



BILL NO. 108

Government Bill

*3rd Session, 61st General Assembly
Nova Scotia
60 Elizabeth II, 2011*

**An Act to Abolish the Rules of Law
against Perpetuities and to Amend Chapter 385
of the Revised Statutes, 1989,
the Real Property Act, and
Chapter 486 of the Revised Statutes, 1989,
the Variation of Trusts Act**

CHAPTER 42
ACTS OF 2011

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 15, 2011**

The Honourable Ross Landry
Minister of Justice

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Abolish the Rules of Law
against Perpetuities and to Amend Chapter 385
of the Revised Statutes, 1989,
the Real Property Act, and
Chapter 486 of the Revised Statutes, 1989,
the Variation of Trusts Act**

Be it enacted by the Governor and Assembly as follows:

- 1 This Act may be cited as the *Perpetuities Act*.
- 2 In this Act,
 - (a) “modern rule against perpetuities” includes the operation of the rule respecting remoteness of vesting and perpetual duration and respecting testamentary executory interests in personal property;
 - (b) “rules of law against perpetuities” means
 - (i) the rule in *Whitby v. Mitchell*, and
 - (ii) the modern rule against perpetuities.
- 3 The rules of law against perpetuities are abolished.
- 4
 - (1) Subject to subsection (2), this Act applies to
 - (a) all interests in property created before, on or after the coming into force of this Act; and
 - (b) all trusts, whether taking effect before, on or after the coming into force of this Act.
 - (2) The rules of law against perpetuities continue to apply to an interest or purported interest in property if, before the coming into force of this Act,
 - (a) the period permitted for the vesting of the interest or purported interest has terminated and any act or step has been taken as a consequence of that termination; or
 - (b) a court has held the interest or purported interest to be void for breach of the rules of law against perpetuities.

5 Chapter 385 of the Revised Statutes, 1989, the *Real Property Act*, is amended by adding immediately after Section 28 the following heading and Section:

VARIATION OR TERMINATION OF INTERESTS IN REAL PROPERTY

- 29 In Sections 30 to 32,
 - (a) “court” means the Supreme Court of Nova Scotia;

(b) “prescribed” means prescribed by the regulations.

30 Sections 31 and 32 apply to

(a) every contingent interest in real property arising before or after the coming into force of those Sections, other than

(i) a contingent interest in real property held on a trust under any will, settlement or other disposition, or

(ii) a prescribed contingent interest in real property in prescribed circumstances; and

(b) a prescribed vested interest in real property in prescribed circumstances.

31 (1) A person interested in real property may apply to the court for an order varying or terminating an interest in the real property to which this Section applies, whether the interest arose before or after the coming into force of this Section.

(2) An applicant shall give notice of the application to

(a) the person who holds the interest in the real property that is the subject of the application; and

(b) any person with a legal or beneficial interest in the real property, regardless of whether the interest is vested or contingent.

(3) The court may, where it considers it appropriate, require the applicant to

(a) give notice of the application to the municipality in which the real property is situate; and

(b) make reasonable efforts to ascertain, locate and give notice to all persons with an interest in the real property.

(4) Upon hearing the application and being satisfied that the reasonable use of the real property will be impeded, without practical benefit to others, if the interest is not varied or terminated, the court may make an order varying, including advancing or postponing the vesting of, or terminating the interest in the real property.

(5) In making a determination pursuant to subsection (4), the court shall have regard to

(a) the length of time that the interest has remained or could be expected to remain contingent;

(b) the intention, if ascertainable, of the grantor of the interest and, where the grantee was a *bona fide* purchaser for value, the grantee; and

(c) the position of any person appearing before the court on the application.

(6) An order made pursuant to subsection (4) may be subject to such terms as the court considers just under the circumstances and, without limiting the generality of the foregoing, the order may provide for compensation for any loss,

injury, interference or damage suffered by any person arising from the variation or termination of the interest in the real property.

32 (1) The Governor in Council may make regulations

(a) prescribing types of contingent interests in real property and the circumstances under which Section 31 does not apply to such interests;

(b) prescribing types of vested interests in real property and the circumstances under which Section 31 applies to such interests;

(c) deeming a vested interest in real property to which Section 31 is applicable to be a contingent interest and providing for a means of determining the length of time that the interest has remained or could be expected to remain contingent for the purpose of clause 31(5)(a).

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

6 Sections 2 and 3 of Chapter 486 of the Revised Statutes, 1989, the *Variation of Trusts Act*, are repealed and the following Sections substituted:

2 In this Act,

(a) “arrangement” means a variation, resettlement or revocation of a trust in relation to property or a variation, deletion or termination of, or an addition to, the powers of a trustee in relation to the management or administration of the property subject to the trust;

(b) “court” means the Supreme Court of Nova Scotia.

3 (1) Where property is held on a trust arising before or after the coming into force of this Section under any will, settlement or other disposition, a person may apply to the court for an order confirming an arrangement with respect to the property.

(2) The court may issue an order confirming the arrangement if

(a) all the beneficiaries of the trust having vested or contingent interests are of full age and capacity and consent to the arrangement; and

(b) the court determines it is appropriate to do so.

(3) Where one or more beneficiaries are incapable of consenting to the arrangement, the court may

(a) approve the arrangement on behalf of those beneficiaries on any terms that the court considers appropriate, unless the arrangement is detrimental to the interests of any of the beneficiaries incapable of giving consent; and

(b) issue an order confirming the arrangement if the court determines it is appropriate to do so.

(4) Where one or more beneficiaries who are of full age and capacity refuse their consent to the arrangement, the court may

(a) approve the arrangement on behalf of those beneficiaries on any terms that the court considers appropriate if

(i) the arrangement is not detrimental to the pecuniary interest of any person who has withheld consent, and

(ii) it would be detrimental to the administration of the trust or to the interests of the other beneficiaries to not approve the arrangement; and

(b) issue an order confirming the arrangement if the court determines it is appropriate to do so.

(5) In determining whether it is appropriate to confirm the arrangement, the court shall have regard to

(a) the intention of the settlor of the trust, if the settlor's intention is objectively discernible;

(b) the positions of the trustees;

(c) the positions of the beneficiaries; and

(d) the position of any person appearing before the court on the application.

(6) An arrangement takes effect upon confirmation by the court.

7 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
