

2022 Bill 12

Third Session, 30th Legislature, 71 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 12

TRUSTEE ACT

THE MINISTER OF JUSTICE AND SOLICITOR GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 12

2022

TRUSTEE ACT

(Assented to , 2022)

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

**Part 1
Interpretation and
Application**

Definitions

- 1 In this Act,
 - (a) “additional trustee” means a person appointed as an additional trustee under section 16;
 - (b) “alter ego trust” has the same meaning as in the *Income Tax Act* (Canada);

- (c) “continuing trustee” means a person who continues to be a trustee after another trustee ceases to be a trustee;
- (d) “court”, except in clause (s), means
 - (i) in respect of Alberta, the Court of Queen’s Bench;
 - (ii) in respect of a jurisdiction other than Alberta, a court of competent jurisdiction;
- (e) “fiscal period”, in respect of a trust, means
 - (i) the period identified in the trust instrument as the period adopted for accounting purposes,
 - (ii) if subclause (i) does not apply, the period specified by the trustee as the period adopted for accounting purposes, or
 - (iii) if subclauses (i) and (ii) do not apply, the calendar year;
- (f) “incapacitated person” means
 - (i) a represented adult under the *Adult Guardianship and Trusteeship Act*,
 - (ii) an incapacitated person under the *Public Trustee Act*, or
 - (iii) a person who has an attorney acting under the *Powers of Attorney Act*;
- (g) “joint spousal or common-law partner trust” has the same meaning as in the *Income Tax Act (Canada)*;
- (h) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (i) “objects”, in respect of the objects of a trust, means beneficiaries or purposes;
- (j) “post-1971 spousal or common-law partner trust” has the same meaning as in the *Income Tax Act (Canada)*;

- (k) “pre-1972 spousal trust” has the same meaning as in the *Income Tax Act* (Canada);
- (l) “qualified beneficiary”, in respect of a trust, means a beneficiary who
 - (i) has a vested beneficial interest in the trust property, or
 - (ii) has delivered written notice to a trustee that the beneficiary wants to be a qualified beneficiary and has not delivered a written withdrawal of notice;
- (m) “replacement trustee” means a person appointed as a replacement trustee under section 15 or 16;
- (n) “secured party”, in respect of a trust, means a person who has a security interest in property of the trust;
- (o) “security interest” means an interest in property that secures payment or performance of an obligation;
- (p) “settlor”, in respect of a trust created by a will, includes a testator;
- (q) “temporary trustee” means a person appointed as a temporary trustee under section 11;
- (r) “transfer”, in respect of property, means to transfer by any method, including
 - (i) to assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest or release, or
 - (ii) to agree to do any of the things referred to in subclause (i);
- (s) “trust instrument” means any of the following that create or vary a trust:
 - (i) deed, will or other legal instrument;
 - (ii) an enactment, other than this Act;
 - (iii) an oral declaration,but does not include a judgment or an order of any court;

- (t) “trustee”, except where this Act provides otherwise, includes an additional trustee, a replacement trustee and a temporary trustee;
- (u) “vest” includes to vest by means of
 - (i) an order of a court,
 - (ii) the terms of a trust instrument or other legal instrument, or
 - (iii) the operation of section 26.

Application to existing trusts

2 This Act applies in respect of a trust created before, on or after the date this section comes into force, except to the extent this Act provides otherwise.

Trust instrument prevails

3 A trust instrument prevails over any contrary provision of this Act except to the extent this Act provides otherwise.

Application to trusts arising outside of this Act

4 This Act does not apply in respect of

- (a) an implied trust,
- (b) a resulting trust,
- (c) a constructive trust,
- (d) any other trust that arises by operation of law, or
- (e) a trust that arises by operation of an enactment other than this Act, except as provided in that enactment.

Application to personal representatives

5 If a person is both a personal representative and a trustee with respect to all or part of the same estate, this Act does not apply in respect of a matter relating to the person in the person’s capacity as personal representative, but this Act does apply in respect of a matter relating to the person in the person’s capacity as trustee.

Secured party in possession

6 The fact that a secured party is in possession of trust property that is the subject of a security interest does not make the secured party a trustee for the purposes of this Act.

Continuation of existing rules

7 The rules of common law and equity continue to apply except to the extent they are inconsistent with this Act.

Trust is not a person

8 For greater certainty, nothing in this Act makes a trust a person.

**Part 2
Appointment and Removal
of Trustee**

**Division 1
Appointment of Trustee**

Designated person

9(1) In this Division, “designated person”, in respect of a trust, means the person determined under subsection (2) or (3).

(2) For a trust with a sole trustee, the designated person is the first of the following persons or classes of person, proceeding in descending order, who is able and willing to act as a designated person:

- (a) the person nominated by the trust instrument for the purpose of appointing a replacement trustee;
- (b) the person appointed in writing by the sole trustee to be a replacement trustee after the sole trustee’s death or retirement;
- (c) the personal representative of the sole trustee.

(3) For a trust with more than one trustee, the designated person is the first of the following persons or classes of person, proceeding in descending order, who is able and willing to act as a designated person:

- (a) the person nominated by the trust instrument for the purpose of appointing a replacement trustee;
- (b) the continuing trustees, excluding any continuing trustee who has been appointed as a temporary trustee;
- (c) the person appointed in writing by the last remaining trustee to be a replacement trustee after the last remaining trustee's death or retirement;
- (d) the personal representative of the last remaining trustee.

(4) If the designated person determined under subsection (2) or (3) is a class of persons, they must act by majority to appoint a replacement trustee.

Person not qualified to be appointed trustee

10 A person is not qualified to be appointed as a trustee if

- (a) the person is an incapacitated person,
- (b) the person has been convicted of an offence involving dishonest conduct under an Act of Canada or any province or territory of Canada,
- (c) the person is an undischarged bankrupt, or
- (d) the person is a corporation that is in liquidation or otherwise disqualified by law or by the terms of the trust.

Temporary absence or incapacity of trustee

11(1) This section applies only where a trustee is temporarily unable to participate in the administration of the trust by reason of an absence or incapacity that does not result in the trustee ceasing to be qualified to hold office under section 20.

(2) If the trust instrument does not name an alternate trustee, a trustee referred to in subsection (1) may appoint another person as a temporary trustee for a specified period to exercise any or all powers, including distributive powers, and to perform any or all duties of the trustee.

(3) If a trustee referred to in subsection (1) is unable or unwilling to appoint a temporary trustee, a designated person may appoint a temporary trustee to

- (a) administer all or part of the trust, or
- (b) exercise the powers or perform the duties authorized by the designated person

during the period that the trustee is absent or incapacitated.

(4) A person who is a co-trustee with a trustee referred to in subsection (1) is eligible for appointment as a temporary trustee under subsection (2) or (3) only if the appointment

- (a) would be reasonable and prudent if the co-trustee were not a co-trustee, and
- (b) would not result in the number of trustees being inconsistent with any express term of the trust.

(5) A trustee referred to in subsection (1) must not exercise trustee powers or perform trustee duties during any period in which a temporary trustee is appointed under subsection (2) or (3).

(6) Despite the period specified in an appointment under subsection (2) or (3), the trustee or designated person may revoke the appointment before the end of that period.

(7) The administration of the trust, exercise of powers or performance of duties by the temporary trustee is deemed to be as valid as if the absent or incapacitated trustee were not absent or incapacitated and had participated in the administration of the trust, exercise of powers or performance of duties.

Notice of temporary trustee

12(1) Where a temporary trustee is appointed or the appointment of a temporary trustee is revoked, a written notice must be delivered to the following within 15 days of the appointment or revocation:

- (a) all trustees;
- (b) all qualified beneficiaries;

- (c) in the case of an appointment under section 11(2), the designated person as defined in section 9(1);
- (d) in the case of an appointment under section 11(3), the absent or incapacitated trustee.

(2) A notice under subsection (1) must include the following information:

- (a) the name of the absent or incapacitated trustee;
- (b) the name of the temporary trustee;
- (c) contact information for the temporary trustee, including one or more of the following:
 - (i) a mailing address;
 - (ii) an electronic mailing address;
 - (iii) a telephone number;
- (d) the reason for the appointment or revocation;
- (e) the date or event on which the appointment or revocation takes effect;
- (f) in the case of an appointment, the date or event on which the appointment ends.

(3) The failure by a trustee or designated person to provide a notice under this section does not, by itself, invalidate any act of the temporary trustee, including the execution of any document.

Temporary trustee liability

13 A temporary trustee is a trustee for the purposes of this Act and may be liable for any loss to trust property arising from the temporary trustee's acts or omissions when exercising trustee powers or performing trustee duties.

Power to delegate by power of attorney

14(1) A trustee may, by power of attorney, appoint an attorney for a specified period to exercise any powers and perform any duties of the trustee.

(2) Subject to subsection (3), a trustee may appoint a co-trustee as attorney only if the appointment would have been reasonable and prudent if the co-trustee had not been a co-trustee.

(3) If there are only 2 trustees of a trust and the terms of the trust specify that there must be a minimum of 2 trustees, neither trustee may appoint the other trustee as attorney.

(4) A trustee who appoints an attorney under subsection (1) is liable for a loss arising from the acts or omissions of the attorney as if those acts or omissions were the acts or omissions of the trustee.

(5) Where an attorney is appointed, a written notice must be delivered to the following within 7 days of the execution of the power of attorney under subsection (1):

- (a) any other trustee of the trust;
- (b) a person who has the power under the trust instrument, whether alone or jointly, to appoint a new trustee;
- (c) if there is no person to whom notice can be delivered under clause (a) or (b), the qualified beneficiaries.

(6) A notice under subsection (5) must include the following:

- (a) the name of the trustee who appointed the attorney;
- (b) the name of the attorney;
- (c) contact information for the attorney, including one or more of the following:
 - (i) the mailing address for the attorney;
 - (ii) the electronic mail address for the attorney;
 - (iii) the telephone number for the attorney;
- (d) a description of the powers and duties delegated to the attorney;
- (e) the reason for the appointment;
- (f) the date or event on which the appointment takes effect;
- (g) the date or event on which the appointment ends.

(7) The failure by a trustee to provide a notice under this section does not, by itself, invalidate any act of the attorney, including the execution of any document.

(8) The *Powers of Attorney Act* does not apply in respect of an attorney appointed under this section.

Appointment of replacement trustee

15(1) A designated person may appoint in writing a replacement trustee in any of the following circumstances:

- (a) a person who was trustee is deceased or a person appointed as trustee dies before taking office;
- (b) the trustee is a corporation that is dissolved;
- (c) a person disclaims the office of trustee;
- (d) a person ceases to hold the office of trustee under section 18.

(2) A designated person, other than a temporary trustee,

- (a) may be self-appointed as a replacement trustee under subsection (1), and
- (b) may be appointed as a replacement trustee under subsection (1).

Court appointment of replacement or additional trustee

16(1) On application, the court may appoint a replacement trustee or an additional trustee if

- (a) the court removes a trustee under section 22, or
- (b) the court is of the opinion that
 - (i) the appointment of the replacement trustee or additional trustee is in the best interests of the objects of the trust, and
 - (ii) the appointment of a trustee would otherwise be inexpedient, difficult or impracticable.

(2) An application under subsection (1) may be made by

- (a) a trustee,
- (b) a beneficiary, or
- (c) a secured party.

(3) This section prevails over any contrary provisions in a trust instrument.

Powers and duties of replacement or additional trustee

17 A replacement trustee or an additional trustee appointed in accordance with this Act has the same powers and duties and may in all respects act as if they had been appointed as a trustee by the trust instrument.

**Division 2
Trustee Ceases to Hold Office**

Ceasing to be trustee

18 A person ceases to hold the office of trustee if

- (a) the person resigns the office in accordance with section 19,
- (b) the person ceases to be qualified to hold the office under section 20,
- (c) the person is removed as a trustee under this Act or under a power conferred by the trust instrument, or
- (d) the person dies.

Resignation by trustee

19(1) A person resigning the office of trustee

- (a) must give written notice of the resignation to
 - (i) the person nominated by the trust instrument for the purpose of appointing a replacement trustee, or
 - (ii) if the trust instrument does not nominate a person referred to in subclause (i), the continuing trustees, if any,

and

(b) where such notice is given, must be able to provide proof that the notice was given.

(2) If no person referred to in subsection (1)(a) exists, written notice of the resignation must be given to all qualified beneficiaries.

(3) A person resigning the office of trustee must provide a report under section 29 to all qualified beneficiaries and must be able to prove that the report was provided.

(4) A person resigning the office of trustee may apply to the court for an order discharging the trustee.

(5) A trustee's resignation is effective when a replacement trustee is appointed or the court discharges the trustee, whichever occurs first.

(6) This section prevails over any contrary provision in a trust instrument.

Disqualification of trustee

20(1) A person ceases to be qualified to hold the office of trustee if the person

- (a) is an incapacitated person,
- (b) is convicted of an offence involving dishonest conduct under an Act of Canada or any province or territory of Canada,
- (c) is an undischarged bankrupt, or
- (d) is a corporation that is in liquidation or is otherwise disqualified by law or by the terms of the trust.

(2) On application, the court may make an order disqualifying a trustee and establishing the date on which the disqualification takes effect.

(3) An application under subsection (2) may be made by a trustee or a beneficiary.

Removal by other trustees

21(1) A person may be removed as a trustee if

- (a) the person
 - (i) fails to demonstrate the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person,
 - (ii) consistently fails to respond to communications from a beneficiary or another trustee, or
 - (iii) is otherwise unwilling or unable, or unreasonably refuses, to act cooperatively with other trustees,
- and
- (b) the person's conduct is detrimental to the efficient or proper administration of the trust.

(2) If there are 3 or more trustees, a trustee may be removed under subsection (1) if a majority of the other trustees provide a written resolution setting out the reasons for the removal.

(3) A resolution under subsection (2) is effective

- (a) if the trustee that is the subject of the written resolution does not request a meeting under subsection (4), 15 days after a copy of the written resolution is delivered to that trustee, or
- (b) if the trustee that is the subject of the written resolution requests a meeting under subsection (4), at the conclusion of the meeting, unless the written resolution is rescinded.

(4) Within the 15-day period after a copy of the written resolution is delivered to the trustee that is the subject of the written resolution, that trustee, by delivering a written request to another trustee, may request a meeting with the other trustees to respond to the reasons set out in the written resolution.

(5) A meeting requested under subsection (4) must take place as soon as practicable.

(6) After the trustee responds to the reasons set out in the resolution, the other trustees may rescind the written resolution.

Power of court to remove trustee

22(1) On application, the court may remove a person from the office of trustee if

- (a) the person cannot be removed under section 21 because there are fewer than 3 trustees,
- (b) the court is of the opinion that
 - (i) the removal of the person is in the best interests of the objects of the trust, and
 - (ii) the removal of the person under section 21 or under a power conferred by a trust instrument would be inexpedient, difficult or impracticable,

or

- (c) the trustee has refused or failed to perform or exercise duties or powers in accordance with an order of the court under section 81(2).

(2) If the court considers a reduction in the number of trustees to be in the best interests of the objects of a trust, the court may

- (a) reduce the number of trustees, and
- (b) to give effect to the decision under clause (a), remove a person as trustee.

(3) An application under this section may be made by

- (a) a trustee,
- (b) a beneficiary, or
- (c) a secured party.

(4) This section prevails over any contrary provisions in a trust instrument.

Power of court to reinstate trustee

23(1) A person removed as trustee, except a person removed under section 22 or 81, may apply to the court for an order under subsection (3) of this section,

- (a) in the case of a person removed as trustee under section 21, within 2 months after the date the written resolution becomes effective, or
 - (b) in any other case, within 2 months after the earlier of
 - (i) the date of the appointment of a replacement trustee under section 15, and
 - (ii) the date that the removal as trustee comes to the attention of the person removed.
- (2)** On an application under subsection (1), the court may make an order under subsection (3) if
- (a) the court is satisfied that the person was removed as trustee based on a mistake of fact or law, and
 - (b) the court considers making the order to be in the best interests of the objects of the trust.
- (3)** Subject to subsection (2), the court may
- (a) reinstate the person as trustee on a specified date,
 - (b) declare that the person did not cease to hold the office of trustee during the period following the purported removal, or
 - (c) dismiss the application.
- (4)** If the court makes an order under subsection (3), the court may also give directions or make a declaration regarding the person's status as trustee or the liability of
- (a) a replacement trustee appointed under section 15,
 - (b) a person who is the subject of the order, or
 - (c) any other person who was a trustee after the person making the application was removed as trustee.
- (5)** This section prevails over any contrary provisions in a trust instrument.

Liability of former trustee

24 Unless the court orders otherwise, if a person ceases to be a trustee, any consequential vesting of trust property in or transfer of trust property to a replacement trustee does not relieve the former trustee from liability from a breach of trust occurring while that person was a trustee.

Part 3 Vesting

Joint tenants

25(1) If trust property vests in more than one trustee, the trust property vests in the trustees as joint tenants.

(2) This section prevails over any contrary provisions in a trust instrument.

Vesting

26(1) If a person is appointed as an additional trustee, a replacement trustee or a temporary trustee, the trust property vests in that person at the time the appointment is effective.

(2) If a person ceases to be a trustee of a trust, the trust property ceases to be vested in that person and remains vested in each continuing trustee.

(3) If a person who is a sole trustee or the last remaining trustee of a trust ceases to be a trustee and a new trustee has not been appointed or there is otherwise no trustee of a trust, the trust property vests in the court until a new trustee is appointed.

(4) A vesting under this section has the same effect as if the property had been actually transferred to the person in whom or the court in which the property is vested.

(5) No further declaration or order is required in respect of trust property that vests or ceases to be vested under this section.

(6) Without limiting subsections (4) and (5), a person in whom property vests under this section is entitled to perfect the transfer of the property in accordance with the *Land Titles Act* to the extent that the *Land Titles Act* is applicable.

(7) This section applies whether a person ceases to be a trustee, or is appointed as a trustee, in accordance with the terms of the trust or this Act.

(8) This section prevails over any contrary provisions in a trust instrument.

Part 4 Powers and Duties of Trustee

Division 1 Duties of Trustee

Duty of care

27(1) In the administration of a trust, a trustee must act in good faith and in accordance with the following:

- (a) the terms of the trust;
- (b) the best interests of the objects of the trust;
- (c) this Act.

(2) Subject to section 35, in the performance of a duty or the exercise of a power, whether the duty or power arises by operation of law or the trust instrument, a trustee must exercise the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person.

(3) Despite subsection (2) but subject to section 35, if, because of a trustee's profession, occupation or business, the trustee possesses or ought to possess a particular degree of skill that is relevant to the administration of the trust and is greater than that which a person of ordinary prudence would exercise in dealing with the property of another person, the trustee must exercise that greater degree of skill in the administration of the trust.

Conflict of interest

28(1) A trustee must exercise the powers and perform the duties of the office of trustee solely in the interests of the objects of the trust.

(2) Without limiting subsection (1), a trustee must not knowingly permit a situation to arise

- (a) in which the trustee's personal interest conflicts in any way with the trustee's exercise of the powers or performance of the duties of the office of trustee, or
- (b) in which the trustee may derive any personal benefit or a benefit for any other person,

except so far as the law or the trust instrument expressly permits.

(3) On application by a trustee or qualified beneficiary who shows that acting or declining to act is in the best interests of the objects of the trust, whether or not the beneficiaries consent, the court may make an order, on terms and conditions the court considers appropriate,

- (a) allowing the trustee to act or decline to act, whether or not the trustee may be in a situation that contravenes subsection (1) or (2), or
- (b) excusing a trustee from liability for contravening subsection (1) or (2).

(4) An order under subsection (3)(b) may be made any time after the contravention of subsection (1) or (2).

(5) A trustee or qualified beneficiary must serve notice of an application under this section as follows:

- (a) on all qualified beneficiaries of the trust, unless otherwise ordered by the court;
- (b) if a beneficiary of the trust is a minor and has a vested beneficial interest, on the Public Trustee at least one month before the date set for the hearing of the application;
- (c) if the trust is a charitable trust, on the Minister at least one month before the date set for the hearing of the application.

(6) On application by the trustee, a qualified beneficiary, the Public Trustee or the Minister, the court may vary an order under this section if

- (a) additional information becomes available after the order is made, or

- (b) the circumstances under which the order was made change.

(7) Nothing in this section limits the jurisdiction of the court under section 67, 68 or 84.

Duty to report to qualified beneficiaries

29(1) For each fiscal period of a trust, the trustee must deliver to the qualified beneficiaries a report in respect of the trust that includes the following:

- (a) for the fiscal period in which the trust is created, a statement of the assets and liabilities of the trust and the value of those assets and liabilities at the time the trust is created;
- (b) a statement of the assets and liabilities of the trust and the value of those assets and liabilities at the beginning and end of the fiscal period;
- (c) the basis for the valuations of the assets of the trust, if the trustee considers it practicable;
- (d) a statement of receipts and their sources for the fiscal period;
- (e) a statement of disbursements and their recipients for the fiscal period.

(2) A report under subsection (1) in respect of a fiscal period must be delivered within 2 months after the end of the fiscal period.

(3) On the written request of a qualified beneficiary, the trustee must allow the beneficiary to inspect the source documents for the statements referred to in subsection (1).

(4) Subject to an order of the court under section 30(2), a trustee is not required to disclose information under this section if, in the opinion of the trustee, the disclosure would

- (a) be detrimental to the best interests of any beneficiary or otherwise be prejudicial to the trust property or the administration of the trust,
- (b) conflict with any duty owed by a trustee as a director of a corporation in which the trust has an ownership interest,

- (c) reveal the reasons why a trustee did or did not exercise a power conferred by the trust instrument or an enactment,
- (d) place an unreasonable administrative burden on the trustee, or
- (e) place the trustee in breach of obligation, properly assumed by the trustee, to maintain confidence.

(5) A qualified beneficiary may waive, by delivering written notice to the trustee, the right to a report or to specific information in the report that is required to be given under this section.

(6) A qualified beneficiary may revoke a waiver by delivering written notice to the trustee.

Duty to provide information

30(1) Section 29 does not limit the duty under general trust law of a trustee to provide to a beneficiary, on request, accounts or trust information within a reasonable period of time.

(2) On application by a qualified beneficiary or a beneficiary who has requested information that has not been provided by the trustee, the court may order, on terms and conditions the court considers appropriate, the disclosure of any information regarding any of the following:

- (a) the terms of the trust;
- (b) the administration of the trust;
- (c) the assets and liabilities of the trust.

Division 2 General Administrative Powers

Powers of trustee

31(1) Subject to this Act and the trustee's fiduciary obligations, a trustee has, in respect of trust property vested in the trustee, all the powers and capacity that an individual of full legal capacity would have if the property were vested in the individual absolutely and for the individual's own use.

(2) Without limiting the generality of subsection (1), a trustee may do any of the following:

- (a) sell or lease trust property;
 - (b) borrow money for the purpose of carrying out the trust;
 - (c) grant a security interest in trust property.
- (3)** A trustee may do one or both of the following:
- (a) with the consent of, and for the purpose of providing a residence for, a beneficiary, use income or capital to which the beneficiary is entitled
 - (i) to purchase or rent living accommodation, or
 - (ii) to construct a residence on land that is part of the trust property or purchased for the construction of the residence;
 - (b) with the consent of a beneficiary, effect a distribution in kind of specific trust property to satisfy, wholly or in part, the share or interest of the beneficiary.

Court may confer further powers on trustee

32(1) If a trustee lacks the power to make a transfer of trust property that the court is satisfied would be expedient and in the best interests of the objects of the trust, the court may, on application, confer the necessary power on the trustee, either generally or in relation to a specified instance and on any terms and conditions the court considers appropriate.

- (2)** An application under subsection (1) may be made by
- (a) a trustee,
 - (b) a beneficiary, or
 - (c) a secured party.
- (3)** This section prevails over any contrary provisions in a trust instrument.

Division 3 Investment Power of Trustee

Power to invest

33(1) A trustee must invest trust funds prudently with a view to obtaining a reasonable return while avoiding undue risk, having regard to the circumstances of the trust.

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

(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) Without restricting the matters that a trustee may consider, in planning the investment of trust funds a trustee must consider the following matters, to the extent that 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.

Investment powers of corporate trustee or agent

34(1) Without limiting section 33, a corporation that is a trustee may invest trust money in its own securities.

(2) Without limiting section 33, if the trustee is a trust corporation or the trustee's agent is a trust corporation as defined by the *Loan and Trust Corporations Act*, the trustee may invest trust property in a common trust fund managed by the trust corporation.

Standard of care in investing

35(1) In investing trust property, a trustee must exercise the care, diligence and skill that a prudent investor would exercise in making investments.

(2) Despite subsection (1), if, because of a trustee's profession, occupation or business, the trustee possesses or ought to possess a particular degree of skill that is relevant to the investment of trust property and is greater than that which a prudent investor would exercise in making investments, the trustee must exercise that greater degree of skill in investing trust property.

Trustee not liable if overall investment strategy prudent

36(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 35 could reasonably have made or adopted.

(2) Despite subsection (1), a trustee is liable for a loss arising from the investment of trust property if

- (a) the trustee is a trustee referred to in section 35(2), and

- (b) the conduct of the trustee that led to the loss did not conform to a plan or strategy for the investment of the trust property that
 - (i) comprised reasonable assessments of risk and return, and
 - (ii) would be adopted under comparable circumstances by a trustee.

(3) 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.

Abolition of common law rules — anti-netting rules

37(1) The rule of law that requires the assessment of a trustee’s decisions on an investment-by-investment basis is abolished.

(2) The rule of law for the assessment of damages for breach of trust that prohibits losses from being offset by gains is abolished.

Interpretation of older trust instruments

38(1) If the trust instrument expresses the powers of the trustee as powers to invest trust property in investments permitted under a former *Trustee Act*, the trust instrument is to be interpreted as authorizing the investments permitted under this Division and section 53.

(2) Despite subsection (1), if an investment is expressly prohibited by the trust instrument, the trust instrument is not to be interpreted as authorizing the investment.

(3) Subsection (1) does not affect a power of the trustee to invest trust property in an investment expressly permitted by the trust instrument.

Division 4 Allocation of Income and Capital by Trustee

Definition

39 In this Division, “outgoing” means an expenditure paid or incurred in administering a trust, including, without limitation, an expenditure arising from or made with respect to repairs,

maintenance, insurance, taxes, security interests, debts, calls on shares, annuities and losses.

Duty to act impartially and prudently

40 Nothing in this Division affects the duty of a trustee

- (a) to act impartially as between different classes of beneficiaries in the administration of a trust, or
- (b) to comply with section 35 in respect of investments.

Abolition of common law rules of apportionment

41(1) The first branch of the rule in *Howe v Lord Dartmouth*, which states that a trustee must convert wasting, hazardous or speculative assets to authorized trustee investments if a will contains a residuary gift of personal property or a future or reversionary property interest for persons in succession, is abolished.

(2) The 2nd branch of the rule in *Howe v Lord Dartmouth*, which states that, if an estate's original assets other than authorized investments are to be converted under a trust for sale, a trustee must apportion the income from those assets between the income and capital beneficiaries until conversion takes place, is abolished.

(3) The rule in *Re Earl of Chesterfield's Trusts*, which states that, if future or reversionary property is included in a residuary gift under a will and is not yielding income before it is sold, the trustee must apportion the proceeds of sale, after it comes into possession, between the income and capital beneficiaries in a particular way, is abolished.

Apportionment of outgoings between income and capital

42(1) This section does not apply in respect of the following trusts unless the trust instrument expressly provides otherwise:

- (a) an alter ego trust;
- (b) a joint spousal or common-law partner trust;
- (c) a post-1971 spousal or common-law partner trust;
- (d) a pre-1972 spousal trust.

(2) A trustee may charge all or part of an outgoing to the income or capital of the trust as the trustee considers is

- (a) just and equitable in the circumstances,
- (b) in accordance with ordinary business practice, and
- (c) in the best interests of the objects of the trust.

(3) If the amount of an outgoing charged under subsection (2) to the income or capital of the trust is not equal to the amount paid out of the income or capital in respect of the outgoing, a trustee may allocate an amount between income and capital to recover or reimburse the payment in respect of the outgoing.

(4) If trust property is subject to depreciation, a trustee may

- (a) deduct from the income earned from the trust property an amount that the trustee considers is
 - (i) just and equitable in the circumstances,
 - (ii) in accordance with ordinary business practice, and
 - (iii) in the best interests of the objects of the trust,and
- (b) add the amount deducted under clause (a) to the capital of the trust.

Discretionary allocation trusts of receipts and outgoings

43(1) If a trustee is expressly directed by the trust instrument to hold trust property on discretionary allocation trusts, the trustee may allocate receipts and charge outgoings to the income and capital of the trust as the trustee considers is just and equitable in the circumstances.

(2) If the amount of an outgoing charged under subsection (1) to the income or capital of the trust is not equal to the amount paid out of the income or capital in respect of the outgoing, a trustee may allocate an amount between income and capital to recover or reimburse the payment in respect of the outgoing.

Total return investment

44(1) In this section,

- (a) “assets” means trust property that is subject to a total return investment policy;
- (b) “net value of the assets” means the amount equal to the fair market value of the assets less any liabilities in respect of those assets;
- (c) “specified percentage” means
 - (i) a percentage specified in the trust instrument for the purpose of this section, or
 - (ii) if no percentage is specified in the trust instrument, the percentage specified by regulation;
- (d) “total return investment policy” means a policy of investing property so as to obtain the optimal return without regard to whether the return is characterized as income or capital;
- (e) “valuation period” means the valuation period determined under subsection (9) or varied by regulation.

(2) For the purposes of this section, in a trust instrument the following words constitute a reference to a total return investment policy:

- (a) “on percentage trusts”;
- (b) “total return”, when used with reference to investments.

(3) A settlor may direct, in a trust instrument, the trustee to adopt a total return investment policy with respect to all or part of the trust property.

(4) Subject to subsection (5), the trustee of a charitable trust, with respect to trust property, may adopt a total return investment policy with respect to that property, whether or not the terms of the trust contain a direction to that effect.

(5) A total return investment policy may not be adopted under subsection (4) if in the trust instrument the settlor expressly directs the trustee not to adopt a total return investment policy with respect to that trust property.

(6) If a total return investment policy is adopted, the trustee must determine the net value of the assets at the beginning of each valuation period.

(7) If a total return investment policy is adopted, the trustee must, in each fiscal period,

- (a) pay to the persons who would otherwise be the income beneficiaries, or
- (b) apply to the other objects

an amount equal to the specified percentage of the net value of the assets at the beginning of the valuation period.

(8) The trustee must

- (a) pay or apply an amount required under subsection (7) from income earned during the fiscal period from the investment of the assets,
- (b) if the income referred to in clause (a) is insufficient to pay or apply the amount required under subsection (7), pay or apply an amount from capital, and
- (c) if the income earned during the fiscal period from the investment of the assets exceeds the amount paid or applied under subsection (7), add the amount of the excess to the assets.

(9) The valuation period for assets that are invested in accordance with a total return investment policy is determined as follows:

- (a) the first valuation period begins
 - (i) one year after the date of the testator's death, in the case of a testamentary trust made in a will, or
 - (ii) in any other case, on the date of the settlement;
- (b) the 2nd and subsequent valuation periods begin immediately after the end of the previous valuation period;
- (c) a valuation period is the shortest of the following:
 - (i) subject to a period specified by regulation, 3 years;

- (ii) the period specified in the trust instrument;
- (iii) the period selected by the trustee.

Application of sections 43 and 44

45 Sections 43 and 44 do not limit any other power of a trustee to encroach on capital in favour of a beneficiary.

**Division 5
Distributive Powers of Trustee**

Interpretation and application

46(1) This Division does not apply in respect of the following trusts unless the trust instrument expressly provides otherwise:

- (a) an alter ego trust;
- (b) a joint spousal or common-law partner trust;
- (c) a post-1971 spousal or common-law partner trust;
- (d) a pre-1972 spousal trust.

(2) A direction in a provision of a trust instrument to accumulate income is not in itself evidence of a contrary intention sufficient to have the provision of the trust instrument prevail over a provision in this Division.

Power to pay income to or for benefit of individual

47(1) Subject to any interest or charge affecting the trust property, if property is held by a trustee in trust for an individual the trustee may do any of the following, as the trustee considers reasonable in the circumstances:

- (a) if the individual is a minor, pay all or part of the income earned from the property towards the individual's past, present or future maintenance, education, benefit or advancement in life;
- (b) if the individual has reached the age of majority and does not have an income or capital interest vested in interest and in possession, pay to, or for the maintenance, education, benefit or advancement in life of, the

individual all or part of the income earned from the property.

(2) A trustee may pay the income earned from the trust property under subsection (1) whether the interest of the individual in the trust property is vested or contingent.

Power to pay amount from capital for benefit of individual

48(1) If property is held by a trustee in trust for an individual for any interest in capital, subject to this section and to any interest or charge affecting the trust property, the trustee may pay an amount in respect of the individual towards the following from the capital of the trust, as the trustee considers reasonable in the circumstances:

- (a) if the individual is a minor, towards the individual's past, present or future maintenance, education, benefit or advancement in life;
- (b) if the individual has reached the age of majority, towards the individual's maintenance, education, benefit or advancement in life.

(2) In order to pay an amount under subsection (1), the trustee may

- (a) create a security interest in a capital asset of the trust, or
- (b) otherwise transfer a capital asset of the trust.

(3) A trustee may pay an amount under subsection (1) or exercise the power under subsection (2) whether the interest of the individual in the capital

- (a) is vested or contingent, or
- (b) is in possession or in remainder or reversion.

(4) A trustee may pay an amount under subsection (1)

- (a) to an individual with a vested interest in the capital, with or without court approval, and
- (b) to an individual with a contingent interest in the capital, with court approval.

(5) If the court approves an amount under subsection (4)(b) in respect of an individual and a trustee pays an amount under subsection (1) in respect of the individual, the trustee must promptly give written notice of the following to any other beneficiary who, at the time of the payment of the amount, is entitled to receive income from the capital from which the amount was paid:

- (a) the terms of the order made by the court under subsection (4)(b);
- (b) the amount paid in accordance with the order.

(6) A trustee must not pay an amount under subsection (1)

- (a) if the income or accumulated surplus income is available under the terms of the trust for the maintenance, education, benefit or advancement in life of the individual, unless the available income or accumulated surplus income is insufficient, or
- (b) if the payment is detrimental to the pecuniary interest of a person who is entitled to a life interest or other interest, whether vested or contingent, in the amount to be paid, unless
 - (i) the person is of full capacity and consents in writing to the payment, or
 - (ii) the person is not of full capacity and the court approves the payment, on application by the trustee.

(7) If an amount is paid under subsection (1) in respect of an individual, the individual's interest in the capital of the trust must be reduced by that amount.

(8) If the individual referred to in subsection (7) does not have a vested interest in the capital of the trust when the amount is paid or applied under subsection (1), the reduction under subsection (7) is to be made when that interest is vested.

(9) This section has effect

- (a) if a contrary intention is not expressed in the trust instrument, and

- (b) subject to the terms of that instrument and the provisions contained in it.

Conditions on payment from capital

49(1) If a trustee pays an amount under section 48(1) or, under the terms of the trust, pays an amount from capital for the benefit of an individual, the trustee may impose conditions on the person receiving the payment or the benefit of the payment, including, without limitation, conditions relating to the following:

- (a) the repayment of the payment to the trustee;
- (b) the payment of interest to the trustee;
- (c) the giving of security to the trustee by the person receiving the payment.

(2) The trustee may do any of the following in respect of a condition imposed under subsection (1):

- (a) waive all or part of a condition;
- (b) release a person from an obligation undertaken;
- (c) release the security given.

(3) If an amount paid under section 48(1) is repaid to or recovered by a trustee in accordance with a condition under subsection (1) of this section, the amount repaid or recovered is deemed not to have been paid under section 48.

(4) When imposing a condition in respect of security under subsection (1), a trustee is not bound by any restrictions on the investment of the trust property.

(5) A trustee who has acted in accordance with section 27 in paying an amount under section 48 is not liable for a loss arising from the transaction, including a loss arising because a person breaches a condition imposed by the trustee.

Payment or transfer in respect of minor or incapacitated person

50(1) If a minor is entitled to trust money or trust securities, a trustee must pay the money to or transfer the securities to

- (a) the trustee appointed by court order under the *Minors' Property Act*, or
- (b) the Public Trustee.

(2) If an incapacitated person is entitled to trust money or trust securities, a trustee must pay the money to or transfer the securities to

- (a) the attorney acting under the *Powers of Attorney Act*, or
- (b) the trustee appointed by court order under the *Adult Guardianship and Trusteeship Act*.

(3) If an attorney or trustee is not appointed for an incapacitated person, then an attorney or trustee must be appointed for payment of the money or transfer of the securities.

Division 6 Delegation by Trustee

Appointment of agent and supervision

51(1) In appointing an agent, a trustee must

- (a) personally select the agent,
- (b) be satisfied of the agent's suitability to exercise the power or perform the duty for which the agent is to be appointed, and
- (c) establish the terms of the delegated authority.

(2) A trustee must exercise reasonable and prudent supervision over an agent appointed by the trustee.

(3) A trustee may appoint a co-trustee as an agent only if the appointment would have been reasonable and prudent if the co-trustee had not been a co-trustee.

When trustee must not delegate

52 A trustee must not appoint an agent to

- (a) exercise a discretion to distribute or transfer trust property to, or for the benefit of, a beneficiary of the trust, or

- (b) perform the duties of the trustee in appointing and supervising an agent under section 51.

Delegation of investment authority

53(1) A trustee must not delegate to an agent appointed under section 51 any authority in respect of the investment of trust funds that a prudent investor would not be able to delegate in accordance with ordinary investment practice.

(2) Investment in a mutual fund referred to in section 33(2), a common trust fund referred to in section 34(2) or a similar pooled fund is not a delegation of authority with respect to the investment of trust property.

Delegation of administrative functions

54(1) If it is reasonable and prudent to do so, a trustee may delegate to an agent the authority to carry out administrative functions related to the trust.

(2) Without limiting subsection (1), a trustee may appoint a person as agent to do one or more of the following:

- (a) execute documents;
- (b) transfer or acquire money or other property;
- (c) give a receipt for any money or other property received by the trustee.

Liability of trustee for agent

55 A trustee is liable for a loss in the value of the trust property caused by an act or omission of an agent only if the trustee is in breach of section 51 and the loss is a consequence of that breach.

Liability of agent

56 Where a trustee delegates authority to an agent 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.

Sub-delegation by agent

57(1) An agent appointed by a trustee may delegate to a person a power or duty of the agent, subject to this Division and any restrictions relating to delegation that are established by the trustee in the terms of the appointment.

(2) In delegating a power or duty under subsection (1), the agent must

- (a) personally select the delegate, and
- (b) be satisfied of the delegate's suitability to exercise the power or perform the duty delegated to the delegate.

(3) An agent must exercise reasonable and prudent supervision over a person to whom a power or duty is delegated under subsection (1).

**Division 7
Miscellaneous Powers and Duties of
Trustee**

Liability of trustee

58(1) Subject to this Act, a trustee is not liable for a breach of trust committed by a co-trustee unless the trustee participated in the breach of trust by the trustee's own acts or omissions in respect of the trust property.

(2) Subject to section 55, a trustee is not liable for a loss in respect of trust property by reason only of the fact that the trustee has signed a receipt with a co-trustee because the trust instrument imposes a requirement that trustees act unanimously.

Powers conferred and duties imposed on trustees jointly

59(1) If a power is conferred or a duty is imposed on 2 or more trustees, the power is conferred and the duty is imposed jointly.

(2) If a power is conferred or a duty is imposed on 2 or more trustees jointly, the power may be exercised or the duty may be performed

- (a) in accordance with section 60, and
- (b) by the survivor of them or, if there are more than 2 surviving trustees, by a majority of them.

Trustees may act by majority

60(1) If there are more than 2 trustees, the trustees may perform their duties and exercise their powers by a majority of the trustees holding office.

(2) A trustee who disagrees with a decision or act of the majority of trustees may deliver a written statement of disagreement to the other trustees but, unless the decision or act is unlawful, must join with the majority in doing anything necessary to carry out that decision or act if it cannot be carried out otherwise.

(3) A trustee who delivers a written statement in accordance with subsection (2) is not liable for a loss or breach of trust arising from the decision or act even if the trustee joins with the majority in accordance with that subsection in order to carry out that decision or act.

(4) This section does not apply in respect of a trust created by a trust instrument executed before this section comes into force, unless this section is consistent with the terms of the trust and the trustees agree this section should apply.

Trustee abstentions

61 If a trustee abstains from participating in a decision or act of the trustees because there is a conflict or potential conflict between the trustee's personal interest and the powers and duties of the office of trustee, the trustee is deemed not to be holding office for the purpose only of determining whether a decision is made or act is done by a majority of trustees holding office or unanimously by the trustees holding office.

Deposit of trust property for safekeeping

62 A trustee is liable for a loss in the value of the trust property caused by the conduct of a financial institution or another person with whom trust property is deposited or left for safekeeping only if the trustee fails to

- (a) exercise prudence in the selection of the financial institution or other person, or
- (b) exercise reasonable and prudent supervision over the financial institution or other person.

Insuring trust property

63(1) A trustee may

- (a) insure against loss or damage to any building or other insurable property to any amount, 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) Subsection (1) does not apply to any building or other property that a trustee is bound forthwith to convey absolutely to a person having a beneficial interest in the building or other property, on being requested to do so.

Allocation of insurance proceeds

64(1) A trustee must allocate insurance proceeds to the capital of the trust if

- (a) the trustee entered into a contract of insurance against loss of, or damage to, any trust property,
- (b) the trustee paid the premiums owing under the contract, and
- (c) insurance proceeds under the contract are paid to the trustee.

(2) If a beneficiary of a trust enters into a contract of insurance against loss of, or damage to, any trust property, whether or not the beneficiary is required by the trust instrument or by a third party to obtain the insurance, and insurance proceeds under the contract are paid to the beneficiary,

- (a) the beneficiary must pay the insurance proceeds to the trustee,

- (b) the trustee must allocate the insurance proceeds to the capital of the trust, and
 - (c) the trustee must reimburse the beneficiary for expenses incurred by the beneficiary in entering into the contract of insurance, in the amount the trustee considers in the trustee's opinion to reflect the interests of the other beneficiaries in the trust property.
- (3)** A trustee may apply all or part of the insurance proceeds received by the trustee under subsection (1) or (2) to the rebuilding, reinstating, replacing or major repair of the trust property that has been lost or damaged.
- (4)** Nothing in this section affects the rights of a secured party, lessor, lessee or other person
- (a) to receive insurance proceeds, or
 - (b) to require that the insurance proceeds be applied to the rebuilding, reinstating, replacing or major repair of the trust property that has been lost or damaged.
- (5)** This section prevails over any contrary provisions in a trust instrument.
- (6)** This section applies only to proceeds under a contract of insurance that are payable after this section comes into force.

Part 5 Variation and Termination of Trusts

Definitions

65 In this Part,

- (a) “beneficiary” and “person” include an organization, a charitable trust and a non-charitable purpose trust;
- (b) “variation” means
 - (i) a variation, resettlement or termination of a trust, or
 - (ii) a variation or deletion of, or an addition to, the powers of a trustee in respect of the management or administration of a trust.

Application of this Part

66 This Part applies to

- (a) vested or contingent interests in the trust property of the object of the trust, and
- (b) trusts that arise by trust instrument other than an enactment.

Variations

67(1) Subject to any terms in a trust instrument reserving the power to any person or persons to terminate or vary a trust, and except as provided in this section, a variation requires approval of the court.

(2) On application by a trustee or beneficiary, the court may approve a variation after taking into account the following factors:

- (a) the nature of all interests and objects and the effect any proposed variation may have on those interests and objects;
- (b) the benefit or detriment to any person that may result from the court approving or declining to approve any proposed variation;
- (c) the intentions of the settlor, to the extent they can be ascertained;
- (d) any other factors the court considers relevant.

(3) Subject to subsection (4), a trustee or beneficiary who makes an application under subsection (2) must have written consent to the application from all persons who are beneficially interested in the trust.

(4) On an application under subsection (2), the court may approve a variation despite that one or more of the following persons who are beneficially interested in the trust have not consented to the application:

- (a) a person who is not capable of consenting because the person is a minor or is incapacitated;
- (b) an unborn person;

- (c) a person who after reasonable inquiry cannot be located;
- (d) a 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;
- (e) a person who has the capacity to consent to a variation but refuses to consent to the variation;
- (f) a charitable organization that is legally incapable of consenting in its own right;
- (g) a charitable trust or a non-charitable purpose trust;
- (h) any other person, organization or trust from whom the court considers it to be impractical to obtain consent.

(5) Where a will or other testamentary instrument contains a gift or devise to a beneficiary who is a minor or is incapacitated and the will or other testamentary instrument contains no trust in respect of the gift or devise, the court may, on an application under subsection (2), approve a variation providing for the gift or devise to be held on trust for the beneficiary while the beneficiary is a minor or is incapacitated, if the court is satisfied, having regard to the circumstances and the terms of the gift or devise, that the variation is in the best interests of the beneficiary.

(6) The court may not approve a variation if the variation would reduce or remove any fixed indefeasible interest that has vested absolutely in a beneficiary.

(7) When an instrument creates a general power of appointment exercisable by deed, the donee of the power may only self-appoint if the instrument provides for self-appointment.

(8) This section prevails over any contrary provision in a trust instrument.

Notice of application to approve variation

68(1) A person who applies to the court for an order under section 67(2) must serve notice of the application,

- (a) in respect of a minor referred to in section 67(4)(a), on the trustee appointed by court order under the *Minors' Property Act* or the Public Trustee;
- (b) in respect of an incapacitated person referred to in section 67(4)(a), on the attorney acting under the *Powers of Attorney Act* or the trustee appointed by court order under the *Adult Guardianship and Trusteeship Act*;
- (c) in respect of an unborn person referred to in section 67(4)(b), on the Public Trustee;
- (d) in respect of a person referred to in section 67(4)(c) who is a missing person as defined in the *Public Trustee Act*, on the Public Trustee.

(2) If there is no attorney or trustee appointed for an incapacitated person referred to in section 67(4)(a), then an attorney or trustee must be appointed.

(3) A person who applies to the court for an order under section 67(2) must, in respect of a charitable organization referred to in section 67(4)(f) or a trust referred to in section 67(4)(g), serve notice of the application on the Minister at least one month before the date set for the hearing of the application.

(4) The Minister is entitled to appear and be heard on an application under section 67(2) and is entitled to the costs the court orders.

Part 6 Trustee Compensation and Accounts

Compensation of trustee

69(1) A person is entitled to fair and reasonable compensation to be paid out of the trust property for services rendered as trustee of the trust.

(2) As part of the compensation to which a trustee is entitled under subsection (1), a trustee who

- (a) has professional skills, and

- (b) has rendered services to the trust, apart from those generally associated with the office of trustee, that required the exercise of those professional skills

is entitled to charge fees at reasonable rates for those services that are reasonably necessary for the purpose of carrying out the trust.

(3) The trustees of a trust are not presumed to be entitled to equal compensation under subsection (1).

(4) On application by a trustee or beneficiary during the administration of the trust or on the passing of accounts, the court may determine the amount of compensation to which the trustee is entitled under subsection (1).

(5) In determining a trustee's compensation, the court may consider the following matters:

- (a) the terms of any relevant contract;
- (b) the gross value of the trust property at the time compensation is claimed;
- (c) any change in the gross value of the trust property since compensation was last claimed or the trust was created and the portion of that change attributable to decisions of the trustee;
- (d) the amount of revenue received and expenditures incurred in administering the trust;
- (e) the complexity of the work involved in administering the trust, including whether or not any difficult or unusual questions were raised;
- (f) any unusual difficulties or situations encountered in administering the trust;
- (g) whether or not the trustee had to instruct on litigation relating to the trust;
- (h) whether or not the trustee was required to manage a business, be the director of a corporation or perform other additional roles in administering the trust;

- (i) the amount of skill, labour, responsibility, technological support and specialized knowledge required in administering the trust;
- (j) the number and complexity of tasks relating to the administration of the trust that were delegated to others;
- (k) the time expended in administering the trust;
- (l) the number of trustees;
- (m) any other matter the court considers relevant.

(6) An application under subsection (4) may be made even if the trust instrument provides for the determination of the amount of compensation.

(7) The court may enforce or vary the terms of compensation provided to a trustee

- (a) whether the terms are found in the trust instrument or another contract between the person making the trust and the trustee,
- (b) whether the contract between the settlor and trustee is signed before or after the date of the trust instrument, and
- (c) whether or not the contract between the settlor and trustee is incorporated by reference into the trust instrument.

(8) This section prevails over any contrary provisions in a trust instrument.

Interim compensation of trustee

70(1) During the administration of the trust and without prior authorization of the court, if there is at least one beneficiary who is of full legal capacity and who has a vested beneficial interest in the trust property, a trustee may take payment out of the trust property in an amount that, in the trustee's opinion, is fair and reasonable compensation for services rendered as trustee of the trust during the period to which the payment relates.

(2) Before taking a payment under subsection (1), a trustee must deliver to the qualified beneficiaries and any other trustees a written notice

- (a) stating the amount of the payment,
- (b) describing the services rendered, and
- (c) stating that, within a specified period of not less than 2 months from the date the notice was delivered, a qualified beneficiary or trustee may apply to the court under subsection (3) to object to the payment.

(3) A qualified beneficiary or trustee may object to the payment under subsection (1) by bringing an application within the notice period specified in subsection (2)(c).

(4) A trustee who files an application under subsection (3) must serve notice of the application on all qualified beneficiaries and trustees.

(5) A qualified beneficiary who files an application under subsection (3) must serve notice of the application on the trustee, and the trustee must then serve notice of the application on the other qualified beneficiaries.

(6) In an application under this section the court may determine the amount, if any, that the trustee may be paid under subsection (1).

Reimbursement of expenses

71 During the administration of the trust and without prior authorization of the court, a trustee may take reimbursement out of the trust property for expenses incurred by the trustee in the administration of the trust.

Passing of accounts

72(1) On application by a qualified beneficiary or a trustee, the court may order that the trustee's accounts be passed on a single occasion or at intervals set by the court.

(2) A trustee making an application under subsection (1) must serve notice of the application on each of the qualified beneficiaries.

(3) A qualified beneficiary making an application under subsection (1) must serve notice of the application on the trustee and the

trustee must then serve notice of the application on each of the other qualified beneficiaries.

(4) If a qualified beneficiary who receives notice under subsection (2) or (3)

- (a) is a minor and the trustee appointed by court order under the *Minors' Property Act* or the Public Trustee, as the case may be, is not present at the passing of accounts, or
- (b) is an incapacitated person and the attorney acting under the *Powers of Attorney Act* or the trustee appointed by court order under the *Adult Guardianship and Trusteeship Act*, as the case may be, is not present at the passing of accounts,

the court may determine, at the passing of accounts or at a subsequent hearing, that the qualified beneficiary is to be, or is deemed to have been, represented by another person who, at the passing of accounts, is of full legal capacity, has a substantially similar interest in the trust property and is not in a conflict of interest with the qualified beneficiary in respect of any aspect of the accounts.

Repayment by trustee

73 If a trustee's compensation as finally determined by the court is less than the total of the payments taken by the trustee without court authorization during the administration of the trust, the trustee must restore the difference to the trust property.

Part 7 Charitable Trusts and Non-charitable Purpose Trusts

Power of court to vary charitable trusts

74(1) Subject to a gift over or reversion expressly provided for in the trust instrument, on application by the trustee of a charitable trust where the trust instrument does not provide for the variation that is sought, the court may vary the terms of the trust in accordance with subsection (3) if the court is of the opinion that

- (a) an impracticability, impossibility or other difficulty hinders or prevents giving effect to the terms of the trust, or
 - (b) a variation of the trust would facilitate the carrying out of the charitable intent, whether general or specific, of the settlor.
- (2)** On an application under subsection (1) to vary the terms of a trust, the court must take into account the following factors:
- (a) the nature of all interests and objects and the effect any proposed variation may have on those interests and objects;
 - (b) the intentions of the settlor to the extent these can be ascertained;
 - (c) any other factors the court considers relevant.
- (3)** In varying the terms of a trust under subsection (1), the court may
- (a) vary, delete or add to any terms of the trust, whether dispositive or administrative in character, which must include the powers of a trustee in respect of the management and administration of the trust, and
 - (b) if the court is of the opinion referred to in subsection (1)(a), vary or add to the terms of the trust to provide for a purpose that is as close as is practicable or reasonable to an existing purpose of the trust.
- (4)** For the purposes of a variation under subsection (1)
- (a) it is irrelevant whether the charitable intent of the settlor was general or specific, and
 - (b) if the terms of the trust expressly provide for a gift over or a reversion in the event of the lapse or other failure of a charitable purpose, the gift over or reversion, if otherwise valid, shall take effect and the court must not vary the terms of the trust under subsection (1).
- (5)** This section prevails over any contrary provisions in a trust instrument.

Power to order sale of property — charitable trust

75(1) On application, if a specific property held in trust for a charitable purpose may no longer be used advantageously for the charitable purpose or should for any other reason be sold, the court may authorize the sale of the property and give directions concerning the conduct of the sale and the application of the proceeds from the sale.

- (2) An application under subsection (1) may be made by
- (a) the Minister,
 - (b) the trustee, or
 - (c) a person appearing to the court to have a sufficient interest in the matter.
- (3) This section prevails over any contrary provisions in a trust instrument.

Notice

76 If an application is made for an order under section 74 or 75 by a person other than the Minister, the order must not be made unless the applicant has served notice of the application on the Minister and any other persons as the court may require, at least one month before the date set for the hearing of the application.

Non-charitable purpose trust

- 77(1)** A person may create a trust that
- (a) is for a non-charitable purpose that
 - (i) is recognised by law as being capable of being a valid object of a trust, or
 - (ii) is sufficiently certain to allow the trust to be carried out, is not contrary to public policy and is
 - (A) for the performance of a function of government in Canada, or
 - (B) a matter specified by regulation
- and

(b) does not create an equitable interest in any person.

(2) A non-charitable purpose trust may exist indefinitely.

Court may vary non-charitable purpose trust

78(1) If, on application, the court is of the opinion that an impracticability, impossibility or other difficulty hinders or prevents giving effect to the terms of a non-charitable purpose trust, the court may, subject to subsection (5),

- (a) vary or add to the terms of the trust to provide for a purpose that is as close as is practicable or reasonable to an existing purpose of the trust, or
- (b) if the court is unable to provide for a purpose that is as close as is practicable or reasonable to an existing purpose of the trust, vary or add to the terms of the trust to provide for a purpose that is consistent with the intention of the original settlement.

(2) Subject to subsection (5), if on application the court is of the opinion that a change in circumstances since the creation of a non-charitable purpose trust has resulted in a purpose of the trust being obsolete or no longer expedient, the court may vary or add to the terms of the trust to provide for a purpose that is consistent with the intention of the original settlement.

(3) In exercising the power under subsection (2), the court may consider the views of the settlor or the trustee concerning the obsolescence or expedience of the purpose of the trust and the proposed variation.

(4) On an application under subsection (1) or (2), the court must take into account the following factors:

- (a) the nature of all interests and the effect any proposed variation may have on those interests and objects;
- (b) the intentions of the settlor to the extent these can be ascertained;
- (c) any other factors the court considers relevant.

(5) Subsections (1) and (2) do not apply if

- (a) the trust instrument contains a valid direction concerning the ultimate disposition of the trust property, or
 - (b) the intention of the settlor concerning the ultimate disposition of the trust property can be inferred from the trust instrument and is valid.
- (6)** Despite subsections (1) and (2), if the court cannot determine a replacement purpose for a non-charitable purpose trust, the court may order that the trust property be returned to the settlor or to the settlor's personal representative.
- (7)** The court may make an order that it considers appropriate
- (a) to enforce a non-charitable purpose trust, or
 - (b) to enlarge or otherwise vary the powers of the trustee of a non-charitable purpose trust.
- (8)** An application under this section may be made by
- (a) the Minister,
 - (b) a person appointed specifically by the settlor in the trust instrument to enforce the trust,
 - (c) the settlor,
 - (d) the personal representative of the settlor,
 - (e) the trustee, or
 - (f) a person appearing to the court to have a sufficient interest in the matter.

Imperfect trust provisions — charitable and non-charitable

79(1) A trust is not void by reason only that the objects of the trust consist of a charitable purpose and a non-charitable purpose.

(2) On application by a trustee or beneficiary, the court may make one or more of the following orders:

- (a) an order that a charitable purpose constitutes the object of a separate charitable trust, if the court determines that it is practicable to separate the charitable purpose from a non-charitable purpose;

- (b) an order that a non-charitable purpose constitutes the object of a separate non-charitable purpose trust, if the court determines that
 - (i) a non-charitable purpose trust may be validly created under section 77(1), and
 - (ii) it is practicable to separate the non-charitable purpose from the other objects of the original trust;
- (c) an order that the terms of the disposition of property relating to a non-charitable purpose must be construed in accordance with section 80, if the court determines that
 - (i) the non-charitable purpose does not meet the requirements of section 77(1), and
 - (ii) it is practicable to separate the non-charitable purpose from a charitable purpose;
- (d) an order that a charitable purpose and a non-charitable purpose constitute the objects of a separate non-charitable purpose trust, if
 - (i) the court determines that
 - (A) a non-charitable purpose may be validly created under section 77(1), and
 - (B) it is not practicable to separate the charitable purpose from the non-charitable purpose,
 - and
 - (ii) the court makes an order under clause (a), (b) or (c) separating other objects of the original trust;
- (e) an order that the terms of the disposition of property relating to a charitable and a non-charitable purpose must be construed as provided in section 80, if the court determines that
 - (i) the non-charitable purpose does not meet the requirements of section 77(1),
 - (ii) it is not practicable to separate the charitable purpose from the non-charitable purpose, and

- (iii) the court makes an order under clause (a), (b) or (c) separating other objects of the original trust;
- (f) an order that the trust takes effect as a non-charitable purpose trust, if the court determines that
 - (i) the non-charitable purpose meets the requirements of section 77(1), and
 - (ii) it is not practicable to separate any objects of the trust;
- (g) an order that the terms of the disposition of property purporting to create a trust must be construed as provided in section 80, if the court determines that
 - (i) the non-charitable purpose does not meet the requirements of section 77(1), and
 - (ii) it is not practicable to separate any objects of the trust.

(3) If the court makes an order under subsection (2)(a), (b), (c) or (d), the trustee must, subject to any terms in the trust instrument regarding apportionment of the trust property or the manner in which a power of apportionment may be exercised, divide the trust property as the trustee considers reasonable in the circumstances between any new trusts and powers of appointment.

(4) Despite subsection (2)(c) and (d), if the objects of a trust consist of a charitable purpose linked conjunctively or disjunctively with a purpose that is not described specifically but is referred to only by an indefinite qualifying term, such as “benevolent”, “worthy” or “philanthropic”, the trust takes effect as a charitable trust.

(5) The trustee must apply all of the property of the trust referred to in subsection (4) as if only the charitable purpose had been set out in the trust instrument.

Disposition purporting to create non-charitable purpose trust construed as power to appoint

80(1) This section applies in respect of a disposition referred to in subsection (2) whether the disposition is made before, on or after the date this section comes into force.

(2) If the terms of a disposition of property purport to create a trust that

- (a) does not create an equitable interest in any person, and
- (b) is for a specific non-charitable purpose, other than a non-charitable purpose referred to in section 77(1),

the terms of the disposition must be construed, subject to this section, as constituting a power to appoint the income or the capital, as the case may be, for a period not exceeding 21 years.

(3) Despite subsection (2), the terms of a disposition referred to in that subsection must not be construed as constituting a power to appoint if the terms of the disposition provide for an illegal purpose or a purpose contrary to public policy.

(4) Despite subsection (2), if a disposition referred to in that subsection is expressed to be of perpetual duration, the court may declare the disposition to be void if the court is of the opinion that, by voiding the disposition, the result would be closer to the intention of the person disposing of the property than would the period of validity provided by this section.

(5) An order under subsection (4) may be made on application by a person referred to in section 78(8).

(6) If a disposition referred to in subsection (2) provides for the expenditure of all or a specified portion of the income or capital within an annual period or another recurring period that is less than 21 years and that income or capital is not fully expended within that period, the person who would have been entitled to the property that is subject to the power to appoint, if the power to appoint had terminated at the expiration of that period, is entitled to that unexpended income or capital.

(7) If the income or capital that is subject to a power to appoint under subsection (2) is not fully expended within a period of 21 years, the person who would have been entitled to the property that is subject to the power to appoint, if the power to appoint had terminated at the expiration of the 21-year period, is entitled to that unexpended income or capital.

(8) Nothing in this section applies to any discretionary power to transfer a beneficial interest in property to any person as a gift.

(9) For the purpose of this section, a trustee's power to appoint for a non-charitable purpose trust that has failed is a special power and a trust power.

(10) This section prevails over any contrary provisions in a trust instrument.

Part 8 Additional Powers of the Court

Non-performance by trustee

81(1) On application by a trustee or beneficiary, the court may determine whether a trustee has refused or failed

- (a) to perform a duty imposed on the trustee, or
- (b) to consider in good faith the exercise of a power conferred on the trustee.

(2) If the court is satisfied that a trustee has refused or failed to perform or exercise duties or powers as provided in subsection (1), the court may

- (a) order the trustee to
 - (i) perform the duty, or
 - (ii) consider in good faith the exercise of the power and satisfy the court that the trustee has given due consideration to the exercise of the power,

or

- (b) remove the trustee.

Trustee may apply to court for directions

82(1) A trustee may apply to the court for directions on any matter or question of fact, law or discretion arising in respect of a trust.

(2) Without limiting subsection (1), if trustees are deadlocked on any matter arising with respect of a trust, a trustee may apply to the court for directions respecting the resolution of the matter.

(3) The duty of a trustee who follows the directions given under subsection (1) or (2) is discharged with respect to the subject-matter of the directions, unless the trustee is guilty of fraud, wilful concealment or misrepresentation in obtaining the directions.

(4) This section prevails over any contrary provisions in a trust instrument.

Trustee may apply to court for order respecting distribution of trust property

83(1) On application by a trustee, the court may authorize the trustee to distribute trust property among the persons entitled to receive the trust property, with the trustee having regard only to

- (a) the persons whom the trustee has been able to locate after making diligent efforts, or
- (b) the claims or interests that the trustee has been able to determine after making diligent efforts.

(2) In making an order under subsection (1), the court may give directions respecting the procedure to be followed by the trustee in respect of a distribution of the trust property, including, without limitation, directions concerning the notice that must be given to persons who may have an interest in the distribution of the trust property.

(3) An order under subsection (1) does not prejudice the right of any creditor or claimant to follow the trust property into the hands of a person who receives it.

(4) This section prevails over any contrary provisions in a trust instrument.

Trustee may be relieved of liability for breach of trust

84(1) In this section, “exemption clause” means a provision of a trust instrument that excludes or restricts the liability of a trustee, including, without limitation, a provision that purports to do one or more of the following:

- (a) make the enforcement of the liability of the trustee subject to restrictive or onerous conditions;

- (b) permit a trustee to act despite a conflict between the trustee's personal interest and the powers and duties of the office of trustee;
- (c) exclude or restrict any right or remedy in respect of the liability of a trustee, or prejudice any person who pursues such right or remedy;
- (d) exclude or restrict rules of evidence;
- (e) negate a duty that, in the absence of the provision, would otherwise be imposed on the trustee.

(2) The court may relieve a trustee or former trustee either wholly or partly from personal liability if the court is satisfied that

- (a) the trustee or former trustee is or may be personally liable for a breach of trust, and
- (b) the trustee or former trustee,
 - (i) has acted honestly and reasonably, and
 - (ii) ought fairly to be excused for the breach of trust.

(3) Subject to subsection (4), an exemption clause in a trust instrument is effective to relieve, according to its terms, a trustee of liability for a breach of trust.

(4) If the court is of the opinion that the conduct of a trustee

- (a) constitutes a breach of trust, and
- (b) has been so unreasonable, irresponsible or incompetent that, in fairness to the beneficiary, the trustee ought not to be relieved by an exemption clause from liability for the breach of trust,

the court may declare that any exemption clause contained in the trust instrument is ineffective in respect of that breach of trust, and that the liability of the trustee for breach of trust is as if the trust instrument did not contain the clause.

(5) An application under this section may be made by

- (a) a beneficiary,

- (b) a trustee, or
- (c) a secured party.

(6) This section prevails over any contrary provisions in a trust instrument.

Contribution and indemnity

85(1) In this section, “breach of trust” includes any act or omission that gives rise to the liability of a trustee to the beneficiaries of the trust, regardless of whether the act or omission

- (a) is intentional,
- (b) is negligent, or
- (c) would give rise to a right for contribution or indemnity apart from this Act.

(2) This section applies only with respect to a breach of trust

- (a) that is the subject of a legal proceeding commenced after this Act comes into force, or
- (b) if no legal proceeding has been commenced for breach of trust, for which a claim for contribution or indemnity is made after this Act comes into force.

(3) Except as provided in this section, a trustee is not obligated to contribute to or indemnify a co-trustee in respect of a breach of trust.

(4) If a trustee commits a breach of trust, the court, having regard to the responsibility of each trustee for the loss to the trust, may determine the amount the court considers appropriate

- (a) for which each trustee is liable in order to make good the loss to the trust, or
- (b) that a trustee must contribute to another trustee.

(5) The court may

- (a) exempt a trustee from liability to make a contribution to another trustee, or

(b) order that any contribution due to, or to be recovered from, a trustee amounts to a complete indemnity.

(6) The powers conferred on the court by this section may be exercised despite that the trustee claiming contribution or indemnity or the trustee against whom the claim is made, or both of them, have acted fraudulently in breach of trust.

(7) If a trustee in breach of trust is insolvent, the court may apportion liability for making good the loss to the trust and any other losses as is appropriate among other solvent co-trustees who are found liable.

(8) If the beneficiaries have settled with a trustee who is in breach of trust and who subsequently seeks contribution from a co-trustee, the court, in making any contribution order and without limiting subsections (4) and (5), may consider whether the settlement was reasonable.

Beneficiaries instigating breaches of trust

86(1) If a trustee commits a breach of trust, and the breach was at the instigation or request or with the consent of some but not all of the beneficiaries, the court may order the beneficiaries who instigated, requested or consented to the breach to contribute to or indemnify the trustee or persons claiming through the trustee.

(2) If the court makes an order under subsection (1), the court may order that all or part of the interest of the beneficiaries in the trust is to be used to satisfy the obligation to contribute to or indemnify the trustee or persons claiming through the trustee.

Payment into court

87(1) A trustee may pay into or deposit in court trust money or trust securities.

(2) If a trustee is not available to receive payment or transfer of trust money or trust securities and give a receipt for the trust money or trust securities, the court may order, on application by a person in possession or control of the trust money or trust securities, that the trust money or trust securities be paid into or deposited in court.

(3) A receipt given by a clerk of the court for any money or securities paid into or deposited in court under subsection (1) or (2) relieves the trustee or other person paying or depositing the money

or securities from any further obligations relating to the money or securities.

(4) The court may make any orders it considers necessary or appropriate regarding the trust money or trust securities paid into or deposited in court under subsection (1) or (2) and for the administration of the trust to which the money or securities are subject.

(5) This section prevails over any contrary provisions in a trust instrument.

Costs paid by party or out of trust property

88(1) The court may order costs of a proceeding under this Act, in the amounts or proportions the court considers appropriate, to be paid

- (a) by or to a party to the proceeding, or
- (b) out of the trust property.

(2) The court may order costs of a transfer of or other transaction respecting trust property, in the amounts or proportions the court considers appropriate, to be paid out of the trust property.

(3) For the purposes of subsection (1)(b) or (2), the court may designate all or part of the trust property as the source for the payment.

Part 9 General

Interpretation and evidence

89 For the purposes of determining the settlor's intention, the court may admit the following evidence:

- (a) evidence as to the meaning, in either an ordinary or a specialized sense, of the words or phrases used in the trust;
- (b) evidence as to the meaning of the provisions of the trust in the context of the settlor's circumstances at the time of the making of the trust;

- (c) evidence of the settlor's intention with regard to the matters referred to in the trust.

Ability of person to have child

90(1) In this section, "physician" means

- (a) a regulated member of the College of Physicians and Surgeons of Alberta under the *Health Professions Act* who is authorized to use the title "physician" and holds a practice permit issued under that Act,
- (b) a professional corporation that is registered under the *Health Professions Act* with the College of Physicians and Surgeons of Alberta, or
- (c) in respect of medical services provided in a jurisdiction other than Alberta, a person who is lawfully entitled to practise medicine under the laws of that jurisdiction.

(2) If, in the administration of a trust, a question arises that turns on the ability of a person to have a child at some future time, it must be presumed that

- (a) a male is able to have a child at the age of 14 years or over, but not under that age, and
- (b) a female is able to have a child at the age of 12 years or over, but not under that age or over the age of 55 years.

(3) Despite subsection (2), in the case of a living person, it may be presumed that the person is or will be unable to have a child at the time in question if

- (a) that person provides information or a reason supporting why that person is or will be unable to have a child at that time,
- (b) there is a decision of the court that the person is or will be unable to have a child at that time, or
- (c) there is an opinion of a physician that the person is or will be unable to have a child at that time.

(4) Subject to subsection (5), if, in the administration of a trust, a question is decided by treating a person as able or unable to have a child at a particular time, then the person must be so treated for the purpose of any related question that may arise in the administration

of the trust, even if the evidence on which the finding of ability or inability to have a child at the particular time is proved by subsequent events to have been erroneous.

(5) If, in the administration of a trust, a question is decided by treating a person as unable to have a child at a particular time and that person subsequently has a child at that time, the court may make an order that it considers appropriate to protect the right that the child would have had in the trust property as if

- (a) that question had not been decided, and
- (b) that child would, apart from the decision, have been entitled to a right in the trust property.

(6) For the purposes of this section, the possibility that a person may at any time have a child by adoption may not be considered in deciding a question that turns on the ability of a person to have a child at some particular time, but if a person does subsequently have a child by adoption, subsection (5) applies in respect of that child.

(7) Subject to subsection (8), a trustee is not liable for a loss arising from a payment of trust money or a transfer of trust property further to a decision to treat a person as unable to have a child at a particular time if, before the trustee has notice that the person subsequently had a child at the particular time, the trustee

- (a) relies on a decision of the court that the person is or will be unable to have a child at that time, or
- (b) relies on an opinion of a physician that the person is or will be unable to have a child at that time.

(8) Subsection (7) does not apply if the trustee is guilty of fraud, wilful concealment or misrepresentation in obtaining a decision or opinion referred to in that subsection.

Assumptions if notice of trust received

91(1) Subsection (2) applies to a person who receives notice of the existence of a trust by reason only of the production or registration of a document evidencing

- (a) the appointment of a trustee,

- (b) a trustee ceasing to hold office, or
- (c) the vesting of property in a trustee.

(2) A person to whom this subsection applies may assume without inquiry that

- (a) a former trustee possessed the powers the former trustee exercised or purported to exercise over the trust property, and
- (b) a current trustee has the powers the current trustee has exercised or purports to exercise over the trust property.

(3) This section prevails over any contrary provisions in a trust instrument.

Purchaser takes property subject to trust if notice of defect

92(1) In this section, “purchaser” means

- (a) a purchaser for value of trust property,
- (b) a secured party, or
- (c) any other person who for value received an interest in or a claim on trust property.

(2) Subject to the *Land Titles Act*, a purchaser takes the trust property subject to the terms of the trust if the purchaser, at the time of the purchase, has received notice that

- (a) a former trustee did not possess, or a current trustee does not possess, a power purported to be exercised with respect to the trust property, or
- (b) a former trustee or current trustee has acted in breach of trust with respect to the trust property.

(3) This section prevails over any contrary provisions in a trust instrument.

Person not liable if compliant with Act or order

93(1) Subject to this Act, a person who complies with this Act or with an order made under this Act is not liable for a loss arising

from anything done or permitted to be done under this Act, unless it was done or permitted to be done in bad faith.

(2) This section prevails over any contrary provisions in a trust instrument.

Receipt relieves person from further obligation

94 A receipt given by a trustee for any money or other property received by the trustee relieves the person paying or otherwise transferring the money or other property from any further obligation relating to the money or other property.

Incapacitated persons and minors

95(1) If a beneficiary is an incapacitated person for whom an attorney has been appointed under the *Powers of Attorney Act* or a trustee has been appointed under the *Adult Guardianship and Trusteeship Act*, the attorney or trustee, as the case may be, is the representative of that beneficiary for the purposes of this Act.

(2) Without limiting subsection (1),

- (a) any action required or permitted to be taken by the beneficiary,
- (b) any notice or report required or permitted to be given to the beneficiary, and
- (c) any consent or agreement required or permitted to be given by the beneficiary

is validly taken or given if it is taken by, given to or given by the attorney or trustee, as the case may be, on behalf of the beneficiary.

(3) If a beneficiary is a minor for whom a trustee has been appointed by court order under the *Minors' Property Act*, the trustee is the representative of that beneficiary for the purposes of this Act.

(4) Without limiting subsection (4),

- (a) any action required or permitted to be taken by the beneficiary,
- (b) any notice or report required or permitted to be given to the beneficiary, and

- (c) any consent or agreement required or permitted to be given by the beneficiary

is validly taken or given if it is taken by, given to or given by the trustee on behalf of the beneficiary.

Notice to minor

96 If a beneficiary is a minor, notice must be given in accordance with the *Minors' Property Act* to the Public Trustee and, where required under that Act, to the beneficiary.

Agent of beneficiary

97 For the purposes of this Act,

- (a) any action required or permitted to be taken by a beneficiary,
- (b) any notice or report required or permitted to be given to a beneficiary, and
- (c) any consent or agreement required or permitted to be given by a beneficiary

is validly taken or given if it is taken by, given to or given by an agent of the beneficiary acting within the scope of the authority conferred by that beneficiary.

Delivery of documents

98(1) In this section,

- (a) “electronic” has the same meaning as in the *Electronic Transactions Act*;
- (b) “recorded mail” means a form of delivery by mail or courier in which receipt of the document or notice is acknowledged in writing.

(2) Where this Act requires documents or notice to be delivered to a person, the documents or notice may be delivered

- (a) in person or to a lawyer who is authorized to accept delivery on behalf of a person,

- (b) by recorded mail, or
- (c) by electronic transmission.

Regulations

99 The Lieutenant Governor in Council may make regulations

- (a) respecting notices under sections 12 and 14;
- (b) specifying a percentage for the purpose of total return investments under section 44;
- (c) varying the length of a valuation period for the purposes of section 44(9)(c)(i);
- (d) respecting matters for which a non-charitable purpose trust may be created under section 77(1);
- (e) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent and purpose of this Act.

Transitional regulations

100(1) In this section, “former Act” means the *Trustee Act*, RSA 2000 cT-8.

(2) The Lieutenant Governor in Council may make regulations

- (a) respecting the transition to this Act of anything from the former Act;
- (b) to deal with any difficulty or impossibility resulting from this Act or the transition to this Act from the former Act.

(3) The Lieutenant Governor in Council may, by regulation, amend regulations made under any Act of Alberta for the purposes of making any changes the Lieutenant Governor in Council considers necessary or advisable as a result of the transition to this Act from the former Act.

(4) Regulations authorized by subsection (3) may be made despite that the regulation being amended was made by a member of the Executive Council or some other person or body.

Part 10
**Consequential Amendments,
Repeal and Coming into Force**

Amends SA 2008 cA-4.2

101(1) The *Adult Guardianship and Trusteeship Act* is amended by this section.

(2) Section 59 is amended

(a) by repealing subsection (1) and substituting the following:

Investments

59(1) The following sections of the *Trustee Act* apply to a trustee appointed under this Act, other than the Public Trustee:

sections 2 and 3;
section 33 except subsection (4)(b);
sections 34 to 38;
sections 51 to 57.

(b) in subsection (2) by striking out “Section 4(1)” and substituting “Section 36”;

(c) in subsection (3) by striking out “section 2(1)” and substituting “section 3”.

Amends RSA 2000 cP-20

102(1) The *Powers of Attorney Act* is amended by this section.

(2) Section 7.1 is repealed and the following is substituted:

Application of Trustee Act

7.1 The following sections of the *Trustee Act* apply to an attorney exercising a power of investment under an enduring power of attorney:

sections 2 and 3;
section 33;
sections 35 to 37;
sections 51 to 57.

Explanatory Notes

101(1) Amends chapter A-4.2 of the Statutes of Alberta, 2008.

(2) Section 59 presently reads:

59(1) Sections 2 to 8, except section 3(5)(b), of the Trustee Act apply to a trustee appointed under this Act, other than the Public Trustee.

(2) Section 4(1) of the Trustee Act does not apply in the case of liability for loss arising from a decision or course of action by a trustee that

(a) contravenes the express terms of the trusteeship order, or

(b) is contrary to the express terms of a trusteeship plan approved by the Court.

(3) A trusteeship order and any trusteeship plan approved by the Court are deemed to be an instrument creating a trust for the purposes of section 2(1) of the Trustee Act.

102(1) Amends chapter P-20 of the Revised Statutes of Alberta 2000.

(2) Section 7.1 presently reads:

7.1 Sections 2 to 8 of the Trustee Act apply to an attorney exercising a power of investment under an enduring power of attorney.

Amends SA 2004 cP-44.1

103(1) The *Public Trustee Act* is amended by this section.

(2) Section 37(5) is repealed and the following is substituted:

(5) The Public Trustee is governed by the following sections of the *Trustee Act* when making or retaining separate investments for a client:

sections 2 and 3;
section 33;
sections 35 to 38;
sections 51 to 57.

Repeal

104 The *Trustee Act*, RSA 2000 cT-8, is repealed.

Coming into force

105 This Act comes into force on Proclamation.

103(1) Amends chapter P-44.1 of the Statutes of Alberta, 2004.

(2) Section 37(5) presently reads:

(5) The Public Trustee is governed by sections 2 to 8 of the Trustee Act when making or retaining separate investments for a client.

104 Repeal.

105 Coming into force.

RECORD OF DEBATE

Stage	Date	Member	From	To
		Interventions	From	To
Stage	Date	Member	From	To
		Interventions	From	To
Stage	Date	Member	From	To
		Interventions	From	To
Stage	Date	Member	From	To
		Interventions	From	To
Stage	Date	Member	From	To
		Interventions	From	To