	Change in product by purchaser
00001	\$441.38	- 28.88	\$412.50	GST overpayment into fund
00022	\$214.00	- 14.00	\$200.00	GST overpayment into fund
00002	\$454.75	- 29.75	\$425.00	GST overpayment into fund
00024	\$400.00	+ 25.00	\$425.00	Under remittance into fund
00023	\$454.75	- 29.75	\$425.00	GST overpayment into fund
00004	\$441.38	- 28.88	\$412.50	GST overpayment into fund
00006	\$454.75	- 454.75	\$ -	Request for refund
00003	\$409.38	- 26.78	\$382.50	GST overpayment into fund
<b>Aggregate Total</b>		<b>-\$575.29</b>	<b>To be released</b>	

**Application**

Heritage applied to the Board on August 25, 2009 for a net adjustment to be made to the perpetual care fund. The adjustments were required to accommodate:

- changes in a contract requiring more monies to be deposited;
- remitting errors wherein GST charges were inadvertently placed into the perpetual care trust fund and further, minor clerical errors, and
- cancellation of a contract, including interest.

Below are details of the adjustments, as applied for by Heritage.

Client #	Original Total Deposited	Interest	Over (-) / Under (+) Payment	Adjusted Amount of Deposit	Reason
00013	\$412.50		+\$ 12.50	\$425.00	Change in product
00001	\$441.38		- 28.88	\$412.50	GST overpayment
00022	\$214.00		- 14.00	\$200.00	GST overpayment
00002	\$454.75		- 29.75	\$425.00	GST overpayment
00024	\$400.00		+ 25.00	\$425.00	Under remittance
00023	\$454.75		- 29.75	\$425.00	GST overpayment
00004	\$441.38		- 28.88	\$412.50	GST overpayment
00006	\$454.75	\$34.87	- 489.62	\$-	Cancellation
00003	\$409.38		- 26.78	\$382.50	GST overpayment
<b>Aggregate Total</b>			<b>-\$610.16</b>	<b>To be released</b>	

### Board Findings

*The Cemeteries Act* (Act) requires owners of cemeteries, columbariums and mausoleums to place into an irrevocable trust account with an authorized trustee, a portion of monies received from sales. Income, from these funds, is to be used for future care and maintenance costs. The Act restricts an authorized trustee from releasing funds deposited into a perpetual care trust fund, unless so required by the Board.

The Board accepts that, from time to time, adjustments may be required and, in this instance, finds the request and the information submitted by Heritage in support of the application to be reasonable, and, thus, will require TD to release the funds as noted in this order.

That said the Board denies Heritage's request to refund the interest on the cancelled contract out of the perpetual care fund, noting that the interest had been paid out to Heritage over the years (for maintenance costs of the cemetery).

