

DARYN R. LEAS
BARRISTER & SOLICITOR

422 - 580 RAVEN WOODS DRIVE
NORTH VANCOUVER, B.C. V7G 2T2

(604) 353-2325
DARYN.LEAS@ME.COM

TO: General Council
Carcross/Tagish First Nation

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RE: **The report of the Jili at káxh adéli (the “Cache Watchman”)**

The Assembly of the Carcross/Tagish First Nation (the “C/TFN”) appointed me as the Cache Watchman of the Dáanaa Jili (Cache) Trust (the “Cache Trust”) in 2006 in accordance with its trust deed. This trust deed must be consistent with the *Dáanaa Jili (Cache) Act* that was approved by the Assembly in 2006.

The trustees of the Cache Trust are Tracy Camilleri, Karen Lepine, Mark Wedge and Marge Baufeld. Tracy and Karen were appointed as trustees in 2006. Mark was appointed in 2012 and Marge in 2013. The trustees are appointed for five-year terms and may be reappointed.

The Cache Trust

The Cache Trust is a legal body that is separate and independent from the C/TFN. It was established to hold and manage the financial compensation assets of the C/TFN on behalf of the C/TFN citizens. Section 2 of the *Dáanaa Jili (Cache) Act* sets out the purpose of the Cache Trust:

This Act authorizes the Carcross/Tagish First Nation to establish a trust and establishes rules and guidelines respecting the administration of the trust to ensure that the management of the trust is fully accountable to the Carcross/Tagish First Nation, realizes the goals of serving current and future generations and is effective and transparent.

The *Dáanaa Jili (Cache) Act* directs the C/TFN to contribute the annual financial compensation payments made pursuant to “Chapter 19 – Financial Compensation” of the C/TFN Final Agreement to the Cache Trust. This means that the financial compensation assets cannot be spent by the C/TFN and they are not managed by the C/TFN. Those assets must be transferred to the Cache Trust where the trustees will manage them. In accordance with the trust deed, the trustees may ultimately disburse or transfer portions of the trust property from the Cache Trust to the C/TFN.

There are several benefits for the C/TFN's financial compensation assets to be contributed to the Cache Trust and managed by the trustees.

- The key objective of the Cache Trust is to provide accountability and transparency with respect to the management and administration of the trust property. The trustees have specific legal duties to manage the trust property in a transparent and accountable manner in accordance with the *Dáanaa Jili (Cache) Act*.
- As trustees, C/TFN citizens are involved in the management of the trust property and the administration of the Cache Trust. This ensures that there is community involvement in the management of the financial compensation provided under the C/TFN land claim agreement.
- The trustees have a legal obligation to manage the financial compensation assets in a manner to preserve and protect them for the use and benefit of current and future generations of C/TFN citizens. The trustees must provide prudent attention and oversight to the management of the financial compensation assets without any political interference.
- The financial compensation assets are protected from any debts or liabilities of the C/TFN and its economic development corporations.
- There are significant taxation benefits for the earnings and income generated by the financial compensation assets placed in the Cache Trust.
- In the future, the C/TFN may assign certain funds, such as monies payable to the C/TFN under an impact benefit agreement, to the Cache Trust in order avoid the application of the "own source revenue" offsets to the annual funding provided to the C/TFN under its financial transfer agreement.

The Cache Trust has checks and balances in place to ensure that the trust property is managed in accordance with the objectives of the *Dáanaa Jili (Cache) Act* to: ensure long-term growth and remain within acceptable levels of risk; provide for the needs of both current and future generations; and produce stable and consistent income for the current generation. These checks and balances include:

- limitations and restrictions on the distribution and use of trust property as set out in the trust deed;
- due diligence undertaken by the trustees, such as the review of quarterly reports provided by the fund manager;
- guidance and direction provided by the investment policy;
- oversight provided by the Cache Watchman;
- reporting by the Cache Watchman and trustees to the C/TFN and C/TFN citizens;
- reporting provided by the custodian; and
- annual financial audits.

Role of the Cache Watchman

As the Cache Watchman, I am responsible to oversee the management and administration of the Cache Trust. While I am not a trustee, I provide oversight of the Cache Trust and report to the C/TFN. It is my responsibility to ensure that the trustees are taking prudent steps to manage and administer the Cache Trust in the best interests of the C/TFN and in accordance with the *Dáanaa Jili (Cache) Act*.

In particular, I must ensure that the trustees are carrying out their responsibilities in a competent and professional manner. They must complete appropriate training in order to understand the structure and operation of the Cache Trust and the nature and scope of their responsibilities. They must be prepared to commit the time and effort to undertake their responsibilities. They must seek and fully consider specialized and professional advice during the course of carrying out their responsibilities, such as tax and investment advice.

Therefore, each trustee has signed a code of conduct in which he or she commits to be an active participant so that the trustees are able to function effectively and efficiently as a whole. In particular, the trustees have made an oath under the code committing to undertake the certain responsibilities and duties. The code includes an “oath of office and confidentiality agreement.” Under the oath, a trustee agrees to immediately resign as a trustee of the Cache Trust in the event that he or she, or his or her fellow trustees or the Cache Watchman have concluded that he or she breached the oath.

The Cache Watchman has broad powers to ensure that the trustees are carrying out their responsibilities in the best interests of the Cache Trust and Assembly. The powers of the Cache Watchman, including the following:

- declare that any act by the trustees requires the approval of the Cache Watchman - section 26 of the *Dáanaa Jili (Cache) Act*;
- remove any person as a trustee (if more than one trustee is removed in a four year period, the second termination within the four year period must be approved by the Assembly) - section 27 of the *Dáanaa Jili (Cache) Act*;
- fill any vacancy among the trustees - section 16 of the *Dáanaa Jili (Cache) Act*; and
- approve the pay of the trustees which must be reasonable in the circumstances - section 12 of the *Dáanaa Jili (Cache) Act*.

If the trustees fail to fulfill their responsibilities, I must address that failure. If I did not, I would be failing to fulfill my responsibilities and may be liable.

The Cache Watchman may resign in writing to the Council and the trustees. The Assembly may remove the Cache Watchman, with a 75 percent vote of the members of the Assembly, ten years after the establishment of the Cache Trust.

Commentary

Since my presentation to the annual reporting meeting held in Carcross on July 19, 2014, I draw your attention to the following matters.

- (a) **Trustees.** Over the past year, I have attended most of the trustees' meetings in my capacity as the Cache Watchman. I have no concerns with respect to the conduct of the trustees or their management, operation and administration of the Cache Trust over the past year. In my view, the trustees are carrying out their duties in a competent and professional manner in accordance with the trust deed and their legal obligations. They have been acting in the best interests of the C/TFN.

The C/TFN is fortunate to have committed and dedicated trustees. They provide continuity and stability to the management and administration of the trust property of the Cache Trust.

- (b) **Investments.** The investment portfolio of the Cache Trust continues to be well diversified and invested in accordance with the investment policy.
- (c) **Draft "sharing the wealth" law.** The trustees discussed the need to ensure that the trust property – which is largely comprised of the financial compensation payments made pursuant to the C/TFN Final Agreement - will be used in a way that benefits directly the C/TFN citizens and not used in the future to fund the operation of the C/TFN government. To that end, I worked with the trustees to develop the concept of a draft law for the consideration of the C/TFN.

It is proposed that this draft law would require the C/TFN, as the beneficiary of the Cache Trust, to allocate any disbursements of the trust property of the Cache Trust in a manner that benefits directly C/TFN citizens. In particular, it proposes the establishment of a disbursement committee that would make recommendations to the Executive Council for the use of any trust property disbursed from the Cache Trust.

The disbursement committee would be an independent and autonomous body. It is proposed that the General Council would appoint the six members of the committee for five-year terms or each Clan would appoint one member.

The committee would have an obligation to seek input and guidance from C/TFN citizens about the uses and purposes of any disbursement from the Cache Trust. Following this engagement with C/TFN citizens, the disbursement committee would make a written recommendation to the Executive Council and the recommendations must be for the primary benefit of C/TFN citizens in accordance with the following purposes:

- a. general administration and governance of the Dáanaa Jíli (Cache) Trust;
- b. culture, heritage and language;
- c. health and wellness;
- d. social development;

- e. economic development;
- f. environment and natural resources;
- g. education, training, bursaries, and scholarships;
- h. community infrastructure; and
- i. sport and recreation.

The Executive Council may accept a written recommendation made by the disbursement committee under this Act and, if accepted, that recommendation would bind the Carcross/Tagish First Nation. If the Executive Council wishes to vary or reject a recommendation made by the disbursement committee under this Act, the Executive Committee would have to obtain the consent of the General Council for that variation or rejection.

The Executive Council will provide materials and information to the distribution committee that confirms the purposes for which the allocation of trust property under this Act was used. If allocation of trust property is not used in accordance with a recommendation made by the disbursement committee or a recommendation that is varied by the General Council, as appropriate, or if the Executive Council fails to report on the use of a distribution, the Executive Council will be in default and will not be eligible to receive any further allocation of trust property until the committee determine that appropriate steps have been taken to cure the default or to prevent future defaults.

The draft law would not permit direct payments or as per capita distributions to C/TFN citizens other than distributions for scholarships, bursaries or other similar initiatives.

Like any other law made by the C/TFN, the General Council would have to approve this proposed “sharing the wealth” law in accordance with its procedures. It is not contemplated that the General Council at this meeting would approve this draft law. At this time, there is no urgency to enact law since it is unlikely that a significant amount of the trust property, if any, would have to be disbursed in the foreseeable future. In any event, C/TFN citizens and the Executive Council need to review and consider this draft law and make revisions, as necessary.

- (d) Annual reporting meeting.** As noted above, the trustees and Cache Watchman convened an annual reporting meeting on July 19, 2014, to provide a comprehensive report to C/TFN citizens. This meeting was co-hosted by the Lanâlkh (Prosperity) Trust.

While I am pleased to provide updates to the meetings of the General Council or Executive Council upon their invitation, I believe that it is important for the trustees and Cache Watchman to provide a comprehensive report directly to C/TFN citizens in a non-political environment. These meeting will allow C/TFN citizens to hear from presentations from the various advisors and agents of the Cache Trust and ask them questions. For instance, the new investment manager for the Cache Trust made a presentation at the meeting in July.

These annual reporting meetings are intended to be informal and promote a constructive dialogue amongst the C/TFN citizens and the trustees and Cache Watchman.

The Cache Trust intends to convene an annual reporting later this calendar year.

- (e) **Training.** I support the efforts of the trustees to provide training to interested C/TFN citizens with respect to the trust deed and the duties of the trustees. In my view, the provision of training is a fundamental responsibility of the Cache Trust.

This training is a valuable investment since it is important for C/TFN citizens to gain a greater understanding of the Cache Trust and the roles of the trustees and Cache Watchman. Such training contributes to the capacity development of the citizens and their understanding of the management of the C/TFN's financial compensation assets. This training is also necessary so that there are C/TFN citizens who are qualified to be appointed as trustees if required. If citizens are interested in such training, I ask them to contact the trustees or me.

In closing, I reiterate that it is my view that the trustees are carrying out their duties under the *Dáanaa Jili (Cache) Act* in a prudent and responsible manner. They are working together effectively and efficiently to administer and manage the Cache Trust.

If you have any questions or require any clarification, please do not hesitate to contact me.

Thank you.