

Federal Court



Cour fédérale

Date: 20240215

**Dockets: T-402-19
T-141-20
T-1120-21**

Ottawa, Ontario, February 15, 2024

PRESENT: The Honourable Madam Justice Aylen

CLASS PROCEEDING

Docket: T-402-19

BETWEEN:

**XAVIER MOUSHOOM, JEREMY MEAWASIGE (BY
HIS LITIGATION GUARDIAN, JONAVON JOSEPH
MEAWASIGE) AND JONAVON JOSEPH
MEAWASIGE**

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

Docket: T-141-20

AND BETWEEN:

**ASSEMBLY OF FIRST NATIONS, ASHLEY DAWN
LOUISE BACH, KAREN OSACHOFF, MELISSA
WALTERSON, NOAH BUFFALO-JACKSON (BY HIS
LITIGATION GUARDIAN, CAROLYN BUFFALO),
CAROLYN BUFFALO AND DICK EUGENE
JACKSON ALSO KNOWN AS RICHARD JACKSON**

Plaintiffs

and

**HIS MAJESTY THE KING AS REPRESENTED BY
THE ATTORNEY GENERAL OF CANADA**

Defendant

Docket: T-1120-21

AND BETWEEN:

**ASSEMBLY OF FIRST NATIONS AND ZACHEUS
JOSEPH TROUT**

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER

UPON MOTION by the Plaintiffs, filed on January 31, 2024 in writing pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106, for:

- (a) An Order appointing CIBC Trust Corporation as the Trustee, as contemplated in the First Nations Child and Family Services Jordan's Principle and Trout Class Final Settlement Agreement dated April 19, 2023, as amended by way of Addendum dated October 10, 2023, and approved by Order of this Court on October 24, 2023 [Final Settlement Agreement];
- (b) An Order approving the Trust Deed for the First Nations Child and Family Compensation Trust [FNCFC Trust];

(c) An Order for the Trustee to open and operate such deposit or other bank accounts and financial products offered in the normal course of business of a Chartered Bank; and

(d) Such further and other relief as counsel may advise and this Honourable Court may deem just and appropriate;

CONSIDERING the Plaintiffs' motion record and letter to the Court dated February 13, 2024;

AND CONSIDERING the affidavit of Stuart Wuttke affirmed January 29, 2024 and the affidavit of Linda Hartford affirmed January 30, 2024;

AND CONSIDERING that the FSA and the parties contemplate three trust structures – the FNCFC Trust for holding funds to compensate individual Class Members, a General Fund Cy-Pres and the Jordan's Principle Post-Majority Supports Fund Cy-Pres (the latter two of which are not before the Court for approval on this motion as they have yet to be finalized, but will be brought forward for Court approval in due course by way of separate motion(s));

AND CONSIDERING the submissions of the parties at the hearing convened by the Court on February 14, 2024;

AND CONSIDERING the amended proposed Trust Deed submitted by the parties on February 14, 2024;

AND CONSIDERING that the Court is satisfied that the relief sought should be granted;

AND CONSIDERING that all defined terms in this Order shall have same meaning as in the Final Settlement Agreement;

THIS COURT ORDERS that:

1. The appointment of CIBC Trust Corporation as Trustee is hereby approved.
2. The Trustee may open and operate such deposit or other bank accounts and financial products as offered in the normal course of business of a Chartered Bank.
3. The authority of the Trustee to appoint Investment Managers from time to time, on the recommendation of the Investment Committee, is hereby approved.
4. The Trust Deed for the FNCFC Trust, in the form appended as Schedule “A” hereto, is hereby approved.
5. The parties shall, by no later than March 6, 2024, provide the Court with their joint availability for a hearing in the Fall of 2024, during which the parties will provide the Court with an interim report on the Trust, including all fees incurred to date in relation thereto. The interim report shall be supported by way of affidavit evidence from the relevant Trust participants and/or oversight committees, which evidence may be filed under seal where commercially sensitive in nature.
6. There shall be no costs of this motion.

“Mandy Aylen”

Judge

SCHEDULE “A”

THE FIRST NATIONS CHILD AND FAMILY COMPENSATION TRUST

THIS TRUST DEED made as of the ____ day of _____, 2024.

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF CANADA

(hereinafter called the “**Settlor**”)

OF THE FIRST PART

AND:

CIBC TRUST CORPORATION

(hereinafter called the “**Trustee**”)

OF THE SECOND PART

Article 1
Background Facts

1.1 The following parties (the “**Parties**”) have entered into the Settlement Agreement:

- (a) Canada, as represented by the Attorney General of Canada;
- (b) The plaintiffs in Moushoom Action and Trout Action, as such terms are defined in the Settlement Agreement, as represented by class counsel; and
- (c) The plaintiffs in AFN Action, as such term is defined in the Settlement Agreement, as represented by class counsel.

1.2 In accordance with the terms of the Settlement Agreement, the Settlor is required to establish an irrevocable trust for the benefit of the Class Members and for the purposes set out in s. 5.1 of this Deed. In furtherance of satisfying such obligation, the Settlor intends to establish such a trust and has transferred to the Trustee the Initial Settlement, to be held by the Trustee upon the terms and conditions hereinafter in this Trust Deed set forth.

1.3 The Settlor has requested the Trustee to act as trustee of the Trust and it has agreed to act as trustee upon the terms and conditions hereinafter in this Trust Deed set forth.

1.4 The Trustee acknowledges receipt of the Initial Settlement and agrees to hold such property, together with the Settlement Amount, and any other property forming part of the Trust Fund, upon the terms and conditions hereinafter in this Trust Deed set forth.

1.5 In consideration of the premises and mutual covenants set out herein, the Trustee and the Settlor have agreed to the following terms and conditions to apply to the holding of the Trust Fund.

Article 2 Definitions

2.1 In this Trust Deed and in any instrument supplemental and ancillary hereto unless the context otherwise requires, the following words and phrases will have the following meanings:

- (a) “**Administrator**” means Deloitte LLP, and any successor(s) for Deloitte LLP appointed from time to time pursuant to the Settlement Agreement, which Administrator has the duties and responsibilities as set out in Article 3.02 of the Settlement Agreement;
- (b) “**Approved Jordan’s Principle Class Members**” has the meaning set out in Article 1.01 of the Settlement Agreement;
- (c) “**Assets**” means all property of any nature and kind and includes cash, securities, estates, and any and all interests therein;
- (d) “**Banking Facilities**” has the meaning set out in Article 1.01 of the Settlement Agreement;
- (e) “**Claimant**” has the meaning set out in Article 1.01 of the Settlement Agreement;
- (f) “**Class Members**” has the meaning set out in Article 1.01 of the Settlement Agreement;
- (g) “**Court**” means the Federal Court of Canada, or such other Court with jurisdiction over the matters set out herein;
- (h) “**Cy-près Fund**” means the amount to be set aside out of the income and capital of the Trust Fund and to be held on trusts to be approved by the Court in accordance with the provisions of Article 8 of the Settlement Agreement, which shall be comprised of the following funds:
 - (i) The General Fund; and
 - (ii) The Jordan’s Principle Post-Majority Fund;
- (i) “**Eligibility Decision**” has the meaning set out in Article 5.02 of the Settlement Agreement;
- (j) “**General Fund**” is the \$50,000,000.00 that is directed to be set aside from the income of the Trust Fund and transferred to the General Fund Trustee pursuant to the provisions of Article 8.03 of the Settlement Agreement;

- (k) “**General Fund Beneficiaries**” means Class Members who do not receive direct payment under the Settlement Agreement, as set out in Article 8.01 of the Settlement Agreement, and does not include the Jordan’s Principle Post-Majority Beneficiaries;
- (l) “**General Fund Agreement**” means the agreement which shall be entered into between **HIS MAJESTY THE KING IN RIGHT OF CANADA**, and the General Fund Trustee, which shall provide for the purposes, terms and conditions, and the administration of the General Fund as set out in Article 8.02 of the Settlement Agreement;
- (m) “**General Fund Trustee**” means such Person appointed to administer the General Fund in accordance with Article 8 of the Settlement Agreement;
- (n) “**income**” means, in respect of the Trust Fund or any Fund thereof, all receipts which are required to be included in income for purposes of a fiduciary accounting of the Trust Fund or any Fund thereof, as the case may be, and for greater certainty, shall not include capital gains (realized and unrealized) and does not mean the income of the Trust Fund or any Fund thereof, as the case may be, as computed for purposes of the Income Tax Act;
- (o) “**Income Tax Act**” means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) and the regulations thereunder as amended from time to time;
- (p) “**Initial Settlement**” means the sum of \$10.00 (ten dollars) initially contributed by the Settlor to the Trustee to establish the Trust;
- (q) “**Interest Reserve Fund**” has the meaning set out in Article 6.15 of the Settlement Agreement and is the amount set aside pursuant to Section 6.1(b) of this Deed;
- (r) “**Interest Reserve Fund Beneficiaries**” means Class Members who are entitled to receive interest pursuant to the provisions of Article 6.15(2) of the Settlement Agreement;
- (s) “**Jordan’s Principle Post-Majority Fund**” is the \$90,000,000.00 that is directed to be set aside from the capital of the Trust Fund and transferred to the Jordan’s Principle Post-Majority Fund Trustee pursuant to the provisions of Article 8.03 of the Settlement Agreement;
- (t) “**Jordan’s Principle Post-Majority Beneficiaries**” has the meaning set out in Article 1.01 of the Settlement Agreement, and does not include the General Fund Beneficiaries;
- (u) “**Jordan’s Principle Post-Majority Fund Trustee**” means such Person as selected by the Caring Society to administer the Jordan’s Principle Post-Majority Fund as set out in Article 8.03 of the Settlement Agreement;

- (v) **“Jordan’s Principle Post-Majority Trust Agreement”** means the agreement which shall be entered into between **HIS MAJESTY THE KING IN RIGHT OF CANADA**, and the Jordan’s Principle Post-Majority Fund Trustee, which shall provide for the purposes, terms and conditions, and the administration of the Jordan’s Principle Post-Majority Fund as set out in Article 8.03 of the Settlement Agreement;
- (w) **“Person”** shall include any individual, corporation, partnership, firm, association, syndicate, joint venture organization, foundation or trust;
- (x) **“Settlement Agreement”** means the final settlement agreement among the Parties and its recitals and schedules, as amended, supplemented or restated from time to time, and as attached hereto as Schedule A, the terms of which are hereby incorporated by reference into the Trust Deed;
- (y) **“Settlement Amount”** means the sum of \$23,343,940,000.00 to be contributed by the Settlor to the Trustee to be held by the Trustee upon the terms and conditions hereinafter in this Trust Deed set forth, which amount is in satisfaction of the Settlor’s obligations under the Settlement Agreement;
- (z) **“Settlement Implementation Committee”** means the committee established pursuant to the provisions of Article 12 of the Settlement Agreement;
- (aa) **“Settlor”** shall mean **HIS MAJESTY THE KING IN RIGHT OF CANADA**;
- (bb) **“Statement of Investment Policies and Procedures”** has the meaning set out in Schedule “G” of the Settlement Agreement;
- (cc) **“Termination Date”** means the earlier of the following:
 - (i) Such date as the Court orders the Settlement Agreement has terminated, as set out in Article 19.01(1) of the Settlement Agreement; and
 - (ii) The 80th anniversary of the date of settlement of this Trust, as contemplated by section 7 of the *Perpetuity Act*, R.S.B.C. 1996, c. 358;
- (dd) **“The Caring Society”** means the First Nations Child & Family Caring Society;
- (ee) **“The General Fund Trust”** means The General Fund Trust, a trust settled by **HIS MAJESTY THE KING IN RIGHT OF CANADA**, and administered by the General Fund Trustee;
- (ff) **“The Jordan’s Principle Post Majority Fund Trust”** means The Jordan’s Principle Post Majority Fund Trust, a trust settled by **HIS MAJESTY THE KING IN RIGHT OF CANADA**, and administered by the Jordan’s Principle Post-Majority Fund Trustee;

- (gg) “**Trust**” shall mean **THE FIRST NATIONS CHILD AND FAMILY COMPENSATION TRUST**;
- (hh) “**Trust Deed**” shall mean this trust deed, as amended from time to time, any instrument supplemental and ancillary to it, and any amendment to such instrument;
- (ii) “**Trust Fund**” shall mean:
 - (i) the Initial Settlement;
 - (ii) the Settlement Amount; and
 - (iii) all other Assets which may at any time be substituted therefor and all other Assets which are now or which at any time during the continuance of the trusts hereof may be gifted, assigned, transferred, appointed, loaned, delivered or conveyed to the Trustee with the acceptance of the Trustee to be held upon the trusts hereof and which the Trustee may be willing to accept and hold upon the trusts hereof, together with all income therefrom and all capital accretions thereto and substitutions therefor, provided that the Trustee shall not accept any property to be gifted, assigned, transferred, appointed, loaned, delivered or conveyed to the Trustee by any Person other than the Settlor in accordance with the provisions of the Settlement Agreement;
- (jj) “**Trustee Act**” shall mean the *Trustee Act*, R.S.B.C. 1996, c. 464, as amended from time to time;
- (kk) “**Trustee**” shall mean **CIBC TRUST CORPORATION**, or such other Person(s) who becomes Trustee in accordance with the provisions of Section 7.1 of this Trust Deed from time to time.

Article 3 Interpretation

3.1 **Capitalized Terms Not Defined Herein.** All capitalized terms used in this Agreement and not defined herein shall have the meanings given to such terms in the Settlement Agreement.

3.2 **Headings.** Section headings are included solely for convenience and are not intended to be full and accurate descriptions of the contents of the Sections to which such headings relate.

3.3 **No Contra Proferentem.** The Parties acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Trust Deed and they agree that any rules of construction to the effect that any ambiguity is to be resolved against the drafting party is not applicable in interpreting this Trust Deed.

3.4 **Day for any Action.** Any reference in this Trust Deed to a date shall mean 11:59 P.M. Pacific Standard Time on that date.

3.5 **Currency.** All references to any sums of money in this Trust Deed shall be interpreted as referring to Canadian dollars.

3.6 **Gender and Number.** Unless elsewhere otherwise expressly provided or unless the context otherwise requires, words of the feminine gender shall include the masculine, the singular shall include the plural, and vice versa, and all sentences so effected shall be construed as being grammatically correct. This Section shall apply, but not be limited to, words that are defined in Section 2.1.

3.7 **References to Persons.** If at any time after the Settlement of this Trust Deed, any Person named in this Trust Deed changes its name, corporate or organizational structure, or transfers assets to any successor Person, any reference in this Trust Deed shall extend to and include a reference to any new name of such Person and any such successor Person.

Article 4 Governing Law

4.1 **Governing Law.** This Trust has been created under the laws of the Province of British Columbia, Canada, and its validity, and the rights and duties of the Trustee hereunder, shall be determined by the laws of that Province.

4.2 **Variation of Governing Law.** The governing provincial law of this Trust may only be varied by Court order. From and after the date of such declaration and until any further declaration is made, the law of the place named therein shall apply in the determination of the rights of the Trustee and the construction and effect of each and every provision hereof and the courts of such place shall be the forum for the administration hereof.

4.3 **Management Within Canada.** The Trust shall be managed and administered within Canada and any meeting of the Trustee must occur within Canada unless the Trustee has determined otherwise after obtaining the advice of qualified legal counsel.

Article 5 Declaration of Trust

5.1 **Purposes of the Trust.** As set out in Article 15.04 of the Settlement Agreement, the Trust is established for the following purposes:

- (a) to acquire the Settlement Amount payable by the Settlor;
- (b) to hold the Trust Fund in trust for the benefit of the Class Members;
- (c) to pay compensation in accordance with the Settlement Agreement;
- (d) to invest the Settlement Amount, and thereafter the Trust Fund, in investments in accordance with the Statement of Investment Policies and Procedures; and

- (e) to do such other acts and things as are incidental to the foregoing, and to exercise all powers that are necessary or useful to carry out the provisions of the Settlement Agreement.

5.2 **Name of Trust.** The Trust shall be known and described as “**The First Nations Child and Family Compensation Trust**” and the Trustee may, in its absolute discretion, in that name hold title to or ownership of any and all of the property from time to time forming part of all of the Trust Fund, carry out any transaction pursuant to this Trust Deed and enter into any contracts or arrangements or otherwise exercise any of the powers or authorities conferred upon them pursuant to this Trust Deed.

5.3 **Additional Contributions.** The Trustee shall have the right to accept any real, personal or mixed property conveyed, transferred or assigned by the Settlor to the Trustee to become part of the Trust Fund, and such additional property so conveyed, transferred or assigned shall become and be subject to the terms and conditions herein set forth to the same extent and effect as if originally included in the Trust Fund.

5.4 **Irrevocable Trust.** This Trust Deed is intended and is hereby declared to be irrevocable by the Settlor and notwithstanding anything to the contrary herein expressed or implied, no parts of the capital or income of the Trust Fund shall be paid or loaned or applied for the benefit of the Settlor in any manner or in any circumstances whatsoever, and no part of the capital shall revert to the Settlor.

5.5 **Legal Entitlements.** The legal ownership of the Trust Fund, and the right to conduct the activities of the Trust, including activities with respect to the Trust Fund, are, subject to the specific limitations and other terms contained in the Settlement Agreement, vested exclusively in the Trustee, and the Class Members have no right to compel or call for any partition, division or distribution of any of the Assets of the Trust Fund or rendering of accounts. No Class Member will have or be deemed to have any right of ownership in any of the Assets of the Trust Fund.

5.6 **Incorporation of Settlement Agreement.** The terms of the Settlement Agreement are hereby incorporated by reference into this Trust Deed for all purposes of the administration of the Trust and the Trust Fund. Nothing contained in this Trust Deed shall be read or construed as altering the respective rights and obligations of the Parties as more particularly set out in the Settlement Agreement, and in the event of any conflict or inconsistency between the provisions of this Trust Deed and the Settlement Agreement:

- (a) If the inconsistency is in connection with the terms of any of Articles 3.02(3), 4.02, 6.14(c), 6.15(1), 8.02, 8.03, 15.02(h), 15.04(d), 15.07, and 22.04 of the Settlement Agreement, the terms of the Trust Agreement shall prevail; and
- (b) In all other respects the terms of the Settlement Agreement shall prevail.

Article 6 Income and Capital

6.1 **Payments of Income and Capital before Termination Date.** The Trustee shall deal with the capital of the Trust Fund as follows:

- (a) In accordance with the provisions of Article 8.03 of the Settlement Agreement, the Trustee shall set aside the amount of Ninety Million Dollars (\$90,000,000.00) from the capital of the Trust Fund and shall pay and transfer such amount to the Jordan's Principle Post-Majority Fund Trustee, to be held as the Jordan's Principle Post-Majority Fund in accordance with the Jordan's Principle Post-Majority Trust Agreement. Such setting aside and paying and transferring of funds shall occur within sixty (60) days of the Court's approval of the Cy-près Fund, provided that the Jordan's Principle Post-Majority Fund Trust is then properly constituted and prepared to receive funds. The receipt of such amount by the Jordan's Principle Post-Majority Fund Trustee shall be a complete release to the Trustee.
- (b) In accordance with the provisions of Article 6.15 of the Settlement Agreement and upon receipt of written direction from the Settlement Implementation Committee, the Trustee shall set aside the amount of One Billion Dollars (\$1,000,000,000.00) from the capital of the Trust Fund for the purpose of establishing the Interest Reserve Fund, such Interest Reserve Fund to be dealt with in accordance with the provisions of Section 6.2 of this Trust Deed.

In addition to the foregoing, until the Termination Date, the Trustee shall pay additional payments of capital to the Interest Reserve Fund as directed in writing by the Settlement Implementation Committee.

- (c) In accordance with the provisions of Article 8.02 of the Settlement Agreement, the Trustee shall set aside the amount of Fifty Million Dollars (\$50,000,000.00) from the income of the Trust Fund, and shall pay and transfer such amount to the General Fund Trustee, to be held as the General Fund in accordance with the General Fund Trust Agreement. Such setting aside and paying and transferring of funds shall occur within one (1) year of the Court's approval of the Cy-près Fund, provided that the General Fund Trust is then properly constituted and prepared to receive funds. The receipt of such amount by the General Fund Trustee shall be a complete release to the Trustee.
- (d) In accordance with the provisions of Article 3.02(3) of the Settlement Agreement, the Trustee shall hold the balance of the capital of the Trust Fund for the purposes hereinbefore stated in Section 5.1 and shall pay to the Administrator from the income and/or capital of the Trust Fund such amounts as the Administrator has requested in writing from time to time from the Trustee to pay Claimants approved by Eligibility Decisions and which have been approved in writing by the Settlement Implementation Committee (such amounts requested from time to time collectively a "**Requested Amount**"), which Requested Amount shall thereafter

be paid by the Administrator to one or more Claimants approved by an Eligibility Decision.

Subject to the receipt by the Trustee of written instructions from the Settlement Implementation Committee in respect of income in accordance with the provisions of Article 6.13 of the Settlement Agreement, the decision to pay the Requested Amount out of income and/or capital of the Trust Fund shall be at the Trustee's absolute discretion. Prior to exercising such discretion, the Trustee shall consider any potential tax implications of making such distribution out of the income of the Trust Fund.

For greater certainty, all decisions of the Administrator, as approved by the Settlement Implementation Committee, with respect to a Requested Amount shall be final and binding on the Trustee, and the Trustee is not required to make inquiries in respect of the validity of a Requested Amount, inclusive of the validity of any Eligibility Decision.

The receipt by the Administrator of a Requested Amount shall be a complete release to the Trustee.

- (e) Any income of the Trust Fund in a given year not distributed in accordance with the provisions of this Section shall, at the end of such year, be accumulated and added to the capital of the Trust Fund and dealt with as part thereof.

6.2 **Interest Reserve Fund.** The Trustee shall set aside and keep invested the Interest Reserve Fund for the benefit of the Interest Reserve Fund Beneficiaries in accordance with the following terms:

- (a) In accordance with the provisions of Article 6.15 of the Settlement Agreement, the Trustee shall pay to the Administrator from the income and/or capital of the Interest Reserve Fund such amounts as the Administrator has requested in writing from time to time from the Trustee to pay those Interest Reserve Fund Beneficiaries who are entitled to a payment pursuant to the provisions of Section 6.1(d) of this Trust Deed (all such amounts requested on a monthly basis collectively a "**Requested Interest Amount**"), which Requested Interest Amount shall thereafter be paid by the Administrator to one more Interest Reserve Fund Beneficiaries to whom a payment is being made pursuant to the provisions of Section 6.1(d) of this Trust Deed.

The decision to pay the Requested Interest Amount out of income and/or capital of the Interest Reserve Fund shall be at the Trustee's absolute discretion. Prior to exercising such discretion, the Trustee shall consider any potential tax implications of making such distribution out of the income of the Trust Fund.

For greater certainty, all decisions of the Administrator, as approved by the Settlement Implementation Committee, with respect to a Requested Interest Amount shall be final and binding on the Trustee, and the Trustee is not required to make inquiries in respect of the validity of a Requested Interest Amount.

- (b) Any income of the Interest Reserve Fund in a given year not distributed in accordance with the provisions of this Section shall, at the end of such year, be accumulated and added to the capital of the Interest Reserve Fund and dealt with as part thereof.
- (c) For greater certainty, the provisions of all Articles of this Deed, including, in particular, the provisions of Section 8.6, shall apply in the administration of the Interest Reserve Fund.

6.3 **Distributions on Termination.** On the Termination Date, the Trustee shall deal with the remainder of the Trust Fund, if any, in accordance with written instructions received from the Settlement Implementation Committee, or, failing which, as directed by the Court.

6.4 **No Reversion.** No part of the income or capital of the Trust Fund shall revert, or be paid or lent, or applied to or for the benefit of the Settlor, in any manner or under any circumstance whatsoever.

Article 7 Trustee

7.1 **Appointment of Trustee.** Additional or replacement Trustee(s) may only be appointed by the Court. Any Person appointed as a Trustee shall have the same powers, authorities and discretions and may in all respects act as if they had been originally appointed a Trustee by this Trust Deed.

7.2 **Retirement or Removal of Trustee.** The Trustee shall not retire or be removed without approval by the Court.

7.3 **Compensation.** The Trustee shall be compensated in accordance with the provisions of Section 11.1 of this Trust Deed.

7.4 **Limited Liability of Trustee.** The Trustee is exonerated from any responsibility or liability for loss or damage to the Trust Fund or to any part thereof through a *bona fide* exercise by it of any power conferred on it by this Trust Deed or by any statute of law. No Trustee or director thereof or representative or agent of the Trustee shall be held to any personal liability whatsoever, in tort, contract or otherwise, in connection with the affairs of the Trust and all Persons shall look solely to the Trust for satisfaction of claims of any nature arising in connection with the affairs of the Trust. No Trustee or director thereof shall be liable for any error of judgment or mistake of law or other mistake or for anything save the willful misconduct or willful breach of this Trust or fraud by such Trustee or director thereof.

7.5 **Trustee Liability.** The Trustee and all directors, officers and employees thereof is released from, immune to, and shall be indemnified from the Trust Fund for any and all claims, counterclaims, suits, actions, causes of action, demands, damages, penalties, injuries, setoffs, judgments, debts, costs, expenses (including legal fees and expenses) or other liabilities of every character whatsoever by any reason, except fraud, and the Settlement Agreement will be a complete defence.

The indemnity hereby granted to the Trustee and all directors, officers and employees thereof shall extend to the immediate reimbursement or payment on account of expenses and liabilities incurred by the Trustee and all directors, officers and employees thereof in any legal proceedings brought by the Class Members or any one or more of them notwithstanding that such proceedings shall be brought in respect of an alleged breach of duty by such Trustee or director, officer or employee thereof, unless it shall be established in the proceeding that such breach of duty was brought about by the dishonesty or willful negligence of such Trustee or director, officer or employee thereof.

7.6 **Training and Education.** In accordance with the provisions of Article 22.04 of the Settlement Agreement, the Trustee, or, if the Trustee is a corporation (inclusive of CIBC TRUST CORPORATION) or other entity, its directors, members, officers and/or employees, as the case may be, who are responsible for managing and administering the Trust Fund, shall undertake First Nations-specific cultural competency training and training regarding the history of colonialism including residential schools, as well as the proceeding that resulted in the Settlement Agreement, with a particular focus on the egregious impacts of systemic discrimination on children, youth, families and Nations. In addition, the Trustee, or, if the Trustee is a corporation or other entity, its directors, members, officers and/or employees, as the case may be, who are responsible for managing and administering the Trust Fund, shall undertake training on the CHRT Proceeding, as such term is defined in the preamble to the Settlement Agreement.

Article 8 Obligations and Powers of Trustee

8.1 **Investment Powers.** Subject to the provisions of this Section, the Trustee may invest and keep invested the Trust Fund in such investments or property of whatever nature and kind and wheresoever situate as the Trustee in its sole discretion shall think fit and the Trustee shall not be subject to the provisions of Section 15.1 of the Trustee Act, the intention being that the Trustee shall have the same powers in all respects as if it was the absolute owner beneficially entitled to the Trust Fund, inclusive of the ability to delegate investment management decisions, and the Trustee shall be fully exonerated from any liability for any loss that may happen to the Trust Fund by reason of any investment made by it in good faith, provided that all such investments shall be made in accordance with the Statement of Investment Policies and Procedures, having regard to the best interests of the Class Members and the ability of the Trust to meet its financial obligations. In connection with the foregoing, and in accordance with the powers granted to the Trustee pursuant to the provisions of Articles 15.02(i) and 15.04(e) of the Settlement Agreement, to facilitate the investment of the Trust Fund as contemplated by the provisions of this Section and in accordance with the Statement of Investment Policies and Procedures:

- (a) the Trustee may from time-to-time borrow from any Person such sum or sums of money, or such other assets, as the case may be, upon such terms and subject to such conditions, and for such length of time as the Trustees, in their absolute discretion, deem advisable in connection with the investment of the Trust Fund in accordance with the Statement of Investment Policies and Procedures; and

- (b) the Trustee may from time-to-time advance out of the Trust Fund by way of loan to any Person such sum or sums of money, or such other assets, as the case may be, upon such terms and subject to such conditions, and for such length of time as the Trustees, in their absolute discretion, deem advisable in connection with the investment of the Trust Fund in accordance with the Statement of Investment Policies and Procedures;

including without security and without interest and, for greater certainty, the Trustee may mortgage, charge, pledge or grant any other form of security interest (under any law) in or over any asset subject, or intended to become subject, to this Trust to secure borrowings or any other liability or for any other purpose inclusive of fulfilling transactions commonly referred to as security lending and repo transactions.

8.2 **Employment of Agents.** The Trustee may, upon consultation with and approval of the Settlement Implementation Committee, employ and act upon the advice of such professional or other experts and consultants including without limitation lawyers, valuers, accountants, tax advisors, actuaries, corporate agents and nominees, as the Trustee considers advisable in the discharge of its duties. All costs associated with such professionals shall be paid as set out in Section 11.1 of this Trust Deed.

The Trustee may act upon the opinion or advice of or upon information obtained from any such professional or other experts and consultants and the Trustee shall not be responsible, answerable or accountable for any loss, depreciation or damage occasioned to the Trust Fund by its acting or not acting in accordance therewith.

8.3 **Operate Bank Accounts.** The Trustee may for the purposes of the Trust Fund open and operate a custodial and/or bank account or bank accounts with any one or more Banking Facilities, inclusive of the Trustee. Cheques drawn upon any such account and other instructions to any such bank or trust company shall be signed by such of the Trustee or other persons as may from time to time be authorized by a resolution of the Trustee.

8.4 **Investment Management Delegation and Sub-Delegation.** Subject to the terms of the Statement of Investment Policies and Procedures, and to the approval of the Settlement Implementation Committee, **CIBC TRUST CORPORATION**, while acting as Trustee, may at any time engage investment counsel, stock brokers or other similar persons or agents as it in its discretion deems advisable. The Trustee may as it sees fit delegate to any such agent as portfolio manager (the "**Portfolio Manager**"), including, CIBC World Markets Inc., CIBC Asset Management Inc., CIBC Private Investment Counsel, a division of CIBC Asset Management Inc. or such other portfolio manager including one affiliated with or related to the Trustee, such authority as seems appropriate, on a fully discretionary basis if appropriate, to invest the assets of the Trust Fund, inclusive of, for greater certainty, the Interest Reserve Fund, provided however that any discretionary power to distribute income or capital from the Trust Fund shall not be so delegated. In addition, the Trustee may allow the Portfolio Manager to delegate from time to time to such other portfolio manager, including one affiliated with or related to the Trustee or to the Portfolio Manager, the discretion to manage all or any part of the Trust Fund, including the ability to sub-delegate such discretionary powers and to invest the assets of the Trust Fund in investments selected by and purchased by the Portfolio Manager. All charges for such services

shall be paid out of capital of the Trust Fund as seems appropriate to the Trustee notwithstanding any association which may exist between the Trustee and any agent so employed. The fees and remuneration of any such agent or person shall be an expense of the Trust Fund and shall be in addition to the compensation payable to the Trustee, as provided by Section 7.3 of this Trust Deed. The Trustee shall not be liable for any loss that may happen to the Trust Fund as a result of any investment made in good faith and in accordance with the Statement of Investment Policies and Procedures by the Trustee or their agent, including the Portfolio Manager or any portfolio manager to whom investment authority has been delegated or sub-delegated.

The Trustee and any Portfolio Manager or delegate or sub-delegate may deposit any cash in or invest in or purchase securities, products and services of related and connected issuers of **CIBC TRUST CORPORATION** or its affiliates, notwithstanding that **CIBC TRUST CORPORATION**, its affiliates, any related and connected issuers, their agents and/or advisors may benefit therefrom. Neither **CIBC TRUST CORPORATION** nor any affiliate, related and connected issuer, agent or advisor shall be required to account for, or to give up, any such benefit.

8.5 **Cash Balances.** Notwithstanding any investment management agreement, any cash forming part of the Trust Fund, including cash received and held until invested, all other uninvested cash balances standing to the credit of the Trust Fund and any cash in suspense pending withdrawal or transfer from the Trust Fund, may be commingled with other trust funds held by **CIBC TRUST CORPORATION**, if it is acting as Trustee. Such cash may be invested by **CIBC TRUST CORPORATION** for its own account or an affiliate. **CIBC TRUST CORPORATION** may choose to pay interest on the cash balance in the Trust Fund at such interest and rates, if any, it may determine from time to time. Such cash is not covered by the Canada Deposit Insurance Corporation (CDIC) or any other government deposit insurer and is not guaranteed by **CIBC TRUST CORPORATION** or any affiliate.

8.6 **Pooled or Separate Trust Funds.** The Trustee may, but is not required to, combine the assets of the Interest Reserve Fund and the balance of the capital of the Trust Fund (after setting aside the General Fund, the Jordan's Principle Post Majority Fund, and the Interest Reserve Fund, the "**Trust Balance**") for the purpose of more convenient administration or investment for any period of time, provided the separate character of the proportionate interest of each such fund is preserved. The Trustee may, if it deems it advisable to do so, maintain the Interest Reserve Fund and the Trust Balance as separate funds, with power from time to time to re-allocate assets from one fund to another. The Trustee may discontinue the use of separate funds or a common fund, as the case may be, and re-establish the use of a common fund or separate funds, as the case may be, as it from time to time deems advisable to do so.

8.7 **Tax Elections.** In accordance with the provisions of Article 15.11 of the Settlement Agreement, the Trustee shall take all lawful and reasonable steps and actions required or permitted under the Income Tax Act and any equivalent provincial or territorial legislation to comply with the stated intention of the Parties that all income of the Trust shall be exempt from federal and provincial taxation. In connection with the foregoing, the Trustee shall have the power to make any determinations, elections or designations pursuant to the provisions of the Income Tax Act and any equivalent provincial or territorial legislation as the Trustee deems necessary to comply with such intention.

8.8 **Additional Trustee's Duties.** In addition to the duties imposed under this Trust Deed, the Trustee acknowledges and accepts the duties imposed on the Trustee under the Settlement Agreement. The Trustee shall do all such acts and shall exercise all powers that are necessary or useful to carry on the activities of the Trust Fund or to carry out the provisions of the Settlement Agreement.

Article 9 Records, Reporting and Financial Statements

9.1 **Records.** In accordance with Article 15.06 of the Settlement Agreement, the Trustee will keep such books, records and accounts as are necessary or appropriate to document the Assets of the Trust Fund and each transaction of the Trust. Without limiting the generality of the foregoing, the Trustee will keep at its principal office records of all transactions of the Trust and a list of the Assets of the Trust Fund and of each separate fund comprised in the Trust Fund, and a record of balance from time to time of the Trust Fund and of each separate fund comprised in the Trust Fund.

9.2 **Quarterly Reporting.** The Trustee shall deliver to the Administrator, Canada, and the Settlement Implementation Committee, upon such information becoming available to the Trustee following the end of each calendar quarter (for greater certainty, each of March 31st, June 30th, September 30th, and December 31st), a quarterly report setting forth the Assets of the Trust Fund (including the term, interest rate or yield and maturity date thereof) and a record of the Trust Fund's account balance during such quarter.

Article 10 Amendment

10.1 **Amendment.** The terms of this Trust Deed may be amended, on such terms and conditions, as is approved by the Court. For greater certainty, no amendment to this Trust Deed will be valid or binding unless approved by the Court.

Article 11 General

11.1 **Costs to be paid by Canada.** Canada shall pay all reasonable costs and disbursements incurred by the Trustee for the purpose of administering the Trust Fund in accordance with the Settlement Agreement, including, but not limited to:

- (a) accounting costs, inclusive of, but not limited to, the expenses associated with the preparation of financial statements, and the preparation and filing of any tax filings associated with the Trust Fund;
- (b) the costs of record keeping and reporting, as set out in Sections 9.1 and 9.2 of this Trust Deed;
- (c) costs associated with legal advice and dispute resolution. For greater certainty, this shall not include costs associated with dispute resolution among members of

the Settlement Implementation Committee, which shall be paid in accordance with the terms of Section 11.3 of this Trust Deed;

- (d) travel expenses and other disbursements associated with the administration of the Trust Fund; and
- (e) the costs associated with the training and education of the Trustee, its directors, members, officers and/or employees as set out in Section 7.6 of this Trust Deed;

(collectively, the “**Administrative Expenses**”).

The Trustee may accept funds from Canada for the payment of the Administrative Expenses. If, at any time, the funds paid by Canada to the Trustee for the payment of Administrative Expenses are insufficient to satisfy the Administrative Expenses, the Trustee may pay such expenses from the capital of the Trust Fund, and seek reimbursement of such amounts to the Trust Fund by notifying the Settlement Implementation Committee of such expenses, which Settlement Implementation Committee will engage with Canada for such reimbursement pursuant to the terms of an agreement between the Settlement Implementation Committee and Canada.

11.2 Costs to be paid from Trust Fund. The following costs and expenses shall be paid from the capital of the Trust Fund:

- (a) Trustee compensation, if provided for pursuant to an agreement entered into between the Settlement Implementation Committee and the Trustee, and subject to the approval of the Court;
- (b) Investment management and custody fees associated with the holding and investment of the Trust Fund, inclusive of costs associated with any borrowing and lending engaged in by the Trustee pursuant to Sections 8.1(a) and (b) of this Trust Deed, pursuant to an agreement negotiated and approved by the Settlement Implementation Committee or the Investment Committee and any entity providing investment management and/or custodial services.

For greater certainty, the Trustee, the investment manager, and/or the custodian of the Trust Fund, as the case may be, may reallocate the amounts approved for payment pursuant to Sections 11.2(a) and (b) above between them as they agree amongst themselves.

11.3 Dispute Resolution Costs. Pursuant to the provisions of Article 18 (3) of the Settlement Agreement, the Trustee shall pay from the Trust Fund the costs of any dispute resolution engaged in among members of the Settlement Implementation Committee, where so ordered by the Court or so instructed by the mediator of such dispute.

11.4 Notices. Any notice or other communication to be given in connection with this Trust Deed will be given in writing and will be given by personal delivery or by electronic communication addressed to the recipient as follows:

If to Trustee:
CIBC Trust Corporation
11th Floor, 81 Bay Street
CIBC Square, Toronto, ON
M5J 0E7

Attention: Sharon Yeung
Regional Director, Estate & Trust Services and Indigenous
Trusts

Email address: sharon.yeung@cibc.com

If to the Settlement Implementation Committee:
Assembly of First Nations
50 O'Connor Street, Suite 200
Ottawa, ON K1P 6L2

Attention: Stuart Wuttke
General Counsel

Email address: stuartw@afn.ca

If to Canada:
Indigenous Services Canada
Mail Stop 11-8
1455-10 Wellington
Gatineau, Québec K1A 0H4

Attention: Director, Corporate Accounting
Email address: capic-admin@sac-isc.gc.ca

If to the Administrator:
Deloitte LLP
Bay Adelaide East
8 Adelaide Street West, Suite 200
Toronto, Ontario
M5H 0A9

Attention: Joelle Gott
National Lead, Grant & Loans Portfolio Services
Email address: jogott@deloitte.ca

or to such other address or email address as the Trustee, the Settlement Implementation Committee, Canada, or the Administrator may from time to time advise by notice in writing to the other such parties.

11.5 **Counterparts.** This Trust Deed may be executed in any number of counterparts. Each executed counterpart shall be deemed to be an original. All executed counterparts taken together shall be deemed to constitute an original of this Trust Deed. To evidence the fact that they have executed this Trust Deed, a party may send a copy of his or her executed counterpart to all other parties by facsimile or electronic transmission.

11.6 **Vesting of Assets.** All Assets of the Trust Fund shall hereby vest in the Trustees.

11.7 **Invalidity.** Any invalidity, in whole or in part, of any provision of this Trust Deed shall not affect the validity of any other of its provisions.

IN WITNESS WHEREOF the parties hereto have executed this Trust Deed.

SIGNED, SEALED AND DELIVERED)

In the presence of:)

_____)

_____)

_____)

By: _____

**HIS MAJESTY THE KING IN
RIGHT OF CANADA**

CIBC TRUST CORPORATION

CIBC TRUST CORPORATION