

Peace Hills Trust Co. v. Canada Deposit Insurance Corp.

Between
Peace Hills Trust Company and Carry the Kettle First
Nation Trustees of the Trust Created out of the Carry
the Kettle First Nation Treaty Land Entitlement
Settlement Agreement, namely: Connie Oshdoehonk, Clyde
O'Watch, Iris O'Watch, Corinna Rider, Cora Thomson,
Roswald Saulteau, Garry Hamilton Beatty, Plaintiffs,
and
Canada Deposit Insurance Corporation, Defendant

[2007] A.J. No. 1247

2007 ABQB 364

55 C.C.L.I. (4th) 204

288 D.L.R. (4th) 237

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Alberta Court of Queen's Bench
Judicial District of Edmonton

D.R.G. Thomas J.

Heard: May 23, 2007.

Judgment: November 2, 2007.

(51 paras.)

Wills, estates and trusts law -- Trusts -- Express trusts, creation -- Application by plaintiffs for declaratory relief respecting extent of deposit insurance coverage under Canada Deposit Insurance Corporation Act dismissed -- Plaintiff trustees of Band deposited settlement funds received from Canada in satisfaction of treaty obligations -- Act provided that individual deposits were only insured to maximum of \$100,000 -- Court rejected plaintiffs' argument that each Band member's share should receive separate insurance coverage -- Trust was a purpose trust, created to enable

purchase and development of reserve lands, not a trust held for two or more persons, and accordingly deposit was insured only to extent of \$100,000.

Application by plaintiffs for declaratory relief respecting extent of deposit insurance coverage under Canada Deposit Insurance Corporation Act -- First Nation Band received \$21,393,654 from Canada in satisfaction of longstanding treaty obligations to enable it to acquire lands to add to existing reserves -- Parties entered into Trust Agreement whereby Band was both settlor and beneficiary of trust for funds, and five trustees were appointed -- Plaintiff trustees deposited funds into trust account with plaintiff Peace Hills Trust Company ("PHT") -- Act provided that an individual deposit could only be insured to a maximum of \$100,000 -- Parties disagreed as to whether accounts containing trust funds involved deposits for a single beneficiary or multiple beneficiaries -- PHT and trustees asserted that each Band member's share should receive separate insurance coverage -- Defendant Corporation argued that trust funds were held as a purpose trust, with result that it was a deposit to which \$100,000 coverage limit applied -- Schedule to Act provided that deposits would be insured separately if they were from a depositor acting as a trustee for two or more beneficiaries -- HELD: Application dismissed -- A purpose trust was a trust in which settlor wanted to benefit a particular purpose, rather than persons, although persons could benefit indirectly -- Non-charitable purpose trusts could exist in Canada provided they did not contravene rule against perpetuities and there was some person with standing to enforce trust -- Wording of Trust Agreement made clear that Band's paramount intention was to make certain identified purposes object of trust as opposed to individual members of Band -- Intent was to benefit collective, rather than individuals making up collective -- Even though individual members would benefit indirectly by increased opportunity for traditional hunting, trapping, gathering or other uses, this fact alone did not prove objects of trust were persons and not purposes -- Settlor's intended object, as revealed by language in Trust Agreement, governed -- Accordingly Court found Trust Agreement created a purpose trust for purpose of acquiring lands and pursuing other development related objectives -- Council, Chief or members of Band would have standing to enforce trust, and accordingly trust was valid from enforcement perspective -- Trust contained clause to avoid breach of rule against perpetuities -- Since a trust held for purposes instead of persons was not a trust held for two or more persons, deposit was insured only to extent of \$100,000.

Statutes, Regulations and Rules Cited:

Canada Deposit Insurance Corporation Act, R.S.C. 1985, c. C-3, s. 7, s. 12

Schedule to Canada Deposit Insurance Corporation Act, R.S.C. 1985, c. C-3, s. 1, s. 2, s. 3, s. 3(3)

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D.R.G. THOMAS J.:-

Reasons for Judgment

Para. #

I.	Summary	1
II.	Introduction	2

III.	Background	4
	A. The Framework and Settlement Agreements	4
	B. The Trust Agreement	6
	C. Relevant Legislation	8
IV.	Issues	16
V.	Analysis	17
	A. Can a valid purpose trust be established under Canadian law?	17
	B. Does the Trust Agreement create a valid purpose trust in respect to the Trust Property deposited with PHT?	30
	C. If the Trust Agreement creates a valid purpose trust, what is the legal effect of that finding on the extent of deposit insurance coverage under the Act?	47
VI.	Disposition	50

I. Summary

1 The parties seek declaratory relief in respect to the extent of deposit insurance coverage under the *Canada Deposit Insurance Corporation Act*, R.S.C. 1985, c. C-3, ("*Act*") for the Trust Property deposited with the Peace Hills Trust Company by the Carry the Kettle First Nation and the Trustees named under the Trust Agreement. In the context of all of the evidence and having particular regard to the terms of the Trust Agreement, I conclude the parties to that agreement have created a purpose trust and the deposit insurance coverage is limited as contended for by the Canada Deposit Insurance Corporation ("*Corporation*").

II. Introduction

2 The trial of this matter proceeded on the basis of an Initial and Supplemental Agreed Statement of Facts and Annexed Documents (collectively referred to as the "*ASF*"). I find as facts all of the mutual admissions and facts set out in the *ASF*. Some of the defined terms in the *ASF* are used in this decision but most of the capitalized terms used in this

judgment reflect the definitions in the Trust Agreement. I refer to the Carry the Kettle First Nation as ("Band"), a term defined in the Trust Agreement.

3 As context for my analysis of the intention of the parties expressed in the Trust Agreement, I set out a brief background to the claim and the relevant law. This is followed by a summary of the positions of the parties. I then review the core issues of whether the parties to the Trust Agreement have created a purpose trust and the legal effect of a finding of such a trust in the circumstances present here. In deciding these core issues I consider three questions, namely:

- (a) Can a valid purpose trust be established under Canadian law?
- (b) Does the Trust Agreement create a valid purpose trust in respect to the Trust Property deposited with PHT?
- (c) If the Trust Agreement creates a valid purpose trust, what is the legal effect of that finding on the extent of deposit insurance coverage under the *Act*?

I conclude with the disposition of the claims for declaratory relief.

III. Background

A. The Framework and Settlement Agreements

4 On September 22, 1992, representatives of Canada, Saskatchewan and 22 First Nations signed the Framework Agreement which established a process under which Canada would satisfy longstanding treaty obligations through the provision of funds to facilitate the acquisition of lands which could then be added to the existing reserves of the First Nation signatories. The Band became a party to the Framework Agreement by subsequent adhesion.

5 On March 29, 1996, the Band entered into the Settlement Agreement as contemplated by the Framework Agreement. Under the Settlement Agreement, Canada and Saskatchewan acknowledged that the Band had suffered a shortfall of 24,320 acres and agreed to pay the Band \$21,393,654.00 as Entitlement Monies to be used by the Band to acquire replacement lands, and to remain a long term asset of the Band.

B. The Trust Agreement

6 As further contemplated by the Framework and Settlement Agreements, the Trust Agreement was entered into on March 18, 1996. Under the Trust Agreement the Band is both the settlor and the beneficiary of the trust created by that document which also appointed five individuals as the Trustees. The Entitlement Monies were paid by Canada to the Trustees and the Trustees then deposited the Entitlement Monies in the Trust Account established at PHT for that purpose.

7 The Trust Agreement may be briefly summarized as providing that the beneficial interest in all Trust Property vests in the Band, that the funds in the Trust Account are available only for limited purposes including the purchase of land for the benefit and use of the Band, purchase of authorized investments, payment of costs associated with land acquisition, and for transfer to a separate account known as the Revenue Trust Account. The funds in that account are also restricted and may only be used to pay Authorized Expenses, purchase Authorized Investments, or for one time disbursement to the Band for the specific purpose of promoting the development of the Band or its administration and services. I will come back to review some of the specific terms of the Trust Agreement when performing the analysis as to the intention of the parties who created and signed the Trust Agreement document.

C. Relevant Legislation

8 Section 7 of the *Act* provides:

- 7. The objects of the Corporation are
 - (a) to provide insurance against the loss of part or all of deposits;
 - (b) to promote and otherwise contribute to the stability of the financial system in Canada; and
 - (c) to pursue the objects set out in paragraphs (a) and (b) for the benefit of persons having deposits with member institutions and in such manner as will minimize the exposure of the Corporation to loss.

9 PHT is a member institution under the *Act* and, as such, pays premiums to the Corporation in exchange for deposit insurance coverage.

10 According to s. 12 of the *Act*, an individual deposit can only be insured to the extent of \$100,000. The term "deposit" is defined in s. 2 of the Schedule to the *Act* ("Schedule") as "the unpaid balance of the aggregate of moneys received or held" by a member institution. In the normal course, a person making two separate deposits of \$75,000 each (totalling \$150,000) would not receive full coverage on both deposits, but instead would receive a total of \$100,000 in coverage on both deposits, leaving \$50,000 uninsured. According to s. 1 of the Schedule, "person" is defined as including an "association of persons," meaning that a deposit by an association will be treated as a deposit made by a single person, not a series of separate deposits by each member of that association.

11 Section 3 of the Schedule specifically deals with the coverage for joint contributions and trust arrangements:

3(1) Where a member institution is obligated to repay moneys to a depositor who is acting as trustee for another or as joint owner with another, if the trusteeship or joint interest is disclosed on the records of the institution, the deposit of the depositor acting as trustee or as joint owner with another shall be deemed for the purposes of deposit insurance with the Corporation to be a deposit separate from any deposit of the depositor acting in his own right or acting in another joint or trust capacity with the institution.

- (1.1) For greater certainty, where two or more persons are joint owners of two or more deposits, the aggregate of those deposits shall be insured to a maximum of one hundred thousand dollars.
- (2) Where a member institution is obligated to repay moneys to a depositor who is acting as trustee for a beneficiary, if the trusteeship is disclosed on the records of the institution, the interest of the beneficiary in the deposit shall be deemed for the purposes of deposit insurance with the Corporation to be a deposit separate from any deposit of the beneficiary made with the institution in his own right for his own use and separate from any interest of the beneficiary in respect of any other trust deposit of which he is a beneficiary.
- (3) Where a member institution is obligated to repay moneys to a depositor who is acting as trustee for two or more beneficiaries, if the interest of each beneficiary in the deposit is disclosed on the records of the member institution, the interest of each beneficiary in the deposit shall be deemed for the purposes of deposit insurance with the corporation to be a separate deposit.

12 Pursuant to s. 3(3) of the Schedule, if a trust arrangement is disclosed on the records of a member institution, and the interest of every individual beneficiary is also disclosed to that institution, the interest of each beneficiary is deemed to be a separate deposit. This would make it possible for each beneficiary's share to attract up to \$100,000 in deposit insurance from the Corporation.

13 The fundamental disagreement in this case relates to how the Trust Property held in the PHT Trust Account and the Revenue Trust Account for the Band should be insured by the Corporation. Between 1995 and 2002, the parties, including the PHT, exchanged numerous written communications on the subject of whether the accounts containing the Trust Property involved deposits for a single beneficiary or multiple beneficiaries. PHT has consistently asserted that the trust arrangement is intended to benefit multiple beneficiaries, i.e., each individual member of the Band, and therefore, each Band member's share should receive separate insurance coverage. The Corporation has been equally consistent in taking the position that the Trust Property held in the Trust Account and the Revenue Trust Account located at the PHT is held as a purpose trust, thereby making it a deposit to which the \$100,000.00 limit of coverage applies. In 2003 the parties recognized that it was unlikely that an agreement would be reached on the insurability of the deposits of the Trust Property and have come to this Court for resolution of the dispute.

14 In this litigation the Plaintiffs argue that the objects of the trust created by the Trust Agreement are firstly for persons, alternatively for a charitable purpose, and in the further alternative, that the objective was to create a non-charitable purpose trust enforceable at law. They further assert that in this case the Band is a named beneficiary under the Trust Agreement, the individual members of the Band are the true beneficiaries, and therefore a deposit by the Trustees is insured pursuant to s. 3(3) of the Schedule. That is to say, the interest of each member of the Band attracts deposit insurance coverage up to the maximum possible coverage of \$100,000 and the total coverage for a particular deposit of Entitlement Monies must be calculated by multiplying the amount of coverage for each beneficiary's interest in the deposit by the number of members of the Band who may exist from time to time.

15 The Defendants respond that the Trust Agreement establishes a purpose trust and does not fall within the scope of the term "trust for another" as used in s. 3 of the Schedule. Alternatively, the Defendants assert that the Trust Agreement establishes a valid trust for a beneficiary within the meaning of s. 3(2) and not s. 3(3) of the Schedule to the *Act* and the beneficiary of that trust is the Band, not its individual members as they may exist from time to time.

IV. Issues

16 Having in mind the factual background and the provisions of the *Act*, including the Schedule, the following issues arise for determination:

- (A) Can a valid purpose trust be established under Canadian law?
- (B) Does the Trust Agreement create a valid purpose trust in respect to the Trust Property deposited with PHT?
- (C) If the Trust Agreement creates a purpose trust, what is the legal effect of that finding on the extent of deposit insurance coverage under the *Act*?

V. Analysis

A. Can a valid purpose trust be established under Canadian law?

17 *Waters' Law of Trusts in Canada*, 3rd ed. (Toronto: Carswell, 2005) at p. 163, describes a purpose trust as a trust in which "the settlor ... may not wish to benefit persons directly. He may have indirect benefit in mind." Waters provides several examples, including funding for a specific research topic, funding the construction of a recreational facility, or a trust intended to provide comfort and amenities to the patients in a specific ward in a specific hospital.

18 Charitable purpose trusts have long been held valid at common law. In *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531, Lord McNaughten construed 'charitable trusts' as including trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion, or trusts for other purposes beneficial to the community not falling under any previous head.

19 Non-charitable purpose trusts are a newer species, but had frequently been held invalid by courts for want of a beneficiary, or for violating the rule against perpetuities. However, over the past half century, non-charitable purpose trusts have increasingly been accepted by the courts of the United Kingdom and Canada.

20 A common feature of charitable and non-charitable purpose trusts is that the trust exists not to benefit a specific person or persons, but to advance specific purposes.

21 In *The Law of Trusts*, 2nd ed., (Toronto: Irwin Law, 2005), the authors provide an example in which a sum of money is left by the testator in trust for his children's education. This trust could be construed either as a trust for a specific purpose (education), or as a trust for a specific person (the testator's children). According to the authors at p. 56, "The answer lies in the paramount intention of the settlor. If the paramount intention is to benefit the children, it is a trust for persons. If the primary intention is to provide education, then the trust is for purposes, not persons." In either case, examination of the settlor's intention is crucial to the clarification of the trust created.

22 Case law in Alberta and British Columbia recognizes that determining whether a trust is in favor of persons or purposes requires examination of the settlor's intention based on the language used in the trust document (see *Friends of the Calgary General Hospital Society v. Canada* (2000), 258 A.R. 22, 76 Alta L.R. (3d) 111 at para. 39 (Q.B); *Gitga' at Development Corp. v. Hill* (2007), 30 E.T.R. (3d) 37, 2007 BCCA 158).

23 In *Re Denley's Trust Deed*, [1968] 3 W.L.R. 457 (Ch. Div.), the trust agreement at issue purported to give the trustees the power to use specific land to create and maintain a recreation ground to benefit employees of a specific company and, secondarily, to benefit such other persons as the trustees allowed. This was recognized as constituting a purpose trust despite the fact that individuals would also derive a benefit from access to the recreation grounds. The testator's primary intention as revealed in the language of the trust agreement had been to construct and maintain a recreation center, not to provide a benefit for a specific group of persons. The trust in that case was held to be valid because specific individuals who would benefit from the operation of the trust would also have the requisite standing to enforce the trust if that was necessary.

24 The concept of the purpose trust recognized in *Re Denley's Trust Deed, supra*, was adopted in Canada by the Manitoba Court of Queen's Bench in *Keewatin Tribal Council Inc. v. Thompson (City)*(1989), 61 Man. R. (2d) 241, [1989] 2 C.T.C. 206. The subject of that case was an apartment block used to provide low cost housing for aboriginal students. The owner of the apartment block was an incorporated non-share association made up of several aboriginal band members and chiefs. The owner had executed a trust indenture declaring that the property in question was held in trust for several Indian bands.

25 The owner in *Keewatin, supra*, claimed a tax exemption on the basis that it was an association that held land in trust for a "tribe or body of Indians." The City of Thompson argued that the trust was either a sham or void because the beneficiaries were either an unincorporated association or an unascertainable group of persons. Jewers, J. ultimately concluded at para. 69 of that decision that the trust was, in fact, a purpose trust as it did not specify that it was in favour of individual members of the bands; the gift was to the bands. He was also of the view that the number of people involved was so large that it could not have been the settlor's intention to give each individual an interest in the properties to be held as tenants in common.

26 The trust in *Keewatin, supra*, was held to be valid because the band councils, chiefs, and possibly even the individual band members would have standing to enforce the trust. No perpetuities issue arose because the common law rule against perpetuities had been abolished in Manitoba.

27 The possibility of creating a valid purpose trust was considered in *Schmidt v. Air Products*, [1994] 2 S.C.R. 611. That case concerned the treatment to be accorded to residual pension monies left in two pension funds after their termination. At issue was whether a pension fund was a classic trust for persons or a purpose trust. The Supreme Court of Canada ultimately characterized the trust in issue as a "true" or "classic" trust rather than a purpose trust. In deciding that the pension funds in that case were, in fact, subject to a true trust (i.e. a non-purpose trust), Cory J. endorsed Adam J.'s definition of purpose trusts in *Bathgate v. National Hockey League Pension Society*, (1992) 11 O.R. (3d) 449 at 510, 98 D.L.R. (4th) 326 (Gen. Div.): "Purpose trusts are trusts for which there is no beneficiary; that is they are not trusts where one person has an equitable entitlement to the trust funds. Funds are deposited in trust in order to see that a particular purpose is filled; people may benefit but only indirectly."

28 The Court in *Schmidt, supra*, accepted Adam, J.'s earlier ruling that pension trusts are true or classic trusts because they do not exist to fulfill a specific purpose, such as constructing a building, but exist only to periodically pay out individual pensioners. At no point in the judgment did the Supreme Court of Canada state that a valid non-charitable purpose trust could not exist in Canadian law.

29 In light of this jurisprudence and having particular regard to the approach taken in *Keewatin, supra*, I conclude that a non-charitable purpose trust may be created in Canada and would be recognized by the courts of this country. However, such trusts must not contravene the rule against perpetuities as that rule may still exist in any particular province, and there must also be some person with standing to enforce the trust.

B. Does the Trust Agreement create a valid purpose trust in respect to the Trust Property deposited with PHT?

30 I turn now to a review of the Trust Agreement to ascertain the settlor's, i.e. the Band's, intention from the language used in that document and to determine whether a valid purpose trust has been created.

31 The Preamble of the Trust Agreement states that:

The Band and Trustees, jointly and severally, recognize Canada's desire to ensure that Land (including all existing Minerals in respect thereof) with a surface area equal to the Band's Shortfall Acres be purchased utilizing the Trust Property pursuant to the Carry the Kettle Treaty Land Entitlement Settlement Agreement and the terms thereof and, thereafter, set apart as an Entitlement Reserve or Entitlement Reserves for the use and benefit of the Band.

32 Section 2 of the Trust Agreement creates the trust and s. 2.01 makes it clear "that the terms and provisions contained in Part I of this Agreement are only binding upon the Band and the Trustees". On its face, these words indicate a clear intention to exclude the individual members of the Band as persons bound by the Trust Agreement.

33 Section 3 specifies that the Trust Property in the Trust Account, including investments from the Trust Account and all accrued interest, "shall be utilized by the Trustees only for the following purposes." The purposes which are then discussed further in s. 3 include acquisition of Entitlement Land, Band Development, transfers to the Revenue Trust Account, purchase of Authorized Investments, the payment of Acquisition Costs and a one time lump sum payment to the Elders.

34 Section 3 of the Trust Agreement also mandates that the revenues arising from the Trust Property in the Revenue Trust Account can only be used to pay Authorized Expenses, to purchase Authorized Investments, or to be distributed to the Band Account. Section 6.01(b)(i) requires that once such funds are transferred to the Band Account, they shall be used only for: (A) "the one-time, lump sum payment to each Elder of the Band"; or (B) "the benefit of the Members of the Band." [According to s. 6.02 (b)(ii), expenditures "for the benefit of the Members of the Band" include only the following designated purposes: (A) "Band Development"; (B) "agriculture"; (C) "recreation and culture" and (D) "education".]; or (C) administrative services to the Trustees capped at 7% per annum; or (D) "for such other purposes as are specifically provided in this Agreement or in the Settlement Agreement."

35 Section 4.01 of the Trust Agreement details the specific procedures for the purchase of Entitlement Land using the Trust Property.

36 Section 5 outlines the procedures for the distribution of funds from the Trust Account for "Band Development" purposes. "Band Development" is defined in s. 1.01(10) of the Trust Agreement as:

... the investment and utilization of Trust Property by the Trustees on behalf of the Band for the purpose of Business, acquisition of Land, Minerals or Improvements (including Entitlement Land) or any project for the use, development, advantage or benefit of the Band or Members of the Band.

37 When these specific provisions of The Trust Agreement are viewed as a whole, they reveal that the settlor's, i.e. the Band's, paramount intention was to make the object of the trust these specifically identified purposes as opposed to individual members of the Band. Most of the Trust Agreement is concerned with the acquisition of Entitlement Lands or, alternatively, financing Band Development and other purposes. It is plain and obvious that the word "purpose" appears again and again throughout these core provisions of the Trust Agreement. The Trust Agreement contains absolutely no mention of providing each individual Band member with a distinct equitable interest in the Trust Property. Rather, there is a clear indication that the settlor, i.e. the Band, had a paramount intention that the Trust Property be utilized only to fulfill a number of relatively specific purposes for the benefit of the collective as opposed to the individuals making up that collective.

38 I note further that there is virtually an absolute prohibition in s. 3.02 of the Trust Agreement on direct or indirect *per capita* distributions of the Trust Property to the Band, Chief, Band Council, or individual members of the Band. While disbursement is allowed, s. 6 of the Trust Agreement provides that such disbursed funds can only be used for the four listed purposes: Band Development, agriculture, recreation and culture, or education. A narrow exception exists for a one time payment to certain Elders only. The fact is that this is "one time" and is so specific as to reinforce my view that the intention of the parties was to dedicate the Trust Property only for the purposes set out in the Trust Agreement and not to grant individual members of the Band some sort of individual equitable interest.

39 The Plaintiffs submit that, while there is no permissible *per capita* distribution of the Trust Property, it is apparent from the Settlement Agreement that the Governments of Canada and Saskatchewan contemplated the use of the Shortfall Acres for traditional hunting, trapping, gathering, or other uses. They contend that this indicates that the individual Band members were intended as the beneficiaries of this trust, since they will enjoy the increased opportunity to engage in these traditional practices over a greater area of land.

40 The individual members of the Band undoubtedly will receive an appreciable indirect benefit from the authorized use of this Trust Property. However, this fact alone does not prove that the objects of the trust are persons and not purposes.

41 In *Keewatin, supra*, the members of the band inevitably benefited from the prospect of affordable accommodations while attending school. Jewers, J. concluded at para. 72 of *Keewatin* that:

... the ultimate, *albeit* indirect, beneficiaries of the trust, are the individual members of the Bands; indeed there are potentially very real benefits in that the children are entitled to use the properties free of charge as accommodation while attending school in Thompson.

42 In *Denley's Will Trust*, *supra*, the persons having access to the recreational facility were no doubt the recipients of a benefit. Nevertheless, both trusts were still found to be purpose trusts. The mere fact that individual persons benefit indirectly from the operation of a trust does not automatically make them the intended object of the trust. The settlor's intended object, as revealed by the language in the trust agreement, still governs.

43 In my view, the present case is clearly distinguishable from the pension trust arrangement found in *Schmidt*, *supra*. Here, there is no evidence that any individual member of the Band has any equitable interest in the Entitlement Monies. Instead, there is a clear prohibition on direct distribution to individual Band members. Any benefits from this trust to individual Band members would be a secondary byproduct of the fulfilment of the primary purposes of this trust.

44 As such, I reject the contention that this is a trust for persons, and find that the Trust Agreement has created a purpose trust for the purpose of acquiring lands and pursuing other development related objectives.

45 The issue of whether this trust is otherwise valid, if found to be a purpose trust, was not strenuously argued in the present case, as it has little bearing, if any, on the insurance coverage to be accorded to the Trust Property on deposit with the PHT. As in *Keewatin*, *supra*, the Council, Chief, or members of the Band would have the standing necessary to enforce the trust and accordingly I conclude that the purpose trust created here is valid from the enforcement perspective.

46 The perpetuities issue was not argued before the Court. While Saskatchewan presently retains the rule against perpetuities, I note that the Trust Agreement does include a 'royal lives' clause as a means of avoiding a breach of the rule against perpetuity. In my view that would be effective in avoiding a perpetuities problem in respect to this trust. Therefore, in conclusion and for the reasons stated, the Trust Agreement does create a legally valid purpose trust in respect to the Trust Property deposited with PHT.

C. If the Trust Agreement creates a valid purpose trust, what is the legal effect of that finding on the extent of deposit insurance coverage under the Act?

47 Generally speaking, all deposits to a member institution attract insurance to a maximum of \$100,000. The only exception addressed in this case is the provision in s. 3(3) of the Schedule, pursuant to which a trust for two or more beneficiaries allows for each beneficiary's share to be insured separately up to the maximum of \$100,000.

48 A trust held for purposes instead of persons is not a trust held for two or more beneficiaries as contemplated by s. 3(3) of the Schedule. Without the operation of this exception, s. 12 of the *Act* applies and accordingly a deposit related to a purpose trust will only be insured to the extent of \$100,000.

49 Having reached this conclusion, it is not necessary to deal with the Plaintiffs' second set of arguments.

VI. Disposition

50 In light of my conclusion that the arrangement in this case constitutes a purpose trust, it follows that s. 3(3) of the Schedule does not apply. Therefore, the Entitlement Monies deposited by the Band with PHT are a regular joint deposit, making them eligible for deposit insurance coverage to the limit of \$100,000 only.

51 In the result, the Plaintiffs' request for declaratory relief is dismissed. The Defendant, Plaintiffs by counterclaim, shall have the declaratory relief which it sought, namely a declaration that s. 3(3) of the Schedule to the *Act* does not apply to the deposit of Trust Property in the Trust Account, the Revenue Trust Account and the Band Account at PHT, as the case may be, pursuant to the Trust Agreement. The Corporation shall have its costs.

D.R.G. THOMAS J.

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