

No. 104

3rd Session, 15th Legislature, Alberta
14 Elizabeth II

BILL 104

A Bill to amend The Trustee Act

HON. MR. MANNING

Explanatory Note

1. This Bill amends chapter 346 of the Revised Statutes.

2. The new sections 3 to 9d replace present provisions dealing with trustee investments. The new provisions, apart from section 4, are based largely on the Model Trustee Investment Provisions recommended by the Conference of Commissioners on Uniformity of Legislation in Canada. The Model has been adopted with variations in British Columbia, Saskatchewan, Manitoba, Nova Scotia, Yukon Territory and the Northwest Territories.

BILL

No. 104 of 1966

An Act to amend The Trustee Act

(Assented to _____, 1966)

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* is hereby amended.
2. Sections 3 to 9 are struck out and the following sections are substituted:
 3. (1) In this section and sections 4 to 9d,
 - (a) "approved corporation" means
 - (i) a corporation approved by the Lieutenant Governor in Council under this Act before the commencement of this section, whether the approval is a general one or is limited to a specified class or classes of security or to deposits, or
 - (ii) a corporation designated as an approved corporation pursuant to section 4, but only for so long as the approval remains in effect;
 - (b) "debentures" includes debenture stock;
 - (c) "improved real estate" means an estate in fee simple in land
 - (i) upon which there exists a building, structure or other improvement used or capable of being used for residential, commercial or industrial purposes, or
 - (ii) upon which there is being erected such a building, structure or other improvement, or
 - (iii) which is serviced with the utilities necessary for such a building, structure or other improvement, but only when the land is being mortgaged for the purpose of erecting such a building, structure or other improvement, or
 - (iv) which is being used for agricultural purposes, but does not include an estate in fee simple in mines or minerals held separately from the surface;

4. The new section 4 is a revision of section 3 (5), (8), (9) and (10) and 3a of the present Act.

(1) The principal change is found in subsection (1) which will now require an approved corporation to have an unimpaired capital of \$1,000,000 as well as a 25 per cent reserve derived solely from earnings. Section 3 (5) of the present Act reads:

(5) In this section, an approved corporation means a corporation approved by the Lieutenant Governor in Council, but no such approval shall be given unless it is shown to the satisfaction of the Lieutenant Governor in Council that

- (a) the corporation is empowered to lend money upon the security of real estate,
- (b) the corporation either
 - (i) has both a subscribed and paid-up permanent capital of which at least five hundred thousand dollars is unimpaired and a reserve fund derived solely from earnings amounting to at least twenty-five per cent of its paid-up capital, or
 - (ii) has a subscribed and paid up permanent capital of which at least one million dollars is unimpaired and has been carrying on business in Alberta continuously for at least three years immediately prior to the application for approval,
- and
- (c) the corporation's permanent capital stock has a market value or established value that is not less than seven per cent in excess of the par value thereof.

The present clause (c) is omitted because of difficulties in interpreting it and applying it.

(2) Subsection (2) will now set out the grounds for revocation of an approval, whereas the present section 3 (9) does not. The content of the present section 3 (8) is now expressed in clause (c) of subsection (2) as a ground for revocation rather than a reason for refusing approval, as at present.

(3) Saving provision as to approved corporations with more than \$500,000 but less than \$1,000,000 unimpaired capital, and which would otherwise not qualify under the new subsection (1) (b).

(4) The present section 3 (10) with the date April 1, 1965, changed to April 15, 1965 to include a corporation that obtained its approval between those dates.

(5) The present section 3a revised to apply to all approved corporations and to permit the Attorney General to require quarterly or monthly balance sheets.

(d) "securities" includes stock, debentures, bonds, shares and guaranteed investment certificates or receipts.

(2) Where a corporation was approved by the Lieutenant Governor in Council before the commencement of this section and the approval is limited to a specified class of or classes of securities or to deposits, the corporation is, subject to subsection (3), an approved corporation for all purposes under section 5.

(3) Nothing in this section or section 5 shall be construed as enlarging the powers of an approved corporation in respect of the borrowing of money or the issuing of securities.

4. (1) The Lieutenant Governor in Council may designate a corporation as an approved corporation where it is shown to his satisfaction that the corporation

(a) is empowered to lend money upon the security of real estate,

(b) has a subscribed and paid-up permanent capital of which at least one million dollars is unimpaired, and

(c) has a reserve fund derived solely from earnings and amounting to at least twenty-five per cent of its paid-up capital.

(2) The Lieutenant Governor in Council may revoke an order approving a corporation or designating an approved corporation where he is satisfied

(a) that the corporation no longer has

(i) a subscribed and paid-up permanent capital of which at least one million dollars is unimpaired, or

(ii) a reserve fund derived solely from earnings and amounting to at least twenty-five per cent of its paid-up capital,

(b) that the corporation is dissolved or is no longer carrying on business in Alberta,

(c) that the corporation has not kept strictly within its legal powers in relation to borrowing and investment, or

(d) that it is in the public interest to do so,

but the revocation does not affect the propriety of deposits or investments made before the revocation.

(3) With respect to a corporation that was an approved corporation on the date of the commencement of this section, no revocation of that approval may be made before the first day of May, 1970 on the ground only that the corporation cannot comply with clause (b) of subsection (1) except that the Lieutenant Governor in Council may

5. Authorized trustee investments.

revoke that approval before that date if he is satisfied that the corporation does not have a subscribed and paid-up permanent capital of which at least five hundred thousand dollars is unimpaired.

(4) With respect to a corporation which was an approved corporation on the fifteenth day of April, 1965, no revocation of that approval may be made before the first day of May, 1970 on the ground only that the corporation cannot comply with clause (c) of subsection (1) because the required reserve fund is not derived solely from earnings.

(5) An approved corporation shall file with the Attorney General

- (a) a balance sheet, operating statement and such other supporting schedules as may be required, on a quarterly or monthly basis, whichever the Attorney General directs, at the times directed by him and in a form and certified in a manner approved by him,
- (b) a certified copy of its balance sheet as of the close of the fiscal year and the auditor's report thereon, and
- (c) any other statements, reports or other information pertaining to its financial position or affairs as the Attorney General may require.

5. A trustee may invest any trust money in his hands, if the investment is in all other respects reasonable and proper, in any of the following classes of securities:

- (a) securities of the Government of Canada, the government of any province of Canada, any municipal corporation in any province of Canada, the Government of the United Kingdom or the Government of the United States of America;
- (b) securities, the payment of the principal and interest of which is guaranteed by the Government of Canada, the government of any province of Canada, any municipal corporation in any province of Canada, the Government of the United Kingdom or the Government of the United States of America;
- (c) debentures issued by a school division, school district or municipal hospital district in the Province that are secured by or payable out of rates or taxes;
- (d) bonds, debentures or other evidences of indebtedness of a corporation that are secured by the assignment to a trustee of payments that the Government of Canada or the government of any province of Canada has agreed to make, if such payments are sufficient

- (i) to meet the interest on all such bonds, debentures or other evidences of indebtedness outstanding as its falls due, and
 - (ii) to meet the principal amount of all such bonds, debentures or other evidences of indebtedness upon maturity;
- (e) bonds, debentures or other evidences of indebtedness of a corporation incorporated under the laws of Canada or any province of Canada,
- (i) that are fully secured by a first mortgage, charge or hypothec to a trustee upon any, or upon any combination of the following assets,
 - (A) improved real estate,
 - (B) the plant or equipment of a corporation that is used in the transaction of its business, or
 - (C) bonds, debentures or other evidence of indebtedness or shares of a class or classes authorized by this section,
 and
 - (ii) that has earned and paid
 - (A) a dividend in each of the five years immediately preceding the date of investment at least equal to the specified annual rate upon all of its preferred shares, or
 - (B) a dividend in each year of a period of five years ended less than one year before the date of investment upon its common shares of at least four per cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid;
- (f) guaranteed investment certificates or receipts of an approved corporation registered as a trust company under *The Trust Companies Act, 1960*;
- (g) investment contracts within the meaning of *The Investment Contracts Act* issued by an approved corporation that is registered as an issuer under that Act;
- (h) bonds or debentures of an approved corporation;
- (i) preferred shares of any corporation incorporated under the laws of Canada or of a province of Canada that has earned and paid
- (i) a dividend in each of the five years immediately preceding the date of investment at least equal to the specified annual rate upon all of its preferred shares, or
 - (ii) a dividend in each year of a period of five years ended less than one year before the date

6. Duties of trustees and restrictions on investments of trust funds under section 5.

of investment upon its common shares of at least four per cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid;

(j) fully paid common shares of a corporation incorporated in Canada or the United States of America that during a period of five years that ended less than one year before the date of investment has either

(i) paid a dividend in each such year upon its common shares, or

(ii) had earnings in each such year available for the payment of a dividend upon its common shares,

of at least four per cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid or in which the corporation had earnings available for the payment of dividends, as the case may be;

(k) notes or deposit receipts of chartered banks;

(l) securities issued or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development, approved by *The Bretton Woods Agreements Act, 1945* (Canada), but only if the bonds, debentures or other securities are payable in the currency of Canada, the United Kingdom, any member of the British Commonwealth or the United States of America;

(m) first mortgages, charges or hypothecs upon improved real estate in Canada, but only if

(i) the loan does not exceed three-quarters of the value of the property at the time of the loan as established by a report as to the value of the property made by a person whom the trustee reasonably believed to be a competent valuator, instructed and employed independently of any owner of the property, or

(ii) the loan is an insured loan under the *National Housing Act, 1954* (Canada).

6. (1) In determining market values of securities a trustee may rely upon published market quotations of a recognized stock exchange in Canada or the United States of America.

(2) No corporation that is a trustee shall invest trust money in its own securities or lend money on the security of its own securities.

7. Other investments approved by the Supreme Court.

8. Deposits of trust funds.

(3) In the case of an investment under clause (e) of section 5, the inclusion, as additional security under the mortgages, charges or hypothecs, of any other assets not of a class authorized by this Act as investments does not render the bonds, debentures or other evidences of indebtedness ineligible as an investment.

(4) No investment may be made under clause (e), (h) or (i) of section 5 that would at the time of making the investment cause the aggregate market value of the investments made under those clauses to exceed thirty-five per cent of the market value at that time of the whole trust estate.

(5) Investments made by the testator or settlor and retained by the trustee under the authority of the trust instrument and that come within any of the classes authorized by clause (e), (h) or (i) of section 5 may, notwithstanding subsection (4), be retained by him under the authority of the trust instrument.

(6) No sale or other liquidation of any investment made under clause (e), (h) or (i) of section 5 is required solely because of any change in the ratio between the market value of such investments and the market value of the whole trust estate.

(7) In case of investment under clause (i) or (j) of section 5, not more than thirty per cent of the total issue of shares of any corporation may be purchased for any trust.

(8) No investment shall be made under clause (j) of section 5 that, at the time of making the investment, would cause the aggregate market value of the common shares held for any particular trust fund to exceed fifteen per cent of the market value of that trust fund at that time.

(9) No sale or other liquidation of common shares is required under this section solely because of any change in the ratio between the market value of those shares and the market value of the whole trust fund.

7. In addition to the investments authorized by section 5 or by the trust instrument (except where that instrument expressly prohibits such investment), a trustee may invest funds in such other securities as the Supreme Court of Alberta or a judge thereof upon application in any particular case approves as fit and proper, but nothing in this section relieves the trustee of his duty to take reasonable and proper care with respect to the investments so authorized.

8. A trustee may, pending the investment of any trust money, deposit it during such time as is reasonable in the circumstances in any bank or treasury branch or in any approved corporation expressly empowered by statute to accept moneys for deposit.

9. Registration of securities to indicate the particular trust.

9a. Trustee's statutory powers in relation to those in the trust instrument.

9b. Powers and liabilities of trustee as to varying or holding investment. Subsection (2) is the present section 7 and subsection (3) is the present section 6.

9c. Powers of trustee holding securities as to corporate schemes, arrangements, etc.

9. (1) Except in the case of a security that cannot be registered, a trustee who invests in securities shall require the securities to be registered in his name as the trustee for the particular trust for which the securities are held, and the securities may be transferred only on the books of the corporation in his name as trustee for such trust estate.

(2) This section does not apply where the trustee is a trust company registered under *The Trust Companies Act, 1960*.

9a. (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 any thing that he is in express terms forbidden to do or to omit to do any thing that he is in express terms directed to do by the instrument creating the trust.

9b. (1) A trustee in his discretion may

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

(b) vary any investments authorized by this Act.

(2) No trustee is liable for any breach of trust by reason only of his continuing to hold an investment that since the acquisition thereof by the trustee has ceased to be one authorized by the instrument of trust or by this Act.

(3) Where a trustee has improperly advanced trust money on a mortgage that would at the time of the investment have been a proper investment in all respects for a less sum than was actually advanced, the security shall be deemed to be an authorized investment for such less sum and the trustee is only liable to make good the amount advanced in excess thereof with interest.

9c. (1) Where a trustee holds securities of a corporation in which he has properly invested money under this Act, he may concur in any compromise, scheme or arrangement

(a) for the reconstruction of the corporation or for the winding-up or sale or distribution of its assets,

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

(c) for the amalgamation of the corporation with another corporation, or

(d) for the release, modification or variation of any rights, privileges or liabilities attached to the securities or any of them, or

9d. Trustees' rights to subscribe for securities.

3. The new section 20a is a re-enactment of the present section 9 in a more appropriate place in the Act. It is now a direct statement of the law rather than expressed as an implied provision in a trust instrument.

(e) whereby

- (i) all or a majority of the shares, stock, bonds, debentures and other securities of the corporation, or of any class thereof, are to be exchanged for shares, stock, bonds, debentures or other securities of another corporation, and
- (ii) the trustee is to accept the shares, stock, bonds, debentures or other securities of the other corporation allotted to him pursuant to the compromise, scheme or arrangement,

in like manner as if he were entitled to the securities beneficially, and may, if the securities are in all other respects reasonable and proper investments, accept any securities of any denomination or description of the reconstructed or purchasing or new corporation in lieu of or in exchange for all or any of the original securities.

(2) A trustee is not responsible for any loss occasioned by any act or thing done in good faith under subsection (1), and he may, if the securities accepted thereunder are in all other respects reasonable and proper investments, retain them for any period for which he could have properly retained the original securities.

9d. (1) Where any conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in the company, they may, as to all or any of the securities,

- (a) exercise such right and apply capital money subject to the trust in payment of the consideration, or renounce the right, or
- (b) assign for the best consideration that can be reasonably obtained the benefit of such right, or the title thereto, to any person, including any beneficiary under the trust,

without being responsible for any loss occasioned by any act or thing so done by them in good faith.

(2) Notwithstanding subsection (1), the consideration for any such assignment shall be held as capital money of the trust.

(3) The powers conferred by this section may only be exercised with the consent of any person whose consent to a change of investment is required by law, or by the instrument, if any, creating the trust.

3. The following section is added after section 20:

20a. A trustee is chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and is answerable and accountable only for his own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for any

4. Commencement of Act.

banker, broker or other person with whom any trust money or securities may be 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 property all expenses incurred in or about the execution of his trust or powers.

4. This Act comes into force on the first day of July, 1966.

No. 104

THIRD SESSION
FIFTEENTH LEGISLATURE
14 ELIZABETH II
1966

BILL

An Act to amend The Trustee Act

Received and read the

First time

Second time

Third time

HON. MR. MANNING