



Province of Alberta

TRUSTEE ACT

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TRUSTEE ACT

Chapter T-8

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definition

- 1** In this Act, “trustee” includes
- (a) an executor, an administrator or a trustee of the estate of a person,
 - (b) a trustee whose trust arises by construction or implication of law as well as an express trustee, and

- (c) several joint trustees.

RSA 2000 cT-8 s1;2004 cM-18.1 s22

Investments

Application

2(1) Sections 3 to 8 are subject to a contrary intention expressed in the instrument creating a trust.

(2) Sections 3 to 8 apply to a trust regardless of whether the trust was created before or after this section came into force.

2001 c28 s2;2006 c9 s2

Powers and duties with respect to investment

3(1) A trustee may invest trust funds in any kind of property if the investment is made in accordance with this section.

(2) A trustee must invest trust funds with a view to obtaining a reasonable return while avoiding undue risk, having regard to the circumstances of the trust.

(3) A trustee must review the trust investments at reasonable intervals for the purpose of determining that the investments continue to be appropriate to the circumstances of the trust.

(4) A trustee who has invested trust funds in property may exercise for the benefit of the trust any right or power that a person who was both the legal and beneficial owner of the trust's interest in the property could exercise.

(5) Without restricting the matters that a trustee may consider, in planning the investment of trust funds a trustee must consider the following matters, insofar as they are relevant to the circumstances of the trust:

- (a) the purposes and probable duration of the trust, the total value of the trust's assets and the needs and circumstances of the beneficiaries;
- (b) the duty to act impartially towards beneficiaries and between different classes of beneficiaries;
- (c) the special relationship or value of an asset to the purpose of the trust or to one or more of the beneficiaries;
- (d) the need to maintain the real value of the capital or income of the trust;
- (e) the need to maintain a balance that is appropriate to the circumstances of the trust between
 - (i) risk,

- (ii) expected total return from income and the appreciation of capital,
- (iii) liquidity, and
- (iv) regularity of income;
- (f) the importance of diversifying the investments to an extent that is appropriate to the circumstances of the trust;
- (g) the role of different investments or courses of action in the trust portfolio;
- (h) the costs, such as commissions and fees, of investment decisions or strategies;
- (i) the expected tax consequences of investment decisions or strategies.

2001 c28 s2

Trustee liability

4(1) A trustee is not liable for a loss in connection with the investment of trust funds that arises from a decision or course of action that a trustee exercising reasonable skill and prudence and complying with section 3 could reasonably have made or adopted.

(2) A court assessing the damages payable by a trustee for a loss to the trust arising from the investment of trust funds may take into account the overall performance of the investments.

2001 c28 s2

Delegation of investment authority

5(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 funds that a prudent investor might delegate in accordance with ordinary investment practice.

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

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

(4) A trustee who has delegated authority to an agent under subsection (2) and has complied with subsection (3) and the regulations is not liable for the decisions or actions of that agent.

(5) Where investment authority has been delegated to an agent by a trustee and the trust suffers a loss because of the agent's breach of the terms of the agency contract, damages for the loss may be recovered from the agent in an action

- (a) by the trustee, or
- (b) by a beneficiary of the trust if the trustee fails to commence an action within a reasonable time after acquiring knowledge of the breach.

2001 c28 s2

Purchase of mutual fund units and delegation

6 Investment in a mutual fund or segregated fund or in a similar investment set out in the regulations is not a delegation of investment authority with respect to the investment of trust funds.

2001 c28 s2

Recording of trust status

7(1) A trustee must ensure, so far as it is practicable to do so, that any record evidencing the trustee's ownership of securities also indicates the trust relationship.

(2) Subsection (1) does not apply when the trustee is a trust corporation or the Teachers' Pension Plans Board of Trustees.

2001 c28 s2

Regulations

8 The Minister may make regulations

- (a) determining similar investments for the purpose of section 6;
- (b) respecting the terms of a delegation of authority by a trustee to an agent under section 5.

2001 c28 s2

9 Repealed 2006 c9 s3.

10 to 13 Repealed 2001 c28 s2.

Appointment and Discharge

Substitute trustee

14(1) When a trustee dies or refuses to act or becomes incapable or unfit to act in the trusts or powers reposed in the trustee, it is lawful for the person empowered to appoint new trustees by the deed, will or other instrument creating the trust, or, if there is no such person or no such person able and willing to act, then for

- (a) the surviving or continuing trustee or trustees for the time being,
- (b) the executor or the administrator of the last surviving and continuing trustee, or
- (c) the last retiring trustee,

to appoint in writing any other person to be a trustee in place of the trustee dying or refusing to act or becoming incapable or unfit to act.

(2) When a trustee after having commenced to act and before having fully discharged and performed the trusts and powers reposed in the trustee desires to be discharged from the trusts and powers reposed in the trustee,

- (a) the trustee may make application to the Court of Queen's Bench for an order passing the accounts of the trust to the date of the application and discharging the trustee from the trust and appointing a new trustee in the trustee's place, and
- (b) the court, on the hearing of the application and after the passing of the accounts, may make an order discharging the applicant and
 - (i) appointing as trustee any fit and proper person nominated for the purpose in the application, or
 - (ii) if not satisfied of the fitness of the person so nominated, appointing an official of the court or other competent person as trustee,

and on that appointment, the trustee desiring to be discharged is discharged from the trust.

(3) As often as a new trustee is appointed under this section, all the trust property, if any, that for the time being is vested in the surviving or continuing trustee or trustees or in the heirs, executors

or administrators of any trustee, shall, with all convenient speed, be conveyed, assigned and transferred so that it is legally and effectually vested in the new trustee either solely or jointly with the surviving or continuing trustee or trustees, as the case requires.

(4) Every new trustee appointed under this section, before as well as after any conveyance, assignment or transfer referred to in subsection (3), and every trustee appointed at any time by the court, has the same powers, authorities and discretions, and shall in all respects act, as if the trustee had originally been nominated a trustee by the deed, will or other instrument creating the trust.

(5) When a new trustee is appointed 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 of the trust property, notwithstanding that no new trustees are to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of the separate set of trustees, or, if only one trustee was originally appointed, then one separate trustee may be appointed for that part of the trust property,
- (c) it is not obligatory that more than one new trustee be appointed when only one trustee was originally appointed or to fill up the original number of trustees when more than 2 trustees were originally appointed, but, except when only one trustee was originally appointed, a trustee shall not be discharged under this section from the trust unless there will be at least 2 trustees to perform the trust, and
- (d) any assurance or thing requisite for vesting the trust property or any part of it jointly in the persons who are the trustees shall be executed or done.

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

(7) The provisions of this section

- (a) relative to a trustee who is dead include the case of a person nominated as a trustee in a will but dying before the testator, and

- (b) relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the provisions of this section.

(8) This section applies only if and so far as a contrary intention is not expressed in the instrument, if any, creating the trust, and has effect subject to the terms of that instrument and to any provisions contained in it.

RSA 2000 cT-8 s14;RSA 2000 c16(Supp) s59

Application for discharge

15(1) When there are more than 2 trustees

- (a) if one of them declares that the trustee is desirous of being discharged from the trust, and
- (b) if the trustee's co-trustees and any other person who is empowered to appoint trustees consent to the discharge of the trustee and to the vesting in the co-trustees of the trust property,

then the trustee desirous of being discharged may make an application to the Court of Queen's Bench.

(2) When on the application it appears to the satisfaction of the court that it is fit and proper to do so, the court may order that the trustee be discharged from the trust without any new trustee being appointed in the trustee's place, but the court may in that case require the passing of accounts.

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

(4) This section applies only if and so far as a contrary intention is not expressed in the instrument, if any, creating the trust, and has effect subject to the terms of that instrument and to the provisions contained in it.

RSA 2000 cT-8 s15;RSA 2000 c16(Supp) s59

Order appointing new trustee

16(1) When it is expedient to appoint a new trustee and it is found inexpedient, difficult or impractical to do so without the assistance of the court, the Court of Queen's Bench may make an order appointing a new trustee

- (a) if there is no existing trustee, or
- (b) in substitution for or in addition to any existing trustee.

(2) The court, in particular and without prejudice to the generality of subsection (1), may make an order appointing a new trustee in substitution for a trustee

- (a) who has been convicted of an indictable offence,
- (b) who is a formal patient under the *Mental Health Act* or in respect of whom a guardian or trustee is appointed under the *Adult Guardianship and Trusteeship Act* or a certificate of incapacity is in effect under the *Public Trustee Act*,
- (c) who is a bankrupt, or
- (d) that is a corporation in liquidation or that has been dissolved.

(3) An order under this section, and any consequential vesting order or conveyance, operates no further 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.

(4) Nothing in this section gives power to appoint an executor or administrator.

RSA 2000 cT-8 s16;RSA 2000 c16(Supp) s59;
2008 cA-4.2 s151

Vesting of trust property

17(1) When an instrument by which a new trustee is appointed to perform a trust contains a declaration by the appointor to the effect that any estate or interest

- (a) in any land that is subject to the trust,
- (b) in any chattel that is subject to the trust, or
- (c) in the right to recover and receive any debt or other chose in action that is subject to the trust,

vests in the persons who by virtue of the instrument become and are the trustees for performing the trust, the declaration, without any conveyance or assignment, but subject to the *Land Titles Act*, operates to vest in those persons as joint tenants and for purposes of the trust, that estate, interest or right.

(2) When an instrument by which a retiring trustee is discharged under this Act contains such a declaration by the retiring and continuing trustees and by the other person, if any, empowered to appoint trustees, the declaration, without any conveyance or assignment, but subject to the *Land Titles Act*, operates 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 any share, stock, annuity, or property only transferable in books kept by a company or other body or in a manner prescribed by or under any Act.

(4) For the purpose of registration of an instrument, the person making the declaration is deemed to be the conveying party or parties and the conveyance is deemed to be made by that person or them under a power conferred by this Act.

RSA 1980 cT-10 s17

Purchase and Sale

Trust for sale

18(1) If a trust for sale or power of sale of property is vested in a trustee, the trustee may sell or concur with any other person in selling all or any part of the property.

(2) The sale may be

- (a) either subject to prior charges or not,
- (b) either together or in lots,
- (c) either by public auction or by private contract, and
- (d) subject to any conditions respecting title or evidence of title or any other matter that the trustee thinks fit.

(3) The trustee may

- (a) vary the contract for sale,
- (b) buy in at the auction, or
- (c) rescind the contract for sale and resell without being answerable for any loss.

(4) This section applies only if and so far as a contrary intention is not expressed in the instrument creating the trust or power, and has effect subject to the terms of that instrument and to the provisions contained in it.

RSA 1980 cT-10 s18

Conditions of sale

19(1) No sale made by a trustee shall be impeached by a beneficiary on the ground that any of the conditions subject to which the sale was made was unnecessarily depreciatory, unless it

also appears that the consideration for the sale was for that reason rendered inadequate.

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

(3) No purchaser on a sale made by a trustee is at liberty to make any objection against the title on the ground mentioned in this section.

RSA 1980 cT-10 s19

Conveyances by married woman

20 When a freehold hereditament is vested in a married woman as bare trustee she may convey or surrender it as if she were a femme sole and without her husband joining in the conveyance.

RSA 1980 cT-10 s20

Powers conferred by court

21(1) When in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release or other disposition or any purchase, investment, acquisition, expenditure or other transaction is expedient in the opinion of the Court of Queen's Bench, but it 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

- (a) may by order confer on the trustees, either generally or in any particular instance, the necessary power for the purpose, on any terms, and subject to any provisions and conditions that the court thinks fit, and
- (b) 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 may, from time to time, rescind or vary an order made under this section or may make a new or further order.

(3) An application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

RSA 2000 cT-8 s21;RSA 2000 c16(Supp) s59

Receipts effectual discharges

22 The bona fide payment of any money to and the receipt of that money by any person to whom it is payable, on an express or implied trust or for a limited purpose, and the bona fide payment to

and receipt by the survivors or survivor of 2 or more mortgagees or holders or the executors or administrators of the survivors or survivor or their or that person's assigns, effectually discharges the person paying the money from seeing to the application or being answerable for the misapplication of it, unless the contrary is expressly declared by the instrument creating the trust or security.

RSA 1980 cT-10 s22

Various Powers and Liabilities

Appointment of agents

23(1) A trustee may appoint a barrister and solicitor to be the trustee's agent to receive and give a discharge for any money or any valuable consideration or property receivable by the trustee under the trust, and no trustee is chargeable with breach of trust by reason only of the trustee having made or concurred in making the appointment.

(2) If a trustee permits the money, valuable consideration or property to remain in the hands or under the control of the barrister and solicitor for a period longer than is reasonably necessary to enable the barrister and solicitor to pay or transfer it to the trustee, nothing in this section exempts the trustee from any liability that the trustee would have incurred if this section had not been enacted.

(3) A trustee may appoint a bank or treasury branch or barrister and solicitor to be the trustee's agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance or otherwise, and no trustee is chargeable with a breach of trust by reason only of the trustee having made or concurred in making the appointment.

(4) If a trustee permits the money to remain in the hands or under the control of the bank or treasury branch or barrister and solicitor for a period longer than is reasonably necessary to enable the bank, treasury branch or barrister and solicitor to pay it to the trustee, nothing contained in this section exempts the trustee from any liability that the trustee would have incurred if this section had not been enacted.

RSA 1980 cT-10 s23

Insuring trust property

24(1) A trustee may

- (a) 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 75% of the full value of the building or property, and

- (b) pay the premiums for the insurance out of the income of the property or out of the income of any other property that is subject to the same trusts without obtaining the consent of any person entitled wholly or partly to that income.

(2) This section does not apply to any building or property that a trustee is bound forthwith to convey absolutely to a cestui que trust on being requested to do so.

RSA 1980 cT-10 s24

Liability of trustee

25 A trustee is chargeable only for money and securities actually received by the trustee, notwithstanding the trustee signing any receipt for the sake of conformity, and is answerable and accountable only for the trustee's own acts, receipts, neglects or defaults and not for

- (a) those of any other trustee,
- (b) any banker, broker or other person with whom any trust money or securities may be deposited,
- (c) the insufficiency or deficiency of any securities, or
- (d) any other loss, unless it happens through the trustee's own wilful default,

and may reimburse the trustee or pay or discharge out of the trust property all expenses incurred in or about the execution of the trustee's trust or powers.

RSA 1980 cT-10 s25

Breach of trust at instigation of beneficiary

26 When a trustee has committed a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may, if it thinks fit, and notwithstanding that the beneficiary is a married woman entitled for her separate use, whether with or without a restraint on anticipation, make any order that to the court 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 the trustee.

RSA 1980 cT-10 s26

Power of trustee to give receipts

27 The receipt in writing of any trustee for any money, securities or other personal property or effects payable, transferable or deliverable to the trustee under any trust or power is a sufficient discharge for it and effectually exonerates the person paying, transferring or delivering it from seeing to the application or being answerable for any loss or misapplication of it.

RSA 1980 cT-10 s27

Executors and trustees acting together

28(1) An executor or administrator or 2 or more trustees, acting together, or a sole acting trustee when by the instrument, if any, creating the trust a sole trustee is authorized to execute the trusts and powers of the trust,

- (a) may, if and as that person or they think fit, accept any composition or any security real or personal for any debt or for any property real or personal claimed,
- (b) may allow any time for payment for any debt, and
- (c) 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 make any agreements, instruments of composition or arrangement and releases and do any other things that to that person or them seem expedient without being responsible for any loss occasioned by any act or thing so done by that person or them in good faith.

(2) This section applies only if and so far as a contrary intention is not expressed in the instrument, if any, creating the trust, and has effect subject to the terms of that instrument and to the provisions contained in it.

RSA 1980 cT-10 s28

Joint trusteeship

29 When a power or trust is given to or vested in 2 or more trustees jointly then, unless the contrary is expressed in the instrument, if any, creating the power or trust, it may be exercised or performed by the survivor or survivors of them for the time being.

RSA 1980 cT-10 s29

Powers of attorney

30(1) A trustee acting or paying money in good faith under or in pursuance of any power of attorney is not liable for the act or payment by reason of the fact that at the time of the act or payment 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 the trustee so acting or paying.

(2) Nothing in this section affects the right of any person entitled to the money against the person to whom the payment is made and the person so entitled has the same remedy against the person to

whom the payment is made as the person so entitled would have had against the trustee.

RSA 1980 cT-10 s30

Trustee of grain-growing property

31 A person or corporation being a trustee of grain-growing property

- (a) may, instead of marketing the grain grown on the property personally, become a member of a company or association formed for the purpose of buying and selling and marketing grain on the non-profit co-operative plan,
- (b) may enter into a contract with the company or association for marketing all grain grown on the property through that company or association, and
- (c) may enter into the contract, notwithstanding that it provides for the retention from the purchase price of the grain of a certain sum or percentage to provide a reserve fund or elevators or other facilities for handling the commodities in which the company or association deals.

RSA 1980 cT-10 s31

Income from Dispositions

Income from dispositions

32(1) Any disposition of property, whether contingent or vested either defeasibly or indefeasibly, includes the income from that property except to the extent that the income, or any part of it, is otherwise expressly disposed of.

(2) This section applies only to dispositions coming into force on and after January 1, 1975.

RSA 1980 cT-10 s32

Payments from Income and Capital

Maintenance and education of minors

33(1) When property is held by a trustee in trust for a minor, either absolutely or contingently on the minor attaining the age of 18 years or on the occurrence of any event prior to the minor attaining that age, the trustee may in the trustee's sole discretion pay to the guardian, if any, of the minor, or otherwise apply for or toward the maintenance or education of the minor, the whole or any part of the income to which the minor is entitled in respect of the property, whether there is any fund applicable for the same purpose or any other person bound by law to provide for that maintenance or education or not.

(2) The trustee shall accumulate all the residue of the income by way of compound interest by investing it and the resulting income of it from time to time in proper securities for the benefit of the person who ultimately becomes entitled to the property from which the accumulation arises.

(3) Notwithstanding subsections (1) and (2), the trustee at any time if it appears to the trustee expedient may apply the whole or any part of the accumulations as if it were part of the income arising in the then current year.

(4) This section applies to trusts created by instrument or otherwise prior to January 1, 1975.

RSA 1980 cT-10 s33

Payment of income

34(1) When property is held by a trustee in trust for a person for any interest whatever, whether contingent or vested either defeasibly or indefeasibly, the trustee may in the trustee's discretion,

- (a) in the case of a beneficiary who is a minor, pay to the parent or guardian having authority to make significant decisions affecting the minor, or pay on behalf of the beneficiary, or
- (b) in the case of a beneficiary who is not a minor and not immediately entitled to payment of the income, pay to that beneficiary, or pay on behalf of the beneficiary,

the whole or any part of the income of the property held in trust for the maintenance, education, benefit or advancement of the beneficiary.

(2) The power conferred by this section may be exercised whether or not there is any other property or fund applicable for the same purpose or any person bound by law to provide for the beneficiary, but the power conferred by this section is subject to any prior interests or charges affecting the property.

RSA 2000 cT-8 s34;2003 cF-4.5 s126

Accumulations

35(1) The trustee shall accumulate the income by way of compound interest by investing it and the resulting income of it from time to time in authorized investments.

(2) Subject to section 34, the trustee shall hold the accumulations as follows:

- (a) if the beneficiary is entitled to payment of the income when the beneficiary attains majority, for the beneficiary at that time;
 - (b) if the beneficiary is entitled to payment of the income at a time subsequent to attaining majority, then for the beneficiary at that time;
 - (c) if the beneficiary is the vested owner of the property from which the income comes, but the beneficiary's interest is subject to defeasance and the beneficiary dies prior to defeasance, whether or not the beneficiary's death causes the defeasance, for the beneficiary's personal representative as part of the beneficiary's estate;
 - (d) in all other cases, as an accretion to the capital of the property from which the accumulations arose.
- (3) The trustee may at any time, if it appears expedient, pay or apply the whole or any part of the accumulations as if it were part of income for the purpose of section 34.
- (4) The trustee may pay or apply income or accumulations for past maintenance, education, benefit or advancement of the beneficiary.
- (5) Section 34 and this section extend to a vested annuity in like manner as if the annuity were the income of property held by a trustee in trust to pay the income from it to the annuitant for the same period for which the annuity is payable, and accumulations made during the minority of the annuitant shall be held in trust for the annuitant absolutely.
- (6) Section 34 and this section have effect if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument and to the provisions contained in it.
- (7) For the purposes of subsection (6), a direction to accumulate does not constitute a contrary intention.
- (8) Section 34 and this section apply to trusts created by instrument or otherwise on or after January 1, 1975.

RSA 1980 cT-10 s35

Sale of property to provide maintenance**36(1) When**

- (a) any property either real or personal is held by a trustee in trust for a minor either absolutely or contingently on the minor attaining the age of 18 years or on the occurrence of any event prior to the minor attaining that age, and

- (b) the income arising from the property is insufficient for the maintenance and education of the minor,

the trustee, with the permission of the Court of Queen's Bench, to be obtained on application, may sell and dispose of any portion of the real or personal property and pay the whole or any part of the money arising from the sale to the guardian, if any, of the minor or otherwise apply it for or toward the maintenance or education of the minor.

(2) When the whole of the money arising from the sale of the real or personal property is not immediately required for the maintenance and education of the minor, then the trustee

- (a) shall invest the surplus money and the resulting income from it from time to time in proper securities,
- (b) shall apply that money and the proceeds from it from time to time for the education and maintenance of the minor, and
- (c) shall hold all the residue of the money and interest on it not required for the education and maintenance of the minor for the benefit of the person who ultimately becomes entitled to the property from which that money and interest arise.

(3) This section applies to trusts created by instrument or otherwise prior to January 1, 1975.

RSA 2000 cT-8 s36;2009 c53 s180;2014 c13 s45

Sale of property to provide maintenance and education

37(1) When

- (a) any property either real or personal is held by a trustee in trust for a person for any interest whatever, whether contingent or vested either defeasibly or indefeasibly, and
- (b) the income arising from the property is insufficient for the maintenance and education of the beneficiary,

the trustee, with the permission of the Court of Queen's Bench, to be obtained on application, may sell and dispose of any portion of that real or personal property and pay the whole or any part of the money arising from the sale to the guardian, if any, of the beneficiary or otherwise apply it for or toward the maintenance or education of the beneficiary.

(2) When the whole of the money arising from the sale of the real or personal property is not immediately required for the maintenance and education of the beneficiary, then the trustee

- (a) shall invest the surplus money and the resulting income from it from time to time in authorized investments,
- (b) shall apply that money and the proceeds from it from time to time for the education and maintenance of the beneficiary, and
- (c) shall hold all the residue of the money and interest on it not required for the education and maintenance of the beneficiary for the benefit of the person who ultimately becomes entitled to the property from which that money and interest arise.

(3) This section applies to trusts created by instrument or otherwise on or after January 1, 1975.

RSA 2000 cT-8 s37;2009 c53 s180;2014 c13 s45

Creditors

38(1) When, in the opinion of the court in which the trustee, assignee, executor or administrator is sought to be charged,

- (a) a trustee or assignee acting under the trusts of a deed or assignment
 - (i) for the benefit of creditors generally, or
 - (ii) for the benefit of a particular class or classes of creditors where the creditors are not designated by name in the deed or assignment,

or

- (b) an executor or administrator,

has given the same or like notices that would have been given by the Court of Queen's Bench

- (c) in an action for the execution of the trusts of the deed or assignment, or
- (d) in an administration suit,

for the creditors and others to send in to the trustee, assignee, executor or administrator their claims

- (e) against the person for the benefit of the creditors of whom the deed or assignment is made, or
- (f) against the estate of the testator or intestate,

as the case may be, then the trustee, assignee, executor or administrator

- (g) may, at the expiration of the time named in the notices or the last of the notices for sending in those claims, distribute the proceeds of the trust estate or the assets of the testator or intestate, as the case may be, or any part of them among the parties entitled to them, having regard to the claims of which the trustee, assignee, executor or administrator has then notice, and
- (h) is not liable to any person, of whose claim the trustee, assignee, executor or administrator had not had notice at the time of distribution, for the proceeds of the trust estate or assets, as the case may be, or any part of them distributed.

(2) Nothing in this Act prejudices the right of a creditor or claimant to follow the proceeds of the trust estate or assets, as the case may be, or any part of them into the hands of the persons who have received them.

(3) This section shall be read subject to the *Bankruptcy and Insolvency Act* (Canada).

RSA 1980 cT-10 s38;1994 c23 s51

39 Repealed 2008 cA-4.2 s151.

Payment into Court, Relief by Court

Payment into court

40(1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust or to the estate of a deceased person, may pay them into the Court of Queen's Bench, and they shall, subject to the rules of court, be dealt with according to the orders of the Court.

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

(3) When any money or securities are vested in any persons as trustees and the majority are desirous of paying them into court, but the concurrence of the other or others cannot be obtained, the Court of Queen's Bench may order the payment into court to be made by the majority without the concurrence of the other or others, and if any money or securities are deposited with a banker, broker or other depository, the court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court.

(4) Every transfer, payment and delivery made pursuant to an order under subsection (3) is valid and takes effect as if it had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered.

RSA 1980 cT-10 s40

Personal liability

41 If in any proceeding affecting trustees or trust property it appears to the court

- (a) that a trustee, whether appointed by the court or by an instrument in writing or otherwise, or that any person who in law may be held to be fiduciarly responsible as a trustee, is or might be personally liable for any breach, whether the transaction alleged or found to be a breach of trust occurred before or after the passing of this Act, but
- (b) that the trustee 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 the trustee committed that breach,

then the court may relieve the trustee either wholly or partly from personal liability for the breach of trust.

RSA 1980 cT-10 s41

Variation of Trusts

Variation of trusts

42(1) In this section, “beneficiary”, “beneficiaries”, “person” or “persons” includes charitable purposes and charitable institutions.

(2) Subject to any trust terms reserving a power to any person or persons to revoke or in any way vary the trust or trusts, a trust arising before or after the commencement of this section, whatever the nature of the property involved and whether arising by will, deed or other disposition, shall not be varied or terminated before the expiration of the period of its natural duration as determined by the terms of the trust, except with the approval of the Court of Queen’s Bench.

(3) Without limiting the generality of subsection (2), the prohibition contained in subsection (2) applies to

- (a) any interest under a trust where the transfer or payment of the capital or of the income, including rents and profits
 - (i) is postponed to the attainment by the beneficiary or beneficiaries of a stated age or stated ages,

- (ii) is postponed to the occurrence of a stated date or time or the passage of a stated period of time,
- (iii) is to be made by instalments, or
- (iv) is subject to a discretion to be exercised during any period by executors and trustees, or by trustees, as to the person or persons who may be paid or may receive the capital or income, including rents and profits, or as to the time or times at which or the manner in which payments or transfers of capital or income may be made,

and

- (b) any variation or termination of the trust or trusts
 - (i) by merger, however occurring;
 - (ii) by consent of all the beneficiaries;
 - (iii) by any beneficiary's renunciation of the beneficiary's interest so as to cause an acceleration of remainder or reversionary interests.

(4) The approval of the Court under subsection (2) of a proposed arrangement shall be by means of an order approving

- (a) the variation or revocation of the whole or any part of the trust or trusts,
- (b) the resettling of any interest under a trust, or
- (c) the enlargement of the powers of the trustees to manage or administer any of the property subject to the trusts.

(5) In approving any proposed arrangement, the Court may consent to the arrangement on behalf of

- (a) any person who has, directly or indirectly, an interest, whether vested or contingent, under the trust and who by reason of minority or other incapacity is incapable of consenting,
- (b) any person, whether ascertained or not, who may become entitled directly or indirectly to an interest under the trusts as being, at a future date or on the happening of a future event, a person of any specified description or a member of any specified class of persons,
- (c) any person who after reasonable inquiry cannot be located, or

(d) any person in respect of any interest of the person's that may arise by reason of any discretionary power given to anyone on the failure or determination of any existing interest that has not failed or determined.

(6) Before a proposed arrangement is submitted to the Court for approval it must have the consent in writing of all other persons who are beneficially interested under the trust and who are capable of consenting to it.

(7) The Court shall not approve an arrangement unless it is satisfied that the carrying out of it appears to be for the benefit of each person on behalf of whom the Court may consent under subsection (5), and that in all the circumstances at the time of the application to the Court the arrangement appears otherwise to be of a justifiable character.

(8) When an instrument creates a general power of appointment exercisable by deed, the donee of the power may not appoint to himself or herself unless the instrument shows an intention that he or she may so appoint.

(9) When a will or other testamentary instrument contains no trust, but the Court is satisfied that, having regard to the circumstances and the terms of the gift or devise, it would be for the benefit of a minor or other incapacitated beneficiary that the Court approve an arrangement whereby the property or interest taken by that beneficiary under the will or testamentary instrument is held on trusts during the period of incapacity, the Court has jurisdiction under this section to approve that arrangement.

RSA 2000 cT-8 s42;2004 cP-44.1 s52

Application to court for advice

43(1) Any trustee may apply in court or in chambers in the manner prescribed by the rules of court for the opinion, advice or direction of the Court of Queen's Bench on any question respecting the management or administration of the trust property.

(2) The trustee acting on the opinion, advice or direction given by the Court is deemed, so far as regards the trustee's own responsibility, to have discharged the trustee's duty as trustee in respect of the subject-matter of the opinion, advice or direction.

(3) Subsection (2) does not extend to indemnify a trustee in respect of any act done in accordance with the opinion, advice or direction of the Court if the trustee has been guilty of any fraud or wilful concealment or misrepresentation in obtaining that opinion, advice or direction.

RSA 1980 cT-10 s43

Allowances to Trustees, etc.

Allowances

44(1) A trustee under a trust, however created, is entitled to any fair and reasonable allowance for the trustee's care, pains and trouble and the trustee's time expended in and about the trust estate that may be allowed by the Court of Queen's Bench or by any clerk of those courts to whom the matter is referred.

(2) A judge of the Court of Queen's Bench may on application to the judge for the purpose settle the amount of the compensation although the trust estate is not before the Court in any action.

(3) Compensation may be allowed in the case of any trust created before as well as after the commencement of this Act.

(4) Nothing in this section applies to any case in which the allowance is fixed by the instrument creating the trust.

RSA 2000 cT-8 s44;RSA 2000 c16(Supp) s59

Professional fees

45 In addition to any allowance, a trustee who is a barrister and solicitor is also entitled to profit costs for any professional work done in connection with the trust.

RSA 1980 cT-10 s45

Judicial Trustees

Judicial trust

46(1) Application may be made to the Court of Queen's Bench

- (a) by or on behalf of the person creating or intending to create a trust,
- (b) by or on behalf of a trustee or beneficiary, or
- (c) by any person interested in the trust or the trust property or in the administration or realization of the trust property either as a creditor or otherwise,

and on the application the court may in its discretion appoint a person, in this Act called a judicial trustee, to be a trustee of the trust either jointly with any other person or as sole trustee, and if sufficient cause is shown in place of all or any existing trustees.

(2) The administration of the property of a deceased person whether a testator or intestate is a trust and the executor or administrator a trustee within the meaning of this section.

(3) Any fit and proper person nominated for the purpose in the application may be appointed a judicial trustee or

- (a) in the absence of a nomination, or
- (b) if the court is not satisfied of the fitness of a person so nominated,

an official of the court or other competent person may be appointed.

(4) A judicial trustee is subject to the control and supervision of the court as an officer of it.

(5) The court may either on request or without request give to a judicial trustee any general or special directions in regard to the trust or the administration of it.

(6) There may be paid to a judicial trustee out of the trust property remuneration not exceeding the prescribed limits that the court may assign in each case, and the remuneration so assigned to a judicial trustee shall, except as the court for special reasons otherwise orders, cover all the judicial trustee's work and personal outlay.

(7) Once in every year the accounts of every trust of which a judicial trustee has been appointed shall be audited and a report on those accounts made to the court by the prescribed persons, and in any case where the court so directs an inquiry into the administration by a judicial trustee of any trust, or into any dealing or transaction of a judicial trustee, shall be made in the prescribed manner.

RSA 2000 cT-8 s46;RSA 2000 c16(Supp) s59

47 Repealed 2010 cW-12.2 s123.

Schedule Repealed 2006 c9 s4.



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