

Federal Court



Cour fédérale

Date: 20220107

Docket: T-370-17

Ottawa, Ontario, January 7, 2022

PRESENT: Madam Justice St-Louis

BETWEEN:

TODD EDWARD ROSS, MARTINE ROY AND ALIDA SATALIC

Plaintiffs

and

HER MAJESTY THE QUEEN

Respondent

ORDER

UPON MOTION by Plaintiffs, Martine Roy, Alida Satalic and Todd Edward Ross, and the LGBT Purge Fund, made this day at the courthouse located at Thomas D'Arcy McGee Building, 90 Sparks Street, 5th floor, Ottawa, Ontario, K1A 0H9;

UPON READING the Notices of Motion, and Affidavits of Michelle Douglas, and Todd Ross;

UPON BEING INFORMED that the LGBT Purge Fund is withdrawing its motion for declaratory relief with respect to section 5.02(a) of the Final Settlement Agreement without

prejudice to its right to bring this issue forward in future and without agreeing with the positions taken by Her Majesty the Queen on this point; and,

UPON HEARING the submissions of Counsel;

1. **THIS COURT ORDERS THAT** the Third Supplementary Agreement dated November 8, 2021, a copy of which is attached as Annex “A” to this Order, between the Representative Plaintiffs, the LGBT Purge Fund, and Her Majesty the Queen is hereby approved;
2. **THIS COURT FURTHER ORDERS THAT** the administration of the Individual Compensation Claims Process, and the implementation of the Individual Reconciliation Measures, under the Final Settlement Agreement (“**FSA**”), Supplementary Agreement (“**SA**”), and Second Supplementary Agreement (“**SSA**”) (collectively, the “**Settlement Agreements**”), and as approved by the Court, are completed and all further obligations thereunder are terminated;
3. **THIS COURT FURTHER ORDERS THAT** the report of the Administrator/Monitor, Deloitte LLP (“**Deloitte**”), is received and approved, and Deloitte is hereby discharged of its duties under the **FSA and SA**;
4. **THIS COURT FURTHER ORDERS THAT** the report of the Claims Assessor, the Honourable Justice Marie Deschamps C.C., Ad.e, (“**Justice Deschamps**”) is received and approved, and Justice Deschamps is hereby discharged of her duties under the Settlement Agreements;

5. **THIS COURT FURTHER ORDERS THAT** Dr. Alain Brunet is hereby discharged of his duties under the Settlement Agreements;
6. **THIS COURT FURTHER ORDERS THAT** the duties of Cambridge LLP, Koskie Minsky, McKiggan Hebert and IMK Advocates (collectively, “**Class Counsel**”) as Class Counsel are hereby suspended in respect of this Action and its settlement and the administration thereof and no further duties or obligations are owed to the Class Members in respect of this Action and its settlement and the administration thereof;
7. **THIS COURT FURTHER ORDERS THAT** Class Counsel will be automatically discharged as Class Counsel upon the dissolution of the LGBT Purge Fund unless this Court orders otherwise;
8. **THIS COURT FURTHER ORDERS THAT** the duties of Representative Plaintiffs Todd Ross, Martine Roy, and Alida Satalic, are hereby suspended and they owe no further duties or obligations to the Class Members in respect of this Action or the Settlement Agreements;
9. **THIS COURT FURTHER ORDERS THAT** the Representative Plaintiffs will be automatically discharged as Representative Plaintiffs upon the dissolution of the LGBT Purge Fund unless this Court orders otherwise;
10. **THIS COURT FURTHER ORDERS THAT** Class Counsel and the Representative Plaintiffs (through their Counsel) will continue to be served with materials in this action, notwithstanding the suspension of their duties;

11. There shall be no order as to costs;

"Martine St-Louis"

Judge

THIRD SUPPLEMENTARY AGREEMENT

WHEREAS:

- A. Canada and the Plaintiffs entered into a Final Settlement Agreement (“FSA”) dated March 28, 2018, a Supplementary Agreement (“SA”) dated June 15, 2018, which was approved by the Federal Court on June 22, 2018;
- B. Canada and the Plaintiffs entered into a Second Supplementary Agreement (“SSA”) dated January 31, 2019, which was approved by the Federal Court on March 5, 2019;
- C. The Second Supplementary Agreement terminated the role of the Reconciliation and Memorialization Measures Panel and assigned its responsibilities to the LGBT Purge Fund, which is a non-profit corporation incorporated under the *Canada Not for Profit Corporations Act* (“CNCA”) on October 19, 2018;
- D. By section 22.03 of the SSA, the LGBT Purge Fund was granted standing in this proceeding to seek directions of the Court with respect to the FSA, the SA and the SSA or the activities of the LGBT Purge Fund pursuant to those agreements, and by section 22.04 of the SSA, was made a party to the FSA, SA and SSA upon execution of the Joinder Agreement which made it subject to all of the obligations provided therein;
- E. The LGBT Purge Fund has requested, and Canada and the Plaintiffs, by their counsel, have agreed, to amend certain portions of the FSA and the SSA to ensure that the LGBT Purge Fund can continue to meet its obligations under the agreements, and;

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

SECTION TWENTY EIGHT

WINDING UP DATE

28.01 Amendment to Winding up Date of the LGBT Purge Fund [FSA 5.02(b)]

The Parties agree to amend the third paragraph of s. 5.02(b) of the FSA to read as follows (amendments underlined):

All monies allocated to RMM, including investment income under this FSA shall be exhausted and the LGBT Purge Fund shall be wound up by June 30, 2027. This deadline may be extended on the written consent of the Parties.

SECTION TWENTY-NINE INVESTMENTS

29.01 Amendment to Restrictions on Investment of RMM Funds [SSA, Annex D, ss. 3.and. 5.1]

The Parties agree to amend s. 3.3 and the second bullet of s. 5.1 of Annex D to the SSA (“Investment Policy Directive”), is amended as follows (amendments underlined):

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 7 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 GICs, 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 GICs, 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.

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 four years or less, but in no case shall the GICs have a term ending later than January 1, 2027 without the written consent of the Parties.

SECTION THIRTY GENERAL

30.01 Entire FSA

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

IN WITNESS WHEREOF the Parties have executed this Third Supplementary Agreement.

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

Signed at Toronto Ontario this 29th day of October, 2021

« Christine Mohr »
BY: _____
ATTORNEY GENERAL OF CANADA
For the Defendant

Signed at Halifax, Nova Scotia, this 29th day of October, 2021.

« Angela Green »
BY: _____
ATTORNEY GENERAL OF CANADA

For the Defendant

THE PLAINTIFFS, as represented by Class Counsel:

Signed at Elliot Lake, Ontario this 8th day of November, 2021

« Celeste Poltak »

BY:

KOSKIE MINSKY LLP

For the Plaintiffs

Signed at Elliot Lake, Ontario this 8th day of November, 2021

« R. Douglas Elliott »

BY:

CAMBRIDGE LLP

For the Plaintiffs

Signed at Montreal, Quebec this 8th day of November, 2021.

« IMK LLP »

BY:

IMK LLP

For the Plaintiffs

Signed at Elliot Lake, Ontario this 8th day of November, 2021

« John McKiggan per RE »

BY:

MCKIGGAN HEBERT LLP

For the Plaintiffs

THE LGBT Purge Fund, as represented by their Counsel:

Signed at Toronto Ontario this 8th day of November, 2021.

« H. Scott Fairley »

BY:

CAMBRIDGE LLP

For the LGBT Purge Fund