

No. 20

4th Session, 13th Legislature, Alberta
6 Elizabeth II, 1958

BILL 20

A Bill to amend The Trustee Act

HON. MR. MANNING

Explanatory Notes

General. This Act amends The Trustee Act and completes the legislation on employers' retirement trusts, plans or funds for employees, which was begun in 1955 by chapter 25 of that year and which appears in the revised Trustee Act as section 56 thereof.

Pension funds or plans that do not come under the provisions of The Alberta Insurance Act but that are established for the purpose of providing pensions, sickness or death benefits to employees were subject to three defects prior to 1955, viz:

- (1) such trusts or funds are intended to continue for indefinite periods and may, therefore, contravene the rules against remoteness of vesting. (This possibility was raised by an unreported English case known as "Re The Telegraph Construction and Maintenance Co." in 1925. In 1954 the Conference of Commissioners on Uniformity of Legislation in Canada recommended legislation to cure this possible defect and that recommendation resulted in present section 56 of The Trustee Act);
- (2) the designation under such a trust or plan by the employee of a beneficiary to receive payment under the plan in the event the employee dies before reaching pension age is testamentary in nature, and therefore should be executed in the proper testamentary manner and could unintentionally be revoked by a subsequent will of the employee (Re Mac-Innis (1935) S.C.R. 200); this is not desirable by the nature of these plans;
- (3) the beneficiary named by the employee under such a plan is not a party to the agreement and has no right to enforce payment of the benefit under existing law; this also is not desirable in the present age.

At the 1957 Conference of Commissioners on Uniformity of Legislation, points (2) and (3) above were dealt with and a recommended model bill approved to remove the defects mentioned. Clause 2, subclauses (1) to (8) of this Bill will enact the 1957 recommendation of the Conference. Subclause (9) of clause 2 is, however, added to ensure that the provisions respecting pension plans will bind the Crown in the event of a *bona vacantia* being claimed by the Crown in respect of an asset under such a plan.

BILL

No. 20 of 1958

An Act to amend The Trustee Act

(Assented to _____, 1958)

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

1. *The Trustee Act*, being chapter 346 of The Revised Statutes of Alberta, 1955, is hereby amended.

2. The following new section is added immediately after section 56:

“57. (1) In this section,

“(a) “designation” means a written instrument to which subsection (2) refers;

“(b) “employer” includes the trustee under a plan;

“(c) “participant” means a person who is participating in a plan established by an employer and who

“(i) is or has been employed by the employer, or

“(ii) is an agent or former agent of the employer;

“(d) “plan” means a pension, retirement, welfare or profit-sharing fund, scheme or arrangement, for the benefit of employees, former employees, agents, and former agents of an employer, or any of them.

“(2) Where, in accordance with the terms of a plan, a participant, by a written instrument signed by him or on his behalf by another person in his presence and by his direction, has designated a person to receive a benefit payable under the plan in the event of the death of the participant,

“(a) the employer is discharged on paying to the person designated the amount of the benefit, and

“(b) subject to subsection (3), the person designated may, on the death of the participant, enforce payment of the benefit to himself for his own use.

“(3) Where a person designated under subsection (2) seeks to enforce payment of the benefit, the employer may set up any defence that he could have set up against the participant or his personal representative.

“(4) A participant may alter or revoke a designation made under a plan, but, subject to subsection (7), any such alteration or revocation may be made only in the manner set forth in the plan.

“(5) Where a designation is contained in a will, the designation shall, notwithstanding section 21 of *The Wills Act*, have effect from the time of its execution.

“(6) A designation contained in an instrument purporting to be a will is not invalid by reason only of the fact that the instrument is invalid as a testamentary instrument, and it may be revoked or altered by any subsequent designation.

“(7) Where a designation is contained in a will, and subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

“(8) This section does not apply to a designation of a beneficiary to which *The Alberta Insurance Act* applies.

“(9) The Crown is bound by this section and section 56.”.

3. This Act comes into force on the day upon which it is assented to.

FOURTH SESSION

THIRTEENTH LEGISLATURE

6 ELIZABETH II

1958

BILL

An Act to amend The Trustee Act

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MANNING
