

*File*



|         |                                      |                    |
|---------|--------------------------------------|--------------------|
| TO      | Mr. C.L. Dodge, City Engineer        | 1. FOLLOW UP       |
| FROM    | R. B. Grant, Director of Development | 2. FOLLOW UP       |
| DATE    | October 10, 1967                     | 3. FOLLOW UP       |
| SUBJECT | Expropriation - Africville Area      | 4. COMPLETION DATE |

The City has completed negotiations for all of the Africville properties except one or two and in these cases negotiated settlements cannot be achieved. A recommendation has, therefore, gone forward to authorize expropriation of all of the Africville properties. The purpose of this expropriation is to obtain title to the two properties yet to be settled and also to wipe any cloud on the title to the properties already acquired. The City could only accept Quit Claim Deeds and this is not a satisfactory form of title.

*TFB-19951*

I am enclosing a copy of Plan 500-46 on which has been superimposed the apparent boundaries of the individual properties. These boundaries are, of course, only approximate but they give an indication of the area. I feel that when we expropriate, we should do so in a manner so as to clarify all problems of title in the area.

As you can see, there are four general areas which constitute the Africville area. These are:

1. An area outlined in yellow which was expropriated from the Halifax Relief Commission in the mid-1950's. There is no need to re-expropriate this area as the interests of the Africville residents within this area were eliminated prior to negotiated settlements.
2. An area bounded by green between the two sets of tracks. In this area, the Africville properties overlapped C. N. R. lands. In addition, we do not know the ownership of the lands at the northeast extremity of the area.

We should prepare an expropriation plan covering the area between the two rights-of-way. This expropriation plan should be extended in a northeasterly direction to the point where definite title can be established.

0001 1178

October 10, 1967

3. An area bounded in blue between the C. N. R. right-of-way and Bedford Basin. These properties infringe on the C. N. R. right-of-way to some extent but again we cannot expropriate against the C. N. R.

We should, however, prepare an expropriation plan covering all of the lands in this area which are not known to have proper legal ownership. We know the eastern boundaries and the western boundaries but a careful study will have to be made to make sure that the expropriation plan is extended sufficiently far in a northeasterly and southwesterly direction to guard against future title difficulties.

4. An area bounded in black to the southeast of the C. N. R. tracks. The expropriation plan for this area should cover a sufficiently large area to ensure that the lands acquired by the City extend to lands in legal ownership of known persons or organizations. This again will require examination of existing records.

We would like to finish the Africville relocation programme as soon as possible. I would appreciate, therefore, if you could arrange for the preparation of the three expropriation plans required as soon as possible. If any queries arise from this memorandum, please let me know and we will attempt to resolve them.



R. B. Grant  
Director of Development

RBG/meb  
Attachment

c.c. Mr. D. Murphy

0001 1179

February 27, 1968

Description of Lands to be Expropriated at  
Africville by the City of Halifax

All these certain lots, pieces or parcels of land and land covered by water in the northern portion of the City of Halifax at Africville being Lots 'A', 'B', 'C' and 'D', as shown hereinafter on a plan entitled "Expropriation Plan of Certain Lands <sup>BY WATER</sup> Required by the City of Halifax for Redevelopment Purposes", dated February 14, 1968 and being on file in the office of the Development Officer of the City of Halifax at City Hall as Plan ~~ST-8-17186~~, the said lands being more particularly described as follows:

Lot 'A'

Beginning at the point where the southwestern official street line of Robie Street is intersected by the western boundary line of the Canadian Government Railway's Willow Park Branch and the southeastern boundary line of other land now or formerly owned by the City of Halifax;

Thence southwestwardly along the said southeastern boundary line of other land now or formerly owned by the City of Halifax for a distance of five hundred and fifty feet and forty-seven hundredths of a foot (550.47') to the southwestern boundary line of said other land now or formerly owned by the City of Halifax;

Thence northwestwardly along the said southwestern boundary line of other land now or formerly owned by the City of Halifax for a distance of one hundred and ninety-five feet (195') to the southern boundary line of the Canadian Government Railway's Deep Water Branch, Bedford Subdivision;

Thence southwestwardly along the said Canadian Government Railway's southern boundary line for a distance of one hundred and ninety-one feet more or less (191'-<sup>2</sup>) to the eastern boundary line of other lands now or formerly owned by the City of Halifax;

Thence southerly along the said eastern boundary line of other lands now or formerly owned by the City of Halifax for a distance of one thousand four hundred and eighty-four feet (1,484'-<sup>2</sup>) to the official north eastern street line of Mackintosh Street.

0001 1191

Thence southeastwardly along the said north eastern official street line of Macintosh Street for a distance of fourteen feet more or less (14' $\frac{1}{2}$ ) to the north western official street line of Forrester Street.

Thence northeastwardly along the said north western official street line of Forrester Street for a distance of three hundred fifty-eight and two tenths of a foot (358.2') to the north eastern boundary line of lands now or formerly of the Macintosh Subdivision.

Thence southeastwardly along the said north eastern boundary line of land now or formerly of Macintosh Subdivision for a distance of three hundred and fifty feet more or less (350' $\frac{1}{2}$ ) to the north western boundary line of lands now or formerly owned by Standard Paving Maritime Limited;

Thence northwardly along the said northwestern boundary line of lands now or formerly owned by Standard Paving Maritime Limited for a distance of nine hundred and forty-one feet more or less (941' $\frac{1}{2}$ ) to the northwestern boundary line of lands now or formerly owned by Canadian Government Railway's, Willow Park Branch;

Thence northwardly along the various courses of the said north western boundary line of lands now or formerly owned by Canadian Government Railway's, Willow Park Branch for a distance of nine hundred and twenty-nine feet and five tenths of a foot more or less (929.5' $\frac{1}{2}$ ) to the place of beginning.

Lot 'B'

Beginning at the point where the southwestern official street line of Robie Street is intersected by the western boundary line of the Canadian Government Railway's, Willow Park Branch and the northeastern boundary line of lands now or formerly owned by the City of Halifax;

Thence northwestwardly along the said northeastern boundary line of lands now or formerly owned by the City of Halifax for a distance of four hundred and eighty feet (480') to the southeastern boundary line of lands now or formerly owned by Canadian Government Railway's, Deep Water Branch Subdivision;

Thence northeastwardly along the various courses of the said southeastern boundary line of lands now or formerly owned by Canadian Government Railway's Deep Water Branch for a distance of one thousand, four hundred and twenty-two feet (1,422') to the northeastern official street line of Göttingen Street;

Thence southeastwardly along the said northeastern official street line of Göttingen Street for a distance of one hundred and thirty-eight feet (138') to the northwestern boundary line of lands now or formerly owned by Canadian Government Railway's, Willow Park Branch;

Thence southwestwardly along the various courses of the said northwestern boundary line of lands now or formerly owned by Canadian Government Railway's Willow Park Branch for a distance of one thousand, five hundred and thirteen feet more or less (1,513' $\frac{1}{2}$ ) to the place of beginning.

0001 1192

Lot 'G'

Beginning at the point where the northeastern official street line of Göttingen Street is intersected by the southeastern boundary line of lands now or formerly owned by Canadian Government Railway's Willow Park Branch;

Thence southwestwardly along the various courses of the said southeastern boundary line of lands now or formerly owned by Canadian Government Railway's, Willow Park Branch for a distance of five hundred and forty-nine feet (549') to the northeastern boundary line of 1<sup>st</sup> now or formerly owned by the City of Halifax;

Thence southeastwardly along the said northeastern boundary line of said lands now or formerly owned by the City of Halifax for a distance of one hundred and eleven feet (111') to the northwestern boundary line of said lands now or formerly owned by the City of Halifax;

Thence northwardly along the northwestern boundary line of said lands now or formerly owned by the City of Halifax for a distance of five hundred and seventy-eight feet (578') to the said northeastern official street line of Göttingen Street;

Thence northwestwardly along the northeastern official street line of Göttingen Street for a distance of one hundred and seventeen feet (117') to the place of beginning.

Lot 'R'

Beginning at the point where the southern boundary line of lands now or formerly owned by Nova Scotia Co-operative Abattoir Limited is intersected by the western boundary line of lands now or formerly owned by Canadian Government Railway's Deep Water Branch, Bedford Subdivision;

Thence southwestwardly along the said western boundary line of lands now or formerly owned by Canadian Government Railway's Deep Water Branch for a distance of three hundred and seventy-six feet and nine tenths of a foot (376.9') to the eastern boundary line of lands now or formerly owned by Fairview Development Limited;

Thence northwestwardly along the northeastern boundary line of lands now or formerly owned by Fairview Development Limited for a distance of eighty-four feet and one tenth of a foot (84.1') to the eastern boundary line of lands now or formerly owned by the National Harbours Board;

Thence northwardly along the eastern boundary line of lands now or formerly owned by the National Harbours Board for a distance of seven hundred and eighty feet more or less (780'±);

Thence northwestwardly along the northeastern boundary line of lands, and lands covered by water now or formerly owned by the National Harbours Board for a distance of two hundred feet more or less (200'±);

0001 1193

Thence northeasterly along the southeastern boundary line of land and lands covered by water now or formerly owned by the National Harbours Board for a distance of seven hundred and fifty feet more or less (750');

Thence northwesterly along the northeastern boundary line of lands and lands covered by water now or formerly owned by the National Harbours Board for a distance of four hundred and ninety feet more or less (490');

Thence northeasterly along the southeastern boundary line of said lands covered by water now or formerly owned by the National Harbours Board for a distance of one hundred and fifty feet (150') to the southwestern boundary line of lands now or formerly owned by the National Harbours Board;

Thence southeasterly along the southwestern boundary line of lands and lands covered by water now or formerly owned by the National Harbours Board for a distance of one hundred and fifty feet more or less (150');

Thence northeasterly along the southeastern boundary line of lands and lands covered by water now or formerly owned by the National Harbours Board for a distance of eight hundred and forty feet (840');

Thence southeasterly along the said southwestern boundary line of said lands and lands covered with water now or formerly owned by the National Harbours Board for a distance of two hundred feet (200');

Thence northeasterly along the said northeastern boundary line of said lands and lands covered with water now or formerly owned by the National Harbours Board for a distance of fifty-five feet (55');

Thence northwesterly along the northeastern boundary line of lands covered by water now or formerly owned by the National Harbours Board for a distance of four hundred feet more or less (400');

Thence northeasterly along the southeastern boundary line of lands covered with water now or formerly owned by the National Harbours Board for a distance of three hundred and fifty feet (350');

Thence southeasterly along the southwestern boundary line of lands covered with water now or formerly owned by the National Harbours Board for a distance of two hundred and sixty feet more or less (260') to high water mark on the shore of Bedford Basin;

Thence northeasterly along the said highwater mark on the shore of Bedford Basin being the southeastern boundary line of lands covered with water now or formerly owned by the National Harbours Board for a distance of one thousand and seventy feet (1,070');

Thence northwesterly along the northeastern boundary line of lands covered with water now or formerly owned by the National Harbours Board for a distance of four hundred and fifteen feet (415');

Thence northwesterly along the southeastern boundary line of lands covered with water now or formerly owned by the National Harbours Board for a distance of three hundred feet (300');

Thence southwesterly along the southwestern boundary line of lands covered with water now or formerly owned by the National Harbours Board for a distance of five hundred and ten feet (510') to high water mark on the shore of Bedford Basin;

Thence eastwardly along the said high water mark on the shore of Bedford Basin being the southern boundary line of lands covered with water now or formerly owned by the National Harbours Board for a distance of seven hundred and fifty feet (750') to the northeastern boundary line of lands now or formerly owned by the National Harbours Board;

Thence southwestwardly along the northwestern boundary line of lands now or formerly owned by the National Harbours Board for a distance of one hundred and eighty-five feet (185') to the northern boundary line of lands now or formerly owned by the Canadian Government Railway's, Deep Water Branch;

Thence westwardly and southwardly along the various courses of the northern and northwestern boundary line of lands now or formerly owned by the Canadian Government Railway's Deep Water Branch for a distance of three thousand four hundred and seventy-three feet (3,473') to the northern boundary line of lands now or formerly owned by Nova Scotia Co-operative Abattoir Limited;

Thence westwardly along the northern boundary line of lands now or formerly owned by Nova Scotia Co-operative Abattoir Limited for a distance of two hundred feet (200') to the western boundary line of said Abattoir property;

Thence southwardly along the western boundary line of lands now or formerly owned by Nova Scotia Co-operative Abattoir Limited for a distance of nine hundred and ten feet (910') to the southern boundary line of said lands now or formerly owned by Nova Scotia Co-operative Abattoir Limited;

Thence eastwardly along the southern boundary line of said lands now or formerly owned by Nova Scotia Co-operative Abattoir Limited for a distance of two hundred and twelve feet more or less (212'±) to the place of beginning.

Made By: *H.B.X.*

Checked By: *J.P.B.*

0001 1195

*Afriville*

Mr. D. Murphy, City Solicitor

C. L. Dodge, P. Eng., City Engineer

February 28, 1968

Description of Lands to be Expropriated at Afriville by the City of Halifax.

Attached is the description of lands and lands covered by water to be expropriated by the City of Halifax at Afriville for Redevelopment purposes.

Yours truly,

*Charles L. Dodge*

CHARLES L. DODGE, P. ENG.  
CITY ENGINEER

JDC/mwg  
Attachment

0001 1196



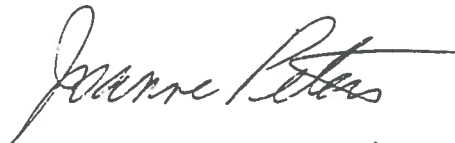
CITY OF HALIFAX  
Memorandum

TO: Mayor Walter Fitzgerald  
FROM: Barry Coopersmith, City Manager LOCAL: 6500  
DATE: October 19, 1995  
SUBJECT: Africville Educational Fund

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This is a follow up to your memo of October 18th with respect to the Africville Educational Fund:

- The money has been budgeted and will be available upon the final approval by Council of an agreement.
- The scholarships will be paid out of the interest generated by the \$100,000 fund. The amount of interest generated will be that available on the prevailing market. The City proposal is that Finance manage and invest the fund but decisions re scholarships be made by the Society/Trustees.
- To this point, Council has only approved staff preparing an agreement. A draft agreement has been prepared and Mary Ellen Donovan will be meeting with Bernie Smith next week to review same. Once they straighten everything out from our side, the draft agreement will then be forwarded to the Africville Genealogical Society for their review, which should be by the end of next week.
- Depending on when we receive the agreement back from the Society, and whether they are in concurrence with it, the agreement will then be forwarded to City Council.



Barry B. Coopersmith  
City Manager

-jep  
cc Alderman Blumenthal  
Alderman Uteck  
Mary Ellen Donovan, Legal





Office of the Mayor

## CITY OF HALIFAX

## MEMORANDUM

**TO:** Barry Coopersmith, City Manager  
**FROM:** Mayor Walter R. Fitzgerald  
**DATE:** October 18, 1995  
**SUBJECT:** Africville Educational Fund

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George Grant a member of the Africville Genealogical Society has to report to his Board at their annual meeting on the Africville Education Fund.

Is the money there? What interest will the money receive? How and who will dispense the money and when can they start paying out the grants?

It is important that he give the Society a progress report. Can you have this done as quickly as possible. He needs it for Friday.

Handwritten signature of Walter R. Fitzgerald in cursive.

Walter R. Fitzgerald,  
MAYOR.

/kas

*file*

1841 Argyle Street  
4th Floor, City Hall

P.O. Box 1749  
HALIFAX, NOVA SCOTIA  
B3J 3A5



**CITY OF HALIFAX**

TELEPHONE  
(902) 421-6511  
FAX # (902) 421-8071

**DEPARTMENT OF CORPORATE AND LEGAL AFFAIRS  
CITY SOLICITOR'S OFFICE**

October 26th, 1995

Irvine Carvery  
Africville Geneological Society  
2349 Maynard Street  
Halifax, Nova Scotia  
B3K 3T8

Dear Mr. Carvery:

**Re: Africville Educational Trust**

Please find enclosed a draft trust agreement which we would ask that you review and provide any comments you have at your earliest convenience.

Yours very truly,

M.E. Donovan  
Senior Solicitor

MED/rcb  
Enclosure

cc Barry Coopersmith  
Mayor Fitzgerald  
Alderman Blumenthal  
Alderman Uteck

*file*

1841 Argyle Street  
4th Floor, City Hall

P.O. Box 1749  
HALIFAX, NOVA SCOTIA  
B3J 3A5



**CITY OF HALIFAX**

TELEPHONE  
(902) 421-6511  
FAX # (902) 421-8071

**DEPARTMENT OF CORPORATE AND LEGAL AFFAIRS  
CITY SOLICITOR'S OFFICE**

November 1, 1995

George Grant  
3350 Robie Street  
Halifax, Nova Scotia  
B3K 4S2

Dear Mr. Grant:

**Re: Africville Educational Trust**

Please find enclosed a draft trust agreement which we would ask that you review and provide any comments you have at your earliest convenience.

Yours very truly,

M.E. Donovan  
Senior Solicitor

MED/rcb  
Enclosure

THIS DECLARATION made the            day of            , 1995.

By the            CITY OF HALIFAX

DRAFT

**AFRICVILLE EDUCATIONAL TRUST**

**WHEREAS**, in the years 1964 to 1969, the City of Halifax, in the interest of urban renewal, acquired all of the lands within the former community of Africville and removed all of the buildings within the lands acquired;

**AND WHEREAS** former residents of Africville have urged the City to provide additional socio-economic support to the former residents and their descendants;

**AND WHEREAS** on 15 December 1994 Halifax City Council passed a motion that "the City provide financial support in the amount of \$100,000.00 with the interest to be used to fund an education fund for the descendants of the former residents of Africville";

**NOW THEREFORE** said monies, together with any other property or money which may from time to time be held by the Trustee for said purpose in addition thereto shall be held by the Trustee, its successors and assigns, upon the following trusts:

**1. DEFINITIONS**

The "**Trust**" means that created by this Declaration, which can also be referred to as the "Africville Educational Trust".

The "**Trust Fund**" means the cash, securities or other property which the Trustees hold from time to time and at any time upon the trusts established by this Declaration.

The "**Former Residents of Africville**" means those who resided in Africville on 16 January 1964.

"**Africville**" means the community commonly known as Africville, in the City of Halifax, Province of Nova Scotia, further described in Appendix "A".

The "**Scholarships**" are the moneys allocated from the Trust Fund to the successful applicant or applicants.

## 2. CREATION OF THE TRUST

The Council of the City of Halifax has set aside the amount of One Hundred Thousand Dollars (\$100,000.00) in the name of the Africville Educational Trust. The Trustee shall hold this amount, and further donations, and any accretions in trust for the Beneficiaries, the descendants of the Former Residents of Africville, and keep the same invested.

The Trustee shall disseminate the income of the Trust Fund on the request of the Scholarship Selection Committee and within the terms of this Trust.

## 3. SCHOLARSHIP SELECTION COMMITTEE

### 3.1 Composition

The Scholarship Selection Committee (hereinafter the "Committee") shall be comprised of five members, at least four of which shall be Former Residents of Africville or descendants of the Former Residents of Africville. The members shall be appointed by Halifax City Council or its successor.

### 3.2 Term

Each member shall serve a five-year term on the Committee, unless the member resigns or is requested to step down by the unanimous vote of the four other members.

### 3.3 Meetings

The Committee shall meet at least once during the year to select the recipients of the Scholarships, determine the procedure for applying for the Scholarships, and any other matters deemed appropriate by the Committee.

### 3.4 Report

The Committee shall report to Halifax City Council or its successor at least once annually. The report shall contain, among other things, the number of applicants, the number of eligible applicants and the names of the successful applicants.

### 3.5 Quorum and Proxy

A quorum of the Committee shall be three members and proxy voting shall be permitted. A proxy vote shall not be included in the total number of members required for a quorum.

## 4. ELIGIBILITY FOR SCHOLARSHIPS

### 4.1 Procedural Requirements

Applicants must complete any application form and provide any information required by the Committee.

### 4.2 Substantive Requirements

The following are the Scholarship eligibility requirements:

- (a) the applicant must be a descendant of one of the Former Residents of Africville;
- (b) the applicant must enrol in a course of studies at an educational institution, both the course and the institution having been approved by the Student Aid Committee, pursuant to the *Student Aid Act*, R.S.N.S. 1989, c. 449.
- (c) the applicant must have successfully completed the entrance requirements for said educational institution at a Nova Scotia educational institution.

## 5. SELECTION CRITERIA

If more than two applicants are eligible for the Scholarships, the Committee shall consider the applicants' financial need and academic standing. It is within the Committee's sole discretion to consider other factors and the weight to be given each factor.

## 6. AMOUNT AND NUMBER OF SCHOLARSHIPS

### 6.1 Number of Scholarships

Subject to 6.4, the Scholarships shall be distributed to two eligible applicants each year.

## 6.2 Amount of each Scholarship

Subject to 6.3, the Scholarships shall be half the net income of the Trust Fund.

## 6.3 Maximum Scholarship

Each Scholarship shall not exceed the cost of tuition of the successful applicant's choice of educational institution.

If half the net income of the Trust is greater than the cost of a successful applicant's tuition, the Committee may elect to add any unused funds to the capital of the trust, or may elect to increase the size of a scholarship in a subsequent year.

## 6.4 Less than Two Eligible Applicants

If, in any year, only one eligible applicant applies for the Scholarship, the one eligible applicant shall receive the same amount he or she would have received if two applicants had been awarded the Scholarship. If, in any year, no eligible applicants apply for the Scholarship, no Scholarships shall be given in that year.

Where, in any year, less than two eligible applicants apply for the Scholarship, the money that would have been paid to eligible applicants shall be added to the capital of the Trust.

## 6.5 Increase in the Number of Scholarships

Upon the motion of four members of the Committee, and approval by Halifax City Council, or its successor, the number of scholarships may be increased, in which case the provisions 6.1, 6.2, 6.3, and 6.4 shall apply *mutatis mutandis*.

## 7. PAYMENT OF THE SCHOLARSHIP

The Scholarship shall be paid directly to the educational institution meeting the criteria set out in 4.2(c) of the applicant's choice.

## 8. TERMINATION

The Council of the City of Halifax declares this to be an irrevocable trust, and if the purpose of the trust fails, then the Trust Funds shall be returned to the Council of the City of Halifax.



## 9. TRUSTEES' POWERS

### 9.1 Limitation on Powers

The Trustee shall not encroach on the capital of the Trust Fund.

### 9.2 Powers Beyond Those Vested by Law or Statute

In addition to all other powers vested in the Trustee by law or statute, the Trustee is authorized generally to act with unrestricted powers in the administration of this Trust, it being the intention that they shall have the same powers to deal with the assets of the Trust as the Council of the City of Halifax would have if it were absolutely and beneficially entitled to the Trust Property and without in any way restricting the generality of the foregoing, the Trustee shall have and may from time to time exercise the following powers:

- (a) To retain any cash, securities and/or other property belonging to or forming part of the Trust Fund from time to time in the actual state or condition in which the same shall be received by the Trustee for so long as the Trustee shall think proper;
- (b) To make investments without being restricted to investments in which trustees are authorized by law to invest trust funds and the Trustee may register all investments or annuities comprising all or any part of the Trust Property in the name of the Trustee or in the name of its nominees;
- (c) To sell any Trust Property at such price and in any manner as it considers advisable and to execute and deliver to the purchasers any deeds and other documents that may be necessary;
- (d) To borrow on behalf of the Trust any money they consider advisable or to advance their own monies instead of realizing the property and securities belonging to the Trust, and to pay or charge interest to them or others with respect to such borrowings and to mortgage, hypothecate, or otherwise affect any of the Trust property, movable or immovable, as security for any money borrowed or advanced and to receive any amount borrowed or advanced;
- (e) to place on deposit with any chartered bank or trust company any cash balance from time to time in the hands of the Trustee or any securities, title deeds or other documents belonging or relating to the Trust Funds;

- (f) to retain all voting rights and powers in connection with any securities or other assets at any time held in connection with or forming part of the Trust Fund notwithstanding that such securities or other assets or any of them may from time to time be set apart as a part of any share or interest, and if at any time the Trustee shall decide to sell any such securities or other assets shall for the time being be set aside as part of any share or interest to sell such securities or other assets or any part or parts thereof at such time or times and upon such terms and conditions and either for cash or credit or partly for cash and partly for credit and upon such conditions as to credit and security and as to voting rights and transfer to a trustee as the Trustee may think advisable;
- (g) To make all such allocations, elections and distributions as they consider advisable in the best interests of the Trust as a whole and specifically any allocations and elections as may be permissible or necessary under the Income Tax Act (Canada) and the provisions thereof in force from time to time.
- (h) To compromise, settle and adjust all claims or demands in favour of or against the Trust upon such terms as they consider advisable.
- (i) To hold the Trust Fund or any part or parts thereof at any place or places and to move the same from time to time from place to place inside or outside Canada and notwithstanding any of the trusts, powers and provisions herein contained, the Trustee may, in their absolute discretion, at any time or times without infringing the rule against perpetuities applicable to this settlement, transfer and convey the whole or any share or portion of the Trust Fund or any of the property from time to time forming the Trust Fund, provided that such share or portion of the Trust fund or such property has not vested in possession in one or more of the beneficiaries by irrevocable deed or deeds, to any other trust or settlement whether established under or pursuant to the laws of Nova Scotia, any other province of Canada, or any other jurisdiction whatsoever, to be held by the Trustees of such other trust or settlement with and subject to the powers and provisions of such other trust or settlement provided such other trust or settlement shall not infringe the rule against perpetuities applicable to this settlement and that all the beneficiaries of this settlement shall be the beneficiaries of such other trusts or settlements and the respective interests and rights of the beneficiaries in and with respect to such share or portion of the trust fund or such property so transferred and conveyed under such other trust or settlement shall be the same as or substantially the same as, where possible under the laws of such

jurisdiction, the interests and rights of the beneficiaries in and with respect to the trust fund under this settlement.

**10. REMUNERATION OF THE TRUSTEE**

The Trustee shall be compensated for all reasonable and necessary out-of-pocket expenses related to the administration of the Trust. There will be no other remuneration.

**11. SETTLEMENT OF ADDITIONAL TRUST PROPERTY**

The Council of the City of Halifax may at any time and from time to time add to the Trust Fund by devising, bequeathing, assigning, transferring, loaning, conveying, delivering or making payable to the Trustee cash, securities or other property. The Trustee may at any time and from time to time purchase for full fair market value cash, securities or other property from any person or persons other than the Council of the City of Halifax. The Trustee may at any time accept contributions of property from any person or persons. All cash, securities and other property acquired by the Trustee pursuant to the provisions of this clause shall be held by the Trustee subject to the terms set forth in this Declaration.

Any additions to the Trust fund from the Council of the City of Halifax, and from any other person, and upon such acceptance the same, shall form part of the Trust Fund and all the terms and conditions of this Declaration shall apply thereto.

**12. TRUST FUND ACCOUNTING**

The Trustee shall provide an annual report to Halifax City Council, which shall include all usual and proper accounts covering both capital and income of the Trust.

**13. EXONERATION OF TRUSTEES**

The Trustee shall not be required to give bond or other security for the due and faithful administration of the Trust Fund or for the discharge of the trusts hereby created and shall, subject to the provisions of Clause 15, be entitled to be indemnified from the Trust Fund for any claims, losses, death duties, succession duties, inheritance and other taxes and impositions arising in connection therewith.

14.1 The City of Halifax shall invest the funds on behalf of the Trust in accordance with the terms of this Trust.

14.2 The Trustee is authorized on behalf of the Trust:

- (a) to sign, endorse, make, draw, and/or accept any cheques, promissory notes, bills of exchange or other negotiable instruments, any orders for the payment of money, contracts for letters of credit or forward exchange and generally all instruments or documents for the purpose of binding or obligating the Trustee in any way in connection with the accounts and transactions of the Trust with the banker, whether or not an overdraft is thereby created, and instruments and documents so signed shall be binding upon the Trustee; and
- (b) to receive from the banker and, where applicable, to give a receipt for all statements of account, cheques and other debit vouchers, unpaid and unaccepted bills of exchange and other negotiable instruments and to delegate in writing, to be filed with the banker, such authority to one or more other persons as the Trustee shall decide.

14.3 The Trustee is authorized on behalf of the Trust to negotiate with, deposit with, or transfer to, the said banker (but for the credit of the Trust's account only) all or any cheques, promissory notes, bills of exchange or other negotiable instruments, and orders for the payment of money and for the said purpose to draw, make, sign, or endorse all or any of the foregoing, and every such signature shall be binding upon all the Trustee.

## 15. DISCRETION OF TRUSTEES

As regards the trusts, powers, authorities and discretions vested in it, to have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner, the mode of, or the time for the exercise thereof, and in the absence of fraud the Trustee shall

be in no way responsible or accountable for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

**SIGNED, SEALED, AND DELIVERED**  
in the presence of

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
City Clerk

**CITY COUNCIL  
DECEMBER 15, 1994**

Project Steering Committee  
(Regional Solid Waste Management)

Peter Kidd

Term to expire upon completion of mandate.

City of Halifax Strategic Planning Committee

Alderman Howard Epstein

Term to expire upon completion of mandate.

Africville

A report from His Worship Mayor Walter Fitzgerald,  
Chairman, Africville Council Committee, dated December 1, 1994,  
is submitted.

MOVED by Alderman Blumenthal, seconded by Alderman  
Beck that:

1. The City provide access to City records re the Africville relocation until March 15, 1995, with the exception of those records containing personal information unless permission for their release has been obtained.
2. The City support the application of the Africville Genealogy Society for Canada/Nova Scotia Infrastructure Works dated September 7, 1994, for the reconstruction of the Seaview United Baptist Church.
3. The City donate 2.5 acres adjoining the Seaview Memorial Park for the purpose of construction of a memorial to the former community of Africville.
4. The City provide financial support in the amount of \$100,000 with the interest to be used to fund an educational fund for the

Do not  
include

descendants of the former residents of Africville.

5. If, upon a review of the records, no legal basis appears to found a claim against the City by March 15, 1995, then this chapter of the history of the City of Halifax be considered closed.

Following a short discussion, the motion was put and passed.

**National Infrastructure Program Anniversary**

MOVED by Alderman Stone, seconded by Deputy Mayor Adams  
that City Council pass the following resolution:

WHEREAS on December 21, 1993, the Federal, Provincial and Territorial Governments unanimously agreed to the establishment of a cost-shared National Infrastructure Program consistent with the program proposed by the Federation of Canadian Municipalities;

WHEREAS the purpose of the program is to renew municipal infrastructure, create jobs, improve the environment and enhance Canada's competitiveness;

WHEREAS the program has now been in place for one year and communities across Canada are benefitting from the program to update and refurbish all types of services;

WHEREAS in the City of Halifax \$12,425,000.00 program dollars have already been allocated, creating between 348 and 435 jobs and helping to upgrade and improve the City's street and sewer systems;

THEREFORE BE IT RESOLVED that the Municipality of the City of Halifax congratulate the Federal and Provincial Governments on this significant

2. the deadline of applications for the 1995/96 year to be March 31, 1995, for 1995/96 requests only.

The motion was put and passed.

### Paramount Theatre Study

An Information Report, dated November 14, 1994, was submitted from the Director of Development and Planning, together with various other pieces of documentation received from Mr. Rob Cohn, Orpheus Project.

MOVED by Alderman Pottie, seconded by Alderman Blumenthal that, as recommended by the Finance and Executive Committee, a letter be immediately forwarded on behalf of Halifax City Council to the funding agency in question, requesting that the previous correspondence forwarded from the City (written in opposition to Mr. Cohn's application) be withdrawn.

After a brief discussion, the motion was put and defeated.

### Africville Genealogy Society

MOVED by Alderman Blumenthal, seconded by Alderman Uteck that Council, in furtherance of the healing process, establish a committee to be composed of the Mayor and two members of Council to meet with members or representatives of the Africville and local black community in order to achieve closure on the issues surrounding the expropriation of the lands in the community (the committee will not deal with any individual monetary compensation).

Alderman Stone addressed the motion put forward by Alderman Blumenthal and noted that, in his opinion and that of many Haligonians, the time for "compensation" has passed. The Alderman expressed the view that the City should instead examine methods by which the economic and social concerns of the black community could be better addressed, and, in this context, made reference to the staff recommendation; namely, that Council support the rebuilding of the Seaview Baptist Church and the



establishment of a scholarship fund for the descendants of Africville residents.

An amendment to the motion was moved by Alderman Walker, seconded by Alderman Meagher; namely, that a member of City staff be added to the composition of the proposed committee.

Alderman Epstein spoke in opposition to the proposed amendment, emphasizing that, in his view, it was now Council's responsibility (not staff's) to attempt to resolve this long-standing issue. The Alderman went on to point out that staff members could always be made available to the committee to provide advice and information on an as-required basis.

After a lengthy discussion, the amendment to the motion was put and passed.

Speaking on the original motion, Alderman Epstein expressed concern that, by preventing the committee from considering individual monetary compensation, Council would be undermining the success of this endeavor.

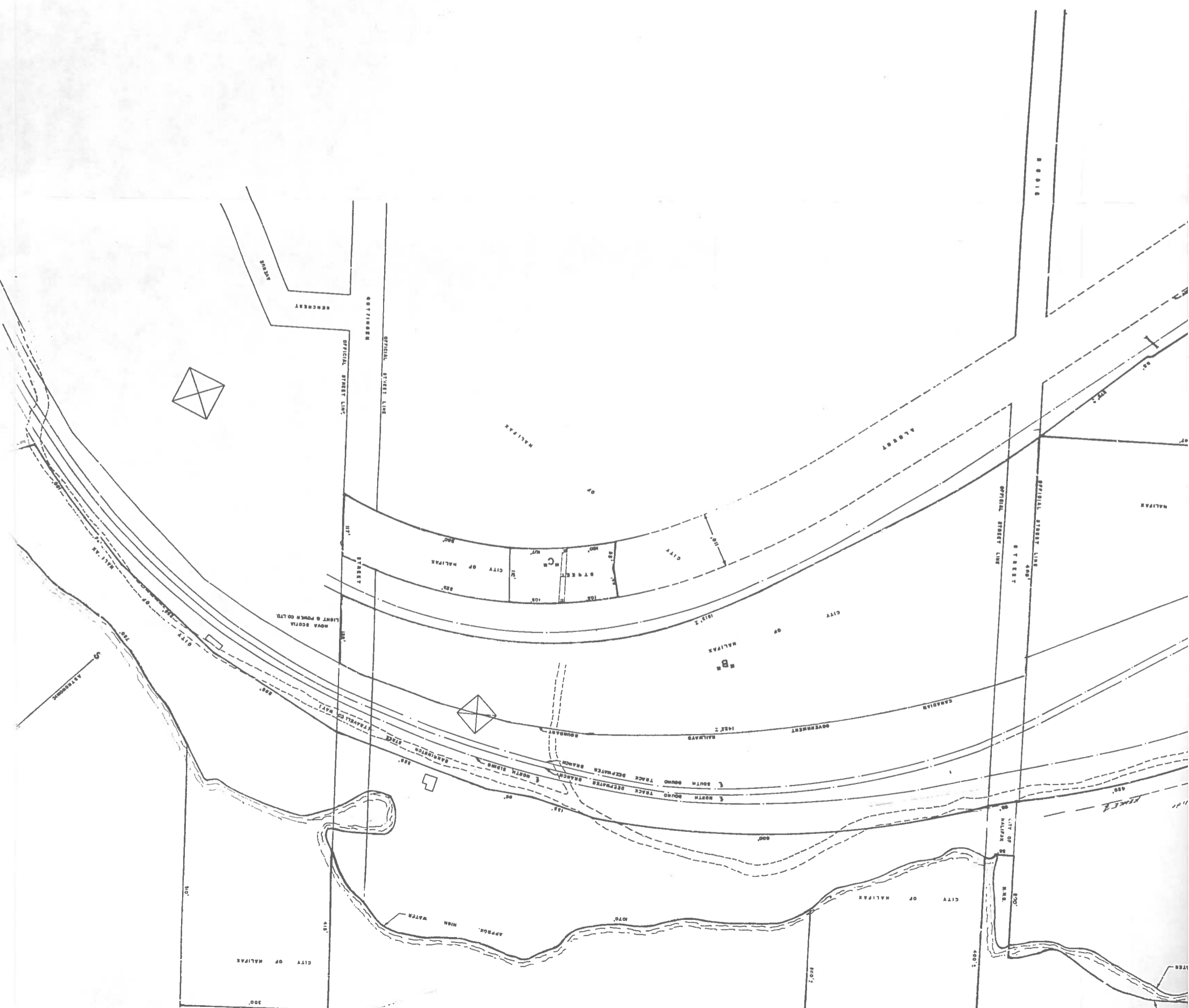
Alderman Uteck, the seconder of the motion and one of the members of Council who had volunteered to serve on the proposed committee, advised that he had discussed this aspect of the committee's mandate with Mr. Carvery, and that it was his view that Mr. Carvery had readily accepted the condition that monetary compensation would not be a option.

The motion, as amended, was put and passed.

### Boards and Commissions Review

An Information Report, dated November 14, 1994, was submitted from the Director of Corporate and Legal Affairs.

Deputy Mayor Adams made reference to the responses which had been received from the various boards and commissions with regard to the recommendations put forward in the report from the Boards and Review Committee, and suggested that one of the primary concerns centered on the lack of information currently available as to how the six consolidated committees would carry out their mandates.





THIS DECLARATION made the        th day of        , 1995.

By

**CITY OF HALIFAX**

(hereinafter the "Settlor" and the "Trustee")

WHEREAS, in the years 1964 to 1969, the City of Halifax, in the interest of urban renewal, acquired all of the lands within the former community of Africville and removed all of the buildings within the lands acquired;

AND WHEREAS former residents of Africville have urged the City to provide additional socio-economic support to the former residents and their descendants;

AND WHEREAS on 15 December 1994 Halifax City Council passed a motion that "the City provide financial support in the amount of \$100,000.00 with the interest to be used to fund an education fund for the descendants of the former residents of Africville."

NOW THEREFORE said monies, together with any other property or money which may from time to time be held by the Trustees in addition thereto shall be held by the Trustee, its successors and assigns, upon the following trusts:

1. **DEFINITIONS**

The "Trust" means that c  
"Africville Educational Tr

The "Trust Fund" means th  
time to time and at any ti

The "Former Residents of  
1964.

"Africville" means the cor  
Province of Nova Scotia, 1

The "Scholarships" are the moneys allocated from the Trust Fund to the successful applicant or applicants.

COPY SENT TO  
D. SMITH  
cc. D. COOPER SMITH

**THIS DECLARATION** made the        th day of        , 1995.

By

**CITY OF HALIFAX**

(hereinafter the "Settlor" and the "Trustee")

**WHEREAS**, in the years 1964 to 1969, the City of Halifax, in the interest of urban renewal, acquired all of the lands within the former community of Africville and removed all of the buildings within the lands acquired;

**AND WHEREAS** former residents of Africville have urged the City to provide additional socio-economic support to the former residents and their descendants;

**AND WHEREAS** on 15 December 1994 Halifax City Council passed a motion that "the City provide financial support in the amount of \$100,000.00 with the interest to be used to fund an education fund for the descendants of the former residents of Africville."

**NOW THEREFORE** said monies, together with any other property or money which may from time to time be held by the Trustees in addition thereto shall be held by the Trustee, its successors and assigns, upon the following trusts:

1.     **DEFINITIONS**

The "**Trust**" means that created by this Declaration, which can also be referred to as the "Africville Educational Trust".

The "**Trust Fund**" means the cash, securities or other property which the Trustees hold from time to time and at any time upon the trusts established by this Declaration.

The "**Former Residents of Africville**" means those who resided in Africville on 16 January 1964.

"**Africville**" means the community commonly known as Africville, in the City of Halifax, Province of Nova Scotia, further described in Appendix "A".

The "**Scholarships**" are the moneys allocated from the Trust Fund to the successful applicant or applicants.

## **2. CREATION OF THE TRUST**

The Settlor has set aside the amount of One Hundred Thousand Dollars (\$100,000.00) in the name of the Africville Educational Trust. The Trustee shall hold this amount, and further donations, and any accretions in trust for the Beneficiaries, the descendants of the Former Residents of Africville, and keep the same invested.

The Trustee shall disseminate the income of the Trust Fund on the request of the Scholarship Selection Committee and within the terms of this Trust.

## **3. SCHOLARSHIP SELECTION COMMITTEE**

### **3.1 Composition**

The Scholarship Selection Committee (hereinafter the "Committee") shall be comprised of five members, at least four of which shall be Former Residents of Africville or descendants of the Former Residents of Africville. The members shall be appointed by Halifax City Council and its successor.

### **3.2 Term**

Each member shall serve a five-year term on the Committee, unless the member resigns or is requested to step down by the unanimous vote of the four other members.

### **3.3 Meetings**

The Committee shall meet at least once during the year to select the recipients of the Scholarships, determine the procedure for applying for the Scholarships, and any other matters deemed appropriate by the Committee.

### **3.4 Report**

The Committee shall report to Halifax City Council or its successor at least once annually. The report shall contain, among other things, the number of applicants, the number of eligible applicants and the names of the successful applicants.

### **3.5 Quorum and Proxy**

A quorum of the Committee shall be three members and proxy voting shall be permitted. A proxy vote shall not be included in the total number of members required for a quorum.

## **4. ELIGIBILITY FOR SCHOLARSHIPS**

### **4.1 Procedural Requirements**

Applicants must complete any application form and provide any information required by the Committee.

### **4.2 Substantive Requirements**

The following are the Scholarship eligibility requirements:

- (a) the applicant must be a descendant of one of the Former Residents of Africville;
- (b) the applicant must have successfully completed Grade Twelve at a high school in Nova Scotia; and
- (c) the applicant must enrol in a course of studies at an educational institution, both the course and the institution having been approved by the Student Aid Committee, pursuant to the *Student Aid Act*, R.S.N.S. 1989, c. 449.

## **5. SELECTION CRITERIA**

If more than two applicants are eligible for the Scholarships, the Committee shall consider the applicants' financial need and academic standing. It is within the Committee's sole discretion to consider other factors and the weight to be given each factor.

## **6. AMOUNT AND NUMBER OF SCHOLARSHIPS**

### **6.1 Number of Scholarships**

Subject to 6.4, the Scholarships shall be distributed to two eligible applicants each year.

## **6.2 Amount of each Scholarship**

Subject to 6.3, the Scholarships shall be half the net income of the Trust Fund.

## **6.3 Maximum Scholarship**

Each Scholarship shall not exceed the cost of tuition of the successful applicant's choice of educational institution.

If half the net income of the Trust is greater than the cost of a successful applicant's tuition, the remainder shall be added to the capital of the Trust.

## **6.4 Less than Two Eligible Applicants**

If, in any year, only one eligible applicant applies for the Scholarship, the one eligible applicant shall receive the same amount he or she would have received if two applicants had been awarded the Scholarship. If, in any year, no eligible applicants apply for the Scholarship, no Scholarships shall be given in that year.

Where, in any year, less than two eligible applicants apply for the Scholarship, the money that would have been paid to eligible applicants shall be added to the capital of the Trust.

## **6.5 Increase in the Number of Scholarships**

Upon the motion of four members of the Committee, and approval by Halifax City Council, or its successor, the number of scholarships may be increased, in which case the provisions 6.1, 6.2, 6.3, and 6.4 shall apply *mutatis mutandis*.

## **7. PAYMENT OF THE SCHOLARSHIP**

The Scholarship shall be paid directly to the educational institution, meeting the criteria set out in 4.2(c), of the applicant's choice.

## **8. TERMINATION**

The Settlor declares this to be an irrevocable trust, and if the purpose of the trust fails, then the Trust Funds shall be returned to the Settlor.



## 9. TRUSTEES' POWERS

### 9.1 Limitation on Powers

The Trustee shall not encroach on the capital of the Trust Fund.

### 9.2 Powers Beyond Those Vested by Law or Statute

In addition to all other powers vested in the Trustee by law or statute, the Trustee is authorized generally to act with unrestricted powers in the administration of this Trust, it being the intention that they shall have the same powers to deal with the assets of the Trust as the Settlor would have if he were absolutely and beneficially entitled to the Trust Property and without in any way restricting the generality of the foregoing, the Trustee shall have and may from time to time exercise the following powers:

- (a) To retain any cash, securities and/or other property belonging to or forming part of the Trust Fund from time to time in the actual state or condition in which the same shall be received by the Trustee for so long as the Trustee shall think proper;
- (b) To make investments without being restricted to investments in which trustees are authorized by law to invest trust funds and the Trustee may register all investments or annuities comprising all or any part of the Trust Property in the name of the Trustee or in the name of their nominees;
- (c) To sell any Trust Property at such price and in any manner as they consider advisable and to execute and deliver to the purchasers any deeds and other documents that may be necessary;
- (d) To borrow on behalf of the Trust any money they consider advisable or to advance their own monies instead of realizing the property and securities belonging to the Trust, and to pay or charge interest to them or others with respect to such borrowings and to mortgage, hypothecate, or otherwise affect any of the Trust property, movable or immovable, as security for any money borrowed or advanced and to receive any amount borrowed or advanced;
- (e) to place on deposit with any chartered bank or trust company any cash balance from time to time in the hands of the Trustee or any securities, title deeds or other documents belonging or relating to the Trust Funds;

(f) to retain all voting rights and powers in connection with any securities or other assets at any time held in connection with or forming part of the Trust Fund notwithstanding that such securities or other assets or any of them may from time to time be set apart as a part of any share or interest, and if at any time the Trustee shall decide to sell any such securities or other assets shall for the time being be set aside as part of any share or interest to sell such securities or other assets or any part or parts thereof at such time or times and upon such terms and conditions and either for cash or credit or partly for cash and partly for credit and upon such conditions as to credit and security and as to voting rights and transfer to a trustee as the Trustee may think advisable;

(g) To make all such allocations, elections and distributions as they consider advisable in the best interests of the Trust as a whole and specifically any allocations and elections as may be permissible or necessary under the Income Tax Act (Canada) and the provisions thereof in force from time to time.

(h) To compromise, settle and adjust all claims or demands in favour of or against the Trust upon such terms as they consider advisable.

(i) To hold the Trust Fund or any part or parts thereof at any place or places and to move the same from time to time from place to place inside or outside Canada and notwithstanding any of the trusts, powers and provisions herein contained, the Trustee may, in their absolute discretion, at any time or times without infringing the rule against perpetuities applicable to this settlement, transfer and convey the whole or any share or portion of the Trust Fund or any of the property from time to time forming the Trust Fund, provided that such share or portion of the Trust fund or such property has not vested in possession in one or more of the beneficiaries by irrevocable deed or deeds, to any other trust or settlement whether established under or pursuant to the laws of Nova Scotia, any other province of Canada, or any other jurisdiction whatsoever, to be held by the Trustees of such other trust or settlement with and subject to the powers and provisions of such other trust or settlement provided such other trust or settlement shall not infringe the rule against perpetuities applicable to this settlement and that all the beneficiaries of this settlement shall be the beneficiaries of such other trusts or settlements and the respective interests and rights of the beneficiaries in and with respect to such share or portion of the trust fund or such property so transferred and conveyed under such other trust or settlement shall be the same as or substantially the same as, where possible under the laws of such jurisdiction, the interests and rights of the beneficiaries in and with respect to the trust fund under this settlement.

#### **10. REMUNERATION OF THE TRUSTEE**

The Trustee shall be compensated for all reasonable and necessary out-of-pocket expenses related to the administration of the Trust. There will be no other remuneration.

#### **11. SETTLEMENT OF ADDITIONAL TRUST PROPERTY**

The Settlor may at any time and from time to time add to the Trust Fund by devising, bequeathing, assigning, transferring, loaning, conveying, delivering or making payable to the Trustee cash, securities or other property. The Trustee may at any time and from time to time borrow or purchase for full fair market value cash, securities or other property from any person or persons other than the Settlor. The Trustee may at any time accept contributions of property from any person or persons provided that the fair market value thereof must be less than the fair market value of the aggregate of the initial and subsequent (if any) contributions made by the Settlor to the Trust Fund. All cash, securities and other property acquired by the Trustee pursuant to the provisions of this clause shall be held by the trustee subject to the terms set forth in this Declaration.

Any additions to the Trust fund from the Settlor, and from any other person, and upon such acceptance the same, shall form part of the Trust Fund and all the terms and conditions of this Declaration shall apply thereto.

#### **12. TRUST FUND ACCOUNTING**

The Trustee shall provide an annual report to Halifax City Council, which shall include all usual and proper accounts covering both capital and income of the Trust.

#### **13. EXONERATION OF TRUSTEES**

The Trustee shall not be required to give bond or other security for the due and faithful administration of the Trust Fund or for the discharge of the trusts hereby created and shall, subject to the provisions of Clause 15, be entitled to be indemnified from the Trust Fund for any claims, losses, death duties, succession duties, inheritance and other taxes and impositions arising in connection therewith.

#### 14. BANKING ARRANGEMENTS

Notwithstanding the other provisions of this Declaration, the following provisions shall govern the banking arrangements of the Trust:

14.1 The Trustee may appoint any bank or trust company to be their banker for the purposes of the Trust;

14.2 The Trustee is authorized on behalf of the Trust:

(a) to sign, endorse, make, draw, and/or accept any cheques, promissory notes, bills of exchange or other negotiable instruments, any orders for the payment of money, contracts for letters of credit or forward exchange and generally all instruments or documents for the purpose of binding or obligating the Trustee in any way in connection with the accounts and transactions of the Trust with the banker, whether or not an overdraft is thereby created, and instruments and documents so signed shall be binding upon the Trustee;

(b) to receive from the banker and, where applicable, to give a receipt for all statements of account, cheques and other debit vouchers, unpaid and unaccepted bills of exchange and other negotiable instruments and to delegate in writing, to be filed with the banker, such authority to one or more other persons as the Trustee shall decide;

14.3 The Trustee is authorized on behalf of the Trust to negotiate with, deposit with, or transfer to, the said banker (but for the credit of the Trust's account only) all or any cheques, promissory notes, bills of exchange or other negotiable instruments, and orders for the payment of money and for the said purpose to draw, make, sign, or endorse all or any of the foregoing, and every such signature shall be binding upon all the Trustee.

**15. DISCRETION OF TRUSTEES**

As regards the trusts, powers, authorities and discretions vested in it, to have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner, the mode of, or the time for the exercise thereof, and in the absence of fraud the Trustee shall be in no way responsible or accountable for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

**SIGNED, SEALED, AND DELIVERED**  
in the presence of

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor, the City of Halifax

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Manager, the City of Halifax

WP 2.31

TRUST ~~BY~~ PRECEDENT  
WITH OPTIONS.

DATED THIS      TH DAY OF                      , 19

THE                      AND                      TRUST

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THIS INDENTURE made as of the      th day of

19, .

B E T W E E N:

~~of~~ of the City of HALIFAX, in the Province of Nova Scotia

(hereinafter called the "Settlor") + TRUSTEE

OF THE FIRST PART

- a n d -

X TRUST ~~(spouse)~~, of the City of HALIFAX, in the Province of Nova Scotia

CO. of \_\_\_\_\_, of the City of \_\_\_\_\_, in the Province of \_\_\_\_\_

THE FORMER RESIDENTS AND THE DESCENDANTS OF THE

(hereinafter called the "Trustees") INHABITANTS OF AFRICVILLE OF THE SECOND PART FORMER RESIDENTS

WHEREAS the Settlor intends to establish a Trust for the benefit of (child) and (child) and has entered into this Indenture to witness the creation of the same, to establish its terms, and to define the rights and obligations of the Trustees.

NOW THIS DEED WITNESSETH that, in consideration of the premises and of the mutual covenants and agreements herein contained, it is mutually covenanted, agreed and acknowledged by and between the parties hereto that the said sum and all other cash, securities or other property which the Settlor may, at any time during the continuance of the Trust, pay, assign, transfer, loan, deliver or convey to the Trustees to be held upon the trusts hereof together with all income therefrom and accretions thereto and substitutions therefor, shall be held by the Trustees upon the trusts, terms and conditions hereinafter set forth:

1. CREATION OF THE TRUST

1.1 Name of the Trust

AFRICVILLE

The Trust created by this Indenture shall be known as the "~~(children's names)~~ Trust", (hereinafter referred to as the "Trust").



THOUSAND

100 000.00

1.3 Settlement of the Trust

The Settlor has settled upon the Trustees, and the Trustees acknowledge that the Settlor has settled upon them one hundred dollars (\$100.00), to the irrevocable intent and effect that the Trustees are to hold same upon and subject to the trusts hereof.

1.3 Acceptance of Trusts

The Trustees by joining in the execution of this Indenture signify their acceptance of this Trust and the duties and obligations contained herein and agree to act until discharged by resignation or other lawful means.

1.4 Trust Property

The property settled upon the Trustees in paragraph 1.2 is the Trust Property and the Trust Property shall also consist of such additional property and assets, whether real, personal or mixed, which the Settlor may at any time and from time to time with the approval of the Trustees pay, transfer, assign or convey to the Trustees, to be held by them upon the trusts herein contained, and shall include any and all property and assets, real, personal or mixed, in which the same may be invested by the Trustees, or into which the same may be converted by the Trustees, at any time or from time to time, as well as any additions or accretions thereto.

1.5 Further Settlement

LEAVE IN (IGNORE SLASHES)

~~No property or assets may be settled upon the Trust from any person, corporation or trust during the lifetime of the Settlor without the consent of the Settlor.~~

3

2. DEFINITIONS

2.1 In this Indenture and the recitals hereto the following words shall, unless the context otherwise requires, have the following meanings:

"Settlor" means ~~the Settlor~~ <sup>FORMER</sup>

"the Beneficiaries" means ~~the Beneficiaries~~ <sup>and</sup> ~~in Africville~~

~~THE RESIDENTS AND THE HEIRS OF THE RESIDENTS OF AFRICVILLE~~ <sup>FORMER</sup>

~~THE HEIRS OF THOSE RESIDENTS~~

"THE RESIDENTS OF AFRICVILLE" ARE THOSE LISTED IN APPENDIX "A" AND ANY OTHERS WHO CAN SHOW THAT THEY OR THEIR FOREFATHERS RESIDED IN AFRICVILLE BETWEEN THE YEARS 19XX + 19XX

TO THE SATISFACTION OF THE COMMITTEE

"this Deed" means this Deed of Trust;

"Trust Fund" means the cash, securities or other property which the Trustees hold from time to time and at any time upon the trusts established by this Deed:

"time of division" means the earlier of;

(i) , 20 :

(ii) such date as the Trustees may in their absolute discretion determine by instrument in writing signed by the Trustees and delivered in counterparts to each and every Beneficiary living at the time of the signing of such instrument";

"Trustees" means the trustees from time to time acting under this Agreement and shall include the Trustees appointed hereunder and any trustees appointed pursuant to the provisions of Article 13 hereof; and

2.2 The masculine gender shall include the feminine gender and singular shall include the plural and vice versa.

3. PURPOSE AND DUTY OF TRUSTEE TO HOLD AND DISTRIBUTE TRUST FUND

3.1 The Trustees shall hold the Property in trust for the Beneficiaries and keep the same invested, ~~and in their absolute discretion shall either pay all or any part of the net income derived from the Trust Fund to or for all the Beneficiaries or some one or more of the Beneficiaries to the exclusion of the other or others, in such manner and proportion as the Trustees decide. The Trustees may, alternatively, accumulate all or any part of the net income derived from the Trust Fund and add it to the capital of the Trust Fund to be dealt with as part thereof.~~

3.2 Subject to the terms of this Trust, the Trustees shall, at the time of division, divide the Trust Fund among all of the Beneficiaries or some one or more of the Beneficiaries to the exclusion of the other or others in such manner and proportion as the Trustees decide, and failing such designation in equal shares per stirpes.

3.3 Notwithstanding anything herein contained, ~~until the time of division~~ the Trustees may, in their absolute discretion, encroach upon the capital of the Trust Fund and pay or transfer any amount or amounts of the capital of the Trust Fund to or for the benefit of all the Beneficiaries or some one or more of the Beneficiaries to the exclusion of the other or others, in such manner and proportion as the Trustees decide.

?

2.1 "AKKIEVILLE" IS THE LAND INTEREST DESCRIBED IN APPENDIX "B"

4. INFANT BENEFICIARIES

4.1 If a Beneficiary shall, pursuant to the provisions of Clause 2 hereof, become entitled to any accumulated income arising from the Trust Fund or, ~~at the time of division, to any part of the Trust Fund before~~ <sup>BEFORE</sup> attaining the age of majority such accumulated income or part shall be held and kept invested by the Trustees and the income and capital or so much thereof as the Trustees shall, in their absolute discretion, consider necessary or advisable shall be used for the benefit of such Beneficiary. All the powers of the Trustees provided for in Clause 5. hereof relating to the Trust Fund shall apply to such accumulated income or part so held for such Beneficiary.

4.2 4.1 The Trustees may make any payments for the benefit of any Beneficiary under the age of majority or under any other disability to a parent or guardian in fact or in law or committee of such Beneficiary or to anyone to whom the Trustees in their discretion deem it advisable to make such payments, whose receipt shall be a sufficient discharge to the Trustees, and the Trustees shall not be liable to see to the application thereof.

ELPA

5. TRUSTEES' POWERS

5.1 In addition to all other powers by this Deed or by any statute or law conferred upon the Trustees they shall have the powers, authority and discretions as follows:

~~OR~~

In addition to all other powers vested in trustees by law or statute, the Trustees are authorized generally to act with the fullest and most unrestricted powers in the administration of this Trust, it being our intention that they shall have the same powers to deal with the assets of the Trust as the Settlor would have if he were absolutely and beneficially entitled to the Trust Property and without in any way restricting the generality of the foregoing, the Trustees shall have and may from time to time exercise the following powers:

(a) To retain any cash, securities and/or other property belonging to or forming part of the Trust Fund from time to time in the actual state or condition in which the same shall be received by the Trustees for so long as the Trustees shall think proper;

(b) To invest and reinvest any and all cash, securities and/or other property belonging to or forming part of the Trust Fund in their hands from time to time without limitation to investments in which Trustees are for the time being authorized by statute to invest trust funds and whether or not there is a liability attaching to any such investments, with the intent that the Trustees shall have the same full and unrestricted powers of investing and reinvesting as a beneficial owner; and without limiting the generality of the foregoing, the Trustees may:

(i) invest in and hold property, real or personal, which is of a speculative, wasting or reversionary nature or is not revenue producing; and

(ii) invest in and hold shares, bonds, debentures or other securities, issued by any corporation or company, public or private, established or newly incorporated, operating or holding, producing income or not producing income and whether or not the Settlor or his issue, the Beneficiaries or the Trustees, their spouses or respective issue have any financial interest therein; and

(iii) purchase, at fair market value, any asset at any time belonging to the Settlor or forming part of the estate of the Settlor on such terms as the Trustees may in their absolute discretion consider advisable;

~~OR~~

(b) To make investments without being restricted to investments in which trustees are authorized by law to invest trust funds, and the Settlers hereby relieve and exonerate the Trustees from all liability and responsibility for any loss that may be occasioned to the Trust by their doing so and the Trustees may register all investments or annuities comprising all or any part of the Trust Property in the name of the Trustees or in the name of their nominees;

(c) To sell, either at public or private sale, assign, transfer, exchange, convey, mortgage, lease, build upon, improve, repair or otherwise deal with and exercise any and all rights pertaining to any of the cash, securities or other property for the time being held in connection with or forming part of the Trust Fund in the same manner, to the same extent and as fully as if they were in absolute ownership and possession of such cash, securities or other property; and without limiting the generality of the foregoing, the Trustees may:

(i) sell for cash or credit or partly for one and partly for the other, and on such terms and conditions as they deem advisable, and with or without security and

(ii) sell, at fair market value, to a Trustee or to any Beneficiary

any cash, securities or other property belonging to or forming part of the Trust Fund which the Trustees may desire to dispose of and in so doing, the Trustees shall not be bound to secure the consent or approval of any person, official, authority, tribunal or court of competent jurisdiction whomsoever or whatsoever;

OR

(c) To sell any Trust Property at such price and in any manner as they consider advisable and to execute and deliver to the purchasers any deeds and other documents that may be necessary; ✓

~~(d) To borrow at any time and from time to time such sum of money, upon such terms and subject to such conditions, for such length of time and for such purposes connected with the Trust Fund or the administration thereof as the Trustees in their absolute discretion deem advisable. In order to secure the repayment of any sum so borrowed the Trustees may make, execute and deliver, under seal or otherwise, such notes, bond or other obligations as may be required, including mortgages, pledges, hypothecations and/or charges upon all or any part of the assets of the Trust Fund. No person from whom any sum is borrowed shall be obliged in any way to see to the application thereof;~~

~~OR~~

(d) To borrow on behalf of the Trust any money they consider advisable or to advance their own monies instead of realizing the property and securities belonging to the Trust, and to pay or charge interest to them or others with respect to such borrowings and to mortgage, hypothecate, or otherwise affect any of the Trust Property, movable or immovable, as security for any money borrowed or advanced and to receive any amount borrowed or advanced; ✓

~~(e) To lend money at such rate and upon such security and such terms and conditions as the Trustees may, in their absolute discretion, consider advisable;~~ ✓

~~(f) To make any payment, provision, division or distribution which may be required under the terms hereof in whole or in part in cash, securities or other property, and on every division or distribution the judgment and apportionment of the Trustees and valuation made by the Trustees shall be binding and conclusive on all persons;~~ ✓

(g) To place on deposit with any chartered bank or trust company any cash balance from time to time in the hands of the Trustees or any securities, title deeds or other documents belonging or relating to the Trust Funds; ✓

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(h) To determine whether any payments made or received by the Trustees in the due administration of the Trust Fund shall be credited to or charged against the capital of the Trust Fund or the income therefrom or partly to or against the capital and partly to or against the income, and such determination shall be final and binding upon all persons concerned;

(i) To vote in person or by proxy all stocks, shares, bonds and other securities and to exercise all rights incidental to the ownership of stocks, shares, bonds and other securities held as part of the Trust Fund in such manner as the Trustees consider to be necessary or advisable in the circumstances; to sell or exercise any subscription rights and in connection with exercise of subscription rights to use trust moneys that may at such time be comprised in the Trust Fund and for that purpose, to consent to and join in any plan or reorganization or readjustment, amalgamation, consolidation, or merger with respect to any corporation whose stocks, shares, bonds or other securities at any time form part of the Trust Fund and to authorize the sale of the undertaking or assets or a substantial portion of the assets or undertaking of any such corporation, and to vote for the election of any of the Trustees to any executive office or to membership on any board of directors or executive or other committee of any such corporation, and to serve in any such office or on any such board or committee and accept and receive remuneration for such services without diminution of his respective compensation as fiduciary hereunder;

(j) To retain any life insurance policy entrusted to them or from time to time held by them hereunder; to purchase insurance on the life of any person who, in accordance with the provisions of the Insurance Act (Nova Scotia) shall have given any necessary consent in writing and to select such type of policy and mode of premium payment as they may deem advisable; to exercise all rights with regard to such retained or purchased insurance as the policy contract grants to the owner thereof; to pay premiums on such policies either out of capital or out of income or partly out of principal and partly out of income as they shall deem proper; to name as beneficiary of any new policies either the trust or any Beneficiary; to purchase annuities for such Beneficiary and to select such type of annuity and mode of payment therefor as they may deem advisable and to purchase and pay the premiums on policies of insurance against fire, other casualty or public liability or other insurance of a similar character; to retain any proceeds of such

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insurance and any amount payable as a result of the prepayment of premiums, but they shall not be liable for any omission to purchase any insurance or to purchase a particular amount of any type of insurance;

(k) To retain all voting rights and powers in connection with any securities or other assets at any time held in connection with or forming part of the Trust Fund notwithstanding that such securities or other assets or any of them may from time to time be set apart as a part of any share or interest, and if at any time the Trustees shall decide to sell any such securities or other assets, they shall have absolute power and discretion notwithstanding that any such securities or other assets shall for the time being be set aside as part of any share or interest to sell such securities or other assets or any part or parts thereof at such time or times and upon such terms and conditions and either for cash or credit or partly for cash and partly for credit and upon such conditions as to credit and security and as to voting rights and transfer to a trustee as the Trustees may think advisable;



~~(l) To incorporate any corporation under the laws of Nova Scotia, or any other jurisdiction in Canada or elsewhere, at the expense of the Trust Fund or otherwise, having such objects (including the conduct of farming operations and leasing of land owned by the corporation), powers and capital as the Trustees may consider expedient and, without limiting the generality of the foregoing, the Trustees shall have the power:~~

~~(i) to cause any such corporation to purchase any real or personal property for such consideration and on such terms as the Trustees may consider advisable;~~

~~(ii) to purchase and hold, as authorized investments under this Deed for the Trust Fund for such length of time as the Trustees may see fit, any shares, stocks, bonds, debentures, notes or other securities issued by any such corporation;~~

~~(iii) to lend money to any such corporation at such rate and upon such security and terms and conditions as the Trustees may, in their absolute discretion, consider advisable;~~



(iv) to manage or join in the management of any such corporation and to cause any such corporation to be wound up or surrender its charter if and when the Trustees shall consider it advisable so to do; provided nevertheless that in relation to any corporation incorporated as aforesaid all of the shares of the capital stock thereof shall be held by the Trustees as part of the Trust Fund;

OR

(l) To incorporate and organize a limited company for the purpose of acquiring any or all of the Trust Property and to sell any Trust Property to any company incorporated by them or to any other company controlled by the Trustees or by or for any of the issue of the Settlers in return for common or preferred shares or debt obligations, whether secured or unsecured, of the company or any combination of shares or debt obligations and to invest Trust Property in such shares or obligations;

(m) To make such elections, determination or designations as the Trustees consider advisable and as they are from time to time permitted to make under the provisions of the Income Tax Act (Canada) either alone or jointly with the Beneficiary or any other person;

(n) (i) To do all acts and things either alone or together with any Beneficiary who may be receiving or being allocated a benefit from the Trust required by the Income Tax Act (Canada) or any applicable provincial statute in respect of any accumulating income of the Trust, to ensure that such accumulating income shall be included in computing the income of such Beneficiary beneficially entitled thereto pursuant to the provisions of Clause 2(a) hereof for the relevant taxation year and deducted from the income of the Trust for such taxation year. The trustees are authorized, subject or pursuant to any specific provisions of any statute or regulation, to join with any Beneficiary or a parent or guardian in law or in fact or committee of any Beneficiary under the age of majority or under any other disability or with any other person whom the Trustees consider competent to act on behalf of such Beneficiary under any taxing statute, with power to the Trustees to make such election on behalf of such Beneficiary, failing a parent, guardian in law or in fact, committee or other person, as aforesaid;

~~(ii) To encroach upon the capital of the Trust Fund and to pay, on behalf of a Beneficiary receiving or being allocated a benefit hereunder, any tax due and owing as a result of any actions taken by the Trustees pursuant to Clause 5 (m)(i) hereof;~~

~~(iii) Notwithstanding any of the foregoing provisions, the making and filing of an election for income tax purposes shall not in itself create a vested entitlement in any Beneficiary to any portion of accumulating income;~~

OR

(m) (and n) (better, but add (iii) above)  
To make all such allocations, elections and distributions as they consider advisable in the best interests of the Trust as a whole and specifically any allocations and elections as may be permissible or necessary under the Income Tax Act (Canada) and the provisions thereof in force from time to time, ~~and in particular, but without restricting the generality of the foregoing;~~

~~(i) To join with any Preferred Beneficiary of the Trust in making any election pursuant to the Income Tax Act (Canada) in order to allocate to the Beneficiary the whole or any part of the accumulating income of the Trust in any taxation year;~~

~~(ii) To pay to any Preferred Beneficiary of the Trust an amount out of the accumulating income of the fund or share in any year sufficient to enable the Beneficiary to pay any increased liability of his or hers under the Income Tax Act (Canada) resulting from any election made by the Beneficiary and the Trustees whereby some or all of the accumulating income of the Trust for the taxation year is allocated to the Beneficiary for income tax purposes;~~

~~(iii) Where the Trustees consider it to be in the interests of a minor Preferred Beneficiary of the Trust, to execute on behalf of the minor Beneficiary an election, pursuant to the Income Tax Act (Canada) in order to allocate for purposes thereof the whole or any part of the accumulating income in any taxation year of the Trust to the Beneficiary;~~

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(iv) Where the Trustees consider it to be in the interests of the Beneficiary, to elect with respect to the disposition of Trust Property in such manner as to maximize and take advantage of any unused portion of any capital gains exemption available under the Income Tax Act (Canada);

(v) To allocate any eligible capital gains to any one or more beneficiaries who have not fully utilized any capital gains exemption available to them under the Income Tax Act (Canada);

ADD(n1) To pay out of the Trust Property any and all taxes assessed or levied against or in respect of the Trust Property either in respect of the income or capital thereof;

ADD(n2) Should any inheritance taxes, estate taxes, succession duties or death or legacy duties (hereinafter called "taxes") be imposed upon any of the beneficiaries of the Trust with respect to their interests therein or in respect of the Trust Property or any succession thereunder, to pay such taxes out of the Trust Property without recourse against the Beneficiaries of the Trust or against the Trustee;

(o) To take, institute, maintain, or defend any action or other proceeding which may be necessary or advisable in the opinion of the Trustees for the preservation or protection of or realization in respect of any cash, securities or other property forming part of the Trust Deed and to compromise and/or settle the same;

OR

(o) To compromise, settle and adjust all claims or demands in favour of or against the Trust upon such terms as they consider advisable;

(p) To engage in any trade or venture in the nature of trade whether solely or jointly with any other person and whether or not by way of partnership under the jurisdiction of the Province of Nova Scotia or elsewhere and make such arrangements in connection therewith as they see fit; and the Trustees may delegate any exercise of this power to any one or more of their number or to a company or partnership formed for this purpose, provided that the persons carrying on any trade or venture in the nature of trade authorized by this Deed shall have power to determine what are the distributable profits thereof and so much

of the distributable profits as accrue to the Trustees (and no more) shall be income of the Trust Fund for the purposes of this Deed. Any power vested in the Trustees under this Deed shall (where applicable) extend to any arrangements in connection with any such power or partnership as aforesaid, and in particular but without limiting the generality of the foregoing, the Trustees' powers of borrowing and charging shall extend to any borrowing arrangements made in connection with such venture or partnership as aforesaid and whether made severally or jointly with others or with unequal liability;

(q) To hold the Trust Fund or any part or parts thereof at any place or places and to move the same from time to time from place to place inside or outside Canada and notwithstanding any of the trusts, powers and provisions herein contained, the Trustees may, in their absolute discretion, at any time or times without infringing the rule against perpetuities applicable to this settlement, transfer and convey the whole or any share or portion of the Trust Fund or any of the property from time to time forming the Trust Fund, provided that such share or portion of the Trust Fund or such property has not vested in possession in one or more of the Beneficiaries by irrevocable deed or deeds, to any other trust or settlement whether established under or pursuant to the laws of Nova Scotia, any other province of Canada, or any other jurisdiction whatsoever, to be held by the Trustees of such other trust or settlement with and subject to the powers and provisions of such other trust or settlement provided such other trust or settlement shall not infringe the rule against perpetuities applicable to this settlement and that all the Beneficiaries of this settlement shall be the Beneficiaries of such other trusts or settlements and the respective interests and rights of the Beneficiaries in and with respect to such share or portion of the Trust Fund or such property, so transferred and conveyed under such other trust or settlement shall be the same as or substantially the same as, where possible under the laws of such jurisdiction, the interests and rights of the Beneficiaries in and with respect to the Trust Fund under this settlement;

(r) To distribute and divide the Trust Property or any part thereof among the several beneficiaries in connection with the terms hereof; and in order to effectuate or facilitate such distribution and division and so that the same may be made without the necessity of selling or disposing of the Trust Property or any part thereof, the Trustees, if in the exercise of their

uncontrolled discretion they shall deem it advisable so to do, are authorized and empowered to make or cause to be made a just and equitable division or partition in kind of any personal or real property among and between the several beneficiaries and to appraise such properties and to fix and determine the value of the shares of such properties to be allotted to each of the several beneficiaries; and to set apart, allot, transfer, convey and deliver the respective shares in such division or partition to the beneficiaries, and the Trustees in order to equalize any differences in such division or partition are further authorized and empowered to pay or receive such sums of money as they shall deem necessary or desirable for that purpose; and also to execute, acknowledge and deliver under seal or otherwise such deeds or other instruments in writing as they shall deem necessary or advisable to effect or complete such division or partition; and the decision of the Trustees in making such division or partition, in determining such valuation and in allotting such shares shall be final and in all respects binding upon all of the persons in any way interested in the Trust Property;

The Trustees are further authorized and empowered to make or cause to be made or to join in and assent to a just and equitable division and partition of any real or personal property which may be held by them or in common with any other person or persons or company or companies and the Trustees in making such division or partition shall have all the powers and authority hereinabove given and granted in this paragraph.

6. GIFT OVER (also see alternative to 3.)

In the event of a total failure of the trusts of this Deed by reason of no Beneficiary living to attain a vested interest therein, the Trustees shall pay or transfer all of the Trust Fund or the amount thereof remaining at the time of such failure to (wife) .

OR

6. DISPOSITION OF TRUST PROPERTY

(to the children of the Beneficiary, the other children of the Settlor, or the spouse)

The Trustees shall hold the Trust Property and shall invest the Trust Property and shall pay all or so much of the net income from investment, (and accumulate and capitalize the net income not so paid), together with all or so much of the capital, as the Trustees in their sole discretion shall deem necessary or advisable, to or for the benefit of until            attains age 25, and then the Trustees shall transfer the Trust Property to           , or if            does not attain age 25, shall transfer the Trust Property in equal shares, share and share alike, to the child or children of the Beneficiary then surviving on the same terms and conditions as herein set out, or if the Beneficiary should leave no child her surviving and then alive, to the other children of the Settlers then surviving on the same terms and conditions as herein set out, or if none of them then survive, then to the (spouse).

7. PROFESSIONAL ADVICE

7.1 The Trustees may take legal or other advice and instead of acting personally may employ professional or other assistance as they may deem necessary to the proper discharge of their duties, and may pay proper and reasonable compensation for such advice and assistance and may in relation to this Deed act on the opinion or advice of, or information obtained from, any solicitor, valuator, broker, auctioneer or other

expert, but will not be bound to act upon such information or advice and shall not be responsible for any loss occasioned by so acting or by not so acting as the case may be.

OR

7.1 To employ and pay for such professional and other assistance as they consider advisable and to act on the opinion or advice of or information obtained from any lawyer, broker or other expert, but without obligation to act upon such opinion or advice, and to pay proper compensation for all such legal or other advice or assistance obtained.

7.2 In making any such arrangement as aforesaid the Trustees are authorized to place the cash, securities or other property comprising the Trust Fund or part thereof in the custody of such solicitor, accountant, valuator, broker, auctioneer, other expert or trust company to transfer such cash, securities or other property or part thereof into the name of any such person or trust company or to any nominee thereof.

8. DIRECTION OR CONSENT OF REPRESENTATIVES

8.1 The Trustees may, if they see fit, prior to the exercise of any power herein granted to them, seek the direction or consent of the parents or guardians in law or in fact or committee of any Beneficiary as to any proposed action to be taken, and action taken in accordance with such direction or consent shall be conclusive and binding upon all persons interested.

9. SETTLEMENT OF ADDITIONAL PROPERTY

*TRUST FUND*

9.1 The Settlor may at any time and from time to time add to the ~~Trust Property~~ *Trust Fund* by devising, bequeathing, assigning, transferring, loaning, conveying, delivering or making payable to the Trustees cash, securities or other property. The Trustees may at any time and from time to time borrow or purchase for full fair market value cash, securities or other property from any person or persons other than the Settlor. The Trustees may at any time accept contributions of property from any person or persons provided that the fair market value thereof must be less than the fair market value of the aggregate of the initial and subsequent (if any) contributions made by the Settlor to the Trust Fund. All cash, securities and other property acquired by the Trustees pursuant to the provisions of this Clause 9.1 shall be held by the Trustees subject to the terms set forth in this ~~Deed.~~

*DECLARATION*

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9.2 In applying this Article 9.

(a) "contributions" shall mean any transfer, assignment or other disposition of cash, securities, or other property to the Trustees other than by way of loan or purchase for full fair market value by the Trustees, and "contribute" shall have a corresponding meaning;

(b) the fair market value of each property contributed by the Settlor shall be determined as at the time the contribution was made, and the fair market value of any other property proposed to be contributed to the Trustees shall be determined as at the time the proposed contribution would be made, in both cases in accordance with generally accepted valuation principles.

OR

9.1 To accept additions to the Trust ~~Property~~ <sup>FUND</sup> from the Settlers and from any other person, and upon such acceptance the same shall form part of the Trust ~~Property~~ <sup>FUND</sup> and all the terms and conditions of this ~~Indenture~~ shall apply thereto.  
~~DECLARATION~~

#### 10. DEALING WITH THE TRUSTEES

10.1 No person dealing with the Trustees shall be obliged to see to the application of money paid or property delivered to the Trustees, to enquire into the necessity or propriety of the Trustees exercising any of the powers herein conferred upon them or to determine the existence of any fact upon which the Trustees' power to perform any act hereunder may be conditioned.

#### 11. TRUST FUND ACCOUNTING

11.1 The Trustees shall keep accurate accounts relating to the Trust which shall be available at all reasonable times for inspection by the Settlor during his lifetime and thereafter for inspection by the parents or guardians in fact or in law or committee of any Beneficiary while under the age of majority or under any other disability and by any adult Beneficiaries.

OR

11.1 To keep all usual and proper accounts covering both capital and income of the Trust.



12. EXECUTION OF DOCUMENTS

12.1 All deeds, transfers, assignments, contracts, obligations, bills of lading, promissory notes, bills of exchange, powers of attorney and any and all other instruments in writing made on behalf of the Trust and purporting to bind the Trust may be signed, executed, drawn, endorsed and negotiated by all of the Trustees.

12.2 Any person dealing with this Deed may rely upon a copy hereof and of the notices endorsed hereon or attached hereto certified by the Trustees or the Trustees' solicitor before a Notary Public to the same extent as he might rely upon the original.

13. REPLACEMENT OF TRUSTEES

13.1 If any Trustee hereof at any time desires to retire and be discharged from the trusts hereof he may so do by notice in writing signed by himself given to the person having for the time being power to appoint new or additional Trustees hereof and upon the mailing or personal delivery of such notice the Trustee so doing is to cease to be a Trustee hereof to all intents and purposes except as to any acts and deeds necessary for the proper vesting of the Trust Property in the continuing or new Trustee or Trustees or otherwise as the case may require.

13.2 The Trustees hereof shall be Canadian residents. In the event that any Trustee hereof shall cease to be a Canadian resident, the said Trustee shall retire forthwith and a Trustee who is a Canadian resident shall be appointed pursuant to Clauses 13.3, 13.4 [and 13.5] hereof.

13.3 Without prejudice to the right of any Trustee to retire, the Settlor may during his lifetime by deed or deeds remove any Trustee or Trustees of this Settlement from office as Trustee and may instead or in addition so appoint any person or persons to be a Trustee or Trustees hereof jointly with any continuing Trustee or Trustees hereof. Save as aforesaid the statutory power of appointing any new or additional Trustee or Trustees hereof is to be applicable hereto.

13.4 In the event that any one of the Trustees should die before the Trust Property has been fully distributed or shall refuse or be permanently unable to act or continue to act or shall resign as Trustee, after the death of the Settlor, the remaining Trustees, by instrument in writing, shall appoint some person or some trust company to fill such vacancy.

OR

13.4 (a) If both the Trustees die or become unable or unwilling to act, during the continuance of this trust, then the Settlor hereby irrevocably grants to the surviving or remaining Trustee a Power of Appointment, to be exercised by Deed or Will, to appoint a successor as Trustee, on the same trusts, and upon the acceptance by the appointed person to act as Trustee, the Trust Property shall be deemed to have vested in the new Trustee, as if that new Trustee had been a party to this Indenture.

(b) or 13.5 (see 13.2) If the surviving or remaining Trustee fails to exercise the Power of Appointment by Deed or Will, then and , of , if acting as guardians of the beneficiary, shall be deemed appointed as Trustees, or if they are not acting as guardians of the beneficiary, and in default of any other appointment, shall be deemed appointed as Trustee, and upon the acceptance by the appointed persons to act as Trustee, the Trust Property shall be deemed to have vested in the new Trustees, as if the new Trustees had been a party to this Indenture.

(c) or 13.6 The Settlor and the Trustees agree, for themselves, their heirs, administrators, executors, successors and assigns, to execute such further documents, agreements, conveyances and assurances, as may be necessary to effect the purposes of this trust, and, in particular, to enable a substituted Trustee to act as fully and effectually with respect to the Trust Property as the Trustees herein appointed.

13.7 Every person so appointed as a Trustee hereunder shall, as well before as after the Trust Property becomes by law or by assurance or otherwise vested in him, have the same powers, authorities and discretions, and may in all respects act as if he had been originally appointed as a Trustee by this Indenture.

14. EXONERATION OF TRUSTEES

14.1 The Trustees shall not be required to give bond or other security for the due and faithful administration of the Trust Fund or for the discharge of the trusts hereby created and shall, subject to the provisions of Clause 18.2, be entitled to be indemnified from the Trust Fund for any claims, losses, death duties, succession duties, inheritance and other taxes and impositions arising in connection therewith.

15. COMPENSATION OF TRUSTEES

15.1 The Trustees shall be entitled to such reasonable compensation from time to time for their services hereunder as may be agreed upon between the Trustees and the Settlor or, in case he shall be deceased, his legal personal representative or as may be fixed by a court of competent jurisdiction; and the Trustees shall be entitled to resort to the income and/or capital of the Trust Fund for payment of such compensation and for reimbursement of all costs, charges and expenses which the Trustees may properly incur in the performance of their duties hereunder.

*SP-12  
REV.  
CANADA  
LETTER*

~~OR~~

15.1 To pay their reasonable and necessary out-of-pocket expenses out of the Trust Property.

15.2 Any Trustee for the time being of this Settlement being engaged in any profession or business may make and be paid all usual professional and other charges for work done by him or his firm or any partner of his in relation to the trusts hereof in the same manner in all respects as if he were not a Trustee hereof and also his reasonable charges in addition to disbursements for all other work and business done and all time spent by him and his firm or any partner of his in connection with matters arising in the premises including matters which might or should have been attended to in person by a Trustee not being a professional person but which such Trustee might reasonably require to be done by a professional person.

16. RULES FOR MANAGING THE TRUST FUND

16.1 The Trustees may adopt any rules and regulations which they from time to time deem proper to govern their own procedure, except that all matters requiring action by the Trustees shall be determined by the unanimous

consent of the Trustees. The Trustees may act either by a resolution at a meeting or by an instrument in writing signed by all the Trustees, and any such decision or act of the Trustees shall, for all purposes of this Deed, be deemed the decision or act of the Trustees.

17. BANKING ARRANGEMENTS

Notwithstanding the other provisions of this Deed, the following provisions shall govern the banking arrangements of the Trust:

17.1 The Trustees may appoint any bank or trust company to be their banker for the purposes of the Trust:

17.2 The Trustees are authorized on behalf of the Trust:

(a) to sign, endorse, make, draw, and/or accept any cheques, promissory notes, bills of exchange or other negotiable instruments, any orders for the payment of money, contracts for letters of credit or forward exchange and generally all instruments or documents for the purpose of binding or obligating the Trustees in any way in connection with the accounts and transactions of the Trust with the banker, whether or not an overdraft is thereby created, and instruments and documents so signed shall be binding upon all the Trustees;

(b) to receive from the banker and, where applicable, to give a receipt for all statements of account, cheques and other debit vouchers, unpaid and unaccepted bills of exchange and other negotiable instruments and to delegate in writing, to be filed with the banker, such authority to one or more other persons as the Trustees shall decide;

17.3 The Trustees are authorized on behalf of the Trust to negotiate with, deposit with, or transfer to, the said banker (but for the credit of the Trust's account only) all or any cheques, promissory notes, bills of exchange or other negotiable instruments, and orders for the payment of money and for the said purpose to draw, make, sign, or endorse all or any of the foregoing, and every such signature shall be binding upon all the Trustees.

18 DISCRETION OF TRUSTEES

18.1 Every discretion or power hereby or by law conferred on the Trustees shall be an absolute and uncontrolled discretion or power and no Trustee shall be held liable for any loss or damage occurring as a result of the Trustees concurring or refusing or failing to concur in an exercise of any such discretion or power.

18.2 The Trustees shall not be liable for any error of judgment or mistake of law or other mistake or for anything save the wilful misconduct or wilful breach of this Trust or fraud by such Trustees, and the Trustees shall be held harmless against any claims, losses, death duties, succession duties, inheritance and other taxes and oppositions arising in connection with the Trust Fund or any part thereof, unless such Trustees have committed an act of wilful misconduct, wilful breach of this Trust or fraud.

OR

18.1 As regards the trusts, powers, authorities and discretions vested in them, to have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner, the mode of, or the time for the exercise thereof, and in the absence of fraud the Trustees shall be in no wise responsible or accountable for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

19. LAW OF NOVA SCOTIA

This Deed shall be governed by and construed in accordance with the laws of the Province of Nova Scotia, Canada.

OR

The Trusts hereby created shall be deemed to be created under the laws of the Province of Nova Scotia, and this Indenture shall be interpreted in accordance with the laws of that Province.

IN WITNESS WHEREOF the parties hereto have hereunto  
respectively set their hands and seal as of the date hereof.

SIGNED, SEALED, AND DELIVERED  
in the presence of:

\_\_\_\_\_  
Settlor

\_\_\_\_\_  
Trustee



\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

WP 1236  
DATED THIS \_\_\_\_\_ TH DAY OF \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
THE AND TRUST  
AFRICVILLE EDUCATIONAL TRUST  
\_\_\_\_\_

KENNETH A. MACINNIS ASSOCIATES

Clare Christie  
Suite 340, 1801 Hollis Street  
Halifax, Nova Scotia  
B3J 3N4

06.5/2A

*M E O*



City of Halifax  
MEMORANDUM

Director of Finance  
421-6497



**TO:** Barry Coopersmith, City Manager  
**FROM:** B. G. Smith, C.A., Director of Finance  
**DATE:** September 8, 1995  
**SUBJECT:** Africville Memorial Education Endowment Trust

Now that the staff recommendation for creation of the Africville Memorial Education Endowment Trust has been passed by Council, it would seem that the next step involved is to have the actual reviewing and recommending body established. As a result, we need some appointees to be set by Council to review applications for this scholarship and, furthermore, we need to introduce some advertising whereby qualifying applicants may be interviewed and assessed on an appropriate basis. Do we need to discuss how this is going to be set up and what, if anything, I can do to assist you in finalizing this particular item.

*[Signature]*  
B. G. Smith, C.A.,  
Director of Finance

BGS/jb.982 *Sept. 11/95*

*B.G. Smith*

*I had requested legal to setup a foundation. Perhaps you can be of assistance. Ask Wayne A. ~~the attached note~~. Please work TOGETHER.*

*BERNARD SMITH 6497*

*c.c. Wayne Austerly*

*Bay C.*





February 27, 1968

Description of Lands to be Expropriated at  
Africville by the City of Halifax

All those certain lots, pieces or parcels of land and land covered by water in the northern portion of the City of Halifax at Africville being lots 'A', 'B', 'C' and 'D', as shown bordered in red on a plan entitled "Expropriation Plan of Certain Lands Required by the City of Halifax for Redevelopment Purposes", dated February 14, 1968 and being on file in the office of the Development Officer of the City of Halifax at City Hall as Plan #TT-8-17186, the said lands being more particularly described as follows:

Lot 'A'

Beginning at the point where the southwestern official street line of Robie Street is intersected by the western boundary line of the Canadian Government Railways Willow Park Branch and the southeastern boundary line of other land now or formerly owned by the City of Halifax;

Thence southwestwardly along the said southeastern boundary line of other land now or formerly owned by the City of Halifax for a distance of five hundred and fifty feet and forty-seven hundredths of a foot (550.47') to the southwestern boundary line of said other land now or formerly owned by the City of Halifax;

Thence northwestwardly along the said southwestern boundary line of other land now or formerly owned by the City of Halifax for a distance of one hundred and ninety-five feet (195') to the southern boundary line of the Canadian Government Railway's Deep Water Branch, Bedford Subdivision;

Thence southwestwardly along the said Canadian Government Railway's southern boundary line for a distance of one hundred and ninety-one feet more or less (191'-) to the eastern boundary line of other lands now or formerly owned by the City of Halifax;

Thence southerly along the said eastern boundary line of other lands now or formerly owned by the City of Halifax for a distance of one thousand four hundred and eighty-four feet (1,484'-) to the official northern street line of Mackintosh Street.

5001.1191

Thence southeastwardly along the said north eastern official street line of Mackintosh Street for a distance of fourteen feet more or less (14'<sup>±</sup>) to the north western official street line of Forrester Street.

Thence northeastwardly along the said north western official street line of Forrester Street for a distance of three hundred fifty-eight and two tenths of a foot (358.2') to the north eastern boundary line of lands now or formerly of the Mackintosh Subdivision.

Thence southeastwardly along the said north eastern boundary line of lands now or formerly of Mackintosh Subdivision for a distance of three hundred and fifty feet more or less (350'<sup>±</sup>) to the north western boundary line of lands now or formerly owned by Standard Paving Maritime Limited;

Thence northwardly along the said northwestern boundary line of lands now or formerly owned by Standard Paving Maritime Limited for a distance of nine hundred and forty-one feet more or less (941'<sup>±</sup>) to the northwestern boundary line of lands now or formerly owned by Canadian Government Railway's, Willow Park Branch;

Thence northwardly along the various courses of the said north western boundary line of lands now or formerly owned by Canadian Government Railway's, Willow Park Branch for a distance of nine hundred and twenty-nine feet and five tenths of a foot more or less (929.5'<sup>±</sup>) to the place of beginning.

Lot 'B'

Beginning at the point where the southwestern official street line of Robie Street is intersected by the western boundary line of the Canadian Government Railway's, Willow Park Branch and the northeastern boundary line of lands now or formerly owned by the City of Halifax;

Thence northwestwardly along the said northeastern boundary line of lands now or formerly owned by the City of Halifax for a distance of four hundred and eighty feet (480') to the southeastern boundary line of lands now or formerly owned by Canadian Government Railway's, Deep Water Branch Subdivision;

Thence northeastwardly along the various courses of the said southeastern boundary line of lands now or formerly owned by Canadian Government Railway's Deep Water Branch for a distance of one thousand, four hundred and twenty-two feet (1,422') to the northeastern official street line of Gottingen Street;

Thence southeastwardly along the said northeastern official street line of Gottingen Street for a distance of one hundred and thirty-eight feet (138') to the northwestern boundary line of lands now or formerly owned by Canadian Government Railway's, Willow Park Branch;

Thence south-eastwardly along the various courses of the said northwestern boundary line of lands now or formerly owned by Canadian Government Railway's Willow Park Branch for a distance of one thousand, five hundred and thirteen feet more or less (1,513'<sup>±</sup>) to the place of beginning.

0001 1192

Lot 'C'

Beginning at the point where the northeastern official street line of Göttingen Street is intersected by the southeastern boundary line of lands now or formerly owned by Canadian Government Railway's Willow Park Branch;

Thence southwestwardly along the various courses of the said southeastern boundary line of lands now or formerly owned by Canadian Government Railway's, Willow Park Branch for a distance of five hundred and forty-nine feet (549') to the northeastern boundary line of land now or formerly owned by the City of Halifax;

Thence southeastwardly along the said northeastern boundary line of said lands now or formerly owned by the City of Halifax for a distance of one hundred and eleven feet (111') to the northwestern boundary line of said lands now or formerly owned by the City of Halifax;

Thence northwardly along the northwestern boundary line of said lands now or formerly owned by the City of Halifax for a distance of five hundred and seventy-eight feet (578') to the said northeastern official street line of Göttingen Street;

Thence northwestwardly along the northeastern official street line of Göttingen Street for a distance of one hundred and seventeen feet (117') to the place of beginning.

Lot 'D'

Beginning at the point where the southern boundary line of lands now or formerly owned by Nova Scotia Co-operative Abattoir Limited is intersected by the western boundary line of lands now or formerly owned by Canadian Government Railway's Deep Water Branch, Bedford Subdivision;

Thence southwestwardly along the said western boundary line of lands now or formerly owned by Canadian Government Railway's Deep Water Branch for a distance of three hundred and seventy-six feet and nine tenths of a foot (376.9') to the eastern boundary line of lands now or formerly owned by Fairview Development Limited;

Thence northwestwardly along the northeastern boundary line of lands now or formerly owned by Fairview Development Limited for a distance of eighty-four feet and one tenth of a foot (84.1') to the eastern boundary line of lands now or formerly owned by the National Harbours Board;

Thence northwardly along the eastern boundary line of lands now or formerly owned by the National Harbours Board for a distance of seven hundred and eighty feet more or less (780'±);

Thence northwestwardly along the northeastern boundary line of lands, and lands covered by water now or formerly owned by the National Harbours Board for a distance of two hundred feet more or less (200'±);

0001 1193

Thence northeastwardly along the southeastern boundary line of land and lands covered by water now or formerly owned by the National Harbours Board for a distance of seven hundred and fifty feet more or less (750');

Thence northwestwardly along the northeastern boundary line of lands and lands covered by water now or formerly owned by the National Harbours Board for a distance of four hundred and ninety feet more or less (490');

Thence northeastwardly along the southeastern boundary line of said lands covered by water now or formerly owned by the National Harbours Board for a distance of one hundred and fifty feet (150') to the southwestern boundary line of lands now or formerly owned by the National Harbours Board;

Thence southeastwardly along the southwestern boundary line of lands and lands covered by water now or formerly owned by the National Harbours Board for a distance of one hundred and fifty feet more or less (150');

Thence northeastwardly along the southeastern boundary line of lands and lands covered by water now or formerly owned by the National Harbours Board for a distance of eight hundred and forty feet (840');

Thence southeastwardly along the said southwestern boundary line of said lands and lands covered with water now or formerly owned by the National Harbours Board for a distance of two hundred feet (200');

Thence northeastwardly along the said southeastern boundary line of said lands and lands covered with water now or formerly owned by the National Harbours Board for a distance of fifty-five feet (55');

Thence northwestwardly along the northeastern boundary line of lands covered by water now or formerly owned by the National Harbours Board for a distance of four hundred feet more or less (400');

Thence northeastwardly along the southeastern boundary line of lands covered with water now or formerly owned by the National Harbours Board for a distance of three hundred and fifty feet (350');

Thence southeastwardly along the southwestern boundary line of lands covered with water now or formerly owned by the National Harbours Board for a distance of two hundred and sixty feet more or less (260') to high water mark on the shore of Bedford Basin;

Thence northeastwardly along the said highwater mark on the shore of Bedford Basin being the southeastern boundary line of lands covered with water now or formerly owned by the National Harbours Board for a distance of one thousand and seventy feet (1,070');

Thence northwestwardly along the northeastern boundary line of lands covered with water now or formerly owned by the National Harbours Board for a distance of four hundred and fifteen feet (415');

Thence northeastwardly along the southeastern boundary line of lands covered with water now or formerly owned by the National Harbours Board for a distance of three hundred feet (300');

Thence southeastwardly along the southwestern boundary line of lands covered with water now or formerly owned by the National Harbours Board for a distance of five hundred and ten feet (510') to high water mark on the shore of Bedford Basin;

Thence eastwardly along the said high water mark on the shore of Bedford Basin being the southern boundary line of lands covered with water now or formerly owned by the National Harbours Board for a distance of seven hundred and fifty feet (750') to the northwestern boundary line of lands now or formerly owned by the National Harbours Board;

Thence southwestwardly along the northwestern boundary line of lands now or formerly owned by the National Harbours Board for a distance of one hundred and eighty-five feet (185') to the northern boundary line of lands now or formerly owned by the Canadian Government Railway's, Deep Water Branch;

Thence westwardly and southwestwardly along the various courses of the northern and northwestern boundary line of lands now or formerly owned by the Canadian Government Railway's Deep Water Branch for a distance of three thousand four hundred and seventy-three feet (3,473') to the northern boundary line of lands now or formerly owned by Nova Scotia Co-operative Abattoir Limited;

Thence westwardly along the northern boundary line of lands now or formerly owned by Nova Scotia Co-operative Abattoir Limited for a distance of two hundred feet (200') to the western boundary line of said Abattoir property;

Thence southwardly along the western boundary line of lands now or formerly owned by Nova Scotia Co-operative Abattoir Limited for a distance of nine hundred and ten feet (910') to the southern boundary line of said lands now or formerly owned by Nova Scotia Co-operative Abattoir Limited;

Thence eastwardly along the southern boundary line of said lands now or formerly owned by Nova Scotia Co-operative Abattoir Limited for a distance of two hundred and twelve feet more or less (212 $\pm$ ) to the place of beginning.

Made By: . . .

Checked By: . . .

0001 1195

*original*

Mr. D. Murphy, City Solicitor


C. L. Dodge, P. Eng., City Engineer

February 28, 1968

Description of Lands to be Expropriated at  
Africville by the City of Halifax.

Attached is the description of lands and lands covered  
by water to be expropriated by the City of Halifax at Africville  
for Redevelopment purposes.

Yours truly,



CHARLES L. DODGE, P. ENG.  
CITY ENGINEER

JDC/mvg  
Attachment

0001 1196

file

City of Halifax  
M E M O R A N D U M  
Corporate and Legal Affairs

TO: Bernard Smith  
FROM: Michael Christie  
DATE: 2 October 1995  
SUBJECT: Africville Educational Trust

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Further to our brief conversation last week, please find attached a draft of the Africville Educational Trust. As you can see, the trustee's powers are significantly expanded beyond the limitations normally imposed by the Trustee's Act. If there are any additional powers you feel we should add, please let us know.

Feel free to comment on any of the other provisions as well.

cc. Barry Coopersmith

**THIS DECLARATION** made the        th day of        , 1995.

By

**CITY OF HALIFAX**

(hereinafter the "Settlor" and the "Trustee")

**WHEREAS**, in the years 1964 to 1969, the City of Halifax, in the interest of urban renewal, acquired all of the lands within the former community of Africville and removed all of the buildings within the lands acquired;

**AND WHEREAS** former residents of Africville have urged the City to provide additional socio-economic support to the former residents and their descendants;

**AND WHEREAS** on 15 December 1994 Halifax City Council passed a motion that "the City provide financial support in the amount of \$100,000.00 with the interest to be used to fund an education fund for the descendants of the former residents of Africville."

**NOW THEREFORE** said monies, together with any other property or money which may from time to time be held by the Trustees in addition thereto shall be held by the Trustee, its successors and assigns, upon the following trusts:

**1. DEFINITIONS**

The "**Trust**" means that created by this Declaration, which can also be referred to as the "Africville Educational Trust".

The "**Trust Fund**" means the cash, securities or other property which the Trustees hold from time to time and at any time upon the trusts established by this Declaration.

The "**Former Residents of Africville**" means those who resided in Africville on 16 January 1964.

"**Africville**" means the community commonly known as Africville, in the City of Halifax, Province of Nova Scotia, further described in Appendix "A".

The "**Scholarships**" are the moneys allocated from the Trust Fund to the successful applicant or applicants.



## **2. CREATION OF THE TRUST**

The Settlor has set aside the amount of One Hundred Thousand Dollars (\$100,000.00) in the name of the Africville Educational Trust. The Trustee shall hold this amount, and further donations, and any accretions in trust for the Beneficiaries, the descendants of the Former Residents of Africville, and keep the same invested.

The Trustee shall disseminate the income of the Trust Fund on the request of the Scholarship Selection Committee and within the terms of this Trust.

## **3. SCHOLARSHIP SELECTION COMMITTEE**

### **3.1 Composition**

The Scholarship Selection Committee (hereinafter the "Committee") shall be comprised of five members, at least four of which shall be Former Residents of Africville or descendants of the Former Residents of Africville. The members shall be appointed by Halifax City Council and its successor.

### **3.2 Term**

Each member shall serve a five-year term on the Committee, unless the member resigns or is requested to step down by the unanimous vote of the four other members.

### **3.3 Meetings**

The Committee shall meet at least once during the year to select the recipients of the Scholarships, determine the procedure for applying for the Scholarships, and any other matters deemed appropriate by the Committee.

### **3.4 Report**

The Committee shall report to Halifax City Council or its successor at least once annually. The report shall contain, among other things, the number of applicants, the number of eligible applicants and the names of the successful applicants.

### 3.5 Quorum and Proxy

A quorum of the Committee shall be three members and proxy voting shall be permitted. A proxy vote shall not be included in the total number of members required for a quorum.

## 4. ELIGIBILITY FOR SCHOLARSHIPS

### 4.1 Procedural Requirements

Applicants must complete any application form and provide any information required by the Committee.

### 4.2 Substantive Requirements

The following are the Scholarship eligibility requirements:

- (a) the applicant must be a descendant of one of the Former Residents of Africville;
- (b) the applicant must have successfully completed Grade Twelve at a high school in Nova Scotia; and
- (c) the applicant must enrol in a course of studies at an educational institution, both the course and the institution having been approved by the Student Aid Committee, pursuant to the *Student Aid Act*, R.S.N.S. 1989, c. 449.

## 5. SELECTION CRITERIA

If more than two applicants are eligible for the Scholarships, the Committee shall consider the applicants' financial need and academic standing. It is within the Committee's sole discretion to consider other factors and the weight to be given each factor.

## 6. AMOUNT AND NUMBER OF SCHOLARSHIPS

### 6.1 Number of Scholarships

Subject to 6.4, the Scholarships shall be distributed to two eligible applicants each year.

## 6.2 Amount of each Scholarship

Subject to 6.3, the Scholarships shall be half the net income of the Trust Fund.

## 6.3 Maximum Scholarship

Each Scholarship shall not exceed the cost of tuition of the successful applicant's choice of educational institution.

If half the net income of the Trust is greater than the cost of a successful applicant's tuition, the remainder shall be added to the capital of the Trust.

## 6.4 Less than Two Eligible Applicants

If, in any year, only one eligible applicant applies for the Scholarship, the one eligible applicant shall receive the same amount he or she would have received if two applicants had been awarded the Scholarship. If, in any year, no eligible applicants apply for the Scholarship, no Scholarships shall be given in that year.

Where, in any year, less than two eligible applicants apply for the Scholarship, the money that would have been paid to eligible applicants shall be added to the capital of the Trust.

## 6.5 Increase in the Number of Scholarships

Upon the motion of four members of the Committee, and approval by Halifax City Council, or its successor, the number of scholarships may be increased, in which case the provisions 6.1, 6.2, 6.3, and 6.4 shall apply *mutatis mutandis*.

## 7. PAYMENT OF THE SCHOLARSHIP

The Scholarship shall be paid directly to the educational institution, meeting the criteria set out in 4.2(c), of the applicant's choice.

## 8. TERMINATION

The Settlor declares this to be an irrevocable trust, and if the purpose of the trust fails, then the Trust Funds shall be returned to the Settlor.

## 9. TRUSTEES' POWERS

### 9.1 Limitation on Powers

The Trustee shall not encroach on the capital of the Trust Fund.

### 9.2 Powers Beyond Those Vested by Law or Statute

In addition to all other powers vested in the Trustee by law or statute, the Trustee is authorized generally to act with unrestricted powers in the administration of this Trust, it being the intention that they shall have the same powers to deal with the assets of the Trust as the Settlor would have if he were absolutely and beneficially entitled to the Trust Property and without in any way restricting the generality of the foregoing, the Trustee shall have and may from time to time exercise the following powers:

- (a) To retain any cash, securities and/or other property belonging to or forming part of the Trust Fund from time to time in the actual state or condition in which the same shall be received by the Trustee for so long as the Trustee shall think proper;
- (b) To make investments without being restricted to investments in which trustees are authorized by law to invest trust funds and the Trustee may register all investments or annuities comprising all or any part of the Trust Property in the name of the Trustee or in the name of their nominees;
- (c) To sell any Trust Property at such price and in any manner as they consider advisable and to execute and deliver to the purchasers any deeds and other documents that may be necessary;
- (d) To borrow on behalf of the Trust any money they consider advisable or to advance their own monies instead of realizing the property and securities belonging to the Trust, and to pay or charge interest to them or others with respect to such borrowings and to mortgage, hypothecate, or otherwise affect any of the Trust property, movable or immovable, as security for any money borrowed or advanced and to receive any amount borrowed or advanced;
- (e) to place on deposit with any chartered bank or trust company any cash balance from time to time in the hands of the Trustee or any securities, title deeds or other documents belonging or relating to the Trust Funds;

(f) to retain all voting rights and powers in connection with any securities or other assets at any time held in connection with or forming part of the Trust Fund notwithstanding that such securities or other assets or any of them may from time to time be set apart as a part of any share or interest, and if at any time the Trustee shall decide to sell any such securities or other assets shall for the time being be set aside as part of any share or interest to sell such securities or other assets or any part or parts thereof at such time or times and upon such terms and conditions and either for cash or credit or partly for cash and partly for credit and upon such conditions as to credit and security and as to voting rights and transfer to a trustee as the Trustee may think advisable;

(g) To make all such allocations, elections and distributions as they consider advisable in the best interests of the Trust as a whole and specifically any allocations and elections as may be permissible or necessary under the Income Tax Act (Canada) and the provisions thereof in force from time to time.

(h) To compromise, settle and adjust all claims or demands in favour of or against the Trust upon such terms as they consider advisable.

(i) To hold the Trust Fund or any part or parts thereof at any place or places and to move the same from time to time from place to place inside or outside Canada and notwithstanding any of the trusts, powers and provisions herein contained, the Trustee may, in their absolute discretion, at any time or times without infringing the rule against perpetuities applicable to this settlement, transfer and convey the whole or any share or portion of the Trust Fund or any of the property from time to time forming the Trust Fund, provided that such share or portion of the Trust fund or such property has not vested in possession in one or more of the beneficiaries by irrevocable deed or deeds, to any other trust or settlement whether established under or pursuant to the laws of Nova Scotia, any other province of Canada, or any other jurisdiction whatsoever, to be held by the Trustees of such other trust or settlement with and subject to the powers and provisions of such other trust or settlement provided such other trust or settlement shall not infringe the rule against perpetuities applicable to this settlement and that all the beneficiaries of this settlement shall be the beneficiaries of such other trusts or settlements and the respective interests and rights of the beneficiaries in and with respect to such share or portion of the trust fund or such property so transferred and conveyed under such other trust or settlement shall be the same as or substantially the same as, where possible under the laws of such jurisdiction, the interests and rights of the beneficiaries in and with respect to the trust fund under this settlement.

#### **10. REMUNERATION OF THE TRUSTEE**

The Trustee shall be compensated for all reasonable and necessary out-of-pocket expenses related to the administration of the Trust. There will be no other remuneration.

#### **11. SETTLEMENT OF ADDITIONAL TRUST PROPERTY**

The Settlor may at any time and from time to time add to the Trust Fund by devising, bequeathing, assigning, transferring, loaning, conveying, delivering or making payable to the Trustee cash, securities or other property. The Trustee may at any time and from time to time borrow or purchase for full fair market value cash, securities or other property from any person or persons other than the Settlor. The Trustee may at any time accept contributions of property from any person or persons provided that the fair market value thereof must be less than the fair market value of the aggregate of the initial and subsequent (if any) contributions made by the Settlor to the Trust Fund. All cash, securities and other property acquired by the Trustee pursuant to the provisions of this clause shall be held by the trustee subject to the terms set forth in this Declaration.

Any additions to the Trust fund from the Settlor, and from any other person, and upon such acceptance the same, shall form part of the Trust Fund and all the terms and conditions of this Declaration shall apply thereto.

#### **12. TRUST FUND ACCOUNTING**

The Trustee shall provide an annual report to Halifax City Council, which shall include all usual and proper accounts covering both capital and income of the Trust.

#### **13. EXONERATION OF TRUSTEES**

The Trustee shall not be required to give bond or other security for the due and faithful administration of the Trust Fund or for the discharge of the trusts hereby created and shall, subject to the provisions of Clause 15, be entitled to be indemnified from the Trust Fund for any claims, losses, death duties, succession duties, inheritance and other taxes and impositions arising in connection therewith.

#### 14. BANKING ARRANGEMENTS

Notwithstanding the other provisions of this Declaration, the following provisions shall govern the banking arrangements of the Trust:

- 14.1 The Trustee may appoint any bank or trust company to be their banker for the purposes of the Trust;
- 14.2 The Trustee is authorized on behalf of the Trust:
- (a) to sign, endorse, make, draw, and/or accept any cheques, promissory notes, bills of exchange or other negotiable instruments, any orders for the payment of money, contracts for letters of credit or forward exchange and generally all instruments or documents for the purpose of binding or obligating the Trustee in any way in connection with the accounts and transactions of the Trust with the banker, whether or not an overdraft is thereby created, and instruments and documents so signed shall be binding upon the Trustee;
  - (b) to receive from the banker and, where applicable, to give a receipt for all statements of account, cheques and other debit vouchers, unpaid and unaccepted bills of exchange and other negotiable instruments and to delegate in writing, to be filed with the banker, such authority to one or more other persons as the Trustee shall decide;
- 14.3 The Trustee is authorized on behalf of the Trust to negotiate with, deposit with, or transfer to, the said banker (but for the credit of the Trust's account only) all or any cheques, promissory notes, bills of exchange or other negotiable instruments, and orders for the payment of money and for the said purpose to draw, make, sign, or endorse all or any of the foregoing, and every such signature shall be binding upon all the Trustee.

**15. DISCRETION OF TRUSTEES**

As regards the trusts, powers, authorities and discretions vested in it, to have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner, the mode of, or the time for the exercise thereof, and in the absence of fraud the Trustee shall be in no way responsible or accountable for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

**SIGNED, SEALED, AND DELIVERED**  
in the presence of

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor, the City of Halifax

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Manager, the City of Halifax



Oct. 16/95

Wagner A

May Ellen



City of Halifax  
MEMORANDUM  
Corporate and Legal Affairs

TO: Bernard Smith  
FROM: Michael Christie  
DATE: 2 October 1995  
SUBJECT: Africville Educational Trust

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Further to our brief conversation last week, please find attached a draft of the Africville Educational Trust. As you can see, the trustee's powers are significantly expanded beyond the limitations normally imposed by the *Trustee's Act*. If there are any additional powers you feel we should add, please let us know.

Feel free to comment on any of the other provisions as well.

cc. Barry Coopersmith ✓

Mike Christie

→ do not like the word Settlor.  
→ a couple of other suggestions.  
Barry

**THIS DECLARATION** made the      th day of      , 1995.

By

**CITY OF HALIFAX**

(hereinafter the "Settlor" and the "Trustee")

**WHEREAS**, in the years 1964 to 1969, the City of Halifax, in the interest of urban renewal, acquired all of the lands within the former community of Africville and removed all of the buildings within the lands acquired;

**AND WHEREAS** former residents of Africville have urged the City to provide additional socio-economic support to the former residents and their descendants;

**AND WHEREAS** on 15 December 1994 Halifax City Council passed a motion that "the City provide financial support in the amount of \$100,000.00 with the interest to be used to fund an education fund for the descendants of the former residents of Africville."

**NOW THEREFORE** said monies, together with any other property or money which may from time to time be held by the Trustees in addition thereto shall be held by the Trustee, its successors and assigns, upon the following trusts:

1.      **DEFINITIONS**

The "**Trust**" means that created by this Declaration, which can also be referred to as the "Africville Educational Trust".

The "**Trust Fund**" means the cash, securities or other property which the Trustees hold from time to time and at any time upon the trusts established by this Declaration.

The "**Former Residents of Africville**" means those who resided in Africville on 16 January 1964.

"**Africville**" means the community commonly known as Africville, in the City of Halifax, Province of Nova Scotia, further described in Appendix "A".

The "**Scholarships**" are the moneys allocated from the Trust Fund to the successful applicant or applicants.

## 2. CREATION OF THE TRUST

COUNCIL OF THE CITY OF HALIFAX

The Settlor has set aside the amount of One Hundred Thousand Dollars (\$100,000.00) in the name of the Africville Educational Trust. The Trustee shall hold this amount, and further donations, and any accretions in trust for the Beneficiaries, the descendants of the Former Residents of Africville, and keep the same invested.

The Trustee shall disseminate the income of the Trust Fund on the request of the Scholarship Selection Committee and within the terms of this Trust.

## 3. SCHOLARSHIP SELECTION COMMITTEE

### 3.1 Composition

The Scholarship Selection Committee (hereinafter the "Committee") shall be comprised of five members, at least four of which shall be Former Residents of Africville or descendants of the Former Residents of Africville. The members shall be appointed by Halifax City Council and its successor.

### 3.2 Term

Each member shall serve a five-year term on the Committee, unless the member resigns or is requested to step down by the unanimous vote of the four other members.

### 3.3 Meetings

The Committee shall meet at least once during the year to select the recipients of the Scholarships, determine the procedure for applying for the Scholarships, and any other matters deemed appropriate by the Committee.

### 3.4 Report

The Committee shall report to Halifax City Council or its successor at least once annually. The report shall contain, among other things, the number of applicants, the number of eligible applicants and the names of the successful applicants.

### 3.5 Quorum and Proxy

A quorum of the Committee shall be three members and proxy voting shall be permitted. A proxy vote shall not be included in the total number of members required for a quorum.

## 4. ELIGIBILITY FOR SCHOLARSHIPS

### 4.1 Procedural Requirements

Applicants must complete any application form and provide any information required by the Committee.

### 4.2 Substantive Requirements

The following are the Scholarship eligibility requirements:

- (a) the applicant must be a descendant of one of the Former Residents of Africville;
- (b) the applicant must have successfully completed Grade Twelve at a high school in Nova Scotia; and
- (c) the applicant must enrol in a course of studies at an educational institution, both the course and the institution having been approved by the Student Aid Committee, pursuant to the *Student Aid Act*, R.S.N.S. 1989, c. 449. OR ITS SUCCESSOR LEGISLATION OR THE COUNCIL OF THE CITY OF HALIFAX OR ITS SUCCESSOR

## 5. SELECTION CRITERIA

If more than two applicants are eligible for the Scholarships, the Committee shall consider the applicants' financial need and academic standing. It is within the Committee's sole discretion to consider other factors and the weight to be given each factor.

## 6. AMOUNT AND NUMBER OF SCHOLARSHIPS

### 6.1 Number of Scholarships

Subject to 6.4, the Scholarships shall be distributed to two eligible applicants each year.

## 6.2 Amount of each Scholarship

Subject to 6.3, the Scholarships shall be half the net income of the Trust Fund.

## 6.3 Maximum Scholarship

Each Scholarship shall not exceed the cost of tuition of the successful applicant's choice of educational institution.

If half the net income of the Trust is greater than the cost of a successful applicant's tuition, the remainder shall be added to the capital of the Trust.

## 6.4 Less than Two Eligible Applicants

If, in any year, only one eligible applicant applies for the Scholarship, the one eligible applicant shall receive the same amount he or she would have received if two applicants had been awarded the Scholarship. If, in any year, no eligible applicants apply for the Scholarship, no Scholarships shall be given in that year.

Where, in any year, less than two eligible applicants apply for the Scholarship, the money that would have been paid to eligible applicants shall be added to the capital of the Trust.

## 6.5 Increase in the Number of Scholarships

Upon the motion of four members of the Committee, and approval by Halifax City Council, or its successor, the number of scholarships may be increased, in which case the provisions 6.1, 6.2, 6.3, and 6.4 shall apply *mutatis mutandis*.

## 7. PAYMENT OF THE SCHOLARSHIP

The Scholarship shall be paid directly to the educational institution, meeting the criteria set out in 4.2(c), of the applicant's choice.

## 8. TERMINATION

The Settlor <sup>COUNCIL OF THE CITY OF HALIFAX</sup> declares this to be an irrevocable trust, and if the purpose of the trust fails, then the Trust Funds shall be returned to the Settlor.

## 9. TRUSTEES' POWERS

### 9.1 Limitation on Powers

The Trustee shall not encroach on the capital of the Trust Fund.

### 9.2 Powers Beyond Those Vested by Law or Statute

In addition to all other powers vested in the Trustee by law or statute, the Trustee is authorized generally to act with unrestricted powers in the administration of this Trust, it being the intention that they shall have the same powers to deal with the assets of the Trust as the Settlor would have if he were absolutely and beneficially entitled to the Trust Property and without in any way restricting the generality of the foregoing, the Trustee shall have and may from time to time exercise the following powers:

- (a) To retain any cash, securities and/or other property belonging to or forming part of the Trust Fund from time to time in the actual state or condition in which the same shall be received by the Trustee for so long as the Trustee shall think proper;
- (b) To make investments without being restricted to investments in which trustees are authorized by law to invest trust funds and the Trustee may register all investments or annuities comprising all or any part of the Trust Property in the name of the Trustee or in the name of their nominees;
- (c) To sell any Trust Property at such price and in any manner as they consider advisable and to execute and deliver to the purchasers any deeds and other documents that may be necessary;
- (d) To borrow on behalf of the Trust any money they consider advisable or to advance their own monies instead of realizing the property and securities belonging to the Trust, and to pay or charge interest to them or others with respect to such borrowings and to mortgage, hypothecate, or otherwise affect any of the Trust property, movable or immovable, as security for any money borrowed or advanced and to receive any amount borrowed or advanced;
- (e) to place on deposit with any chartered bank or trust company any cash balance from time to time in the hands of the Trustee or any securities, title deeds or other documents belonging or relating to the Trust Funds;

(f) to retain all voting rights and powers in connection with any securities or other assets at any time held in connection with or forming part of the Trust Fund notwithstanding that such securities or other assets or any of them may from time to time be set apart as a part of any share or interest, and if at any time the Trustee shall decide to sell any such securities or other assets shall for the time being be set aside as part of any share or interest to sell such securities or other assets or any part or parts thereof at such time or times and upon such terms and conditions and either for cash or credit or partly for cash and partly for credit and upon such conditions as to credit and security and as to voting rights and transfer to a trustee as the Trustee may think advisable;

(g) To make all such allocations, elections and distributions as they consider advisable in the best interests of the Trust as a whole and specifically any allocations and elections as may be permissible or necessary under the Income Tax Act (Canada) and the provisions thereof in force from time to time.

(h) To compromise, settle and adjust all claims or demands in favour of or against the Trust upon such terms as they consider advisable.

(i) To hold the Trust Fund or any part or parts thereof at any place or places and to move the same from time to time from place to place inside or outside Canada and notwithstanding any of the trusts, powers and provisions herein contained, the Trustee may, in their absolute discretion, at any time or times without infringing the rule against perpetuities applicable to this settlement, transfer and convey the whole or any share or portion of the Trust Fund or any of the property from time to time forming the Trust Fund, provided that such share or portion of the Trust fund or such property has not vested in possession in one or more of the beneficiaries by irrevocable deed or deeds, to any other trust or settlement whether established under or pursuant to the laws of Nova Scotia, any other province of Canada, or any other jurisdiction whatsoever, to be held by the Trustees of such other trust or settlement with and subject to the powers and provisions of such other trust or settlement provided such other trust or settlement shall not infringe the rule against perpetuities applicable to this settlement and that all the beneficiaries of this settlement shall be the beneficiaries of such other trusts or settlements and the respective interests and rights of the beneficiaries in and with respect to such share or portion of the trust fund or such property so transferred and conveyed under such other trust or settlement shall be the same as or substantially the same as, where possible under the laws of such jurisdiction, the interests and rights of the beneficiaries in and with respect to the trust fund under this settlement.

#### 10. REMUNERATION OF THE TRUSTEE

The Trustee shall be compensated for all reasonable and necessary out-of-pocket expenses related to the administration of the Trust. There will be no other remuneration.

#### 11. SETTLEMENT OF ADDITIONAL TRUST PROPERTY

The Settlor may at any time and from time to time add to the Trust Fund by devising, bequeathing, assigning, transferring, loaning, conveying, delivering or making payable to the Trustee cash, securities or other property. The Trustee may at any time and from time to time borrow or purchase for full fair market value cash, securities or other property from any person or persons other than the Settlor. The Trustee may at any time accept contributions of property from any person or persons provided that the fair market value thereof must be less than the fair market value of the aggregate of the initial and subsequent (if any) contributions made by the Settlor to the Trust Fund. All cash, securities and other property acquired by the Trustee pursuant to the provisions of this clause shall be held by the trustee subject to the terms set forth in this Declaration.

Any additions to the Trust fund from the Settlor, and from any other person, and upon such acceptance the same, shall form part of the Trust Fund and all the terms and conditions of this Declaration shall apply thereto.

#### 12. TRUST FUND ACCOUNTING

The Trustee shall provide an annual report to Halifax City Council, which shall include all usual and proper accounts covering both capital and income of the Trust.

#### 13. EXONERATION OF TRUSTEES

The Trustee shall not be required to give bond or other security for the due and faithful administration of the Trust Fund or for the discharge of the trusts hereby created and shall, subject to the provisions of Clause 15, be entitled to be indemnified from the Trust Fund for any claims, losses, death duties, succession duties, inheritance and other taxes and impositions arising in connection therewith.



#### 14. BANKING ARRANGEMENTS

Notwithstanding the other provisions of this Declaration, the following provisions shall govern the banking arrangements of the Trust:

- 14.1 The Trustee may appoint any bank or trust company to be their banker for the purposes of the Trust;
- 14.2 The Trustee is authorized on behalf of the Trust:
- (a) to sign, endorse, make, draw, and/or accept any cheques, promissory notes, bills of exchange or other negotiable instruments, any orders for the payment of money, contracts for letters of credit or forward exchange and generally all instruments or documents for the purpose of binding or obligating the Trustee in any way in connection with the accounts and transactions of the Trust with the banker, whether or not an overdraft is thereby created, and instruments and documents so signed shall be binding upon the Trustee;
  - (b) to receive from the banker and, where applicable, to give a receipt for all statements of account, cheques and other debit vouchers, unpaid and unaccepted bills of exchange and other negotiable instruments and to delegate in writing, to be filed with the banker, such authority to one or more other persons as the Trustee shall decide;
- 14.3 The Trustee is authorized on behalf of the Trust to negotiate with, deposit with, or transfer to, the said banker (but for the credit of the Trust's account only) all or any cheques, promissory notes, bills of exchange or other negotiable instruments, and orders for the payment of money and for the said purpose to draw, make, sign, or endorse all or any of the foregoing, and every such signature shall be binding upon all the Trustee.

**15. DISCRETION OF TRUSTEES**

As regards the trusts, powers, authorities and discretions vested in it, to have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner, the mode of, or the time for the exercise thereof, and in the absence of fraud the Trustee shall be in no way responsible or accountable for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

**SIGNED, SEALED, AND DELIVERED**  
in the presence of

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor, the City of Halifax

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Manager, the City of Halifax

S P E E D I M E M O R A N D U M

City of Halifax

CITY SOLICITOR'S  
OFFICE

OCT 12 1995

**SEND TO:** Mike Christie, Legal Department

**FROM:** B. G. Smith, C.A., Director of Finance

---

You will note that we are not totally in agreement over here. I am happy to discuss, if you wish.

Reg - Any comments?

BJS

~~BS~~

See my comments

~~Reg~~

City of Halifax  
MEMORANDUM  
Corporate and Legal Affairs

TO: Bernard Smith  
FROM: Michael Christie  
DATE: 2 October 1995  
SUBJECT: Africville Educational Trust

---

Further to our brief conversation last week, please find attached a draft of the Africville Educational Trust. As you can see, the trustee's powers are significantly expanded beyond the limitations normally imposed by the *Trustee's Act*. If there are any additional powers you feel we should add, please let us know.

Feel free to comment on any of the other provisions as well.

cc. Barry Coopersmith

Michael Christie

*[Handwritten signature]*



THIS DECLARATION made the      th day of      , 1995.

By

**CITY OF HALIFAX**

(hereinafter the "Settlor" and the "Trustee")

WHEREAS, in the years 1964 to 1969, the City of Halifax, in the interest of urban renewal, acquired all of the lands within the former community of Africville and removed all of the buildings within the lands acquired;

AND WHEREAS former residents of Africville have urged the City to provide additional socio-economic support to the former residents and their descendants;

AND WHEREAS on 15 December 1994 Halifax City Council passed a motion that "the City provide financial support in the amount of \$100,000.00 with the interest to be used to fund an education fund for the descendants of the former residents of Africville." ✓

NOW THEREFORE said monies, together with any other property or money which may from time to time be held by the Trustees in addition thereto shall be held by the Trustee, its successors and assigns, upon the following trusts:

1. **DEFINITIONS**

The "Trust" means that created by this Declaration, which can also be referred to as the "Africville Educational Trust".

The "Trust Fund" means the cash, securities or other property which the Trustees hold from time to time and at any time upon the trusts established by this Declaration.

The "Former Residents of Africville" means those who resided in Africville on 16 January 1964.

"Africville" means the community commonly known as Africville, in the City of Halifax, Province of Nova Scotia, further described in Appendix "A".

The "Scholarships" are the moneys allocated from the Trust Fund to the successful applicant or applicants.

2. CREATION OF THE TRUST

The Settlor has set aside the amount of One Hundred Thousand Dollars (\$100,000.00) in the name of the Africville Educational Trust. The Trustee shall hold this amount, and further donations, and any accretions in trust for the Beneficiaries, the descendants of the Former Residents of Africville, and keep the same invested.

The Trustee shall disseminate the income of the Trust Fund on the request of the Scholarship Selection Committee and within the terms of this Trust.

3. SCHOLARSHIP SELECTION COMMITTEE

3.1 Composition

The Scholarship Selection Committee (hereinafter the "Committee") shall be comprised of five members, at least four of which shall be Former Residents of Africville or descendants of the Former Residents of Africville. The members shall be appointed by Halifax City Council and its successor.

3.2 Term

Each member shall serve a five-year term on the Committee, unless the member resigns or is requested to step down by the unanimous vote of the four other members.

*For long make 3 most.*

3.3 Meetings

The Committee shall meet at least once during the year to select the recipients of the Scholarships, determine the procedure for applying for the Scholarships, and any other matters deemed appropriate by the Committee.

3.4 Report

The Committee shall report to Halifax City Council or its successor at least once annually. The report shall contain, among other things, the number of applicants, the number of eligible applicants and the names of the successful applicants.

*Yes Good Point*

3.5 Quorum and Proxy

A quorum of the Committee shall be three members and proxy voting shall be permitted. A proxy vote shall not be included in the total number of members required for a quorum.

4. ELIGIBILITY FOR SCHOLARSHIPS

4.1 Procedural Requirements

Applicants must complete any application form and provide any information required by the Committee.

4.2 Substantive Requirements

The following are the Scholarship eligibility requirements:

(a) the applicant must be a descendant of one of the Former Residents of Africville;

(b) the applicant must have successfully completed Grade Twelve at a high school in Nova Scotia; and

(c) the applicant must enrol in a course of studies at an educational institution, both the course and the institution having been approved by the Student Aid Committee, pursuant to the *Student Aid Act*, R.S.N.S. 1989, c. 449.

*This will  
course should it not  
be on acceptance  
to a  
learning  
to participate  
in the*

*required  
enrolment  
requirement  
from a  
NS inst*

5. SELECTION CRITERIA

If more than two applicants are eligible for the Scholarships, the Committee shall consider the applicants' financial need and academic standing. It is within the Committee's sole discretion to consider other factors and the weight to be given each factor.

6. AMOUNT AND NUMBER OF SCHOLARSHIPS

6.1 Number of Scholarships

Subject to 6.4, the Scholarships shall be distributed to two eligible applicants each year.

*Draw a good  
point. ~~Not~~ NOT LEAVE  
OUT.*

NOT NEEDED. IF NOT TOXED UP INCOME 0068  
TO 0061  
of surplus of the year

6.2 Amount of each Scholarship

Subject to 6.3, the Scholarships shall be half the net income of the Trust Fund.

6.3 Maximum Scholarship

Each Scholarship shall not exceed the cost of tuition of the successful applicant's choice of educational institution.

If half the net income of the Trust is greater than the cost of a successful applicant's tuition, the remainder shall be added to the capital of the Trust.

why? allocate surplus.

In a year where there are no applicants for capital. I would not go down well

6.4 Less than Two Eligible Applicants

If, in any year, only one eligible applicant applies for the Scholarship, the one eligible applicant shall receive the same amount he or she would have received if two applicants had been awarded the Scholarship. If, in any year, no eligible applicants apply for the Scholarship, no Scholarships shall be given in that year.

Where, in any year, less than two eligible applicants apply for the Scholarship, the money that would have been paid to eligible applicants shall be added to the capital of the Trust.

6.5 Increase in the Number of Scholarships

Upon the motion of four members of the Committee, and approval by Halifax City Council, or its successor, the number of scholarships may be increased, in which case the provisions 6.1, 6.2, 6.3, and 6.4 shall apply *mutatis mutandis*.

don't agree see 6.2 + 6.3 changes. surplus.

7. PAYMENT OF THE SCHOLARSHIP

The Scholarship shall be paid directly to the educational institution, meeting the criteria set out in 4.2(c), of the applicant's choice.

8. TERMINATION

The Settlor declares this to be an irrevocable trust, and if the purpose of the trust fails, then the Trust Funds shall be returned to the Settlor.

good

I think it's a good idea to add

to capital. otherwise in the long run it will become irrelevant

not go down well

UNLESS THE CAPITAL IS ADDED TO

Money left to fall unused funds to capital or select to build up in subsequent years.



9. TRUSTEES' POWERS

9.1 Limitation on Powers

The Trustee shall not encroach on the capital of the Trust Fund.

9.2 Powers Beyond Those Vested by Law or Statute

In addition to all other powers vested in the Trustee by law or statute, the Trustee is authorized generally to act with unrestricted powers in the administration of this Trust, it being the intention that they shall have the same powers to deal with the assets of the Trust as the Settlor would have if he were absolutely and beneficially entitled to the Trust Property and without in any way restricting the generality of the foregoing, the Trustee shall have and may from time to time exercise the following powers:

- (a) To retain any cash, securities and/or other property belonging to or forming part of the Trust Fund from time to time in the actual state or condition in which the same shall be received by the Trustee for so long as the Trustee shall think proper;
- (b) To make investments without being restricted to investments in which trustees are authorized by law to invest trust funds and the Trustee may register all investments or annuities comprising all or any part of the Trust Property in the name of the Trustee or in the name of their nominees;
- (c) To sell any Trust Property at such price and in any manner as they consider advisable and to execute and deliver to the purchasers any deeds and other documents that may be necessary; *except for the capital of the trust.*
- (d) To borrow on behalf of the Trust any money they consider advisable or to advance their own monies instead of realizing the property and securities belonging to the Trust, and to pay or charge interest to them or others with respect to such borrowings and to mortgage, hypothecate, or otherwise affect any of the Trust property, movable or immovable, as security for any money borrowed or advanced and to receive any amount borrowed or advanced;
- (e) to place on deposit with any chartered bank or trust company any cash balance from time to time in the hands of the Trustee or any securities, title deeds or other documents belonging or relating to the Trust Funds;

*Don't agree. should not be allowed to borrow.*

*RICH7*

(f) to retain all voting rights and powers in connection with any securities or other assets at any time held in connection with or forming part of the Trust Fund notwithstanding that such securities or other assets or any of them may from time to time be set apart as a part of any share or interest, and if at any time the Trustee shall decide to sell any such securities or other assets shall for the time being be set aside as part of any share or interest to sell such securities or other assets or any part or parts thereof at such time or times and upon such terms and conditions and either for cash or credit or partly for cash and partly for credit and upon such conditions as to credit and security and as to voting rights and transfer to a trustee as the Trustee may think advisable;

(g) To make all such allocations, elections and distributions as they consider advisable in the best interests of the Trust as a whole and specifically any allocations and elections as may be permissible or necessary under the Income Tax Act (Canada) and the provisions thereof in force from time to time.

(h) To compromise, settle and adjust all claims or demands in favour of or against the Trust upon such terms as they consider advisable.

(i) To hold the Trust Fund or any part or parts thereof at any place or places and to move the same from time to time from place to place inside or outside Canada and notwithstanding any of the trusts, powers and provisions herein contained, the Trustee may, in their absolute discretion, at any time or times without infringing the rule against perpetuities applicable to this settlement, transfer and convey the whole or any share or portion of the Trust Fund or any of the property from time to time forming the Trust Fund, provided that such share or portion of the Trust fund or such property has not vested in possession in one or more of the beneficiaries by irrevocable deed or deeds, to any other trust or settlement whether established under or pursuant to the laws of Nova Scotia, any other province of Canada, or any other jurisdiction whatsoever, to be held by the Trustees of such other trust or settlement with and subject to the powers and provisions of such other trust or settlement provided such other trust or settlement shall not infringe the rule against perpetuities applicable to this settlement and that all the beneficiaries of this settlement shall be the beneficiaries of such other trusts or settlements and the respective interests and rights of the beneficiaries in and with respect to such share or portion of the trust fund or such property so transferred and conveyed under such other trust or settlement shall be the same as or substantially the same as, where possible under the laws of such jurisdiction, the interests and rights of the beneficiaries in and with respect to the trust fund under this settlement.

*Don't know  
but I believe that  
I should give  
my share to  
Halifax, Nova  
Scotia!!*

## 10. REMUNERATION OF THE TRUSTEE

The Trustee shall be compensated for all reasonable and necessary out-of-pocket expenses related to the administration of the Trust. There will be no other remuneration.

## 11. SETTLEMENT OF ADDITIONAL TRUST PROPERTY

*Don't give anything*  
*RIGHT*  
 The Settlor may at any time and from time to time add to the Trust Fund by devising, bequeathing, assigning, transferring, loaning, conveying, delivering or making payable to the Trustee cash, securities or other property. The Trustee may at any time and from time to time borrow or purchase for full fair market value cash, securities or other property from any person or persons other than the Settlor. The Trustee may at any time accept contributions of property from any person or persons provided that the fair market value thereof must be less than the fair market value of the aggregate of the initial and subsequent (if any) contributions made by the Settlor to the Trust Fund. All cash, securities and other property acquired by the Trustee pursuant to the provisions of this clause shall be held by the trustee subject to the terms set forth in this Declaration.

Any additions to the Trust fund from the Settlor, and from any other person, and upon such acceptance the same, shall form part of the Trust Fund and all the terms and conditions of this Declaration shall apply thereto.

## 12. TRUST FUND ACCOUNTING

The Trustee shall provide an annual report to Halifax City Council, which shall include all usual and proper accounts covering both capital and income of the Trust.

## 13. EXONERATION OF TRUSTEES

The Trustee shall not be required to give bond or other security for the due and faithful administration of the Trust Fund or for the discharge of the trusts hereby created and shall, subject to the provisions of Clause 15, be entitled to be indemnified from the Trust Fund for any claims, losses, death duties, succession duties, inheritance and other taxes and impositions arising in connection therewith.

14. BANKING ARRANGEMENTS

Notwithstanding the other provisions of this Declaration, the following provisions shall govern the banking arrangements of the Trust:

14.1

*The City of Halifax (municipality) or its successor*  
~~The Trustee may appoint any bank~~ or trust company to be their banker for the purposes of the Trust;

14.2

The Trustee is authorized on behalf of the Trust:

(a) to sign, endorse, make, draw, and/or accept any cheques, promissory notes, bills of exchange or other negotiable instruments, any orders for the payment of money, contracts for letters of credit or forward exchange and generally all instruments or documents for the purpose of binding or obligating the Trustee in any way in connection with the accounts and transactions of the Trust with the banker, whether or not an overdraft is thereby created, and instruments and documents so signed shall be binding upon the Trustee;

(b) to receive from the banker and, where applicable, to give a receipt for all statements of account, cheques and other debit vouchers, unpaid and unaccepted bills of exchange and other negotiable instruments and to delegate in writing, to be filed with the banker, such authority to one or more other persons as the Trustee shall decide;

14.3

The Trustee is authorized on behalf of the Trust to negotiate with, deposit with, or transfer to, the said banker (but for the credit of the Trust's account only) all or any cheques, promissory notes, bills of exchange or other negotiable instruments, and orders for the payment of money and for the said purpose to draw, make, sign, or endorse all or any of the foregoing, and every such signature shall be binding upon all the Trustee.

*Handwritten notes and signature:*  
Should be the banker  
+ shall invest the funds in Halifax  
Trust  
No overdraft  
B/C 1/27  
[Signature]

15. DISCRETION OF TRUSTEES

As regards the trusts, powers, authorities and discretions vested in it, to have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner, the mode of, or the time for the exercise thereof, and in the absence of fraud the Trustee shall be in no way responsible or accountable for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

SIGNED, SEALED, AND DELIVERED  
in the presence of

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor, the City of Halifax

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Manager, the City of Halifax

City of Halifax  
M E M O R A N D U M  
Corporate and Legal Affairs

TO: Mary Ellen Donovan  
FROM: Michael Christie  
DATE: 14 September 1995  
SUBJECT: Africville Educational Trust

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I have found two precedents, which, combined, should give us a working document. I have also copied an excerpt from Waters which deals with the requirement of certainty of objects. Despite being a charitable trust it is my opinion that we will have to be quite specific about whom the beneficiaries are under this trust. I have taken a quick stab at it, but I think we should be careful on this. Specifying the residents of Africville by name would be preferable, if possible.

I think we would be wise to appoint a trust company as trustee. Perhaps we can discuss this with B.G. Smith in finance.

It would be my preference to talk to some of the descendants of Africville and/or council members to determine whom should be on the selection committee, and more importantly, what the distribution criteria should be. There are many questions about the number of recipients each year, whether payment should be for tuition only, eligible institutions etc. We would be taking a big leap to plug those in at this stage. On the other hand, I understand your interest in getting a working document generated.

I wish I could have been further along on this --leave it for me on Tuesday if you like.

*report to Council.*

6960 The Trust - Finance

7665 The Commission Dave Lomer

Education Act

CAI-Net Mail

To: ruthB

CC:

Re: BURSARY - AFRICVILLE

From karenSW@DUKE Sent 10:46 16 Aug 95

Just a reminder that you were to check with Mary Ellen re: the City  
Manager's suggestion about a "non-profit organization" to be established t

oversee these monies. KAREN

From wayneA@DUKE Sent 11:23 16 Aug 95

From maryD Sent 13:31 29 Aug 95

CITY OF HALIFAX  
Memorandum

TO: Mr. Barry Allen, Acting City Solicitor  
FROM: Barry B. Coopersmith, City Manager LOCAL: 6500  
DATE: 18 July 1995  
SUBJECT: Status Report - Africville

---

I would like a status report on the following items as soon as possible as the Mayor will be meeting with the Africville Genealogy Society early next week:

1. When will the Education Fund be in operation?
2. When can we expect to convey the Park land to the Society?
3. Could you give me a status report on what is happening in our attempt to move the Carvery Brothers from City Land?

*BB*

Barry B. Coopersmith  
City Manager

bbc/gc



THIS AGREEMENT made this <sup>30th</sup>  
day of August, A.D., 1985.

B E T W E E N:

FRED A. CHRISTIE of Medicine Hat in the Province of Alberta; INNIS M. CHRISTIE of Halifax, County of Halifax, Province of Nova Scotia; GARTH B. CHRISTIE of Fredericton in the County of York, Province of New Brunswick and CLARE W. CHRISTIE of Halifax in the County of Halifax, Province of Nova Scotia,

Hereinafter called the "SETTLORS"

OF THE FIRST PART,

and -

CENTRAL TRUST COMPANY, body corporate under the laws of Canada,

Hereinafter called the "TRUSTEE",

OF THE SECOND PART.

WHEREAS the Settlers are desirous of establishing an annual scholarship to be awarded to a student of the Amherst Regional High School in memory of their father and mother, H. B. and Alice Christie;

AND WHEREAS the Settlers have assigned, transferred and delivered to the Trustee the sum of Ten Thousand Dollars (\$10,000.00) upon certain trusts.

NOW THEREFORE in consideration of the covenants herein contained, it is hereby mutually agreed between the parties hereto that the said monies, together with any other property or money which may from time to time be held by the Trustees in addition thereto, all of which is hereinafter referred to as the trust fund, shall be held by the Trustee, its successors and assigns upon the following trusts:

1. TRUST

1. The Trustee shall keep invested the trust fund on the terms and conditions as set out in a Management Agreement attached hereto as Schedule "A" forming part of this Agreement and shall pay from the annual net income therefrom a sum of money in the amount to be determined by the Trustee to an educational institution to be attended by the recipient

of this Scholarship as selected by the Scholarship Selection Committee and the receipt of the proper officers of the Educational Institution for each such payment shall be an absolute discharge to the Trustee.

2. REMUNERATION OF TRUSTEE

1. The remuneration of the Trustee shall be as follows: 5% of the annual income of the trust fund plus 2/5 of 1% of the capital of the trust fund provided the minimum annual fee shall not be less than \$100.00.

3. SELECTION COMMITTEE

1. The composition of the Scholarship Selection Committee shall be the Superintendent of the Cumberland District School Board, the Supervisor of Guidance of the Amherst Regional High School, the Principal of the Amherst Regional High School and a representative of the Christie family.

4. ELIGIBILITY OF STUDENT FOR SCHOLARSHIP

(a) The student must be a Grade 12 graduating student of Amherst Regional High School proceeding to further education or training;

(b) The student must be a permanent resident of the Amherst Shore, Tidnish, Lorneville, Chapman Settlement or Beecaham Settlement communities situate in the County of Cumberland, Province of Nova Scotia. The geographic area of said communities is more particularly set out in Schedule "B" attached hereto.

(c) The Scholarship is intended to assist a hard working student in financial need. Where financial circumstances are roughly equal, the Scholarship will be awarded to the student with the highest academic standing.

(d) The Scholarship is tenable at any university, Nova Scotia Teachers College, a School of Agriculture, a School of Nursing, an Institute of Technology or similar Institution for further education or training approved by the Selection Committee.

5. AMOUNT OF SCHOLARSHIP

1. The amount of the Annual Scholarship Award shall be determined from time to time by the Trustee in its sole discretion, however, in no case to exceed the annual net income of the trust fund. Unless there is sound reasons to do otherwise, it would be the Settlers desire that the amount of the Annual Scholarship be One Thousand Dollars (\$1,000.00) or the annual interest from the trust fund, whichever is less.

6. TERMINATION

1. The Settlers declare this be an irrevocable trust and if for any reason this trust had to be dissolved the Settlers direct the Trustee to pay the trust funds over to a recognized charitable institution in Canada with like or similar objects.

IN WITNESS WHEREOF the Settlers and Trustee have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED )  
in the presence of )

*[Handwritten signature]*

*[Handwritten signature]* .....  
Fred A. Christie

*[Handwritten signature]* .....  
Iris M. Christie

*[Handwritten signature]* .....  
Garth B. Christie

*[Handwritten signature]* .....  
Clare W. Christie

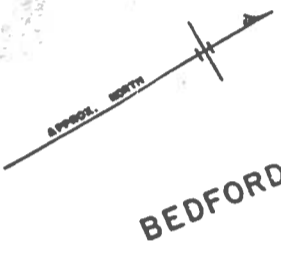
CENTRAL TRUST COMPANY

Per:.....

Per:.....

11-1-128c

AREA  
ADJACENT TO  
HIGHLAND ST  
ALFRED ST



BEDFORD BASIN

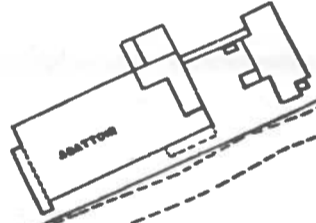


HIGH WATER MARK

STREET

BARRINGTON

BEDFORD SUBDIVISION C.N.R.



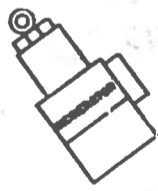
CITY OF HALIFAX

MAC KINTOSH STREET

CITY OF HALIFAX

FORRESTER STREET

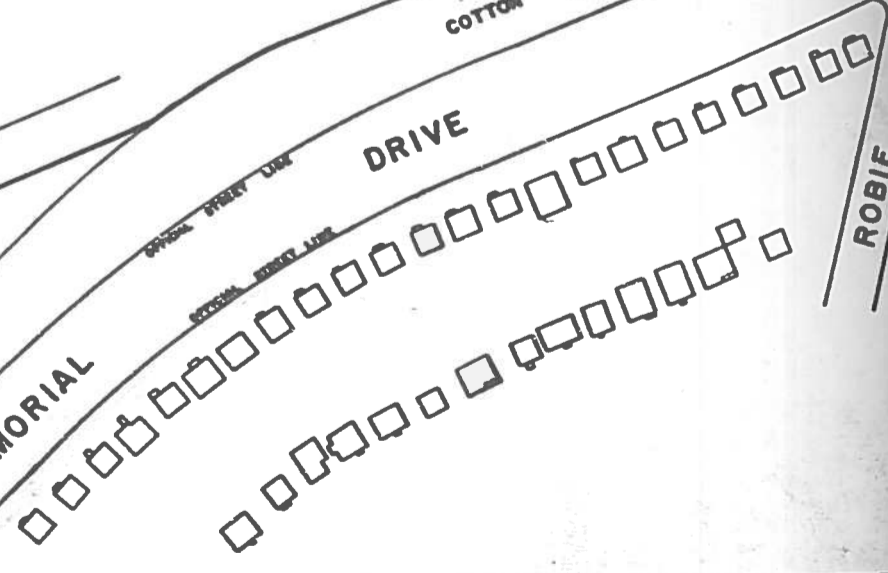
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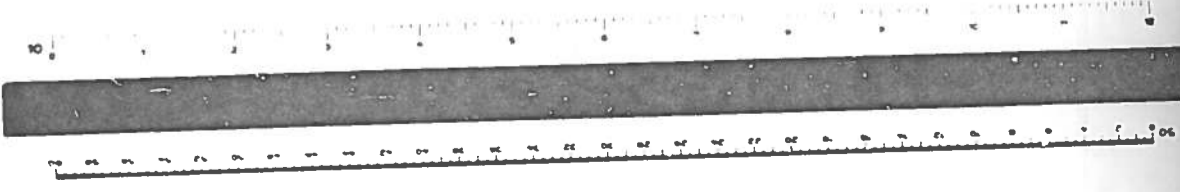
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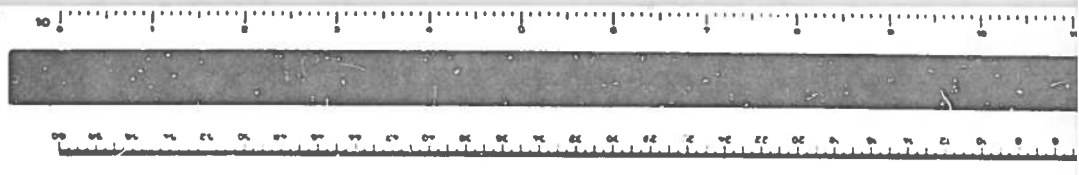
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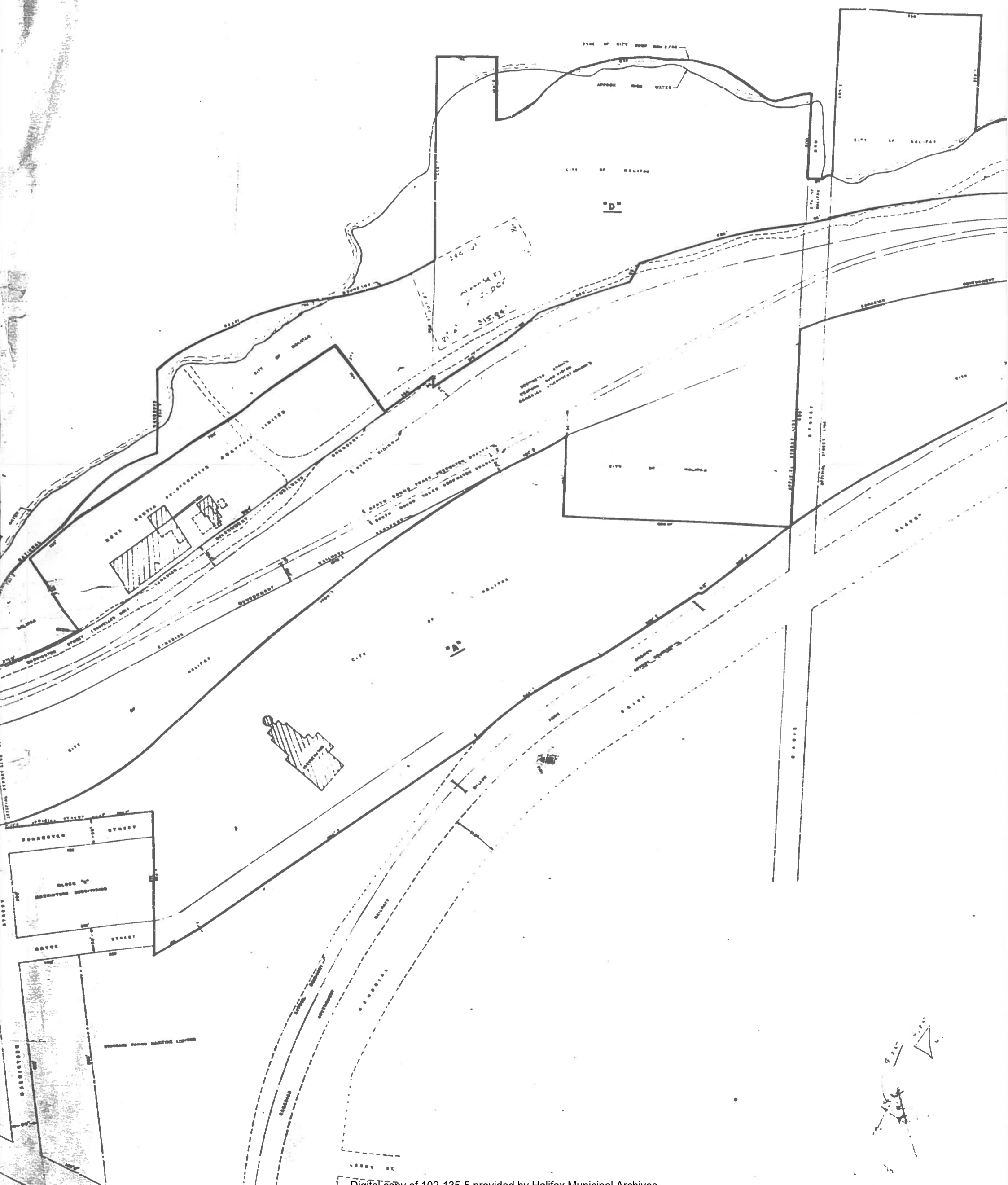






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# Registering Your Charity For Income Tax Purposes

## Highlights

**Benefits and obligations  
of a registered charity**

**What is required to  
apply for registration**

**Examples of charitable  
purposes**

**Where to get  
more information**

T4063(E) Rev. 94

Canada



This publication uses plain language to explain the most common questions you may have when you consider registering your charity for income tax purposes. For more information, please contact the Charities Division, Revenue Canada, at the address and telephone numbers listed below.

You can obtain extra copies of this publication free of charge from Revenue Canada district taxation offices (see the back cover of this publication for the addresses and telephone numbers).

This publication is a companion to form T2050, *Application for Income Tax Registration for Canadian Amateur Athletic Associations and Canadian Charities*. You should read it before you apply for registration as a charity. The application form has step-by-step instructions that explain how to complete it.

This publication explains whether or not an organization should apply, and outlines the principal factors we consider in registering an organization. If you need more information on the registration process or registered charities, please call us at:

- (613) 954-0410 for local Ottawa calls;
- 1-800-267-2384 for toll-free, long-distance calls;
- other services:
  - 1-800-267-1267 for toll-free service for visually impaired people;
  - 1-800-665-0354 for toll-free service for hearing impaired people.

You can also write to us at:

Charities Division  
Revenue Canada  
400 Cumberland Street  
Ottawa ON K1A 0L8

Cette publication existe aussi en français sous le titre *L'enregistrement de votre organisme de bienfaisance aux fins de l'impôt sur le revenu*.

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Printed in Canada

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## Introduction

You already know that Revenue Canada collects income tax. But did you know it is also responsible for registering charities for income tax purposes? The Charities Division of this Department administers the *Income Tax Act* as it applies to registered charities.

This publication explains:

- the benefits you will have as a registered charity;
- the legal requirements of being registered; and
- information you should know when sending us your registration application.

We can only grant registration if:

- the applicant's purposes and activities fall within the legal concept of charity as recognized by the courts (see the section called "What are charitable purposes?" on page 6 of this publication); and
- the organization meets the other requirements of the *Income Tax Act* (see the section on this page called "What are the obligations of a registered charity?").

Please note that there are organizations in the community with worthwhile purposes that are not considered "charitable" by the courts. For example, organizations like non-profit social clubs, sport groups and advocacy groups fall in this group. These groups do not qualify for registration (see the section called "What are charitable purposes?" on page 6 of this publication).

## What are the advantages of being a registered charity?

There are two basic advantages of being a registered charity:

- Registration allows your organization to issue official donation receipts for gifts received. This reduces the individual donor's income tax payable, and reduces the taxable income of a corporate donor.
- Once your organization is registered, it is exempt from paying income tax (under Part I of the *Income Tax Act*).

## What are the obligations of a registered charity?

Once it is registered, your organization must:

- devote its resources to charity;
- continue to meet the other requirements of registration; and
- file a form T3010, *Registered Charity Information Return and Public Information Return* within 6 months of the organization's year-end (part of the return is available to the public on request).

If you don't meet these obligations, you may lose your registered status.

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## Does your organization need to be registered?

Your organization may not need to be registered in the following situations:

- your organization does not need to be exempt from income tax, and it does not anticipate receiving gifts for which it will have to give official donation receipts; or
- your organization is a branch or agent of a Canadian municipality, or is raising funds for a municipal project.

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### Note

The *Income Tax Act* provides that gifts to a Canadian municipality are tax-supported to the same extent as gifts to registered charities. If a municipality agrees to receive the money contributed, control the expenditures, and issue official receipts in the municipality's name, the organization does not need charitable registration for income tax purposes.

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Organizations should keep in mind that some provinces and municipalities will only grant certain licenses or provide relief from provincial and municipal taxes to organizations that are registered charities under the *Income Tax Act*. Special provisions are available for registered charities under the goods and services tax rules. For more information, see the section that follows.

If your organization cannot meet the requirements for registered charitable status, it might qualify as a non-profit organization under the *Income Tax Act*. An organization with non-profit status does not have to pay tax on most types of income, but it cannot issue official donation receipts for tax purposes.

For more information on non-profit status, contact the Enquiries and Office Examination Section of your local Revenue Canada district taxation office. See the back cover of this publication for the address and telephone number of the office in your area.

## Are charities subject to other federal and provincial requirements?

The *Income Tax Act* is not the only law that applies to charities. Charities can also be subject to other federal or provincial legislation that is associated with their operations, such as provincial or municipal standards for a nursing home, hospital, school board or housing project.

At the federal level, registered charities also have to meet the requirements of the goods and services tax (GST), and may need to register with Revenue Canada for GST purposes. For more information about the GST, contact your local Excise/GST district office. You will find the address and telephone number in the Government of Canada listings of your telephone book.

If your charity is federally or provincially incorporated, it has to meet certain requirements under the incorporating law. These may include the requirement that corporations send returns to the appropriate incorporating authority. For more information, contact the government department that issued your certificate of incorporation, letters patent, memorandum of association or other incorporating document.

To find out how your charity might be affected by legislation other than the *Income Tax Act*, contact the appropriate government authority.

## What standards does Revenue Canada use to register charities?

To qualify for registration, your organization must be established and operated for charitable purposes, and it must devote its resources to charitable activities. The charity must be resident in Canada, and cannot have any income payable to benefit its members.

A charity has to meet a public benefit test. To qualify under this test, your organization must show that:

- its activities and purposes provide a tangible benefit to the public;
- those people who are eligible for benefits are either the public as a whole or a significant section of it in that they are not a restricted group or one where members share a private connection, such as social clubs or professional associations with specific membership; and
- the charity's activities must be legal and must not be contrary to public policy.

For purposes of registration as a charity, your organization has to be either incorporated or governed by a legal document called a trust or a constitution. This document has to explain the organization's purposes and structure. When an organization is governed by a constitution or trust, these documents have to at least meet the requirements set out in Appendix A or B on page 13 of this publication.

The law provides for two types of registered charities: foundations and organizations. Generally, a foundation provides funds to other charities, while an organization performs its own charitable activities.

A foundation has to be designated as either private or public. It is a private foundation if there is a close relationship among its officers, or if it is mostly funded by a single private source.

Public foundations and charitable organizations can only operate businesses that are related to their mandate or that are run substantially by volunteers. Private foundations are not allowed to engage in any business activity.

## What are charitable purposes?

The courts have identified four general categories of charitable purposes. For your organization to be registered, its purposes have to fall within one or more of the following categories:

- the relief of poverty;
- the advancement of religion;
- the advancement of education; or
- certain other purposes that benefit the community in a way the courts have said are charitable.

The application for registration you send to Revenue Canada should clearly show the way your organization will meet each of its charitable purposes. For example, a purpose "to relieve poverty" is acceptable only if it is accompanied by a statement of activities indicating how the organization will accomplish this purpose. For example, the statement might say your organization will relieve poverty "by establishing a food bank, operated by volunteers, in rented premises on Maple Street. The food bank will receive gifts of food from retail stores and individual donors, and will undertake two major door-to-door campaigns per year."

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The following are examples of the types of organizations that may qualify as charitable under each of the four categories.

### **The relief of poverty**

Organizations established for the relief of poverty include food banks, soup kitchens and organizations that supply low-cost rental housing, clothing, furniture and appliances to the poor.

### **The advancement of religion**

This category refers to promoting the spiritual teachings of a religious body, and maintaining the doctrines and spiritual observances on which those teachings are based. There has to be an element of theistic worship, which means the worship of a deity or deities in the spiritual sense. To foster a belief in proper morals or ethics alone is not enough to qualify as a charity under this category. A religious body is considered charitable when its activities serve religious purposes for the public good. The beliefs and practices cannot be what the courts consider subversive or immoral.

Other activities that advance religion include:

- organizing and providing religious instruction, and performing pastoral and missionary work; and
- establishing and maintaining buildings for worship and other religious use.

### **The advancement of education**

The courts recognize a purpose or activity as advancing education when it involves significant training or instruction, develops mental faculties, or improves a branch of human knowledge. Only providing information is not accepted by the courts as educational; training or instruction also have to be offered. The advancement of education includes:

- establishing and operating schools, colleges, universities and other similar institutions;
- establishing academic chairs and lectureships;
- providing scholarships, bursaries and prizes for scholastic achievement;
- undertaking research in a recognized field of knowledge (the research must be carried out for educational purposes and the results must be made available to the public);
- advancing science and scientific institutions, including maintaining learned societies (professional associations or other societies that primarily provide benefits to members are not considered charitable); and
- providing and maintaining museums and public art galleries.

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#### **Note**

The courts have ruled that an activity which advances education should involve a full and fair presentation of the facts so people can draw their own conclusions. Therefore, if an organization intends to influence the opinion or actions of the public toward one side of a controversial issue, then the organization is not advancing education in the charitable sense. For this reason, an advocacy group would not qualify as a charity under this category.

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## Purposes beneficial to the community

This category includes various purposes that do not fall within the other categories, but which the courts have decided are charitable. However, not all purposes that benefit the public are charitable. For example, a property-owners' association or community association might not qualify. Organizations that normally qualify as charitable include those with the following purposes:

- providing immediate relief to victims of natural disasters or sudden catastrophes (e.g., floods, earthquakes and tornadoes);
- relieving suffering or disability caused by old age, which includes providing facilities for the care, maintenance and rehabilitation of the elderly;
- preventing and relieving sickness and disability, both physical and mental (e.g., hospitals, nursing and convalescent homes and clinics, caring for the sick, and establishing workshops or other centres for disabled people);
- providing rental housing and related facilities for people with special needs (e.g., homes for disabled people);
- preserving the environment;
- protecting the welfare of children (e.g., societies for the prevention of child abuse);
- providing counselling services for people in distress;
- rehabilitating victims of substance abuse and preventing substance abuse;
- providing public amenities to benefit the community, which includes establishing facilities for the entire community (e.g., community halls, picnic areas or playgrounds);
- establishing safety rescue operations or a volunteer fire department; and
- establishing humane societies, animal shelters and similar institutions to prevent cruelty to animals.

## What factors will disqualify an organization from registration?

### Providing personal benefits

The *Income Tax Act* stipulates that no part of a registered charity's income can be payable or otherwise available to personally benefit any proprietor, member, shareholder, trustee or settlor of the organization. However, this does not prevent your organization from paying for services rendered, or incurring and paying other expenses that are associated with the normal operation of your charity.

### Political purposes or activities

Your organization will not qualify for charitable registration if at least one of its purposes is political. The courts have decided that organizations seeking to achieve political objectives, in whole or in part, are not charities. Examples of purposes of a political nature include:

- furthering the aims of a political party;
- promoting a political doctrine;
- persuading the public to adopt a particular view on a broad social question; and
- attempting to bring about or oppose changes in the law or government policy.

As well, purposes that are so broad as to allow for unlimited political activity are not acceptable.

However, a registered charity that is established exclusively for charitable purposes can engage to a limited extent (i.e., devoting no more than 10% of the charity's resources) in non-partisan political "activities" which directly help accomplish the charity's purposes. This includes, for example, distributing publications or holding conferences, workshops or other forms of communication intended primarily to sway public opinion to the charity's point of view.

### **Example**

A registered charity with a charitable purpose to provide for the welfare of children can engage in activities that take a public position about certain legislation in the field of child welfare provided the activities are within the limits described above. However, an organization established solely for the purpose of pressuring for change in legislation affecting the welfare of children cannot be recognized as a "charity," according to the principles recognized by the courts.

### **Note**

The *Income Tax Act* specifically prohibits a registered charity from engaging in any partisan political activity. This means it cannot support or oppose, monetarily or otherwise, a political party or candidate for political office.

If your organization needs more information about political activities and registered charities, contact the Charities Division (see page 2 of this publication for the address and telephone numbers).

## **What types of organizations or activities are not "charitable"?**

The public supports and benefits from a number of worthwhile organizations and activities. However, the courts may not consider all of these as "charitable." The following are examples of organizations and activities that are not considered "charitable":

### **Service clubs or fraternal lodges**

Many service clubs and fraternal lodges devote their resources to a mix of charitable and non-charitable activities. For example, many clubs provide services for needy members of the community, but also hold regular social events for their members. Therefore, they cannot be registered as charities under the *Income Tax Act*.

However, these groups could establish a separate organization to handle their charitable activities and then apply for charitable registration on its behalf. The two organizations would then need to keep their books and records separately.

### **Acts of private benevolence**

A family loses its house in a fire and the community establishes a fund to accept donations for the family. An organization is set up to cover the travel and incidental costs for a particular child's surgery. While these endeavours are commendable, an organization that is established to provide planned assistance or aid to a single identified individual or to a group of specifically named individuals is established for private benevolence. The courts do not accept the act of private benevolence as charitable, since it lacks the necessary element of public benefit. This means organizations that are formed to help named individuals or a private group do not qualify for charitable registration.



However, other registered charities that are established to provide general help to the community may be able to assist in these circumstances. For more information, contact the Charities Division (see page 2 of this publication for the address and telephone numbers).

## **What is the *Application for Income Tax Registration for Canadian Amateur Athletic Associations and Canadian Charities* (form T2050)?**

This form provides step-by-step instructions on how to complete it on the detachable flaps. It explains the information and documents that you have to provide to Revenue Canada so that the Department can determine whether your organization qualifies for registration.

Please make sure to enclose all the documents and information requested when you send us a completed application form. If your application is complete and all information is included, you will avoid unnecessary processing delays caused by missing information.

## **What is a governing document?**

The governing document is a legal document which establishes the formal existence of an organization, association, trust or corporation. A governing document sets out the organization's purposes and the boundaries within which it has to operate. Constitutions, trust documents and incorporating documents are all examples of governing documents. If your organization has enacted by-laws, we also consider these as part of your governing documents. Organizations often adopt by-laws for their internal administrative and management matters, such as duties of officers, fiscal year-end, and disposal of assets when the organization dissolves.

A constitution or trust document has to at least meet the requirements set out in Appendix A or B on page 13 of this publication.

You should send us official copies of your governing documents. An official copy is as follows:

- For an incorporated applicant, an official copy is a copy of the document bearing the seal, signature or stamp of the federal or provincial incorporating authority acknowledging its approval. This acknowledgement varies from authority to authority. These documents can be a certificate of incorporation, letters patent, or memorandum of incorporation.
- For an unincorporated applicant, an official copy of the constitution or trust document has to bear original signatures of at least three of the current directing officers. The document should also show an effective date.
- For by-laws, the official document should bear the signatures of at least two of the current directing officers and an effective date.

If your organization has no governing documents of its own because it is not an independent body but rather a division of an existing registered charity, you can provide affiliation documents instead. These usually take the following form:

- a letter of affiliation signed by an executive officer of the principal charity that confirms the affiliation of the applicant and indicates the officially recognized names of both organizations and the effective date of the affiliation; and

- a dated copy of a resolution signed by at least two directing officers of the applicant organization that indicates its members have agreed to abide by the governing document of the principal charity.

## Review process

If you are setting up a corporation and expect to eventually register it as a charity, it is important to use objectives that express specific charitable intentions, not the broad and general standard objectives allowed for other incorporation purposes under provincial and federal laws.

Therefore, before you go ahead with the incorporation, you may want to send a completed application for registration as a charity, including your organization's proposed objectives together with all documents requested on the application form, to Charities Division for review (see page 2 of this publication for the address).

To help Revenue Canada process applications as efficiently as possible, it is important that you provide a sufficient amount of detail on your organization's activities and that you fully state your case in your first submission. Insufficient information can eventually result in a denial of registration.

## What is the difference between a charitable organization and a charitable foundation?

There are three types of charity. The designation of a charity depends on its structure, its source of funding and the charity's mode of operation. The *Income Tax Act* requirements are different, depending on the type of charity.

**Charitable organization** — A registered charity which primarily carries on its own charitable activities is a charitable organization. Less than 50% of the charity's directing officers can be related persons. As well, at least 50% of the funds the charity receives has to be received from donors that are not related persons (see the section called "Related persons" on page 12 of this publication).

A charitable organization can be a corporation, or it can be established by a constitution or a trust document.

**Public foundation** — A public foundation is a charity with a primary purpose to fund other organizations that are qualified donees (see the section called "Qualified donees" on page 12 of this publication). It may also carry out some of its own charitable activities. Less than 50% of the charity's directing officers can be related persons, and at least 50% of its funding is received from donors who are not related persons (see the section called "Related persons" on page 12 of this publication).

A public foundation has to be established either as a trust or a corporation.

**Private foundation** — A private foundation is a closely held charity that carries on its own activities or funds other organizations that are qualified donees (see the section called "Qualified donees" on page 12 of this publication). A charity is designated as a private foundation if 50% or more of the directing officers are related persons, or if it receives more than 50% of its funding from one person or a group of related persons. Private foundations cannot carry on any business activities. A private foundation has to be established either as a trust or a corporation.

## **Related persons**

Individuals can be related to each other by blood, marriage, adoption, common-law relationship, or close business or corporate association (e.g., business partners, employee and employer).

Individuals or groups can also be related to a corporation in which they have a controlling interest. Those people related to these individuals are also related to the corporation.

If you would like more information about the meaning of "related persons", please contact the Charities Division (see the address and telephone numbers on page 2 of this publication).

## **Qualified donees**

Under the *Income Tax Act*, "qualified donees" are:

- registered Canadian charities;
- registered Canadian amateur athletic associations;
- certain housing corporations resident in Canada that are formed exclusively to provide low-cost housing for the aged;
- Canadian municipalities;
- the United Nations or its agencies;
- prescribed universities outside Canada;
- charitable organizations outside Canada to which Her Majesty in right of Canada (the Canadian federal government or its agents) has made a gift during the taxpayer's taxation year or the 12 months before it; or
- Her Majesty in right of Canada or in right of a province (i.e. the federal government, a provincial government or their agents).

## **What can you do if your organization is denied registration?**

If Revenue Canada denies your application for registration, you can appeal this decision to the courts.

Before the Department makes a final decision, we send a letter to the applicant to explain why it likely will not qualify. The applicant has 60 days to make further submissions to us.

If the applicant's further submission does not satisfy our concerns, we inform the applicant by registered mail of our final decision and the reasons why we refused registration. The applicant has 30 days from receiving this final decision to appeal to the Federal Court of Appeal. We describe the appeal procedure in more detail in the letter that explains our final decision.

## **Where can you get more information?**

For more information on the registration process and registered charities in general, contact us at the address and telephone numbers printed on page 2 of this publication.

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## Appendix A

### Minimum requirements of a constitution

For the purposes of registering your organization as a charity, its constitution has to at least include the following items:

- the organization's name;
- the organization's purposes;
- a clause stating that the organization shall be carried on without purpose of gain for its members, and any profits or other accretions to the organizations shall be used solely to promote its objectives;
- the organization's structure (president or chair, secretary, treasurer, etc.);
- a provision that explains how the organization will replace its directors and directing officers;
- the effective date of the document; and
- the signatures of at least three of the organization's directing officers.

## Appendix B

### Minimum requirements of a trust document

For the purpose of registering your trust as a charity, the trust document has to at least include the following items:

- the name of the trust;
- the names of the original trustees;
- the purpose for which the trust is established;
- the rules governing how the trustees of the trust will administer all money received;
- a provision in which the trustees give assurance that all the money received will be spent only for the purposes outlined in the trust document;
- provisions that explain how trustees will be replaced;
- the effective date of the document; and
- the signatures of at least three of the trustees.

| District taxation offices  | English services   |  |  |  |
|--|--|--|--|--|
|  | General enquiries  |  | Forms request  |  |
|  | Local  | Long distance  | Local  | Long distance  |
| <b>Newfoundland</b><br>St. John's - Sir Humphrey Gilbert Building,<br>P.O. Box 5968, A1C 5X6   | 772-2610   | 1-800-563-2600   | 772-5088   | 1-800-563-2600   |
| <b>Prince Edward Island</b><br>Charlottetown - 94 Euston St., P.O. Box 8500, C1A 8L3   | 628-4200   | 1-800-884-5711   | 628-4250   | 1-800-245-9922   |
| <b>Nova Scotia</b><br>Halifax - 1256 Barrington St., P.O. Box 638, B3J 2T5<br>Sydney - 47 Dorchester St., P.O. Box 1300, B1P 6K3   | 426-2210<br>564-7080   | 1-800-565-2210<br>1-800-563-7080   | 426-2210<br>564-7120   | 1-800-565-2210<br>1-800-563-7120   |
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H.B. and Alice Christie  
Memorial Scholarship  
c/o Central Trust Company  
P.O. Box 38  
Amherst, Nova Scotia  
B4H 3Y6

December 9, 1985

NOTIFICATION OF REGISTRATION  
H.B. and Alice Christie  
Memorial Scholarship

We are pleased to advise that, based on the information supplied, and assuming that your activities will be as stated in your application, we have determined that you qualify for tax-exempt status as a registered charity under paragraph 149(1)(f) of the Income Tax Act.

We have further determined that you are a private foundation because you meet the requirements of paragraph 149.1(1)(f) of the Act. If you do not agree with this designation, please let us know, giving your reasons why.

The effective date of your registration is August 31, 1985, and the official registration number assigned to you is 0717405-21-03. Please use this number in all correspondence to this office.

Gifts made to you are deductible by the donors as provided in subparagraph 110(1)(a)(i) of the Act. We would advise that official receipts issued to acknowledge gifts must conform to the requirements set out in Regulation 3501 of the Income Tax Regulations. Please refer to the enclosed Appendix in this regard.

If there is any change in your purposes, character, or method of operation, please advise us immediately so that we may consider its effect on your registered status.

... 2

Ottawa, Ont.  
K1A 0L8

Ottawa (Ont.)  
K1A 0L8

Canada

There are operational and filing requirements that you must satisfy in order to maintain your registered charity status. These are explained briefly in the enclosed Information Letter. A more detailed explanation will be contained in our information circular, entitled "Registered Charities", presently being prepared. We will send you a copy as soon as it is published, which should be within the next few months.

We note that it is apparently the intention of the H.B. and Alice Christie Memorial Scholarship to accumulate a permanent capital fund and to award scholarships in perpetuity from the income (e.g. interest) generated therefrom. The trust may therefore wish to consider soliciting donations subject to a direction by the donors that the property given, or property substituted therefor, is to be held by a charity for a period of not less than 10 years. Gifts of this nature are eligible for official tax receipts in the usual manner but need not be included in the annual calculation of the "disbursement quota" of a charity. Consequently, such gifts may be used to compile a permanent capital fund. Similar treatment can be accorded to gifts of capital received by way of bequest or inheritance. In addition, any amounts received for which official receipts have not been issued as well as any amounts over and above the trust's annual disbursement quota, may also be accumulated as capital. We would remind you, however, that a private foundation must expend 4.5% of the value of certain investment assets pursuant to subparagraph 149.1(1)(e)(iv) of the Act.

With respect to clause 2 of the trust agreement submitted, concerning the payment of trustees, we would simply make the following comment. It is our position that the trustees or directors of a registered charity may not be compensated for acting in such a capacity. However, trustees and directors may be retained as employees or agents of the charity and may receive reasonable compensation for specific duties and/or services performed for the charity and may be compensated for reasonable expenses incurred on behalf of the charity.

Please keep this determination letter in your permanent records.



Janet M.A. Reid  
for Chief  
Charitable and Non-Profit Organizations Section  
Department of National Revenue, Taxation

JMAR/cfc(1) (g.1)(I)

c.c. Hicks, Lemoine Haugg & Christie  
Attention: David Christie

LAW  
OF TRUSTS  
IN CANADA

by

D. W. M. WATERS

M.A., B.C.L. (Oxon.), Ph.D. (London)  
of Lincoln's Inn, Barrister-at-Law  
Gale Professor of Law, McGill University

1974

THE CARSWELL COMPANY LIMITED  
TORONTO, CANADA



is to be received by each beneficiary. In a sense the settlor delegates to his trustees the determination of the size of the beneficiaries' interests.<sup>83</sup>

Finally, it should be noticed that there is nothing to prevent a trustee changing the nature of the trust property through exercise of his power of investment. Certainty of subject-matter requires only that the trust property be initially defined or ascertainable; if it is changed in character by, for example, the sale of land and the purchase of shares the trust property obviously retains its ascertainability.

### 3. Certainty of Objects

"Objects" is a neutral word, and properly so, because trusts may be created in favour of persons, but also to a limited extent in favour of purposes which the settlor or testator would like to see carried out.

#### (1) Persons

We saw earlier<sup>83A</sup> that the courts in England have recently distinguished between a mere or non-discretionary trust, a power in the nature of a trust which includes the discretionary trust, and a mere power. Persons, human or incorporated, are the familiar objects of trusts, and the problem of certainty which they present is whether it is possible to say that the persons intended as objects are ascertainable.<sup>84</sup> Ascertainable is a somewhat ambiguous word, but in this context it means two things: first, that it is possible to determine, if the intended beneficiaries are not referred to by name but by a class description, whether any person is a member of that class, and, secondly, that all the members of that class are known.<sup>85</sup> Ascertainment means certainty, and it is certainty on both those matters that must be established if the trustees have no discretion as to distribution among the class members, but hold the property for beneficiaries who have interests whose amount or quantum is set out in the instrument creating the trust.

Before pursuing these two elements of certainty further, however, something must be said of why certainty of objects is required. If a testator leaves

<sup>83</sup> See further on discretionary trusts, *post*, p. 369.

<sup>83A</sup> *Supra*, p. 73.

<sup>84</sup> Reference should be made to p. 65 *et seq.*, *supra*, where distinction is drawn between the certainty required for a mere power, a power in the nature of a trust which includes a discretionary trust, and a mere or non discretionary trust.

<sup>85</sup> Two things should be noted: (1) the difficulty of finding the members of the class is irrelevant, if the description is such that it is possible to say who is or is not in the class, and to list the persons who make up the class. "The whereabouts or continued existence of some of its members at the relevant time matters not": *Whishaw v. Stephens*, [1970] A.C. 508 at 524, *per* Lord Upjohn, (sub nom. *Re Gulbenkian's Settlement* [1968] 3 All E.R. 785 (H.L.)); (2) "The question of certainty must be determined as of the date of the document declaring the donor's intention": *ibid.*, *i.e.* the date of the deed, writing, or verbal declaration which is to take effect *inter vivos*, or the date of the testator's death when his will is the instrument of creation.

For an unusual case—an hotelier's catering staff during the time that he had been imposing a service charge upon customers—see *Shabinsky v. Horwitz*, [1973] 1 O.R. 745, 32 D.L.R. (3d) 318.

property on trust for equal distribution "among my friends", it is self evident that before the trustees can discharge their task they must be able to say what the testator meant by a "friend" and be able to discover the full number of those friends. It is equally clear that, even if the trustees could be said to have an objective and workable test by which they can determine whether any person is a member of the intended class of trust objects, they can never be sure that they have a complete list of these persons. If such a trust were valid, each friend being entitled to an equal share, the result would be a stalemate. The trustees do not know that they have all the friends, and until they have a definitive list they cannot divide the property. However, a trust is an obligation, and, if the trustees do not carry it out, the courts have always taken the view that it is incumbent upon them to see to its discharge. This is the root of the doctrine whereby the administration of a trust can be transferred to the court. The court both redresses breach of trust by entertaining an action against the trustees for breach, and it administers a trust if no other path is open for its administration by others. But, said Sir William Grant and Lord Eldon in *Morice v. The Bishop of Durham*,<sup>86</sup> how can the court control and administer the trust if the trust objects are uncertain? The court is in no better position than the trustees. The inevitability of this position is that the trust for uncertain objects must fail initially, and the property, if that is certain, revert to the settlor or to the testator's estate.

The test, therefore, is whether there is sufficient certainty of objects that, if need be, the court could execute the trust. In effect this means that the trustees, too, must be able to find the same degree of certainty. In personal or family trusts a number of class descriptions have come before the courts, and the courts do not readily deem such a description as uncertain. Nevertheless, there must be limits. "Children", "grandchildren", "cousins", "nephews and nieces" and such terms of relationship have provided no difficulty, but the nebulous description is a different matter. A trust in favour of a person's "family", "relatives",<sup>87</sup> "dependents" or "friends,"<sup>88</sup> poses problems, as we have seen, at two levels: is it clear enough whom the testator means to include, and, if so, can the range of those persons be known? Evidence may be available to make the description more definitive, for instance, "immediate family", "close relatives", and "dependents living in my household", but in the absence of other evidence the court is left with the descriptive noun itself. Family, relatives, and dependents have each been held to satisfy the first test, namely, that it is possible to determine whether or not a person is a member of the class, and they have satisfied the second test, namely that all the members of class must be known, where the family, relatives or dependents of one person were in question. The situation is quite different, however, where the trust is non-discretionary, and the relatives and dependents of a large class of persons are

<sup>86</sup> (1804) 9 Ves. 399, aff'd 10 Ves. 522, 32 E.R. 947.

<sup>87</sup> *McPhail v. Doulton*, [1971] A.C. 424, [1970] 2 All E.R. 228 (H.L.), and authorities there discussed.

<sup>88</sup> *Re Coates*, [1955] Ch. 495, [1955] 1 All E.R. 26 (a mere power).

beneficiaries of the intended trust. This is why the *McPhail v. Doulton* gift failed as a trust in the lower courts.

An excellent example of this problem arose with *Re Connor Estate*.<sup>89</sup> This was a decision of the Alberta Court of Appeal before the time of *McPhail v. Doulton*, when the leading authority on trust powers was *I.R.C. v. Broadway Cottages Trust*.<sup>90</sup> The issue concerned the validity of a discretionary trust in favour of the testatrix's "close friends". The test of ascertainability then was that the descriptive term must be sufficiently clear that it could be said of any person whether or not he was a member of the class, and all the members of the class must be determinable. At first instance Sinclair J. held that, given the ease of finding the friends of a woman who had lived in a small community for many years, he considered both tests satisfied. In the Court of Appeal he was reversed in a two to one decision. In the view of the majority the gift did not pass even the first test. Friendship was a word of broad and varied application, unlike "relations" it had no statutory or other controlling limitations, and it could embrace any relationship from the greatest intimacy to acquaintanceship. Nor did "close" as an adjective to "friends" make sufficient difference.<sup>91</sup> McDermid J.A. concluded, "In my opinion a gift to 'friends' is so indefinite and makes the ascertainment of the class so difficult, if not impossible, as to avoid the gift."<sup>92</sup>

When the trust is not of a family nature, but is to be found in a community or commercial setting, the problem is compounded because of the size of the purported class. In *Re Bethel*<sup>93</sup> the trust was in favour of "any needy or deserving Toronto members of the [T. Eaton Company Ltd.] Quarter Century Club" as the trustees in their discretion should decide. This was a decision in the wake of *McPhail v. Doulton*; if that decision is to be followed in Canada,<sup>94</sup> it is now necessary to satisfy only the first test when the trust is discretionary. That is to say, it must be possible to say of any person whether or not he is a member of the class. In *Whishaw v. Stephens*<sup>95</sup> Lord Upjohn said that, in determining whether a class description is sufficiently certain in meaning so that it can be said of any person whether he qualifies as a member, one must construe the whole document with an effort to find a reasonable meaning of the term used. In the context of the instrument, the intent of the maker of the document may still appear to give a meaning to what without that evidence is an ambiguous

<sup>89</sup> (1970), 72 W.W.R. 388, 10 D.L.R. (3d) 5, reversing (1969) 69 W.W.R. 241 (Alta. C.A.).

<sup>90</sup> [1955] Ch. 20, [1954] 3 All E.R. 120 (C.A.).

<sup>91</sup> At this point McDermid J.A. cited Lord Upjohn's judgment in *Re Gulbenkian's Settlement Trusts (Whishaw v. Stephens)* [1970] A.C. 508 at 523, [1968] 3 All E.R. 785 at 792, where his Lordship said that, even if two or three persons were plainly "friends" and presented themselves to the trustees, the trustees would still never know that there were not others. This suggests that Lord Upjohn considered "friends" to fall on the second test, but to satisfy the first. Moreover, this reasoning supports the decision in *Re Coates*, [1955] Ch. 495 (friends—mere power—sufficient certainty of objects) which has always been regarded as sound.

<sup>92</sup> (1970), 72 W.W.R. 388 at 393.

<sup>93</sup> [1971] 2 O.R. 316, 17 D.L.R. (3d) 652, aff'd sub nom. *Jones v. T. Eaton Co.* (1973), 35 D.L.R. (3d) 97 (Can.).

<sup>94</sup> In the Supreme Court judgment, *supra*, it appears to be assumed that it is to be followed in Canada.

<sup>95</sup> [1970] A.C. 508 at 522.

term. In *Re Bethel Gale* C.J.O. accepted this, but still found "Toronto members" and "The Quarter Century Club" uncertain.<sup>96</sup> The language was "sensible and comprehensible", but the limits of those terms were "quite vague and whether an individual is or is not a member of the class cannot be ascertained with any degree of certainty."<sup>97</sup> Did membership require residence in Toronto or employment in the store, or both? Did it include retired as well as currently employed persons? The time of the required certainty was the testator's death; that was not in dispute. But that did not serve to answer the questions posed. On appeal to the Supreme Court<sup>98</sup> the majority view in the court below (from which Gale C.J.O. had dissented) was upheld in that the trust was charitable; but Spence J. turned to the question posed in the appeal that, even if the trust was charitable, what did "Toronto members" mean?

In view of the evidence that employees of the store for twenty-five years might still be moved from the location of one store in Canada to another, Spence J. conceded that this was a question of "some little difficulty". But, applying the *McPhail v. Doulton* test, requiring as to certainty that it be possible to say of any individual whether he is or is not a member of the class, the learned judge came to a conclusion on the basis of a submission by counsel that, given the wording of the bequest and the fact that the testator had worked in Toronto with company employees there, certainty of description could be established. "The testator would mean", said Spence J., "those members [of the Quarter Century Club] who were employed by the company in Toronto at the time when they became members. . . . What influenced the testator in his choice of the words 'Toronto members' was his thinking of those who had spent 25 years working, as he had, for the T. Eaton company right in Toronto."<sup>99</sup>

A number of difficulties spring from this decision. First, it is not altogether clear from the judgment whether *any* person qualifies who completes twenty-five years of employment while working at the Toronto store. Counsel invited the court to come to that conclusion, and it seems likely that that construction would be put upon the meaning of the judgment. But would a person be included if, after many years working in Montreal, he was transferred to Toronto one month before completing twenty-five years' service? Would his

<sup>96</sup> Gale C.J.O. dissented from the majority opinion that the trust was charitable. It is curious that the Chief Justice did not draw attention to the fact that this was a *purpose trust*. See *post*, p. 118. If it was not charitable, it had to fail. Whether or not its objects were certain, or its terms contravened the perpetuity rule, was irrelevant. It clearly did not fall within either of the anomalous types of non-charitable purpose trusts. The text here takes note of what the Chief Justice had to say of "Toronto members", and assumes for the sake of argument that this was a discretionary trust directly in favour of persons. It must be conceded, however, that trusts for purposes sometimes, as in this case, come very close to being trusts directly for persons. *E.g.*, "on trust for such Toronto members of the Quarter Century Club as the trustees in their discretion shall decide" is a discretionary trust for a class of persons; "on trust for any needy or deserving Toronto members", etc., is a discretionary trust for purposes, namely, the relief of the needy and deserving. The distinction in such a case as this may be fine, but, in view of the law concerning non-charitable purpose trusts, it is vital that the draftsman realize what he is doing when he introduces adjectives (*e.g.*, "needy or deserving") as was done in this case.

<sup>97</sup> [1971] 2 O.R. 316 at 322.

<sup>98</sup> (1973), 35 D.L.R. (3d) 97 (Can.).

<sup>99</sup> *Ibid.*, at 108-109.

qualification be even more in doubt if he retired from the company when working at another branch of the store in another city? Secondly, these questions seem to underline Gale C.J.O.'s point that the *McPhail v. Doulton* test could not be met in this case. Everything turns on what "admissible evidence" means. The evidence of "relevant surrounding circumstances" in this case, tendered in response it would seem to Gale C.J.O.'s objections to the vagueness of the term, turned out to be little more than speculative deduction. And, if evidence of this kind can be sufficient, *Re Connor Estate*<sup>1</sup> was most definitely wrongly decided. Not only has the *McPhail v. Doulton* decision overtaken it, but Sinclair J.'s approach seems now eminently more sound than that of the Alberta Court of Appeal. He took into account the circumstances in which the testatrix had lived, and from that evidence derived a certainty of meaning for "close friends".

The precept which every trust draftsman should therefore follow is that the objects clause of the trust instrument should be spelt out in careful detail if there could be any question of which persons come into a class description. The "class must be as defined as the individual; the court cannot guess at it".<sup>2</sup> Provided certainty is attained as to who would or would not qualify as a member, and it is possible, given the nature of the instrument and the circumstances, to point to a reasonable number of persons as coming within that class description, the requirement of certainty is satisfied for a mere power, a discretionary trust, and any other form of trust power. Where there is no power or obligation to select persons from the class, or every member of the class must receive something from the trustees of the discretionary trust or the donee of the trust power, then there must also be certainty in the sense that every member of the class must be listed or determined. He has to be known, not in the sense of where he was living or whether he was still alive when the trust instrument or the instrument containing the trust power came into effect, but that he existed. Trustees can always apply to the court for directions or pay the share in question into court if they find themselves with an untraceable or deceased beneficiary whose share is vested.

If the objects clause is not spelt out carefully so that the court is asked to guess at the membership of the class, the trust may well fail whether it is discretionary or non-discretionary. Everything depends upon whether there is "admissible evidence" of the intention of the settlor or testator which gives certainty to that term which in itself is uncertain. *Jones v. Executive Officers of T. Eaton Co.*<sup>3</sup> on the *McPhail v. Doulton* point may come to be regarded as merely a decision on the facts, and to be distinguished as such. The trust in that case was held to be charitable, and the courts will often go to considerable lengths to uphold an otherwise valid charitable trust. But, as so many of these decisions turn upon the attitude of the court towards the instrument and the surrounding circumstances, no outcome can be entirely predictable. The sort of trust which is peculiarly vulnerable to uncertainty of objects failure is the discretionary

<sup>1</sup> (1970), 72 W.W.R. 388, 10 D.L.R. (3d) 5 (Alta. C.A.).

<sup>2</sup> *Whishaw v. Stephens*, [1970] A.C. 508 at 524, per Lord Upjohn.

<sup>3</sup> *Supra*, note 98.

trust in favour of employees when it is not clear whether the reference is to past as well as present and future employees, or the discretionary trust, possibly of a charitable character, which names a nebulous class such as "old members of the XYZ Club". Two factors are in the settlor's, or testator's, favour; the decision in *McPhail v. Doultton* will save many trusts which might previously have failed, and in the main Canadian courts are less demanding than the English courts in the search for certainty.

## (2) Purposes<sup>4</sup>

A trust is a mechanism whereby one person manages property for the benefit of another. The trustee has consequent duties, and it is up to the beneficiary to see that those duties are discharged. If they are not, and loss has to be recovered from the trustee or from a liable third party, it is the trust beneficiary who brings an action for breach against the trustee or recovers the trust property on behalf of all the trust beneficiaries from the hands of the third party. This is the mechanism of the trust in operation.

However, the settlor or testator may not wish to benefit persons directly. He may have indirect benefit in mind. It may be very indirect, as where he wishes to leave money on trust "to fund research into the law of trusts in Canada", or less indirect, as when his trust is "to provide recreational facilities and sports equipment in the East End Community Centre". In the latter case the donor is not so much concerned with the specific people who use the centre, as with the fact that the persons who do use it tend to be of low income groups or otherwise in need. But the benefit may be even less indirect as where the intended trust is to be for the "provision of comforts for the patients of Ward H of the Uplands Hospital, Notown, Alberta". In all these cases, however, the trust is not for persons but for purposes, and, since the trustee cannot be compelled to discharge his duties by a "purpose", the law has opposed them. In principle purpose trusts are void.

To this principle, nevertheless, there is one considerable exception. If the purpose is charitable within the meaning that the law gives to that term, the trust will be valid. This is an age-old concession in recognition and encouragement of acts of giving which are concerned to improve the welfare of society or sizeable groups within it. A further concession to charity is that the objects of the charitable trust, that is, the purpose or purposes, need not be set out with the same degree of certainty as is demanded of the objects clause of a trust for persons. It is true the court cannot execute a purpose trust where the purpose is unascertained;<sup>5</sup> but, provided the purpose whatever its range of possible activities comes within the scope of charitable activities as the law defines that term, the trust will be said to have certainty of objects. Certainty is "charitable"; the court will order a scheme to be drawn up setting out a

<sup>4</sup> This subject is sketched in at this point for the purpose of completing the discussion of certainty. The subject is dealt with fully, *post*, at p. 421 *et seq.*

<sup>5</sup> *E.g.*, "for good and needed work for the benefit of the residents of Notown".

specific proposal for the expenditure of the trust funds if such an ambiguity within the scope of charity is found.<sup>6</sup> The trust is then capable of being executed or carried out. But, if the testator or settlor does not confine his purpose to those which are charitable, his trust will either partly or wholly fail.

However, certainty of purpose, though it exists immediately or by way of a scheme, does not solve the problem of how the trust is to be enforced. A part answer has been supplied for many centuries by the Crown's inherent responsibility as *parens patriae* for all charitable activities. A Crown officer, such as the Attorney General, the Public Trustee, or other designated person, will represent a charitable trust in any litigation. In the absence of legislation, however, the Crown restricts its activities to mere representation, and in such circumstances there is little, if any, survey by anyone of the zeal and efficiency of the charitable trustees in discharging their duties. This, of course, was precisely why the courts were always reluctant to accept the validity of purpose trusts. The English Charities Act of 1960 was passed to deal with exactly this problem, namely, adequate supervision and enforcement arrangements for charitable trusts.

Non-charitable purpose trusts do not come within the scope of these concessions, and therefore, following the principle, are invalid. In the nineteenth century, first instance courts in England conceded validity to two types of such trusts, and it is only because of the antiquity of those decisions that they have not been reversed by twentieth century appellate courts. The list is made up of (1) trusts for the care and maintenance of specific graves or burial places, and the erection of gravestones and monuments; (2) trusts for the maintenance of specific animals. If they are not charitable, doubt surrounds trusts for the saying of masses for the dead, and considerable controversy of a related, but more complex kind has surrounded trusts for unincorporated associations. Legislation in Ontario<sup>7</sup> and Alberta<sup>8</sup> deems all non-charitable purpose trusts with "specific" objects to be powers, which would suggest that no problem involving certainty can arise. As yet, however, there has been no reported litigation on the subject.

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<sup>6</sup> The Supreme Court having found that the trust in *Jones v. T. Eaton Co.* was a trust for charitable purposes, a scheme could have been ordered if "Toronto members" was found to be uncertain. A definition of "Toronto members" would then have been agreed upon.

<sup>7</sup> Perpetuities Act, R.S.O. 1970, c. 343, s. 16(1).

<sup>8</sup> Perpetuities Act, 1972 (Alta.), c. 121, s. 20(1).



# APPLICATION FOR INCOME TAX REGISTRATION FOR CANADIAN AMATEUR ATHLETIC ASSOCIATIONS AND CANADIAN CHARITIES

| For Departmental use only |  |
|---------------------------|--|
| Registration number       |  |
| Date                      |  |

**PLEASE READ THE INSTRUCTIONS ON THE PERFORATED FLAPS.** You will need the information to properly complete this form. The numbered paragraphs in the instructions match the numbers on this form.

All organizations, corporations, trusts, etc. who want to become registered charities or registered Canadian amateur athletic associations must complete this form.

## PART I – IDENTIFICATION

|   |             |                                 |
|---|-------------|---------------------------------|
| 1. Name of applicant                                      |             |                                 |
| 2. Mailing address (Street and no., P.O. Box or R.R. No.) |             |                                 |
| 3. City or town   | 4. Province | 5. Postal code                  |
| 6. Address at which books and records will be kept        |             |                                 |
| 7. City or town   | 8. Province | 9. Fiscal year-end<br>Day Month |

## PART II – SUPPORTING INFORMATION

|  |                          |
|--|--------------------------|
|  | <b>Attached</b>          |
| 10. Please attach an <b>official</b> copy of each of the <b>governing documents</b> under which the applicant was established. ....  | <input type="checkbox"/> |
| Does your organization have by-laws? <input type="checkbox"/> Yes <input type="checkbox"/> No  |                          |
| If yes, please attach an official copy. ....   | <input type="checkbox"/> |
| 11. Please attach a <b>statement of activities</b> setting out fully the activities and programs to be carried on by the applicant to further each of the objectives or purposes set out in its governing documents. ....  | <input type="checkbox"/> |
| 12. Please attach <b>financial statements</b> for the last completed year or fiscal year of operation. If the applicant is not yet in operation, you should attach a copy of a proposed budget or estimate of income and expenditures, as well as anticipated assets and liabilities for the first year of operation. .... | <input type="checkbox"/> |
| 13. Please attach a <b>list of officers</b> showing the full name, address and occupation of all the executive or directing officers of the applicant, including, in the case of a parish or congregation, the name of the priest, pastor, minister, or religious leader in charge. ....                                   | <input type="checkbox"/> |
| 14. Is the applicant seeking registration as: <input type="checkbox"/> a charity?<br><b>or</b><br><input type="checkbox"/> a Canadian amateur athletic association?  |                          |
| 15. Does the applicant own (or intend to own) real property, i.e., land or buildings? <input type="checkbox"/> Yes <input type="checkbox"/> No<br>If Yes, please state below the name in which title to the real property will be registered.  |                          |
| Name   |                          |



## PART II – SUPPORTING INFORMATION

**10. Governing documents** (continued) In the case of an **unincorporated** applicant, an **official** copy or photocopy of the constitution or trust document must bear the signatures of at least three of the current directing officers. The document must also show an effective date.

For by-laws, the official document or photocopy should bear the signatures of at least two of the current directing officers and an effective date.

You also have to attach copies of any later documents that amend the **governing documents** (e.g., supplementary letters patent or special resolutions).

If your organization is affiliated with a principal body that is a registered charity, please see the **governing documents** section in the *Registering Your Charity for Income Tax Purposes* brochure for information on the documents you will need.

**11. Statement of activities** - This statement must fully describe all aspects of the operation or intended operation of the applicant. If the description of the applicant's activities is vague or incomplete, or only a reiteration of the objects or purposes, this will **delay** the **processing of the application** because we will need to contact the applicant for more details. The statement should refer to the objects or purposes set out in the governing documents (see number 10), and explain in full how the applicant intends to accomplish each of these objects or purposes. If the applicant has brochures, advertising or other published material prepared, you should attach samples.

**12. Financial statements** - Financial statements normally include a Statement of Income and Expenditures as well as a Statement of Assets and Liabilities. These detailed statements should relate to the most recent complete fiscal period. Please explain unusual items. If the applicant is not yet operating, or has not been in existence for a full year, a proposed budget for its first complete year of operation or estimate of income and expenditures and assets and liabilities will suffice. The statements or estimate should account for the entire operation of the applicant.

**14. Registered charities and registered Canadian amateur athletic associations** - Revenue Canada's brochure *Registering Your Charity for Income Tax Purposes* describes the requirements for registration as a charity. To qualify for registration as a Canadian amateur athletic association, an applicant must be a non-profit association that has as its primary purpose and function the promotion of amateur athletics in Canada on a **nation-wide** basis.

**15. Real property** - If the applicant owns (or intends to own) land or buildings, the applicant should be incorporated. If it is not incorporated, real property may be held:

- by a Canadian municipality;
- by an incorporated principal or parent body that is a registered charity;
- in trust for the applicant under the terms of a provincial statute; or
- by trustees for the benefit of the applicant.

If the applicant will hold title to real property, please give full details on a separate sheet, along with a copy of the **trust** instrument, if it applies.

## HOW TO COMPLETE THIS FORM

Read these instructions carefully before you complete the attached application. **To help you, we have numbered each paragraph below to correspond with the number of each item on the application.** Please answer all the questions on the form, and submit the information and documentation requested. **Omissions and errors will lead to delays in the processing of the application.**

Revenue Canada's brochure *Registering Your Charity for Income Tax Purposes* (T4063) gives details about the requirements for registration as a charity. You should read it before you complete this application.

**For help in completing this form, please contact us at the Charities Division, Revenue Canada, Ottawa, Ontario.**

**Telephone: Toll-free 1-800-267-2384; Ottawa (613) 954-0410.**

You can get information on the registration requirements for Canadian amateur athletic associations from the Charities Division.

If an organization has separate branches, sections, parishes, congregations, or other divisions that receive donations or income on their own, you must submit a separate application for registration for each.

## PART I – IDENTIFICATION

**1. Name of applicant** - This refers to the legal name of the organization, association, corporation, trust, etc. that is seeking registration. The name entered on the form should be identical to the name of the applicant as it appears on its **governing documents** (see number 10 below). Registration is granted only in this name. If the organization operates under another name, please explain this in the information you provide with this application.

**6. Address at which books and records will be kept** - Provide either a complete street address, a lot or concession number, or other means of describing the physical location where the applicant will keep books and records. A post box number or a rural route number is not sufficient.

**9. Fiscal year-end** - This is the date on which the applicant's financial year ends. If the date you provide on the application form is different from the one shown in the applicant's governing documents, please explain. Once Revenue Canada, has registered your charity under a specific fiscal year-end, you cannot alter that date except with the prior approval of the Department.

## PART II – SUPPORTING INFORMATION

**10. Governing documents** - Every registered charity must be legally established by a governing document. To apply for registration:

- a **charitable organization** can either be incorporated or established by a constitution or trust; and
- a **public or private foundation** must either be incorporated or be a trust.

**You should provide official copies of your governing documents.** Official copies are as follows:

- In the case of an **incorporated** applicant, you need to provide a copy of the document bearing the seal, signature or stamp of the federal or provincial incorporating authority acknowledging its approval. Such acknowledgement varies from authority to authority. These documents could be a certificate of incorporation, letters patent, or memorandum of incorporation.
- If an **unincorporated applicant** does not presently have a governing document, you will need to draw up a constitution or trust document. Please refer to the brochure *Registering Your Charity for Income Tax Purposes* for an outline of the required elements of a **constitution** or a **trust** document.

(continued)

**questions 16, 17 and 18**

|                                      |                          |                          |
|--------------------------------------|--------------------------|--------------------------|
| an 50% of its income to              | Yes                      | No                       |
| .....                                | <input type="checkbox"/> | <input type="checkbox"/> |
| ont page) <b>related to</b>          |                          |                          |
| cting officers are <b>related</b> by |                          |                          |
| iness or corporate ties              |                          |                          |
| ate this relationship on the         |                          |                          |
| s form. ....                         | <input type="checkbox"/> | <input type="checkbox"/> |
| an 50% of                            |                          |                          |
| <b>related</b> to each other? .....  | <input type="checkbox"/> | <input type="checkbox"/> |

nd in all documents attached is true and correct.

|  |                                  |
|--|----------------------------------|
|  | Date                             |
|  | Business Telephone Number<br>( ) |
|  | Home Telephone Number<br>( )     |
|  | Date                             |
|  | Business Telephone Number<br>( ) |
|  | Home Telephone Number<br>( )     |

entative, if different from 19 above:

|  |                              |                                  |
|--|------------------------------|----------------------------------|
|  | Home Telephone Number<br>( ) | Business Telephone Number<br>( ) |
|--|------------------------------|----------------------------------|

**WHEN WILL YOU KNOW YOU ARE REGISTERED?**

When completed, you should forward the forms and the supporting documents to Charities Division, **Revenue Canada, Ottawa, Ontario, K1A 0L8**. Please detach the instruction flaps from the application form by tearing along the perforated lines. Keep the flaps for future reference.

Revenue Canada, makes every effort to process applications as quickly as possible. However, because of variations in the volume and complexity of submissions we receive, delays do occur. If you need any information on the progress of your application, contact us at the Charities Division at 1-800-267-2384 for toll-free, long-distance calls, or (613) 954-0410 for local Ottawa calls.

If we approve the application, we will advise you of the registration number with a Notification of Registration, which will also provide some details of the requirements for continued registration.

If it appears that your application will not likely be approved, we will give you an explanation of the reasons why and give you a full opportunity to discuss the application.

Please note that an organization cannot issue official donation receipts for income tax purposes until it is formally registered by Revenue Canada, as a charity. The Department does issue account numbers to newly formed corporations, but you should not confuse these numbers with the nine-digit charitable registration number.

**OBLIGATIONS OF A REGISTERED CHARITY**

- A registered charity must continue to meet the operational requirements of charitable registration under the *Income Tax Act*.
- It must also file an annual information return within six months of the charity's year-end. A portion of the return is available to the public on request.

**Have you included . . .**

- an official copy of governing documents?**  
(see note 10)
- a statement of activities?**  
(see note 11)
- a statement of income and expenditures, assets and liabilities?**  
(see note 12)
- the names, addresses and occupations of executive or directing officers?**  
(see items 13 and 17)

(DETACH)

(DETACH)