

# Trustee Act

CHAPTER 479 OF THE REVISED STATUTES, 1989

*as amended by*

1992, c. 8, s. 37; 1994-95, c. 19; 2002, c. 10, s. 45;  
2007, c. 17, ss. 22-25; 2017, c. 4, ss. 98-101



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**An Act to Consolidate and Amend  
 the Enactments Relating to Trustees  
 and for Other Purposes**

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(The table of contents is not part of the statute)

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### Short title

- 1 This Act may be cited as the *Trustee Act*. R.S., c. 479, s. 1.

### Interpretation

- 2 In this Act,

(a) “contingent right”, as applied to land, includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent;

(b) “convey” and “conveyance”, applied to any person, include the execution by that person of every necessary or suitable assurance for conveying, assigning, appointing, surrendering or otherwise transferring or disposing of land whereof he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of the conveyance, including the acts to be performed by married women to bar dower or convey their interests in real property under the statutes of the Province;

(c) “Court” means the Trial Division of the Supreme Court;

(d) “devisee” includes the heir of a devisee and the devisee of an heir, and any person who claims right by devolution of title of a similar description;

(da) *repealed 2017, c. 4, s. 98.*

(e) “instrument” includes a statute;

(f) “judge” means a judge of the Court;

(g) “land” includes incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land;

- (h) *repealed 2007, c. 17, s. 22.*
- (i) “mortgage” and “mortgagee” include and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee;
- (j) “pay” and “payment”, as applied in relation to stocks and securities and, in connection with the expression “into court”, include the deposit or transfer of the same in or into court;
- (k) “person of unsound mind” means any person, not an infant, who is incapable from infirmity of mind of managing his own affairs;
- (l) “possessed” applies to receipt of income of, and to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in any land;
- (m) “property” includes real and personal property, and any estate and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not;
- (n) “rights” includes estates and interests;
- (o) “securities” includes stocks, debentures, bonds, funds and shares, and so far as relates to payments into court, means securities standing or deposited in the name or to the credit or account of the Accountant General on behalf of the court, or placed to the credit of a cause, matter or account in the court;
- (p) “stock” includes fully paid-up shares, and, so far as relates to vesting orders made by the Court under this Act, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein;
- (q) “transfer”, in relation to stock, includes the performance and execution of every deed, power of attorney, act and thing on the part of the transferor to effect and complete the title in the transferee;
- (r) “trust” does not include the duties incident to an estate conveyed by way of mortgage, but with this exception “trust” and “trustee” include implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of personal representative of a deceased person. R.S., c. 479, s. 2; 2007, c. 17, s. 22; 2017, c. 4, s. 98.

## PART I

### INVESTMENTS

#### Permitted investment

**3 (1)** A trustee may invest trust property in any form of property or security in which a prudent investor might invest, including a security issued by a mutual fund as defined in the *Securities Act*.

(2) Subsection (1) does not authorize a trustee to invest in a manner that is inconsistent with the trust.

(3) A trustee may have regard to the following criteria in planning the investment of trust property, in addition to any others that are relevant to the circumstances:

- (a) general economic conditions;
  - (b) the possible effect of inflation or deflation;
  - (c) the expected tax consequences of investment decisions or strategies;
  - (d) the role that each investment or course of action plays within the overall trust portfolio;
  - (e) the expected total return from income and the appreciation of capital;
  - (f) other resources of the beneficiaries;
  - (g) needs for liquidity, regularity of income and preservation or appreciation of capital;
  - (h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
- 2002, c. 10, s. 45.

#### **Prudent investor**

**3A** In investing trust property, a trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments. 2002, c. 10, s. 45.

#### **Diversification**

**3B** A trustee must diversify the investment of trust property to an extent that is appropriate having regard to

- (a) the requirements of the trust; and
- (b) general economic and investment market conditions. 2002, c. 10, s. 45.

#### **Liability of trustee**

**3C** A trustee is not liable for a loss to the trust arising from the investment of trust property if the conduct of the trustee that led to the loss conformed to a plan or strategy for the investment of the trust property, comprising reasonable assessments of risk and return, that a prudent investor could adopt under comparable circumstances. 2002, c. 10, s. 45.

**Assessment of damages**

**3D** A court assessing the damages payable by a trustee for a loss to the trust arising from the investment of trust property may take into account the overall performance of the investments. 2002, c. 10, s. 45.

**Advice**

**3E (1)** A trustee may obtain advice in relation to the investment of trust property.

**(2)** It is not a breach of trust for a trustee to rely upon advice obtained under subsection (1) if a prudent investor would rely upon the advice under comparable circumstances. 2002, c. 10, s. 45.

**Delegation**

**3F (1)** In this Section, “agent” includes a stockbroker, investment dealer, investment counsel and any other person to whom investment responsibility is delegated by a trustee.

**(2)** A trustee may delegate to an agent the degree of authority with respect to the investment of trust property that a prudent investor might delegate in accordance with ordinary business practice.

**(3)** A trustee who delegates authority under subsection (2) must exercise prudence in

- (a) selecting the agent;
- (b) establishing the terms of the authority delegated; and
- (c) monitoring the performance of the agent to ensure compliance with the terms of the delegation.

**(4)** In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

**(5)** A trustee who complies with the requirements of subsection (3) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

**(6)** This Section does not authorize a trustee to delegate authority under circumstances in which the trust requires the trustee to act personally.

**(7)** Investment in a security issued by a mutual fund as defined in the *Securities Act* or in a similar investment is not a delegation of authority with respect to the investment of trust property. 2002, c. 10, s. 45.

**Regulations**

**4** The Governor in Council may make regulations prescribing or prohibiting the investment of money by a trustee in particular investments and prescrib-

ing investments or classes of investments in which money may be invested by a trustee for the sound and efficient management of a trust. 1994-95, c. 19, s. 1.

#### **Prohibited investments**

**5** Nothing in Section 3 or 4 permits a trustee to invest in investments that are expressly forbidden by the instrument, if any, creating the trust. 1994-95, c. 19, s. 1.

**6** *repealed 1994-95, c. 19, s. 1.*

#### **Investments authorized by Court**

**7** In addition to the investments authorized by Section 3 or by the trust instrument, except where that instrument expressly prohibits such investment, a trustee may invest funds in such other securities as the Court or a judge upon application in any particular case selects as fit and proper, but nothing herein shall relieve the trustee of his duty to take reasonable and proper care with respect to the investments so authorized. R.S., c. 479, s. 7.

#### **Deposit of trust moneys pending investment**

**8** A trustee may, pending the investment of any trust moneys, deposit the same during such time as is reasonable in the circumstances in a trust account in the name of the trustee in any chartered bank of Canada, or in any approved trust company, loan corporation or any other like depository which has by order of the Governor in Council been approved as such depository. R.S., c. 479, s. 8.

#### **Condition upon deposit pending investment**

**9** Where a trustee deposits trust moneys as authorized in Section 8, he shall maintain a ledger account in his books for the particular trust estate for which such trust moneys are held or shall require the account in the bank or other depository ledger to be opened and kept in the name of the trustee for the particular trust estate for which such moneys are held. R.S., c. 479, s. 9.

#### **Effect of Act on authority of trustee**

**10 (1)** The powers conferred by this Act relating to trustee investments are in addition to the powers conferred by the instrument, if any, creating the trust.

**(2)** Nothing in this Act relating to trustee investments authorizes a trustee to do anything that he is in express terms forbidden to do or omit to do anything that he is in express terms directed to do by the instrument creating the trust. R.S., c. 479, s. 10.

#### **Variation of investments and liability**

**11 (1)** A trustee in his discretion, from time to time, may

(a) call in any trust funds invested in any other securities than those authorized by this Act and invest the same in any securities authorized by this Act; and

(b) vary any investments authorized by this Act.

(2) No trustee shall be liable for any breach of trust by reason only of his continuing to hold an investment that has ceased to be one authorized by the instrument of trust or by the general law. R.S., c. 479, s. 11.

#### **Concurrence in scheme to reconstruct or sell company**

**12 (1)** Where a trustee holds securities in which he has property invested under the provisions of this Act, he may concur in any scheme or arrangement

(a) for the reconstruction of the company, or for the winding up or sale or distribution of the assets of the company;

(b) for the sale of all or any part of the property and undertaking of the company to another company;

(c) for the amalgamation of the company with another company;

(d) for the release, modification or variation of any rights, privileges or liabilities attached to the securities, or any of them, in like manner as if he were entitled beneficially to such securities, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first mentioned securities.

(2) The trustee shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which he could have properly retained the original securities. R.S., c. 479, s. 12.

#### **Liability for improper advance on mortgage security**

**13 (1)** Where a trustee improperly advances trust money on a mortgage security, which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorized investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof, with interest.

(2) This Section applies to investments made as well before as on or after the seventeenth day of April, 1889. R.S., c. 479, s. 13.

#### **Notice to beneficiary respecting proposed investment**

**14 (1)** Where a beneficiary entitled in possession to receive the income of the trust fund for his life, or for a term of years determinable with his life, or for any greater estate, has given to the trustee a notice in writing that he desires to be consulted with regard to any proposed investments or changes of investment, notice in writing of any proposed investment or change of investment shall be first given by the trustee to such beneficiary.

(2) Such notice shall contain a request that if the beneficiary objects to such proposal, he shall notify at least one of the trustees in writing of such objection within ten days after the receipt of the notice.

(3) If the trustee receives a notice of any such objection he may apply to the Court or a judge in a summary manner for leave to make such proposed investment, or change of investment, notwithstanding such objection.

(4) Service of notice of the proposal or of the objection may be made either personally or by mailing the same, postage prepaid and registered, to the address of the person to be notified and may be proved by an affidavit stating the fact and the mode of service.

(5) The Court or judge may authorize or refuse to authorize the proposed investment or change of investment, and shall have a discretion as to the disposal of the costs of the application.

(6) No such notice of a proposed investment or change of investment shall be required to be given in the case of a release of a mortgage upon payment of the principal by the mortgage debtor, or of the temporary deposit on interest of the whole or any part of a fund in any solvent chartered bank of Canada. R.S., c. 479, s. 14.

15 *repealed 1994-95, c. 19, s. 2.*

## PART II

### VARIOUS POWERS AND DUTIES OF TRUSTEES

#### Appointment of New Trustees

##### **New trustee**

16 (1) When a trustee, either original or substituted and whether appointed by the Court or a judge or otherwise, is dead, or remains out of the Province for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses, or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then, if the beneficiaries consent thereto in writing, the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, in writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the Province, desiring to be discharged, refusing, or being unfit, or being incapable as aforesaid.

(2) On the appointment of a new trustee for the whole or any part of trust property,

(a) the number of trustees may be increased;

(b) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first mentioned part;

(c) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but, except where only one trustee was originally appointed, a trustee shall not be discharged under this Section from his trust unless there will be at least two trustees to perform the trust; and

(d) any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(3) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(4) The provisions of this Section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this Section.

(5) This Section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of the instrument and to any provisions therein contained.

(6) This Section applies to trusts created either before, on or after the sixteenth day of April, 1888. R.S., c. 479, s. 16.

#### **Retirement of trustee who desires to be discharged**

17 (1) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3) This Section applies only if, and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4) This Section applies to trusts created either before, on or after the sixteenth day of April, 1888. R.S., c. 479, s. 17.

#### **Vesting of trust property where new trustee**

18 (1) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest or right.

(2) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this Section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates.

(3) This Section does not extend to land conveyed by way of mortgage for securing money subject to the trust or to any such share, stock, annuity or property as is only transferable in books kept by a company or other body, or in manner prescribed by or under an Act of Parliament or of the Legislature of this Province.

(4) For the purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5) This Section applies only to deeds executed after the seventeenth day of April, 1889. R.S., c. 479, s. 18.

#### **Purchase and Sale**

##### **Sale or exchange by trustee**

19 (1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title

or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale, and to re-sell without being answerable for any loss.

(2) If the power expressly authorizes an exchange he may make an exchange of any land or any part thereof for any other land in the Province, including an exchange in consideration of money paid for equality of exchange.

(3) No purchaser under any such sale shall be bound to inquire whether the trustees or other persons making the same have or have not in contemplation any particular re-investment of the purchase money.

(4) For the purpose of completing any such sale or exchange, the trustees or other persons empowered to sell or exchange shall have full power to convey or otherwise dispose of the property in question, either by the way of revocation and appointment of the use or otherwise, as is necessary.

(5) The money so received upon any such sale or for equality of exchange, subject to

- (a) payment of claims properly payable thereout; and
- (b) payment of consideration money for equality of exchange, if any,

shall be invested by the trustees according to this Act.

(6) The property or securities so acquired by the trustee shall be held to the uses, upon and for the trusts, intents and purposes, and with, under and subject to the powers, provisions and declarations to which the property sold or given in exchange was or would have been subject, or as near thereto as circumstances admit of, but not so as to increase or multiply charges.

(7) The trustee or other person exercising any such power, may if he thinks fit, apply any money received upon any such sale, or for equality of exchange or any part thereof, in or towards paying off or discharging any mortgage or other charge or encumbrance which affects the property or any part thereof which is then subject to the same uses or trusts as those to which the property or part sold or given in exchange was subject.

(8) Until the money received upon any such sale or for equality of exchange is disposed of in the manner in this Section mentioned, the same shall be invested at interest for the benefit of the same persons who would be entitled to the property or securities to be purchased or acquired therewith and the rents, profits, dividends or interest thereof in case such purchase, acquisition and settlement were then actually made.

(9) No such sale or exchange, and no purchase or acquisition of property or securities out of money received on any such sale or exchange, shall be made without the consent of the person appointed to consent by the will, deed or

other instrument, or if no such person is appointed, then of the person entitled in possession to the receipt of the rents and profits of such property, if there is such a person under no disability, but this subsection shall not be taken to require the consent of any person where it appears from the will, deed or other instrument to have been intended that such sale, exchange or purchase should be made by the trustee or other person making the same without the consent of any other person. R.S., c. 479, s. 19.

#### **Impeachment of sale**

**20 (1)** No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

**(2)** No sale made by a trustee shall after the execution of the conveyance be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for such sale was made.

**(3)** No purchaser upon any sale made by a trustee shall be at liberty to make any objection against the title upon the ground aforesaid. R.S., c. 479, s. 20.

#### **Power to mortgage or lease is included in power to sell**

**21 (1)** Wherever a power to sell real property is given to any executor or trustee, such power shall include a power to mortgage or lease, unless the instrument expressly excludes it.

**(2)** This Section applies to powers given by instruments executed before the seventeenth day of April, 1889. R.S., c. 479, s. 21.

#### **Conveyance by married woman who is bare trustee**

**22** When any freehold hereditament is vested in a married woman as a bare trustee she may convey it as if she was a *feme sole*. R.S., c. 479, s. 22.

### Miscellaneous Powers and Liabilities

#### **Appointment of agent**

**23 (1)** A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the solicitor to have the custody of, and to produce, a deed containing in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the trustee.

(2) Such deed shall be a sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor without the solicitor producing any separate or other direction or authority in that behalf from the trustee.

(3) A trustee may appoint a bank or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance, by permitting the bank or solicitor to have the custody of, and to produce, the policy of assurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment.

(4) Nothing in this Section shall exempt a trustee from any liability which he would have incurred if this Act had not been passed, in case he permits any such money, valuable consideration or property to remain in the hands or under the control of the bank or solicitor for a period longer than is reasonably necessary to enable the bank or solicitor, as the case may be, to pay or transfer the same to the trustee.

(5) This Section applies only where the money or valuable consideration or property is received on or after the sixteenth day of April, 1888.

(6) Nothing in this Section shall authorize a trustee to do anything which he is in express terms forbidden to do, or to omit anything which he is in express terms, directed to do, by the instrument creating the trust. R.S., c. 479, s. 23.

#### **Power to insure property**

24 (1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding three equal fourth parts of the full value of such building or property, and to pay the premiums for such insurance out of the income thereof, or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who is entitled wholly or partly to such income.

(2) This Section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested so to do.

(3) This Section applies to trusts created either before, on or after the seventeenth day of April, 1889, but nothing in this Section contained shall authorize any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust. R.S., c. 479, s. 24.

#### **Receipt given by trustee is sufficient discharge**

25 (1) The receipt in writing of any trustee for any money, securities or other property or effects payable, transferable or deliverable to him under any

trust or power, shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(2) This Section applies to trusts created either before, on or after the sixteenth day of April, 1888. R.S., c. 479, s. 25.

#### **Power of executor or trustee to pay or allow claim**

26 (1) An executor or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2) An executor or administrator, or two or more trustees acting together, or a sole acting trustee whereby the instrument, if any, creating the trust a sole trustee is authorized to execute the trusts, and powers thereof, may, if and as he or they think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estate, or to the trust, and for any of those purposes may enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to him or them seem expedient without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3) This Section applies only if and so far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4) This Section applies to executorship, administratorships and trusts constituted or created either before, on or after the sixteenth day of April, 1888. R.S., c. 479, s. 26.

#### **Exercise of power or trust by surviving trustee**

27 (1) Where a power or trust is given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2) This Section applies only to trusts constituted after or created by instruments coming into operation after the sixteenth day of April, 1888. R.S., c. 479, s. 27.

#### **Liability of trustee acting under power of attorney**

28 A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead, or had done some act to avoid the power, if this fact was not

known to the trustee at the time of his so acting or paying, provided that nothing in this Section shall affect the right of any person entitled to the money against the person to whom the payment is made, and that person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee. R.S., c. 479, s. 28.

#### **Accountability of trustee and expenses**

**29** A trustee shall, without prejudice to the provisions of the instrument, if any, creating the trust, be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for any bank, bankers, broker or other person with whom any trust moneys or securities are deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default, and may reimburse himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of his trusts or powers. R.S., c. 479, s. 29.

#### **Discretion to apply income of property held for infant**

**30 (1)** Where any property is held by a trustee in trust for an infant, either for life or for any greater interest, and whether absolutely or contingently on his attaining the age of nineteen years, or any other age, or on the occurrence of any event before his attaining such age, the trustee may at his sole discretion pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

**(2)** The trustee shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which he is by the instrument, if any, creating the trust, or by law, authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise, provided that the trustee may at any time, if he thinks fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

**(3)** This Section applies only if and so far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

**(4)** This Section applies whether the instrument comes into operation before, on or after the sixteenth day of April, 1888. R.S., c. 479, s. 30.

## PART III

## POWERS OF THE COURT

## Appointment of New Trustees and Vesting Orders

**Appointment of new trustee by Court**

**31 (1)** The Court or a judge may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the Court, make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees or although there is no existing trustee, or although no trustee was appointed in a will containing provisions rendering a trustee necessary to carry them into effect.

**(2)** In particular and without prejudice to the generality of subsection (1), the Court or judge may make an order for the appointment of a new trustee in substitution for a trustee who

- (a) has been convicted of an offence punishable by imprisonment in the penitentiary; or
- (b) is insolvent.

**(3)** In making such appointment such terms as to security for the due execution of the trust as are deemed necessary may be imposed.

**(4)** An order under this Section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated. R.S., c. 479, s. 31.

**Vesting order as to land**

**32** In any of the following cases, namely:

- (a) where the Court or a judge appoints or has appointed a new trustee;
- (b) where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person
  - (i) is a person of unsound mind or has been found under the *Adult Capacity and Decision-making Act* to not have capacity respecting financial matters,
  - (ii) is an infant,
  - (iii) is out of the jurisdiction of the Court, or
  - (iv) cannot be found;
- (c) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land;

(d) where, as to the last trustee known to have been entitled to or possessed of any land, it is uncertain whether he is living or dead;

(e) where there is no heir or personal representative of a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead or where the heirs or personal representatives of such last mentioned trustee are out of the jurisdiction of the Court;

(f) where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or a release of the right to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for twenty-eight days after the date of the requirement,

the Court or a judge may make an order, in this Act called a “vesting order”, vesting the land in any such person in any such manner and for any such estate as the Court or a judge may direct, or releasing or disposing of the contingent right to such person as the Court or a judge may direct, provided that

(g) where the order is consequential on the appointment of a new trustee, the land shall be vested for such estate as the Court or a judge may direct in the persons who, on the appointment, are the trustees; and

(h) where the order relates to a trustee entitled jointly with another person, and such trustee is out of the jurisdiction of the Court or cannot be found, the land or right shall be vested in such other person, either alone or with some other person. R.S., c. 479, s. 32; 2007, c. 17, s. 23; 2017, c. 4, s. 99.

#### **Order as to contingent right of unborn person**

**33** When any land is subject to a contingent right in an unborn person or class of unborn persons who on coming into existence would in respect thereof become entitled to or possessed of such land on any trust, the Court or a judge may make an order releasing such land from such contingent right, or may make an order vesting in any person the estate to or of which such unborn person or class of unborn persons would upon coming into existence be entitled or possessed in such land. R.S., c. 479, s. 33.

#### **Order disposing of interest of infant in land**

**34** When any person entitled to or possessed of land or entitled to a contingent right in land by way of security for money is an infant, the Court or a judge may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an infant trustee. R.S., c. 479, s. 34.

#### **Vesting order respecting mortgage**

**35** Where a mortgagee of land has died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect to the mortgage has been paid to a person entitled to receive the same, or

that last mentioned person consents to any order for the reconveyance of the land, then the Court or a judge may make an order vesting the land in such person or persons in such manner and for such estate as the Court or judge directs, in any of the following cases, namely:

- (a) where an heir or personal representative or devisee of the mortgagee is out of the jurisdiction of the Court, or cannot be found;
- (b) where an heir or personal representative or devisee of the mortgagee on demand made by or on behalf of a person entitled to require a conveyance of the land has stated in writing that he will not convey the same, or does not convey the same for the space of twenty-eight days next after a proper deed for conveying the land has been tendered to him by or on behalf of the person so entitled;
- (c) where it is uncertain which of several devisees of the mortgagee was the survivor;
- (d) where it is uncertain as to the survivor of several devisees of the mortgagee, or as to the heir or personal representative of the mortgagee, whether he is living or dead; and
- (e) where there is no heir or personal representative of a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his heir or personal representative or devisee. R.S., c. 479, s. 35.

#### **Deemed trustee or vesting if order for sale or mortgage**

**36** Where any court or judge gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of the land, or entitled to a contingent right therein as heir, or under the will of a deceased person for payment of whose debts the judgment was given or order made, and is a party to the action or proceeding in which the judgment or order is given or made, or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Act, and the court or judge may, if it is deemed expedient, make an order vesting the land or any part thereof for such estate, as that court or judge thinks fit, in the purchaser or mortgagee or in any other person. R.S., c. 479, s. 36.

#### **Vesting where judgment given for conveyance of land**

**37** Where a judgment is given for the specific performance of a contract concerning any land, or for the partition, or sale in lieu of partition, or exchange, of any land, or generally where any judgment is given for the conveyance of any land either in cases arising out of the doctrine of election or otherwise, the Court or judge may declare that any of the parties to the action are trustees of the land or any part thereof within the meaning of this Act, or may declare that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which the judgment is given, are the interests of persons who on coming into existence would be trustees within the meaning of this

Act, and thereupon the Court or judge may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees. R.S., c. 479, s. 37.

#### **Effect of vesting order**

**38** A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate as the Court or judge directs, or if there is no such person, or no such person of full capacity, then as if such person had existed and been of full capacity, and had duly executed all proper conveyances of the land for such estate as the Court or judge directs, and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance to the effect intended by the order. R.S., c. 479, s. 38.

#### **In lieu of vesting order**

**39** In all cases where a vesting order can be made under any of the foregoing provisions the Court or judge may, if it is more convenient, appoint a person to convey the land, or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision. R.S., c. 479, s. 39.

#### **Vesting of rights as to stock or chose in action**

**40 (1)** In any of the following cases, namely:

(a) where the Court or judge appoints or has appointed a new trustee;

(b) where a trustee entitled alone or jointly with another person to stock or to a chose in action

(i) is a person of unsound mind or has been found under the *Adult Capacity and Decision-making Act* to not have capacity respecting financial matters,

(ii) is an infant,

(iii) is out of the jurisdiction of the Court,

(iv) cannot be found,

(v) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action, according to the direction of the person absolutely entitled thereto, for twenty-eight days next after a request in writing has been made to him by the person so entitled, or

(vi) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action for twenty-eight days next after an order of the Court or judge for that purpose has been served on him; or

(c) where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a chose in action is alive or dead,

the Court or judge may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action, in any such person as the Court appoints, provided that

(d) where the order is consequential on the appointment by the Court or judge of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and

(e) where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last mentioned person, either alone or jointly with any other person whom the Court or judge appoints.

(2) In all cases where a vesting order can be made under this Section, the Court or judge may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court or judge under this Act, may transfer the stock to himself or any other person, according to the order, and all banks and other companies shall obey every order under this Section according to its tenor.

(4) After notice in writing of an order under this Section it shall not be lawful for any bank or other company to transfer any stock to which the order relates, or to pay any dividends thereon, except in accordance with the order.

(5) The Court or judge may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under this Act is to be exercised.

(6) The provisions of this Act as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock. R.S., c. 479, s. 40; 2007, c. 17, s. 24; 2017, c. 4, s. 100.

#### **Person beneficially interested may apply for order**

**41 (1)** An order under this Act for the appointment of a new trustee or concerning any land, stock or chose in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock or chose in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2) An order under this Act concerning any land, stock or chose in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage. R.S., c. 479, s. 41.

#### **Powers of trustee appointed by court**

42 Every trustee appointed by a court of competent jurisdiction 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 a trustee by the instrument, if any, creating the trust. R.S., c. 479, s. 42.

#### **Order for payment of costs from trust estate**

43 The Court or judge may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be paid or raised out of the land or personal property in respect whereof the same is made or out of the income thereof, or to be borne and paid in such manner and by such persons as to the Court or judge seems just. R.S., c. 479, s. 43.

#### **Vesting orders respecting charity or society**

44 The powers conferred by this Act as to vesting orders may be exercised for vesting any land, stock or chose in action in any trustee of a charity or society over which the Court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power, under the provisions of a statute or by the Court or a judge under its general or statutory jurisdiction. R.S., c. 479, s. 44.

#### **Vesting order made on certain allegation is evidence**

45 Where a vesting order is made as to any land under this Act founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or personal representative or devisee of a mortgagee is out of the jurisdiction of the Court or cannot be found, or that it is uncertain which of several trustees or which of several devisees of a mortgagee was the survivor, or whether the last trustee or the heir or personal representative or last surviving devisee of a mortgagee is living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or personal representative or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order, but this Section shall not prevent the Court or a judge from directing a reconveyance on the payment of costs occasioned by any such order if improperly obtained. R.S., c. 479, s. 45.

## Payment Into Court by Trustees and Others

**Payment into Court by trustees**

**46 (1)** Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into the Court, and the same shall, subject to rules of Court, be dealt with according to the orders of the Court.

**(2)** The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.

**(3)** Where any moneys or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the Court or judge may order the payment into court to be made by the majority without the concurrence of the other or others, and where any such moneys or securities are deposited with any bank, broker or other depository, the Court or judge may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into court, and every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the moneys and securities so transferred, paid or delivered. R.S., c. 479, s. 46.

**Person under disability**

**47** Where any infant or person of unsound mind is entitled to any money payable in discharge of any land, stock or other security, or chose in action conveyed, assigned or transferred under this Act, the person by whom such money is payable may pay the same into the Supreme Court or to such person as the Court or a judge orders, in trust in any cause then depending concerning such money, or if there is no such cause, to the credit of such infant or person of unsound mind, subject to the order or disposition of the Court or a judge, and the Court or a judge may, in a summary way, order any money so paid to be invested in such stock or securities as such Court or judge selects or approves, and may order payment or distribution thereof, or payment of the dividends thereof, as to such Court or judge seems reasonable, and the Accountant General or other person who receives any such money shall give to the person paying the same a receipt for such money, and any such receipt shall be an effectual discharge for the money therein expressed to have been received. R.S., c. 479, s. 47.

## Miscellaneous

**Judgment against trustee who cannot be found**

**48** Where, in any action, the Court or judge is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the Court, and that he cannot be found, the Court or judge may hear and determine the action and give judgment therein against that person in his character of a trustee, as if he had been duly served or had entered an appearance in the action, and had also appeared by his counsel

and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character. R.S., c. 479, s. 48.

### **Indemnity to trustee who breaches trust with consent**

**49 (1)** Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Court or judge may if it or he thinks fit, and notwithstanding that the beneficiary is a married woman entitled for her separate use and restrained from anticipation, make such order as to the Court or judge seems just for impounding all or any part of the interest of the beneficiary in the trust estate, by way of indemnity to the trustee or person claiming through him.

**(2)** This Section shall apply to breaches of trust committed as well before as on or after the seventeenth day of April, 1889. R.S., c. 479, s. 49.

### **Order for mortgage for repairs**

**50 (1)** Trustees, guardians and others standing in a fiduciary relation, may, under an order obtained from the Court or judge, upon grounds laid to the satisfaction of the Court or judge, mortgage real property or portions thereof for the purpose of putting, keeping and maintaining the same in proper repair, and mortgages so made shall operate as securities to the holders in the same way and to the same extent as if made by the persons whose interests are represented by the mortgagors.

**(2)** The Court or judge may apportion the charge for repairs, including interest on the sum borrowed, to and among the persons interested in the property as is just and equitable. R.S., c. 479, s. 50.

### **Order to confer powers not provided in instrument**

**51 (1)** Where in the management or administration of any property vested in trustees, whether before, on or after the tenth day of April, 1930, any sale, lease, mortgage, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction, is in the opinion of the Court or a judge expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the Court or a judge, may by order confer upon the trustees, either generally, or in any particular instance, the necessary power for the purpose, on such terms and subject to such provisions and conditions, if any, as the Court or a judge may think fit and may direct in what manner any money authorized to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

**(2)** The Court or a judge may, from time to time, rescind or vary any order made under this Section or may make any new or further order.

**(3)** An application to the Court or a judge under this Section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust. R.S., c. 479, s. 51.

**Funds raised upon appeal to public for contribution**

**52 (1)** In this Section, “fund” includes money and property other than real property and tangible personal property.

**(2)** Where any funds are held by, or are under the control of, one or more persons and the funds have been paid, transferred or contributed by members of the public or by any public officer, body or authority, with or apparently with the intention that the funds will be used or applied for the benefit of a class of persons in respect of whom an appeal for funds has been made, the person or persons who receive and hold the funds shall be trustees thereof and there shall be a trust to which this Act applies.

**(3)** A trustee mentioned in subsection (2) alone or jointly with other trustees may without notice to any person apply to a judge for approval of a scheme for the distribution of the funds held in trust and the judge may by order approve the scheme with any variation or additions as the judge in his discretion thinks proper.

**(4)** A judge may from time to time by order, on the application of any person or without application, rescind or vary any order made pursuant to subsection (3) or approve a new scheme for the distribution of the funds then held in trust.

**(5)** The *Civil Procedure Rules* shall apply *mutatis mutandis* to an application made under this Section, except that it shall not be necessary to give notice to any person unless notice is directed to be given by the judge.

**(6)** No action shall be brought against a trustee who distributes funds or does any other act in accordance with a scheme or order approved or made under this Section. R.S., c. 479, s. 52.

## PART IV

## MISCELLANEOUS AND SUPPLEMENTARY

**Act and orders are indemnity for acts done**

**53** This Act and every order purporting to be made under this Act shall be a complete indemnity to all companies and to all persons for any acts done pursuant thereto, and it shall not be necessary for any company or person to inquire concerning the propriety of the order, or whether the Court or judge making the same had jurisdiction to make it. R.S., c. 479, s. 53.

**Grantor may assign personalty to himself and another**

**54** Any person may assign personal property by law assignable, including chattels real, directly to himself and another person or persons or corporation, by the like means as he may assign the same to another person. R.S., c. 479, s. 54.

**Effect of payment of purchase or mortgage money**

**55** The *bona fide* payment to and the receipt by any person to whom any purchase or mortgage money is payable, upon any express or implied trust, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the trust or security. R.S., c. 479, s. 55.

**Distribution of estate assets after notice to creditors**

**56** Where an executor or administrator has given such or the like notices as, in the opinion of the court in which such executor or administrator is sought to be charged, would be sufficient in the Supreme Court in an administration action, or in a court of probate, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the persons entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator did not have notice at the time of distribution of the said assets or a part thereof, as the case may be, but nothing in this Section contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who have received the same respectively. R.S., c. 479, s. 56.

**Effect of encumbrance on receipt of rent and income**

**57** For the purposes of this Act, a person is deemed to be entitled to the possession or to the receipt of the rents and income of land or personal property, although his estate may be charged or encumbered, either by himself or by any former owner, or otherwise howsoever, to any extent, but the estates or interests of the persons entitled to any such charge or encumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents or income as aforesaid unless they concur therein. R.S., c. 479, s. 57.

**Conversion by railway law**

**58** Where land subject to a trust has been converted into money by the operation of any law relating to railways, such money shall be considered as land for the purposes of this Act, and shall be dealt with as nearly as may be in conformity with the provisions thereof. R.S., c. 479, s. 58.

**Effect of act on courts of probate**

**59** Nothing in this Act shall be construed to interfere with or impair the powers at present vested in the several courts of probate, further than is herein expressly mentioned. R.S., c. 479, s. 59.

**Registration of order or instrument affecting land**

**60** As to persons not having actual notice of any order, deed or other instrument affecting the title to land, made under this Act, such order, deed or other instrument shall be binding only from the time the same is registered in the registry of deeds for the registration district in which the land lies under the *Registry Act*. R.S., c. 479, s. 60.

**Rules**

**61** The Supreme Court may make rules not inconsistent with this Act, nor with the laws for the time being in force in the Province, for the better and more effectual carrying out of the purposes of this Act, and for defining and declaring the procedure in cases arising under it. R.S., c. 479, s. 61.

**Remuneration of trustee or guardian**

**62 (1)** Trustees or guardians shall be entitled to such fair and reasonable remuneration for their care, pains and trouble, and their time expended in and about the estate, and in such proportions where there is more than one trustee, as is determined by the Court or judge, or by any local judge of the Court or referee to whom the matter is referred.

**(2)** A judge may, on application to him for the purpose, settle the amount and apportionment of such remuneration, although the estate is not before the Court in any action or proceeding.

**(3)** Nothing in this Section shall apply to any case in which the rate of remuneration is fixed by the instrument creating the trust. R.S., c. 479, s. 62.

**Executor or trustee who renders services as solicitor**

**63** Where there are more executors, administrators, trustees or guardians than one, any one of such executors, administrators, trustees or guardians who is also a solicitor may with the consent of his co-executors, co-administrators, co-trustees or co-guardians, charge for professional services rendered by him in relation to the estate in the same manner as if he were not such executor, administrator, trustee or guardian provided, however, that no such charge shall be made for any service which an executor, administrator, trustee or guardian ought to render without the intervention of a solicitor. R.S., c. 479, s. 63.

**Court may relieve trustee from liability**

**64** If it appears to the Court that a trustee is or may be personally liable for any breach of trust whether the transaction alleged to be a breach of trust occurred before, on or after the twenty-seventh day of March, 1902, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve the trustee either wholly or partly from personal liability for the same. R.S., c. 479, s. 64.

**Where trustee absent and trust money held by another**

**65** Any person with whom trust moneys have been deposited or to whose hands trust moneys have come, may in case the trustee has been absent from the Province for a period of one year and is not likely to return at an early date, or in the event of the trustee's death, or if any trustee is unable to give any acquittance of money, pay the same into the Supreme Court in the same manner as payments into court are made by trustees and others under the provisions of this Act. R.S., c. 479, s. 65.

**Perpetual trust as to cemetery lot**

**66 (1)** A perpetual trust whether created before, on or after the second day of May, 1933, for the purpose of caring for, preserving, improving, embellishing or maintaining any private lot, tomb, monument or enclosure in any cemetery in the Province shall be lawful and the rule or law against perpetuities shall not apply.

**(2)** Every city, every incorporated town and every municipality shall have, and shall be deemed to have had before the second day of May, 1933, the power to take and hold by gift, agreement, assignment, devise, bequest or otherwise, any money or securities, and to accept and execute any trust for the care, preservation, improvement, embellishment or maintenance in perpetuity or otherwise of any private lot, tomb, monument or enclosure in any cemetery owned, managed or controlled by such city, incorporated town or municipality. R.S., c. 479, s. 66.

**Fund for pensions or employee benefits**

**67** The rules of law and statutory enactments relating to perpetuities and to accumulations do not apply and shall be deemed never to have applied to the trusts of a plan, trust or fund established for the purpose of providing pensions, retirement allowances, annuities or sickness, death or other benefits to employees or to their widows, dependants or other beneficiaries. R.S., c. 479, s. 67.

## PART V

## TRUST COMPANIES

**Conditions for appointment of trust company by Court**

**68 (1)** Where any company incorporated under any special Act of the Legislature of the Province or of the Parliament of Canada or under letters patent issued pursuant to any Act of the Legislature or Parliament is authorized to execute the office of executor, administrator, trustee, receiver, assignee, guardian of an infant or representative for an adult, in case the Governor in Council approves of such company being accepted by the Supreme Court as a trust company for the purposes of such Court, the said Court or any judge thereof, and every other court or judge having authority to appoint a person to execute any such office, may, with the consent of the company, appoint such company to execute any of the said offices in respect to any estate or person under the authority of such court or judge, or may grant to such company probate of any will in which such company is named an

executor, but no company which has issued or has authority to issue debentures shall be approved as aforesaid.

(2) Such company may be appointed to execute any of the said offices by any person or persons having authority by deed, will or other instrument to appoint a person or persons to execute any such office. R.S., c. 479, s. 68; 2007, c. 17, s. 25; 2017, c. 4, s. 101.

#### **Grant of administration by probate court**

69 Notwithstanding anything contained in the *Probate Act*, it shall be lawful for any judge or court of probate to grant administration of an intestate estate to any such company, instead of granting it to the person or persons specified in the *Probate Act* provided, however, that administration shall not be granted to such company under this Part unless the person or persons in priority entitled to administration under the *Probate Act* consent in writing to the granting of such administration to such company. R.S., c. 479, s. 69.

#### **Appointment as sole or joint trustee**

70 Such company may be appointed to be a sole trustee, notwithstanding that but for this Part it would be necessary to appoint more than one trustee, and may also be appointed trustee jointly with any person. R.S., c. 479, s. 70.

#### **Appointment may be under Act or document of trust**

71 Such appointment may be made whether the trustee is required under the provisions of any deed, will or document creating a trust, or whether the appointment is made under this Act. R.S., c. 479, s. 71.

#### **Security by company**

72 Notwithstanding any rule of practice, or any provision of any Act requiring security, it shall not be necessary for the said company to give any security for the due performance of its duty as such executor, administrator, trustee, receiver, assignee or guardian, unless otherwise ordered. R.S., c. 479, s. 72.

#### **Revocation of approval of company**

73 The Governor in Council may revoke the approval given under this Part, and no court or judge after notice of such revocation shall appoint any such company to be administrator, trustee, receiver, assignee or guardian, unless such company gives the like security for the due performance of its duty as would be required from a private person. R.S., c. 479, s. 73.

#### **Liability of company**

74 The liability of any such company to persons interested in an estate held by the said company as executor, administrator, trustee, receiver, assignee or guardian as aforesaid, shall be the same as if the estate had been held by any private person in such capacities respectively, and its powers shall be the same. R.S., c. 479, s. 74.

**Deposit with company of money paid into court**

**75** Every court into which money is paid by parties, or is brought by order or judgment, may by order direct the same to be deposited with any such company that agrees to accept the same, and the company may pay any lawful rate of interest on such moneys as is agreed upon, and when no special arrangement is made, interest shall be allowed by the company at the rate of not less than three per cent annually. R.S., c. 479, s. 75.

**Eligible investments by company**

**76 (1)** Every such company may invest any trust moneys in its hands in any security in which private trustees may by law invest trust moneys, but such company shall not in any case invest the moneys of any trust in securities prohibited by the trust, and shall not invest moneys entrusted to it by any court in a class of securities disapproved of by the court.

**(2)** Where such company is trustee jointly with another person, the company and the other person have the same authority to invest trust moneys in their hands as joint trustees that the company has under subsection (1) as sole trustee.

**(3)** *repealed 1994-95, c. 19, s. 3.*

R.S., c. 479, s. 76; 1994-95, c. 19, s. 3.

**Company not to act as insurance agent**

**77** No company approved under this Part shall, nor shall any officer, agent or employee of such company, nor any company, firm or corporation controlled wholly or in part by such company whether by ownership of shares or otherwise, under penalty of revocation by the Governor in Council of the approval given under this Part, act in the Province as agent for any insurance company or for any person in the placing of insurance, for the benefit or profit of the company so approved, nor shall any company so approved or any officer, agent or employee thereof exercise pressure in the Province upon any borrower from such company in any particular insurance agency or company, provided that nothing herein contained shall be construed in any wise to restrict the right of such company to refuse to approve as acceptable security the insurance policy of any company. R.S., c. 479, s. 77.

**Acquisition by trust company**

**78 (1)** Whenever a trust company that is approved by the Governor in Council pursuant to Section 68 acquires the business, property and assets of another trust company

(a) on and after the date upon which such acquisition takes place, all trusts of every kind and description, including incomplete or inchoate trusts, and every duty assumed by or binding upon the selling company shall be vested in and bind and may be enforced against the purchasing company as fully and effectually as if it had been originally named as the fiduciary in the instrument;

(b) whenever in any instrument any estate, money or other property, or any interest, possibility or right is intended at the time or times of the publishing, making or signing of the instrument to be thereafter vested in or administered or managed by or put in the charge of the selling company as the fiduciary, the name of the purchasing company shall be deemed to be substituted for the name of the selling company, and such instrument shall vest the subject-matter therein described in the purchasing company according to the tenor or, and at the time indicated or intended by, the instrument, and the purchasing company shall be deemed to stand in the place and stead of the selling company;

(c) where the name of the selling company appears as executor, trustee, guardian or curator in a will or codicil, such will or codicil shall be read, construed and enforced as if the purchasing company was so named therein, and it shall, in respect of the will or codicil, have the same status and rights as the selling company;

(d) in all probates, administrations, guardianships, committees or appointments of administrator or guardian *ad litem* issued or made by any court to the selling company from which at the said date upon which the acquisition or sale becomes effective it had not been finally discharged, the purchasing company shall *ipso facto* be substituted therefor;

(e) on and after the said date upon which the acquisition or sale becomes effective, the assets so acquired or sold shall, in accordance with and subject to the terms of any agreement made with respect thereto and without any further conveyance, become vested in the purchasing company, and the selling company shall, subject to the terms of any such agreement, execute such formal and separate conveyances, assignments and assurances for registration purposes or otherwise as may reasonably be required to confirm or evidence the vesting in the purchasing company of the full title and ownership of the said assets.

(2) In this Section, “fiduciary” includes trustee, bailee, executor, administrator, assignee, guardian, committee, receiver, liquidator or agent, and “instrument” includes every will, codicil or other testamentary document, settlement, instrument of creation, deed, mortgage, assignment, statute, and a judgment, decree, order, direction and appointment of any court, judge or other constituted authority.

(3) For purposes of this Act, the amalgamation of two or more trust companies is deemed to constitute an acquisition by the amalgamated trust company of the business, property and assets of each of the amalgamating trust companies and “purchasing company” includes the amalgamated trust company and “selling company” includes each of the amalgamating trust companies. R.S., c. 479, s. 78.

**Filing of instrument of acquisition**

**79** Whenever a trust company acquires the business, property and assets of another trust company, whether before, on or after the thirteenth day of April, 1962, a duplicate original of the instrument by which such acquisition is accomplished shall be filed in the office of the Attorney General who, upon being satisfied that the acquisition has been accomplished and that the purchasing trust company has been approved pursuant to Section 68, may issue a certificate under his hand and seal certifying that a duplicate original of the instrument of acquisition has been filed in his office and declaring that the purchasing trust company has acquired the business, property and assets of the selling trust company and declaring the effective date of the acquisition. R.S., c. 479, s. 79.

**Certificate as prima facie proof**

**80 (1)** A certificate of the Attorney General given under Section 79 is for all purposes and in all courts admissible in evidence and is *prima facie* proof of all matters therein certified or declared without proof of the signature or the seal of the person signing and sealing the certificate.

**(2)** A copy of an instrument filed in the office of the Attorney General pursuant to Section 79, when certified as a true copy under the seal of the Attorney General and under his hand or the hand of the Deputy Attorney General, is admissible in evidence in all courts. R.S., c. 479, s. 80.

**Registration of certificate**

**81** A certificate of the Attorney General given under Section 79 or a copy thereof certified under seal by a notary public to be a true copy may be registered in any registry of deeds without proof of the signature or the seal of the person signing and sealing the same or purporting to have signed and sealed the same. R.S., c. 479, s. 81.

**The Central Trust Company of Canada**

**82** Sections 68 to 81 apply to The Central Trust Company of Canada, a body corporate, duly incorporated under the laws of the Province of New Brunswick to the same extent as if the said The Central Trust Company of Canada was incorporated under a special Act of the Legislature of the Province. R.S., c. 479, s. 82.

**National Trust Company Limited**

**83** The provisions of this Part apply to the National Trust Company, Limited, a body corporate, duly incorporated under the laws of the Province of Ontario, to the same extent as if the said National Trust Company, Limited was incorporated under a special Act of the Legislature of the Province. R.S., c. 479, s. 83.

**Crown Trust Company**

**84** The provisions of this Part apply to the Crown Trust Company, a body corporate, duly incorporated under the laws of the Province of Ontario, to the same extent as if the said Crown Trust Company was incorporated under a special Act of the Legislature of the Province. R.S., c. 479, s. 84.

**International Trust Company**

**85** The provisions of this Part apply to the International Trust Company, a body corporate, duly incorporated under the laws of the Province of Quebec, to the same extent as if the said International Trust Company was incorporated under a special Act of the Legislature of the Province. R.S., c. 479, s. 85.

**Credit Foncier Trust Company**

**86** The provisions of this Part apply to Credit Foncier Trust Company, a body corporate, duly incorporated under the laws of the Province of Quebec, to the same extent as if the said Credit Foncier Trust Company was incorporated under a special Act of the Legislature of the Province. R.S., c. 479, s. 86.

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