

Federal Court



Cour fédérale

**Date: 20190305**

**Docket: T-370-17**

**Ottawa, Ontario, March 5, 2019**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**TODD EDWARD ROSS, MARTINE ROY AND  
ALIDA SATALIC**

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**ORDER**

**WHEREAS** the parties before the Court have consented that the Honourable Justice St-Louis has been given the authority to preside over the motion for certification and settlement approval in this action in accordance with rules 53, 334.11 and 334.17 and 334.29 of the *Federal Courts Rules*;

**AND WHEREAS** the Plaintiffs and the Defendant entered into a Final Settlement Agreement (The “**FSA**”) dated March 28, 2018, which incorporates the further Supplementary Agreement dated June 15, 2018 (the “**SA**”), in respect of the Plaintiffs’ claims against the Defendant and this Court approved by its Order dated June 18, 2018;

**AND WHEREAS** by its Order dated June 18, 2018, this Court reserved exclusive and continuing jurisdiction over this action, the Plaintiffs, all the Class Members, Deemed Class Members, and the Defendant, for the purposes of implementing, enforcing and administering the **FSA**, **SA**, and its Order of June 18, 2018, which contemplated the issuance of such further and ancillary orders, from time to time, as are necessary to implement and enforce the provisions of the **FSA**, the **SA**, and its Order of June 18, 2018

**UPON READING** the Plaintiffs' motion record, as filed;

**AND UPON BEING ADVISED** of the Plaintiffs' and Defendant's consent to the form of this Order;

**AND WITHOUT ADMISSION OF LIABILITY** on the part of the Defendant;

**THIS COURT ORDERS THAT:**

1. The Second Supplementary Agreement (the "**SSA**") to the **FSA** and **SA** attached hereto as Schedule "A" is hereby approved.
2. By this Order, the **SSA** is hereby incorporated as part of the **FSA** and **SA** previously approved by this Court.

3. Class counsel and the Administrator shall continue to report back to this Court on the administration of the **FSA**, the **SA** and the **SSA** at reasonable intervals not less than semi-annually, upon the request of the Court, and upon the completion of the administration of the **FSA**, the **SA** and the **SSA** in accordance with Schedule “O” of the **FSA**.

"Martine St-Louis"

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Judge

**FEDERAL COURT**

Class Proceeding

TODD EDWARD ROSS, MARTINE ROY and ALIDA SATALIC

Plaintiffs

- and -

HER MAJESTY THE QUEEN

Defendant

**SECOND SUPPLEMENTARY AGREEMENT**

**WHEREAS:**

- A. Canada and the Plaintiffs (collectively the "Parties") entered into a Final Settlement Agreement ("**FSA**") dated March 28, 2018;
- B. Following the Parties' entry into the **FSA**, the RMM Panel was constituted in accordance with **FSA section 5.02(c)**;
- C. Pursuant to **section 5.02(b)** of the **FSA**, the Parties agreed that the RMM Fund would be paid and administered under the terms of a supplementary agreement to be negotiated and executed by the Parties no later than seven days prior to the date of the Approval Hearing;
- D. The Supplementary Agreement ("**SA**") was executed on June 15, 2018;
- E. Pursuant to the **SA**, the Parties set out certain terms pertaining to the payment and administration of the RMM Fund, and agreed to continue negotiations relating to the

creation of an appropriate legal entity to receive, hold, invest and disburse the RMM Fund, in order to give effect to the Parties' intentions in the **FSA**;

- F. During negotiations, the Plaintiffs identified a federal not-for-profit corporation incorporated by the RMM non-governmental Panel Members under the *Canada Not-for-profit Corporations Act* ("CNCA") as the most appropriate legal entity to receive, hold, invest and disburse the RMM Fund for the purpose of giving effect to the Parties' intentions in the **FSA** and Canada has accepted their determination subject to the terms of this Second Supplementary Agreement;
- G. The LGBT Purge Fund/Le Fonds Purge LGBT (the "LGBT Purge Fund" or "Corporation") was incorporated under the CNCA on October 19, 2018;
- H. The Parties determined that it would be inappropriate and potentially problematic for the same persons to act simultaneously in their individual capacity as the RMM non-governmental Panel Members and as directors of the Corporation;
- I. Thus, the Parties have agreed to replace the RMM Panel with the Corporation and delineate, in this Second Supplementary Agreement, the roles, responsibilities and rights that each of Canada and the Corporation will assume from the RMM Panel or modify, as the case may be;
- J. The Parties further wish to enter into this Second Supplementary Agreement to set out the agreed terms pursuant to which the Corporation shall be legally entitled to receive, hold, invest and disburse the RMM Fund for the purpose of giving effect to the Parties' intentions in the **FSA** and **SA**; and
- K. The Parties have determined that it is desirable to establish terms for the designation of and the payment of fees for the Mental Health Expert to assist the Assessor.

**NOW THEREFORE**, in consideration of the mutual agreements, covenants and undertakings set out in this agreement, the Parties agree with each other as follows:

## Definitions

Capitalized terms used in this Second Supplementary Agreement ("**SSA**") and not otherwise defined shall have the same meanings as contained in the **FSA** as amended by the **SA**.

In this **SSA** and annexes thereto:

**"Articles of Incorporation"** means the articles of incorporation, including the statement of purpose, of the LGBT Purge Fund/Le Fonds Purge LGBT, which articles of incorporation were completed and duly signed by the incorporating RMM non-governmental Panel Members and which are attached to the **SSA** as **Annex "A"**.

**"By-laws"** means the by-laws of the Corporation, which by-laws are attached to the **SSA** as **Annex "B"**.

**"LGBT Purge Fund", "LGBT Purge Fund / Le Fonds Purge LGBT", or "Corporation"** means the federal not-for-profit corporation incorporated by the RMM Non-governmental Panel Members under the CNCA.

**"Mental Health Expert"** means Dr. Alain Brunet, designated by the Parties under **section 51 of Schedule "O"** to the **FSA** and appointed by the Court to assist the Assessor in determining Level 4 claims.

**"RMM Non-governmental Panel Members"** means Todd Ross, Martine Roy, Diane Pitre and Wayne Davis appointed as the four Class Members, Douglas Elliott as the member of the Plaintiffs' Class Counsel team and Michelle Douglas nominated by the Class Members as chair of the RMM Panel.

**"Operating Expenses"** means the expenses incurred in carrying out the day-to-day operations of the LGBT Purge Fund/Le Fonds Purge LGBT, including the stipends and travel expenses provided at **section 5.02(d)** of the **FSA**. Operating expenses do not include funds used or transferred to cover the cost of an RMM measure.

For the sake of clarity, numbering of clauses in this **SSA** continues from the conclusion of the **SA**.

## SECTION TWENTY-TWO

### LGBT PURGE FUND

#### 22.01 The Structure of the LGBT Purge Fund

- (a) Notwithstanding any provision in the Articles of Incorporation or the By-laws or any subsequent amendments thereto, the LGBT Purge Fund shall consist of six members and the same six individual members at any given time shall also be its directors.
- (b) The first directors and officers of the LGBT Purge Fund are Michelle Douglas, Chair; Todd Ross, Vice Chair; Martine Roy, President; Diane Pitre, Vice-President; Wayne Davis, Vice-President & Treasurer, and Douglas Elliott, Vice-President and Secretary.
- (c) Should any of the directors die or otherwise be unable or unwilling to act as a director, member and officer of the LGBT Purge, the remaining directors or members of the LGBT Purge Fund, shall appoint a successor to replace the director or member of the LGBT Purge Fund, as the case may be, in accordance with the qualifications required by the **FSA** and **SA**, and consistent with the requirements of the CNCA.

#### 22.02 Termination of the RMM Panel

- (a) The first four paragraphs of section 5.02(c) of the FSA shall be deleted. The fifth and last paragraph, concerning the RMM Panel Chair shall remain as 5.02(c);
- (b) Wherever reference to the term "RMM Panel", "Reconciliation and Memorialization Measures Panel" or "Panel" appears in the **FSA** and **SA**, the term shall be read to refer to the LGBT Purge Fund; and
- (c) Reference in the **SA** to the term "RMM non-governmental Panel Members" shall be read to refer to the LGBT Purge Fund.

### **22.03 Standing**

The LGBT Purge Fund shall have standing in this proceeding to seek direction of the Court with respect to the **FSA**, the **SA**, the **SSA** or the activities of the LGBT Purge Fund pursuant to those agreements. Similarly, any of the parties to this proceeding may seek directions of the Court with respect to the activities of the LGBT Purge Fund, and the LGBT Purge Fund shall be entitled to standing in any such process.

### **22.04 LGBT Purge Fund to Become Party to FSA, SA and SSA**

The Parties agree that the LGBT Purge Fund will become a party to the FSA, the SA, and the SSA upon execution of the Joinder Agreement attached as **Annex “C”** to this SSA.

## **SECTION TWENTY-THREE**

### **POWERS AND DUTIES OF THE LGBT PURGE FUND**

#### **23.01 General Powers of the LGBT Purge Fund**

- (a) The LGBT Purge Fund shall have freedom of contract for the purposes of giving effect to the Parties' intentions as set out in the **FSA**, **SA**, and **SSA**, without requiring the approval of Canada or the Federal Court to enter into such contracts.
- (b) Notwithstanding any provision in the Articles of Incorporation or the By-laws or any subsequent amendments thereto, the LGBT Purge Fund shall not solicit financial contributions, donations or gifts but may receive unsolicited financial contributions, donations and gifts.

#### **23.02 Roles and Responsibilities relating to RMM Projects**

- (a) The LGBT Purge Fund shall have oversight and responsibility for the implementation of all Reconciliation and Memorialization Measures (RMM), other than the RMM projects specifically mentioned in **section 5.01** of the **FSA**. With respect to additional RMM projects that could involve the Government of Canada or for which the Department of

Canadian Heritage ("Heritage") may be in a position to assist, Canada shall offer consultation services or information to the LGBT Purge Fund, upon the LGBT Purge Fund's request.

- (b) The Canadian Museum for Human Rights (CMHR) shall have oversight, management and control over the curation, design and production of the museum exhibition(s) to be created pursuant to **section 5.01(a)** of the **FSA**. The CMHR will engage representatives of the LGBT Purge Fund and representatives of the Government of Canada in the development of the exhibition(s). The proposal and cost of the project, prepared by the CMHR, will be subject to the written approval of the LGBT Purge Fund and grant agreement prepared by the LGBT Purge Fund. After execution of the grant agreement the LGBT Purge Fund shall disburse the necessary funds directly to the CMHR as and when required by the CMHR and CMHR will comply with the requirements of the grant agreement including but not limited to providing adequate reporting.
- (c) Heritage shall have oversight, management and control over the National Monument project pursuant to **section 5.01(b)** of the **FSA**. Heritage will consult the LGBT Purge Fund and the size, scope, location, timelines and cost of the National Monument will be determined and agreed to by the parties before proceeding with the project. The Parties will thereafter enter into a multi-party project agreement to be negotiated between Heritage, the National Capital Commission and the LGBT Purge Fund. Upon execution of the agreement, the LGBT Purge Fund will provide Heritage with written confirmation that the LGBT Purge Fund has allocated the funds required to complete the project. The multi-party project agreement will contain a detailed description of the National Monument project, the roles and obligations of each of the parties, a schedule for periodic payments to be made by the LGBT Purge Fund in respect of the project, developed by Heritage, and tied to milestones, as well as a statement of roles for the directors of the LGBT Purge Fund with respect to the provision of strategic advice and direction to the project team. If the LGBT Purge Fund does not meet its financial obligations in accordance with the payment schedule, Heritage and Canada shall have no further obligation to proceed with the creation of the National Monument, accompanying interpretation packages or other aspects of the project.

### **23.03 Powers respecting RMM Funds**

The LGBT Purge Fund shall receive, hold, invest, and manage the RMM Fund designated under the **FSA** and **SA** for the RMM and disburse the funds in accordance with and subject to the terms and conditions set out in the **FSA**, **SA** and this **SSA**.

### **23.04 Operating Expenses to be paid to the extent possible by Investment Returns**

The LGBT Purge Fund shall be entitled to draw from the interest or investment earnings on the RMM Fund and Additional Payment, if any, (collectively, the "Capital Fund") to pay its Operating Costs, and may also use financial contributions, donations and gifts (collectively, "Donations") to pay Operating Costs. The LGBT Purge Fund shall reinvest, as appropriate, in accordance with **section 23.05**, all interest or investment earnings on the Capital Fund that remain after the Operating Costs have been paid. In the alternative, as necessary and appropriate, the LGBT Purge Fund may place interest and/or investment income in a reserve fund account to cover operating expenses. Until the Capital Fund generates sufficient interest or investment earnings and the LGBT Purge Fund receives sufficient Donations to collectively cover Operating Costs, the LGBT Purge Fund may borrow from the Capital Fund to pay Operating Costs. All amounts borrowed from the Capital Fund to pay Operating Costs shall be reimbursed to the Capital Fund at first instance from interest or investment earnings on the Capital Fund and from Donations. However, in the event that interest or investment earnings prove insufficient to cover operating expenses, the LGBT Purge Fund may reimburse Operating Costs in excess of the total of amounts earned from the interest or investment earnings from the Capital Fund and received Donations.

### **23.05 Restrictions on Investment of RMM Funds**

The LGBT Purge Fund shall oversee the prudent investment of the Capital Fund in accordance with the Investment Policy attached as **Annex "D"** until the Capital Fund, including the interest and investment earnings reinvested in accordance with **section 23.04**, is fully disbursed in order to carry out the objects set out in the **FSA** and **SA**. In the event that, prior to the liquidation of the LGBT Purge Fund, the Investment Policy requires revision at the request of the LGBT Purge Fund's chosen financial institution or otherwise, the

Investment Policy may be amended with the consent of the Attorney General and the approval of the Court.

### **23.06 Restrictions on Borrowing**

Prior to the LGBT Purge Fund's receipt of the initial \$15 million RMM Fund payment, the LGBT Purge Fund may borrow on its own credit as bridge funding provided that the total indebtedness of the corporation does not exceed \$200,000 and provided that the LGBT Purge Fund, upon receipt of the payment, shall apply the amount received to pay off, in full, any amount borrowed. For greater certainty, nothing in this SSA or the FSA overall precludes the LGBT Purge Fund from obtaining and utilizing a corporate credit card account in accordance with normal commercial practice through its chosen financial institution referenced in Annex D.

### **23.07 Financial Reporting Requirements**

The LGBT Purge Fund shall provide audited annual financial statements to Canada and the Federal Court within six (6) months of its fiscal year-end. The LGBT Purge Fund shall include with the financial statements a report containing a list and description of all projects funded by the LGBT Purge Fund during the fiscal year covered by the financial statements and the amounts expended for those projects during the fiscal year and cumulatively, and will itemize Operating Expenses through the end of the fiscal year in a reasonable level of detail. The financial statements of the LGBT Purge Fund and accompanying reports will be made available to Class Members on request at no cost.

## SECTION TWENTY-FOUR

### LIQUIDATION OF LGBT PURGE FUND

#### 24.01 RMM Fund to be Exhausted

Following the LGBT Purge Fund's transfer of the allocated portion of the RMM Fund towards the completion of the National Monument and CMHR projects, when the amount of all funds remaining in the LGBT Purge Fund (capital, any interest/earnings on capital, and Donations) is \$100,000 or less, the LGBT Purge Fund will:

- (a) identify steps to be taken to dissolve the LGBT Purge Fund and the estimated costs of same; and
- (b) within six months of the depletion of its funds to a level of \$100,000 or less, transfer any funds required to reduce the funds to a zero balance to another non-profit organization or charity serving the LGBT community, after having set aside sufficient funds to pay reasonable legal, accounting and other costs related to dissolution of the LGBT Purge Fund and all necessary reporting and other compliance requirements of the **FSA**, **SA** and this **SSA** ("Dissolution Funds").

#### 24.02 Dissolution of LGBT Purge Fund

Upon exhaustion of its funds (except the Dissolution Funds), the LGBT Purge Fund shall commence an orderly dissolution of the Corporation, to be completed within the times frames contemplated in **section 5.02(b)** of the **FSA** or such further periods as may be approved by Order of the Federal Court. The members and directors of the LGBT Purge Fund shall serve on Canada and shall file with the Federal Court an affidavit containing a summary of the Corporation's activities, and the final audited financial statement, and related report within six months of the date of such exhaustion of funds.

## SECTION TWENTY-FIVE

### REPRESENTATIONS, WARRANTIES AND COVENANTS

#### 25.01 By the LGBT Purge Fund

The LGBT Purge Fund represents, warrants to and covenants with Canada that:

- (a) each of the Corporation's directors is an individual with the legal capacity to incorporate a federal not-for-profit corporation under the CNCA;
- (b) each of the Corporation's directors has had the opportunity, or has waived the opportunity, to receive independent legal advice about the roles, responsibilities and potential personal liabilities of a director, officer and member of a federal not-for-profit corporation under the CNCA;
- (c) each of the Corporation's directors reasonably believes he or she has the time and the ability required to fulfil the roles and legal duties and responsibilities of a director, officer and member of the LGBT Purge Fund in accordance with the requirements of the CNCA and other applicable law and the **FSA**, including the **SA** and **SSA**;
- (d) the LGBT Purge Fund shall be maintained as a corporation incorporated under the CNCA in good standing under the laws of Canada;
- (e) the LGBT Purge Fund has the requisite corporate power to carry on its activities as contemplated by the **FSA**, the **SA** and the **SSA**;
- (f) all of the activities contemplated in the **FSA**, **SA** and this **SSA** that will be carried out by the LGBT Purge Fund will be duly authorized by all requisite corporate action as determined by the LGBT Purge Fund board of directors; and
- (g) the execution and delivery of the **FSA**, **SA** and **SSA** does not violate the provisions of the LGBT Purge Fund's Articles of Incorporation, by-laws, or any resolution of the LGBT Purge Fund's members or board of directors.

## **25.02 Obligations**

The LGBT Purge Fund shall:

- (a) agree that the **FSA**, **SA** and **SSA** constitute legally binding obligations of the LGBT Purge Fund, enforceable against it in accordance with their terms and subject to the Court's authority in enforcing the **FSA**, **SA** and **SSA**;
- (b) remain in good standing and comply with all obligations under the CNCA;
- (c) file all business registrations as and when required by the Province of Ontario; and
- (d) notify the Court and Canada of any changes to its directors, officers, Articles of Incorporation, or by-laws.

## **SECTION TWENTY-SIX**

### **MENTAL HEALTH EXPERT**

#### **26.01 Appointment of Mental Health Expert**

Dr. Alain Brunet is designated by the Parties to assist the Assessor in determining Level 4 claims, pursuant to **sections 51 and 52 of Schedule "O"** to the **FSA**.

#### **26.02 Key Tasks**

Dr. Brunet shall:

- (a) examine the first series of claims in parallel with the Assessor in order to determine if, in his view, the claim forms contain all the elements needed to evaluate claims;
- (b) assist the Assessor in framing any additional questions to be submitted to the claimants; and
- (c) be available to consult and provide an opinion to the Assessor when a specific case requires his expertise.

#### **26.03 Fee Structure**

Canada shall pay Dr. Brunet's fees at the rate of \$500 per hour in accordance with these terms and any further terms as may be agreed by the Parties in writing, on a monthly basis for the work covered for the invoice where:

- (a) An accurate and complete invoice and any other documents required by the FSA have been submitted in accordance with invoicing instructions to be provided by Canada prior to the first billing period; and
- (b) All documents have been verified by Canada.

#### **26.04 Limits**

Dr. Brunet must not perform any work that would result in Canada's liability exceeding \$100,000, except with the express written authorization of the Parties or, failing agreement, the authorization of the Court.

#### **26.05 Confidentiality**

Dr. Brunet shall be bound by the same confidentiality terms as set out in **sections 23-27 of Annex "B"** to the **SA** and shall sign the same non-disclosure agreement.

## **SECTION TWENTY-SEVEN**

### **GENERAL**


#### **27.01 Entire FSA**

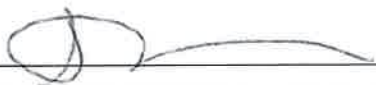
As set out in **section 17.03** of the **FSA**, the Parties confirm that the **FSA** executed on March 28, 2018, shall include the **SA** and this **SSA**, and together they form the entire agreement between the Parties.


**IN WITNESS WHEREOF** the Parties have executed this Second Supplementary Agreement.


HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Attorney  
General of Canada

Signed this 31<sup>st</sup> day of January, 2019.

BY:   
ATTORNEY GENERAL OF CANADA  
For the Defendant

BY:   
ATTORNEY GENERAL OF CANADA  
For the Defendant

BY:   
ATTORNEY GENERAL OF CANADA  
For the Defendant

BY:   
ATTORNEY GENERAL OF CANADA  
For the Defendant

THE PLAINTIFFS, as represented by Class Counsel:

Signed this 31<sup>st</sup> day of January, 2019.

BY:   
CAMBRIDGE LLP  
For the Plaintiffs

BY:   
KOSKIE MINSKY LLP  
For the Plaintiffs

BY:   
IMK LLP  
For the Plaintiffs

BY:   
MCKIGGAN HEBERT LLP  
For the Plaintiffs

# **ANNEX A**



## Certificate of Incorporation

*Canada Not-for-profit Corporations Act*

## Certificat de constitution

*Loi canadienne sur les organisations à but non  
lucratif*

LGBT Purge Fund  
Le Fonds Purge LGBT

Corporate name / Dénomination de l'organisation

1105142-3

Corporation number / Numéro de  
l'organisation

I HEREBY CERTIFY that the above-named  
corporation, the articles of incorporation of which  
are attached, is incorporated under the *Canada  
Not-for-profit Corporations Act*.

JE CERTIFIE que l'organisation susmentionnée,  
dont les statuts constitutifs sont joints, est  
constituée en vertu de la *Loi canadienne sur les  
organisations à but non lucratif*.

Cheryl Ringor

Deputy Director / Directeur adjoint

2018-10-19

Date of Incorporation (YYYY-MM-DD)  
Date de constitution (AAAA-MM-JJ)



**Form 4001**  
**Articles of Incorporation**  
*Canada Not-for-profit Corporations*  
**Act (NFP Act)**

**Formulaire 4001**  
**Statuts constitutifs**  
*Loi canadienne sur les*  
*organisations à but non lucratif*  
**(Loi BNL)**

1

Corporate name  
Dénomination de l'organisation  
**LGBT Purge Fund**  
**Le Fonds Purge LGBT**

2

The province or territory in Canada where the registered office is situated  
La province ou le territoire au Canada où est maintenu le siège  
**ON**

3

Minimum and maximum number of directors  
Nombres minimal et maximal d'administrateurs  
**Min. 3      Max. 20**

4

Statement of the purpose of the corporation  
Déclaration d'intention de l'organisation  
**See attached schedule / Voir l'annexe ci-jointe**

5

Restrictions on the activities that the corporation may carry on, if any  
Limites imposées aux activités de l'organisation, le cas échéant  
**None**

6

The classes, or regional or other groups, of members that the corporation is authorized to establish  
Les catégories, groupes régionaux ou autres groupes de membres que l'organisation est autorisée à établir  
**See attached schedule / Voir l'annexe ci-jointe**

7

Statement regarding the distribution of property remaining on liquidation  
Déclaration relative à la répartition du reliquat des biens lors de la liquidation  
**See attached schedule / Voir l'annexe ci-jointe**

8

Additional provisions, if any  
Dispositions supplémentaires, le cas échéant  
**See attached schedule / Voir l'annexe ci-jointe**

9

**Declaration:** I hereby certify that I am an incorporator of the corporation.  
**Déclaration :** J'atteste que je suis un fondateur de l'organisation.

Name(s) - Nom(s)

Original Signed by - Original signé par

**Wayne Davis**

**Wayne Davis**

**Wayne Davis**

**Diane Pitre**

**Diane Pitre**

**Diane Pitre**

**Douglas Elliott**

**Douglas Elliott**

**Douglas Elliott**

A person who makes, or assists in making, a false or misleading statement is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months or to both (subsection 262(2) of the NFP Act).

La personne qui fait une déclaration fautive ou trompeuse, ou qui aide une personne à faire une telle déclaration, commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 5 000 \$ et un emprisonnement maximal de six mois ou l'une de ces peines (paragraphe 262(2) de la Loi BNL).

You are providing information required by the NFP Act. Note that both the NFP Act and the *Privacy Act* allow this information to be disclosed to the public. It will be stored in personal information bank number IC/PPU-049.

Vous fournissez des renseignements exigés par la Loi BNL. Il est à noter que la Loi BNL et la *Loi sur les renseignements personnels* permettent que de tels renseignements soient divulgués au public. Ils seront stockés dans la banque de renseignements personnels numéro IC/PPU-049.

Martine Roy

Martine Roy

Martine Roy

Michelle Douglas

Michelle Douglas

Michelle Douglas

Todd Ross

Todd Ross

Todd Ross

A person who makes, or assists in making, a false or misleading statement is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months or to both (subsection 262(2) of the NFP Act).

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## Schedule

### Statement of the Purposes of the Corporation

The purposes of the Corporation are to:

- (a) receive, hold, invest, manage and disburse funds constituting from time to time the Reconciliation and Memorialization Measures Fund established in the case of *Ross et al. v Canada*, pursuant to the Final Settlement Agreement (“FSA”), dated November 24, 2017, and approved by Justice St. Louis of the Federal Court of Canada by Order made on June 18, 2018, as may be amended from time to time;
- (b) fund in amounts it determines appropriate the mandatory projects specified in the FSA and, to the extent possible, ensure implementation of such projects;
- (c) oversee the production and archiving of records connected with the LGBT Purge, as that term is defined in the FSA, and fund in amounts it determines appropriate the retrieval and archiving of such records;
- (d) support programs, initiatives and organizations that foster and encourage discussion of issues impacting the LGBT community in Canada, including historic and continuing discrimination against the LGBT community;
- (e) educate the public about, and increase the public’s awareness and understanding of, issues impacting the LGBT community in Canada, including discrimination against the LGBT community and the LGBT Purge;
- (f) support initiatives, programs and organizations that promote reconciliation measures with respect to past discrimination against the LGBT community, including but not limited to the LGBT Purge, and that promote memorialization measures with respect to such past discrimination;
- (g) receive, hold, invest, manage and disburse funds for any of the Corporation’s purposes;
- (h) receive and maintain a fund or funds and to apply all or a portion of the principal and income therefrom, from time to time, to qualified donees as defined in subsection 149.1(1) of the *Income Tax Act* (Canada) and/or to non-qualified donees; and
- (i) pursue purposes not inconsistent with the Corporation’s other purposes.

**Schedule / Annexe**  
**Classes of Members / Catégories de membres**

The Corporation is authorized to establish one class of members. Each member shall be entitled to receive notice of, attend and vote at all meetings of the members of the Corporation.

## **Schedule / Annexe**

### **Distribution of Property on Liquidation / Répartition du reliquat des biens lors de la liquidation**

Any property remaining on liquidation of the Corporation, after discharge of liabilities, shall be distributed to one or more qualified donees within the meaning of subsection 248(1) of the Income Tax Act.

**Schedule / Annexe**  
**Additional Provisions / Dispositions supplémentaires**

- a) The Corporation shall be carried on without the purpose of gain for its members, and any profits or other accretions to the Corporation shall be used in furtherance of its purposes; and
- b) Each director shall be compensated for his or her services as a director in amounts not to exceed those permitted under the FSA, as may be amended from time to time, and may be reimbursed for reasonable expenses incurred in performing his or her duties as a director. A director shall not be prohibited from receiving compensation for services provided to the corporation in another capacity.

# **ANNEX B**

## **BY-LAW NO. 1**

A By-law relating generally to the conduct of the affairs of

### **LGBT PURGE FUND / LE FONDS PURGE LGBT** (the "Corporation")

**BE IT ENACTED** as a by-law of the Corporation as follows:

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<u>Section 6 – Meetings of Directors</u>
<u>Section 7 – Officers</u>
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#### **SECTION 1 – GENERAL**

##### **1.01 Definitions**

In this by-law and all other by-laws of the Corporation, unless the context otherwise requires:

- (a) "Act" means the *Canada Not-for-profit Corporations Act* S.C. 2009, c.23 including the Regulations made pursuant to the Act, and any statute or regulations that may be substituted, as amended from time to time;
- (b) "articles" means the original or restated articles of incorporation or articles of amendment, amalgamation, continuance, reorganization, arrangement or revival of the Corporation;
- (c) "board" means the board of directors of the Corporation and "director" means a member of the board;

- (d) "by-law" means this by-law and any other by-laws of the Corporation as amended and which are, from time to time, in force and effect;
- (e) "meeting of members" includes an annual meeting of members or a special meeting of members;
- (f) "ordinary resolution" means a resolution passed by a majority of the votes cast on that resolution;
- (g) "Regulations" means the regulations made under the Act, as amended, restated or in effect from time to time; and
- (h) "special resolution" means a resolution passed by a majority of not less than two-thirds (2/3) of the votes cast on that resolution.

## **1.02 Interpretation**

In the interpretation of this by-law, words in the singular include the plural and vice-versa, words in one gender include all genders, and "person" includes an individual, body corporate, partnership, trust and unincorporated organization. Other than as specified in Section 1.01 above, words and expressions defined in the Act have the same meanings when used in this by-law.

## **1.03 Corporate Seal**

The Corporation may have a corporate seal in the form approved from time to time by the board. If a corporate seal is approved by the board, the secretary of the Corporation shall be the custodian of the corporate seal.

## **1.04 Execution of Documents**

Deeds, transfers, assignments, contracts, obligations and other instruments in writing requiring execution by the Corporation must be signed by any two (2) of its officers or directors, subject to the following: the board may from time to time direct the manner in which and the person or persons by whom a particular document or type of document shall be executed. Any person authorized to sign any document may affix the corporate seal (if any) to the document. Any signing officer may certify a copy of any instrument, resolution, by-law or other document of the Corporation to be a true copy thereof.

## **1.05 Financial Year End**

The financial year end of the Corporation shall be determined by the board.

### **1.06 Banking Arrangements**

The banking business of the Corporation shall be transacted at such bank, trust company or other firm or corporation carrying on a banking business in Canada or elsewhere as the board may designate, appoint or authorize from time to time by resolution. The banking business or any part of it shall be transacted by an officer or officers of the Corporation and/or other persons as the board may by resolution from time to time designate, direct or authorize.

### **1.07 Annual Financial Statements**

The Corporation shall send to the members a copy of the annual financial statements and other documents referred to in subsection 172(1) (Annual Financial Statements) of the Act or a copy of a publication of the Corporation reproducing the information contained in the documents. Instead of sending the documents, the Corporation may send a summary to each member along with a notice informing the member of the procedure for obtaining a copy of the documents themselves free of charge. The Corporation is not required to send the documents or a summary to a member who, in writing, declines to receive such documents.

### **1.08 Borrowing Powers**

The directors of the Corporation may, without authorization of the members,

- (a) borrow money on the credit of the Corporation;
- (b) issue, reissue, sell, pledge or hypothecate debt obligations of the Corporation;
- (c) give a guarantee on behalf of the Corporation to secure performance of an obligation of any person; and
- (d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired, to secure any debt obligation of the Corporation.

## **SECTION 2 – MEMBERSHIP**

### **2.01 Membership Conditions**

Subject to the articles, there shall be one class of members in the Corporation. The only members of the Corporation shall be the directors of the Corporation from time to time. A director automatically becomes a member of the Corporation upon his or her appointment or election as a director without further act, deed or approval. Each director of the Corporation shall be a member of the Corporation for the period of time they serve as a director. Each member shall be entitled to receive notice of, attend and vote at all meetings of the members of the Corporation.

Pursuant to subsection 197(1) (Fundamental Changes) of the Act, a special resolution of the members is required to make any amendments to this section of the by-law if those amendments affect membership rights and/or conditions described in paragraphs 197(1)(e), (h), (l) or (m).

## **2.02 Notice of Members' Meeting**

Notice of the time and place of a meeting of members shall be given to each member entitled to vote at the meeting by the following means:

- (a) by mail, courier or personal delivery to each member entitled to vote at the meeting, during a period of 21 to 60 days before the day on which the meeting is to be held; or
- (b) by telephonic, electronic or other communication facility to each member entitled to vote at the meeting, during a period of 21 to 35 days before the day on which the meeting is to be held.

Pursuant to subsection 197(1) (Fundamental Changes) of the Act, a special resolution of the members is required to make any amendment to the by-laws of the Corporation to change the manner of giving notice to members entitled to vote at a meeting of members.

## **2.03 Absentee Voting at Members' Meetings**

### **2.03.1 Voting by Mailed-In or Electronic Ballot**

Pursuant to section 171(1) (Absentee Voting) of the Act, a member entitled to vote at a meeting of members may vote by mailed-in ballot or by means of a telephonic, electronic or other communication facility if the Corporation has a system that:

- (a) enables the votes to be gathered in a manner that permits their subsequent verification, and
- (b) permits the tallied votes to be presented to the Corporation without it being possible for the Corporation to identify how each member voted.

Pursuant to subsection 197(1) (Fundamental Changes) of the Act, a special resolution of the members is required to make any amendment to the by-laws of the Corporation to change this method of voting by members not in attendance at a meeting of members.

### **2.03.2 Voting by Proxy**

a. Pursuant to Section 171(1) of the Act, a member entitled to vote at a meeting of members may vote by proxy by appointing in writing a proxyholder, and one or more alternate proxyholders, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by it subject to the requirements for proxies set out in the Act.

b. Any notice to members of the time and place of a meeting of members shall either enclose a form of proxy or contain a reminder of the right to appoint a proxyholder.

c. Pursuant to Section 197(1) (Fundamental Changes) of the Act, a special resolution of the members is required to make any amendment to the articles or by-laws of the Corporation to change this method of voting by members not in attendance at a meeting of members.

### **SECTION 3 – MEMBERSHIP DUES AND TERMINATION**

#### **3.01 Membership Dues**

Members shall be notified in writing of the membership dues at any time payable by them, if any, and, if any such membership dues are not paid within one (1) calendar month of the membership renewal date the members in default shall automatically cease to be members of the Corporation.

#### **3.02 Termination of Membership**

A membership in the Corporation is terminated when:

- (a) the member dies, or, in the case of a member that is a body corporate, the body corporate is dissolved;
- (b) the member resigns;
- (c) the member ceases to be a director of the Corporation;
- (d) the member is removed from membership in accordance with section 3.03 below;
- (e) the member's term of membership, if any, expires;
- (f) the Corporation is liquidated and dissolved under the Act; or
- (g) the member's membership is otherwise terminated in accordance with the articles or by-laws.

Subject to the articles, upon any termination of membership, the rights of the member automatically cease to exist.

#### **3.03 Removal from Membership**

The board shall have authority to remove any member from the Corporation for any one or more of the following grounds:

- (a) violating any provision of the articles, by-laws, or written policies of the Corporation;

- (b) carrying out any conduct which may be detrimental to the Corporation as determined by the board in its sole discretion; or
- (c) for any other reason that the board in its sole and absolute discretion considers to be reasonable, having regard to the purpose of the Corporation.

In the event that the board determines that a member should be removed from membership in the Corporation, the chair of the board, or such other officer as may be designated by the board, shall provide twenty (20) days written notice of the proposed removal of the member from membership to the member and shall provide written reasons for the proposed removal. The member may make written submissions to the chair of the board, or such other officer as may be designated by the board, in response to the notice received within such twenty (20) day period.

If no written submission is received by the chair of the board, the chair of the board, or such other officer as may be designated by the board, may proceed to notify the member that the member is removed from membership in the Corporation. If a written submission is received in accordance with this section, the board shall consider such submissions in arriving at a final decision and shall notify the member concerning such final decision within a further 20 days from the date of receipt of the submission. The board's decision shall be final and binding on the member, without any further right of appeal.

#### **SECTION 4 – MEETINGS OF MEMBERS**

##### **4.01 Place of Members' Meeting**

Subject to compliance with section 159 (Place of Members' Meetings) of the Act, meetings of the members may be held at any place within Canada or elsewhere as the board may determine.

##### **4.02 Persons Entitled to be Present**

The only persons entitled to be present at a meeting of members shall be those entitled to vote at the meeting, the directors and the public accountant of the Corporation and such other persons who are entitled or required under any provision of the Act, articles or by-laws of the Corporation to be present at the meeting. Any other person may be admitted only on the invitation of the chair of the meeting or by resolution of the members.

##### **4.03 Chair of the Meeting**

In the event that the chair of the board and the vice-chair of the board are absent, the members who are present and entitled to vote at the meeting shall choose one of their number to chair the meeting.

#### **4.04 Quorum**

A quorum at any meeting of the members (unless a greater number of members are required to be present by the Act) shall be the lesser of: (i) 50% of the members entitled to vote at the meeting, or (ii) two (2) members entitled to vote at the meeting. If a quorum is present at the opening of a meeting of members, the members present may proceed with the business of the meeting even if a quorum is not present throughout the meeting.

#### **4.05 Votes to Govern**

At any meeting of members every question shall, unless otherwise provided by the articles or by-laws or by the Act, be determined by a majority of the votes cast on the question. The chair of the meeting shall not exercise a vote except in the case of an equality of votes either on a show of hands or on a ballot or on the results of electronic voting.

### **SECTION 5 – DIRECTORS**

#### **5.01 Directors' Powers**

The directors may exercise all such powers and do all such acts or things as may be exercised or done by the Corporation that are not by the Act, articles or by-laws expressly directed or required to be done in some other manner. Subject to the Act, articles and by-laws the board shall manage or supervise the management of the activities and affairs of the Corporation.

#### **5.02 Number of Directors**

The board shall consist of the number of directors specified in the articles. If the articles provide for a minimum and maximum number of directors, the board shall be comprised of the fixed number of directors as determined from time to time by the members by ordinary resolution or, if the ordinary resolution empowers the directors to determine the number, by resolution of the board. In the case of a soliciting corporation the minimum number of directors may not be fewer than three (3), at least two (2) of whom are not officers or employees of the Corporation or its affiliates.

#### **5.03 Election and Term**

Subject to the articles, the members will elect the directors at each annual meeting at which an election of directors is required, and the directors shall be elected to hold office for a term expiring not later than the close of the next annual meeting of members following the election. If an election of directors is not held at the proper time, the incumbent directors shall continue in office until their successors are elected.

#### **5.04 Removal of Directors**

Subject to the Act, the members may by ordinary resolution passed at a special meeting of members remove any director from office, and the vacancy created by such removal may be filled at the same meeting by the members, failing which it may be filled by the board.

#### **5.05 Vacancy in Office of Director**

The office of a director shall be automatically vacated if:

- (a) the director dies;
- (b) the director delivers a written notice of resignation to the Corporation;
- (c) the director ceases to be a member;
- (d) the director ceases to be qualified for election as a director; or
- (e) the director is removed from office by the members.

#### **5.06 Filling Vacancy in Office of Director**

Subject to the Act, a quorum of the board may fill a vacancy in the board, except for a vacancy resulting from:

- (a) an increase in the number or minimum number of directors; or
- (b) a failure of the members to elect the number or minimum number of directors provided for in the articles.

### **SECTION 6 – MEETINGS OF DIRECTORS**

#### **6.01 Calling of Meetings**

Meetings of the board may be called by the chair of the board, the vice-chair of the board or any two (2) directors at any time.

#### **6.02 Notice of Meeting**

Notice of the time and place for the holding of a meeting of the board shall be given in the manner provided in Section 9.01 (Method of Giving Notices) of this by-law to every director of the Corporation not less than forty-eight (48) hours before the time when the meeting is to be held, if delivered or sent other than by mail. Notice by mail shall be sent at least fourteen (14) days prior to the meeting. Notice of a meeting shall not be necessary if all of the directors are present, and none objects to the holding of the meeting, or if those absent have waived notice of or have otherwise signified their consent to the holding of such meeting. Notice of an adjourned

meeting is not required if the time and place of the adjourned meeting is announced at the original meeting. Unless the by-law otherwise provides, no notice of meeting need specify the purpose or the business to be transacted at the meeting except that a notice of meeting of directors shall specify any matter referred to in subsection 138(2) (Limits on Authority) of the Act that is to be dealt with at the meeting.

### **6.03 Regular Meetings**

The board may appoint a day or days in any month or months for regular meetings of the board at a place and hour to be named. A copy of any resolution of the board fixing the place and time of such regular meetings of the board shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meeting except if subsection 136(3) (Notice of Meeting) of the Act requires the purpose thereof or the business to be transacted to be specified in the notice.

### **6.04 Quorum**

A majority of directors in office, from time to time, but no less than two (2) directors, shall constitute a quorum for meetings of the board.

### **6.05 Votes to Govern**

At all meetings of the board, every question shall be decided by a majority of the votes cast on the question. The chair of the meeting shall not exercise a vote except in the case of an equality of votes either on a show of hands or on a ballot or on the results of electronic voting.

## **SECTION 7 – OFFICERS**

### **7.01 Appointment**

The board may designate the offices of the Corporation, appoint officers on an annual or more frequent basis, specify their duties and, subject to the Act, delegate to such officers the power to manage the affairs of the Corporation. A director may be appointed to any office of the Corporation. An officer may, but need not be, a director unless these by-laws otherwise provide. Two or more offices may be held by the same person.

### **7.02 Description of Offices**

Unless otherwise specified by the board (which may, subject to the Act modify, restrict or supplement such duties and powers), the offices of the Corporation, if designated and if officers are appointed, shall have the following duties and powers associated with their positions:

- (a) Chair of the Board – The chair of the board, if one is to be appointed, shall be a director. The chair of the board, if any, shall, when present, preside at all meetings of the board and of the members. The chair shall have such other duties and powers as the board may specify.

- (b) Vice-Chair of the Board – The vice-chair of the board, if one is to be appointed, shall be a director. If the chair of the board is absent or is unable or refuses to act, the vice-chair of the board, if any, shall, when present, preside at all meetings of the board and of the members. The vice-chair shall have such other duties and powers as the board may specify.
- (c) President – If appointed, the president shall be the chief executive officer of the Corporation and shall be responsible for implementing the strategic plans and policies of the Corporation. The president shall, subject to the authority of the board, have general supervision of the affairs of the Corporation.
- (d) Vice-President – If appointed, the vice-president may, if the president is absent or unable or refuses to act, exercise all the powers and perform all the duties of the president during such absence or inability or refusal to act. The vice-president shall have such other duties and powers as the board or the president may specify.
- (e) Secretary – If appointed, the secretary shall attend and be the secretary of all meetings of the board, members and committees of the board. The secretary shall enter or cause to be entered in the Corporation's minute book, minutes of all proceedings at such meetings; the secretary shall give, or cause to be given, as and when instructed, notices to members, directors, the public accountant and members of committees; the secretary, or such other officer or employee as designated by the secretary, shall be the custodian of all books, papers, records, documents and other instruments belonging to the Corporation.
- (f) Treasurer – If appointed, the treasurer shall keep, or cause to be kept, proper accounting records as required by the Act. The treasurer shall deposit, or cause to be deposited, all monies received by the Corporation in the Corporation's bank account; the treasurer shall, under the direction of the board, supervise the safekeeping of securities and the disbursement of the funds of the Corporation; the treasurer shall render to the board, whenever required, an account of all his transactions as treasurer and of the financial position of the Corporation; and the treasurer shall perform such other duties as may from time to time be prescribed by the board.

The powers and duties of all other officers of the Corporation shall be such as the terms of their engagement call for or the board or president requires of them. The board may from time to time and subject to the Act, vary, add to or limit the powers and duties of any officer. In the event that any of the officers above are not appointed, to the extent that such officers have any responsibilities pursuant to any other provisions of this by-law, the board may assign those responsibilities to another officer or employee of the Corporation.

### **7.03 Vacancy in Office**

In the absence of a written agreement to the contrary, the board may remove, whether for cause or without cause, any officer of the Corporation. Unless so removed, an officer shall hold office until the earlier of:

- (a) the officer's successor being appointed;
- (b) the officer's resignation;
- (c) such officer ceasing to be a director (if a necessary qualification of appointment);  
or
- (d) such officer's death.

If the office of any officer of the Corporation shall be or become vacant, the directors may, by resolution, appoint a person to fill such vacancy.

## **SECTION 8 – COMMITTEES**

### **8.01 Committees**

The board may from time to time establish any committee or other advisory body, as it deems necessary or appropriate for such purposes and, subject to the Act, with such powers as the board shall see fit, or terminate any committee or other advisory body, as it deems necessary or appropriate. The size, composition, structure and election process for members of any such committee shall be established by the board. Any such committee shall operate within the rules and directions as the board may from time to time make. Any committee member may be removed by resolution of the board.

## **SECTION 9 – NOTICES**

### **9.01 Method of Giving Notices**

Any notice (which term includes any communication or document), other than notice of a meeting of members, to be given (which term includes sent, delivered or served) pursuant to the Act, the articles, the by-laws or otherwise to a member, director, officer or member of a committee of the board or to the public accountant shall be sufficiently given:

- (a) if delivered personally to the person to whom it is to be given or if delivered to such person's address as shown in the records of the Corporation or, in the case of notice to a director, if delivered to the director's latest address as shown in the records of the Corporation or in the last notice that was sent by the Corporation in accordance with section 128 (Notice of directors) or 134 (Notice of change of directors) and received by the Director appointed under the Act to administer the Act;

- (b) if mailed by prepaid ordinary or air mail to such person at such person's recorded address, or in the case of notice to a director to the latest address as shown in the records of the Corporation or in the last notice that was sent by the Corporation in accordance with section 128 (Notice of directors) or 134 (Notice of change of directors) and received by the Director appointed under the Act to administer the Act;
- (c) if sent to such person by telephonic, electronic or other communication facility at such person's recorded address for that purpose; or
- (d) if provided in the form of an electronic document in accordance with Part 17 of the Act.

A notice so delivered shall be deemed to have been given when it is delivered personally or to the recorded address as aforesaid; a notice so mailed shall be deemed to have been given when deposited in a post office or public letter box; and a notice so sent by any means of transmitted or recorded communication shall be deemed to have been given when dispatched or delivered to the appropriate communication company or agency or its representative for dispatch. The secretary may change or cause to be changed the recorded address of any member, director, officer, public accountant or member of a committee of the board in accordance with any information believed by the secretary to be reliable. The declaration by the secretary that notice has been given pursuant to this by-law shall be sufficient and conclusive evidence of the giving of such notice. The signature of any director or officer of the Corporation to any notice or other document to be given by the Corporation may be written, stamped, type-written or printed or partly written, stamped, type-written or printed.

## **9.02 Omissions and Errors**

The accidental omission to give any notice to any member, director, officer, member of a committee of the board or public accountant, or the non-receipt of any notice by any such person where the Corporation has provided notice in accordance with the by-law or any error in any notice not affecting its substance shall not invalidate any action taken at any meeting to which the notice pertained or otherwise founded on such notice.

## **SECTION 10 – ELECTRONIC MEETINGS**

### **10.01 Participation by Electronic Means**

If the Corporation makes available a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during a member or director meeting, any person entitled to attend such meeting may participate in the meeting by means of such telephonic, electronic or other communication facility in the manner provided by the Act. A person participating in a meeting by such means is deemed to be present at the meeting.

Notwithstanding any other provision of this by-law, any person participating in a meeting pursuant to this section who is entitled to vote at that meeting may vote, in accordance with the

Act, by means of any telephonic, electronic or other communication facility that the Corporation has made available for that purpose.

#### **10.02 Meeting Held Entirely by Electronic Means**

If the directors or members of the Corporation call a meeting pursuant to the Act, those directors or members, as the case may be, may determine that the meeting shall be held, in accordance with the Act and the Regulations, entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting.

### **SECTION 11 – INDEMNITIES TO DIRECTORS AND OTHERS**

#### **11.01 Indemnification**

Subject to the Act, the Corporation shall indemnify a director or officer, a former director or officer, or a person who acts or acted at the Corporation's request as a director or an officer or in a similar capacity of another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the Corporation or other entity, if such individual (a) acted honestly and in good faith with a view to the best interests of the Corporation or, as the case may be, to the best interests of the other entity for which the individual acted as director or officer or in a similar capacity at the Corporation's request; and (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that such conduct was lawful. The Corporation shall also indemnify such person in such other circumstances as the Act or law permits or requires. Nothing in this by-law shall limit the right of any person entitled to indemnity to claim indemnity apart from the provisions of this by-law.

### **SECTION 12 – DISPUTE RESOLUTION**

#### **12.01 Dispute Resolution Mechanism**

If a dispute or controversy among members, directors, officers or committee members of the Corporation arising out of or related to the articles or by-laws, or out of any aspect of the activities or affairs of the Corporation is not resolved in private meetings between the parties, then such dispute or controversy shall be settled by a process of dispute resolution as follows to the exclusion of such persons instituting a lawsuit or legal action:

- (a) the dispute shall be settled by arbitration before a single arbitrator, in accordance with the *Arbitration Act, 1991* (Ontario) or as otherwise agreed upon by the parties to the dispute. All proceedings relating to arbitration shall be kept confidential, and there shall be no disclosure of any kind. The decision of the arbitrator shall be final and binding and shall not be subject to appeal on a question of fact, law or mixed fact and law; and

## 12.01 Dispute Resolution Mechanism

If a dispute or controversy among members, directors, officers or committee members of the Corporation arising out of or related to the articles or by-laws, or out of any aspect of the activities or affairs of the Corporation is not resolved in private meetings between the parties, then such dispute or controversy shall be settled by a process of dispute resolution as follows to the exclusion of such persons instituting a lawsuit or legal action:

(c) the dispute shall be settled by arbitration before a single arbitrator, in accordance with the *Arbitration Act, 1991* (Ontario) or as otherwise agreed upon by the parties to the dispute. All proceedings relating to arbitration shall be kept confidential, and there shall be no disclosure of any kind. The decision of the arbitrator shall be final and binding and shall not be subject to appeal on a question of fact, law or mixed fact and law; and

(d) all costs of the arbitrator shall be borne by such parties as may be determined by the arbitrator.

## SECTION 13 – BY-LAWS AND AMENDMENTS

### 13.01 By-laws and Amendments

The board may not make, amend or repeal any by-laws that regulate the activities or affairs of the Corporation without having the by-law, amendment or repeal confirmed by the members by ordinary resolution. The by-law, amendment or repeal is only effective on the confirmation of the members and in the form in which it was confirmed.

This section does not apply to a by-law that requires a special resolution of the members according to subsection 197(1) (Fundamental Changes) of the Act.

### 13.02 Invalidity of any provisions of this by-law

The invalidity or unenforceability of any provision of this by-law shall not affect the validity or enforceability of the remaining provisions of this by-law.

CERTIFIED to be By-Law No. 1 of the Corporation, as enacted by the directors of the Corporation by resolution on the 19<sup>th</sup> day of October, 2018 and confirmed by the members of the Corporation by ordinary resolution on the 19<sup>th</sup> day of October, 2018.

DATED as of the 19<sup>th</sup> day of October, 2018.

  
MICHELLE DOUGLAS,

Director and Chair of the Board

\_\_\_\_\_  
TODD ROSS,

Director and Vice-Chair of the Board

- (c) all costs of the arbitrator shall be borne by such parties as may be determined by the arbitrator.

**SECTION 13 – BY-LAWS AND AMENDMENTS**

**13.01 By-laws and Amendments**

The board may not make, amend or repeal any by-laws that regulate the activities or affairs of the Corporation without having the by-law, amendment or repeal confirmed by the members by ordinary resolution. The by-law, amendment or repeal is only effective on the confirmation of the members and in the form in which it was confirmed.

This section does not apply to a by-law that requires a special resolution of the members according to subsection 197(1) (Fundamental Changes) of the Act.


**13.02 Invalidity of any provisions of this by-law**

The invalidity or unenforceability of any provision of this by-law shall not affect the validity or enforceability of the remaining provisions of this by-law.

**CERTIFIED** to be By-Law No. 1 of the Corporation, as enacted by the directors of the Corporation by resolution on the 19<sup>th</sup> day of October, 2018 and confirmed by the members of the Corporation by ordinary resolution on the 19<sup>th</sup> day of October, 2018.

**DATED** as of the 19<sup>th</sup> day of October, 2018.

\_\_\_\_\_  
**MICHELLE DOUGLAS,**  
Director and Chair of the Board

  
\_\_\_\_\_  
**TODD ROSS,**  
Director and Vice-Chair of the Board

# **ANNEX C**

## JOINDER AGREEMENT

**THIS JOINDER AGREEMENT** is executed on February 1, 2019.

### WHEREAS:

- A. Her Majesty the Queen in right of Canada, Todd Edward Ross, Martine Roy, and Alida Satalic (collectively, the "Original Parties to the FSA") entered into a Final Settlement Agreement dated March 28, 2018; which later incorporated and now includes a Supplementary Agreement ("SA") dated June 15, 2018; and a Second Supplementary Agreement ("SSA") to be executed January 23, 2019 (collectively, the "FSA");
- B. The Original Parties to the FSA identified a federal not-for-profit corporation incorporated by the RMM non-governmental Panel Members under the *Canada Not-for-profit Corporations Act* ("CNCA") as the most appropriate legal entity to receive, hold, invest and disburse the RMM Fund for the purpose of giving effect to the intentions of the Original Parties to the **FSA**;
- C. The LGBT Purge Fund/Le Fonds Purge LGBT (the "LGBT Purge Fund" or "Corporation") was incorporated under the CNCA on October 19, 2018;
- D. The LGBT Purge Fund desires to become a party to the **FSA**;
- E. The Original Parties to the FSA have, by section 22.04 of the **FSA**, agreed to this Joinder Agreement, subject to the condition that the LGBT Purge Fund execute this Joinder Agreement.

**NOW THEREFORE**, in consideration of the mutual agreements, covenants and undertakings set out in this agreement, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agrees as follows:

1. **JOINDER.** The LGBT Purge Fund is hereby made a party to the **FSA**, and agrees to be bound by, and shall comply with, the terms thereof. From the date hereof, the LGBT Purge Fund shall be a party to the **FSA** and shall be subject to all of the obligations provided therein.

2. **ACKNOWLEDGMENT.** The LGBT Purge Fund hereby acknowledges that it has received and reviewed a copy of the **FSA** and fully agrees with and will comply with its terms and conditions.
3. **REAFFIRMATION.** The terms and conditions of the **FSA** remain in full force and effect in all respects.

IN WITNESS WHEREOF, the undersigned has executed this agreement.

**LGBT Purge Fund**

  
Per:

**Name: R. Douglas Elliott**

**Title: Director, LGBT Purge Fund**

**I/We have authority to bind the Corporation.**

# **ANNEX D**

# **Investment Policy Statement**

## **LGBT Purge Fund**

Adopted: February 1, 2019

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## 1 GENERAL

### 1.1 Purpose

This Investment Policy Statement ("IPS") applies to the assets held by the LGBTQ Purge Fund (the "Fund"). The purpose of this Investment Policy Statement ("the Statement") is to outline the procedures and policies to effectively manage and monitor these investment assets. The assets will be managed in accordance with all applicable legal requirements.

Any investment manager ("the Manager") or any other agent or advisor providing services in connection with the Fund shall accept and adhere to this Statement.

### 1.2 Background

The Fund is a Canadian, federally incorporated not-for-profit created under the Not-for-Profit Corporations Act and subject to the *Trustee Act*, and the *Income Tax Act* as amended from time to time. The Fund is exempt from income taxes as provided under the *Income Tax Act*.

The fiscal year end of the Fund is December 31<sup>st</sup>.

The Fund's objective is to apply all of the principal and income therein to memorialization, reconciliation and public education regarding the Canadian government's discriminatory actions towards thousands of LGBTQ federal workers (Royal Canadian Mounted Police, Canadian Armed Forces and federal public servants) over multiple decades. The court-approved Final Settlement Agreement relating to the "LGBTQ Purge" and the court-approved supplemental agreements thereto set out details of the Fund, its projects and its operations.

## 2 RESPONSIBILITIES

### 2.1 Board of Directors

The Board of Directors ("Board") of the Fund has ultimate responsibility and decision-making authority for the portfolio assets. It is expected that Board members are willing and able to devote the necessary time and resources to serving the Fund.

The Board may delegate some or all of its responsibilities with respect to the investment of the Fund to an investment manager (the "Manager").

The Board will have an active role to:

- maintain an understanding of legal and regulatory requirements and constraints applicable to the Fund;



- on an annual basis, review the Fund's Statement of Investment Policies and make appropriate revisions;
- Select, engage or dismiss professional investment managers and advisors;
- formulate revisions regarding the Manager's mandate;
- oversee the Fund and the activities of the Manager, including the Manager's compliance with their mandates, the investment performance of assets managed by the Manager and the performance of the Fund as a whole;
- ensure that the Manager is apprised of any amendments to their mandate; and
- inform the Manager of any significant cash flows.

## **2.2 Investment Managers**

The Investment Manager is responsible for:

- Selecting securities within the asset classes assigned to them, subject to applicable legislation and the constraints set out in this Statement;
- Providing the Board with quarterly reports of portfolio holdings and a review of investment performance and future strategy;
- Attending Board meetings, or otherwise make a written report to the Board, at least once per year to review performance and to discuss proposed investment strategies;
- Informing the Board promptly of any investments which fall outside the investment constraints contained in this Statement and what actions will be taken to remedy this situation; and
- Advising the Board of any elements of this Statement that could prevent attainment of the Fund's objectives.

# **3 PORTFOLIO OBJECTIVES**

## **3.1 Investment Objectives**

The overall investment objectives, in their order of priority, of the portfolio are to:

- preserve invested capital
- maintain liquidity necessary to meet cash requirements
- outperform the Fund's denoted benchmark after fees



### **3.2 Cash Requirements and Liquidity**

The Fund is expected to have varying liquidity needs over a five year period, at which point all Fund assets are expected to be liquidated. In accordance to the varying liquidity constraints, Fund investments will be divided into three sub groups: Short Term, Medium Term and Long Term investments.

### **3.3 Time Horizon**

The Fund is expected to have a multi-stage time horizon based on the varying liquidity need highlighted above. The entirety of the Fund is expected to be liquidated over a 5 year time horizon.

- Assets earmarked for cash outflows within a one year period are considered Short Term and will be invested in cash and cash equivalent investments including GICs (Guaranteed Investment Certificates) and money market pooled funds.
- Assets earmarked for cash outflows within a one to three year time horizon are considered Medium Term and will be invested in a combination of pooled money market funds and pooled short-term fixed income funds.
- Assets earmarked for cash outflows within three to five years are considered Long Term and will be primarily invested in a combination of pooled short and medium term fixed income investments. At the Manager's discretion, pending equity market conditions, and following consultations with the Board, up to 20% of Long Term assets may be invested in low volatility equity strategies to enhance real capital preservation for the Long Term assets.

## **4 AUTHORIZED INVESTMENTS**

Outlined below are the general investment criteria as understood by the Board.

### **4.1 List of Permitted Investments**

#### **(a) Short-term instruments:**

- Cash;
- Demand or term deposits;
- Short-term notes;
- Treasury bills;
- Bankers acceptances;
- Commercial paper; and
- Investment certificates issues by banks, insurance companies and trust companies.



(b) Fixed income instruments:

- Bonds;
- Debentures (convertible and non-convertible); and
- Conventional income-producing mortgages (via pooled vehicles only).

(c) Equities:

- Low volatility Canadian equities
- Low volatility global equities

**4.2 Derivatives**

The manager may use derivatives, such as swaps, options, futures and forward contracts, for hedging purposes, to protect against losses from changes in interest rates and market indices; and for non-hedging purposes, as a substitute for direct investment. The Manager must hold enough assets or cash to cover its commitments under the derivatives. The Fund cannot use derivatives for speculative trading or to create a portfolio with any leverage.

**4.3 Pooled Funds**

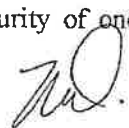
With the approval of the Board, the Manager may hold any part of the portfolio in one or more pooled or co-mingled funds managed by the Manager, provided that such pooled funds are expected to be operated within constraints reasonably similar to those described in this mandate. It is recognized by the Board that complete adherence to this Statement may not be entirely possible; however, the Manager is expected to advise the Board in the event that the pooled fund exhibits, or may exhibit, any significant departure from this Statement.

## **5 RISK GUIDELINES**

*All allocations are based on market values. All ratings are at time of purchase. All debt ratings refer to the ratings of Dominion Bond Rating Service (DBRS), Standard & Poors' or Moody's and are at time of purchase.*

**5.1 Cash & Equivalents**

- Cash and cash equivalents such as money market to have ratings of at least R1, using the rating of the Dominion Bond rating Service ("DBRS") or equivalent.
- Bank deposits and Guaranteed Investment Certificates to have maturity of one year or less.



## 5.2 Fixed Income

- Exposure to bonds rated BBB is limited to 25% of the Fund.
- Exposure to sub-investment grade bonds (bonds rated BB and below) is not permitted.
- Exposure to conventional mortgages is limited to 35% of the Fund.
- No single issuer, other than federal or provincial governments and their affiliated agencies shall represent more than 5% of the market value of the Fund.

## 5.3 Equities

- Total equity exposure is limited to the lesser of:
  - 20% of Long Term funds, OR
  - 10% of the total Fund
- Exposure to Emerging Markets equities is not permitted.
- Equities exposure should be limited to low volatility strategies

# 6 PERFORMANCE EXPECTATIONS FOR FUND

Return objectives include realized and unrealized capital gains or losses plus income from all sources. Returns will be measured quarterly, and calculated as time-weighted rates of return.

In addition to fulfilling the Fund's liquidity and capital preservation objectives as dictated by cash outlays provided by the Fund to the Manager, the Manager is evaluated relative to the benchmark for each strategy under its management. The performance of the active Manager is reviewed annually.



## **7 REPORTING & MONITORING**

### **7.1 Investment Reports**

Each quarter, the Manager will provide a written investment report containing the following information:

- Portfolio holdings at the end of the quarter;
- Portfolio transactions during the quarter;
- Rates of return for the portfolio with comparisons with relevant indexes or benchmarks; and
- Compliance Report.

### **7.2 Monitoring**

At the discretion of the Board as required, the Manager will meet with the Board regarding:

- the rate of return achieved by the Manager;
- the Manager's outlook for the markets and corresponding strategies; and
- other issues as requested.

### **7.3 Annual Review**

It is the intention of the Fund to ensure that this Statement is continually appropriate to the Fund's needs and responsive to changing economic and investment conditions. Therefore, the Board shall review the Investment Policy Statement annually.



## 8 CONFLICT OF INTEREST

All fiduciaries shall disclose the particulars of any actual or potential conflicts of interest with respect to the Fund. This shall be done promptly in writing to the Chair of the Board of Directors of the Fund. The Chair will, in turn, table the matter at the next Board meeting. It is expected that no fiduciary shall incur any personal gain either directly or indirectly because of their fiduciary position. This excludes normal fees and expenses incurred in fulfilling their responsibilities if documented and approved by the Board.

## 9 STANDARD OF CARE

The Manager will manage the assets with the care, diligence and skill that an investment Manager of ordinary prudence would use in dealing with all clients. The Manager will also use all relevant knowledge and skill that it possesses or ought to possess as a prudent Investment Manager.


The Manager will manage the assets in accordance with this Statement and will verify compliance with this Statement when making any recommendations with respect to changes in investment strategy or investment of assets.

The Manager will, at least once annually, provide a letter to the Board confirming the Manager's familiarity with this Statement. The Manager will, from time to time, recommend changes to the IPS to ensure that the IPS remains relevant and reflective of the Fund's investment objectives over time.

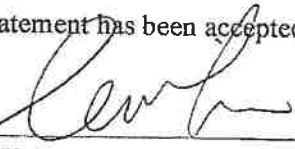


## 10 ACKNOWLEDGEMENT

This Statement has been approved by the undersigned on behalf of the Board:

Accounts:	
Michelle Douglas,	
Chair, Board of Directors, LGBT Purge Fund	
Name	
	February 1, 2019
Signature	Date
Authorized signatory for accounts above.	

This Statement has been accepted by the undersigned on behalf of RBC PH&N Investment Counsel:

  
Signature

Leila Fiozzi  
Name

Vice President & Investment Counsellor  
Title

February 1, 2019  
Date Approved