

BILL

No. of 1919.

An Act to establish the Office of Public Trustee.

(Assented to , 1919.)

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

1. This Act may be cited as "*The Public Trustee Act.*"
2. In this Act, if not inconsistent with the context,—
 1. "Expenses" includes costs and charges;
 2. "Instrument" includes Act of Parliament of the United Kingdom of Great Britain and Ireland applicable to Canada, Act of Parliament of Canada, and Act of the Legislative Assembly, or Ordinance of the North-West Territories;
 3. "Judge" means a judge of the Supreme Court of Alberta, and as respects trusts within his jurisdiction, a District Court judge;
 4. "Land" includes corporeal as well as incorporeal hereditaments, and any interest therein, and also an undivided share of land;
 5. "Letters of administration" means letters of administration of the estate and effects of a deceased person, whether general or with a will annexed, or limited either in time or otherwise, and administrator has a meaning similarly extended;
 6. "Minister" means the Provincial Treasurer;
 7. "Prescribed" means prescribed for the time being by rules under this Act;
 8. "Property" includes real and personal property and any estate or interest in any property, real or personal, and any debt, and anything in action, and any other right or interest, whether in possession or not;
 9. "Securities" includes stocks, funds and shares;
 10. "Stock" includes shares whether fully paid up or not, and any fund, annuity or security transferable in a book or register, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein;

11. "Trust" includes an executorship or administratorship, and the expression "trustee" shall be construed accordingly;

12. "Trust property" includes all property in the possession or under the control wholly or partly of the public trustee by virtue of any trust.

3. There shall be established the office of Public Trustee.

(2) The public trustee shall be a corporation sole under that name, with perpetual succession and an official seal, and may sue and be sued under the above name like any other corporation sole.

(3) The public trustee shall be appointed and the terms of his appointment fixed by the Lieutenant Governor in Council.

(4) The Minister may, from time to time, appoint such other deputies, officers and servants as may be necessary for the purpose of this Act.

4. The public trustee may accept any appointment by the Government, or any other person, or by a court and either generally or in a particular case (as the case may be) as trustee, executor, administrator, guardian, committee, agent, attorney, arbitrator, umpire, receiver, liquidator, official guardian, official assignee or administrator of lunatics' estates under any instrument authorizing the appointment of any of the said persons or under the exercise of the general jurisdiction of any court, and any such other appointment as may be prescribed but he shall not accept any such appointment jointly with any other persons or person without the prior consent of the Minister.

(2) The public trustee may accept and administer any charitable or public trust.

5. The acceptance of the public trustee of any appointment made by any person other than the government or a court shall be declared by a writing signed and sealed by him.

6. The public trustee may be appointed trustee either sole, or with the prior consent of the Minister, joint trustee by any court, judge or person, including the Crown, desiring to create or declare a trust.

7. The public trustee, notwithstanding the terms of the trust instrument, if any, may be appointed sole, or with the prior consent of the Minister, joint trustee of any

property subject to a trust by the trustees or trustee of such property or by the person authorized by statute or otherwise to appoint new trustees of such property.

8. The public trustee may be appointed sole executor or administrator or with the prior consent of the Minister joint executor or administrator of the estate of any person whether dying before or after the passing of this Act,—

- (a) By the executors of such estate who have taken probate;
- (b) By the executors named in the will where probate has not been taken;
- (c) By the administrators of any such estate.

(2) Upon any such appointment the public trustee shall be sole or joint trustee of the said estate as the case may be, whether the appointing persons were or were not trustees.

9. Where the consent of any person is necessary to the appointment of an executor, administrator or trustee and such person refuses to consent to the appointment of the public trustee, or is an infant, idiot, lunatic, or person of unsound mind, or is absent from Alberta or is under any disability, then such appointment may be made without such consent, if a judge consents thereto.

10. The written acceptance of the public trustee of any appointment as trustee, executor or administrator shall, without any conveyance or assignment operate to vest the trust property in the public trustee and the right to transfer, or call for a transfer of any stock, portion of such property, and to receive the dividend or income thereof and to sue for and recover any chose in action, portion of such property.

(2) Upon receipt of a copy of the said acceptance, the registrar of land titles for the district in which any land, portion of the trust property, is situate shall without requiring any further authority issue a certificate of title with respect thereto to the public trustee.

(3) In all cases where the public trustee becomes sole trustee, any trustee entitled under the trust to administer the estate shall upon any such vesting be discharged from all liability attaching to the administration, except in respect of past acts.

11. On the death of any person domiciled in Alberta, or who has property in Alberta, who has died or hereafter dies in Alberta or elsewhere intestate, the public trustee shall, if he thinks fit to apply therefor, be entitled as of right to letters of administration of such property.

(2) The application may be made in any judicial district of the court at the discretion of the public trustee.

(3) On such application an affidavit by the public trustee that he has made due inquiries and is satisfied that such person has died intestate shall be conclusive proof of the death and intestacy.

Provided that if some other person permanently resident in Alberta would save for this section be entitled to letters of administration and applies therefor, the court may grant the same to the person so applying, but the court shall not require the public trustee to give notice of his application to any such person or any other person.

12. Where any person has heretofore died or hereafter dies, in or out of Alberta, leaving property therein the gross value of which as estimated by the public trustee does not at the time of the election hereinafter mentioned exceed five thousand dollars, and no person has taken out probate or letters of administration, the public trustee may, and in lieu of taking out probate or obtaining an order to administer, file in the office of the District Court at Edmonton an election in writing setting forth the name of the deceased, his residence and occupation so far as then known to the public trustee, and of his estate so far as then known and electing to administer and, in the case of a testate deceased, stating that after due inquiries he believes that the document or documents annexed to such election is the will of the deceased entitled to probate.

(2) On such election being filed the public trustee shall be the duly constituted executor or administrator, as the case may be, of the property of the deceased, and shall publish in The Alberta Gazette a notice that he has made such election as aforesaid, which notice shall be conclusive evidence of his right to administer.

(3) If after filing such election the gross value of the property to be administered is found to exceed seven thousand dollars, the public trustee shall, as soon as practicable thereafter, file in the said office of the District Court a memorandum under his hand stating that fact, and shall proceed in the ordinary manner to obtain probate or letters of administration, as the case may be.

(4) The filing of any election under this Act shall operate in the same way as if it were a written acceptance of the public trustee and as if he had been duly appointed executor or administrator, as the case may be.

(5) The only fee payable to any court officer in respect of the right to administer obtained by filing an election as aforesaid shall be one dollar.

(6) A copy of any election certified as a correct copy by the clerk of the District Court shall be equivalent to an

exemplification for all purposes; and no fee under any rule of court shall be payable in respect thereof except a fee of one dollar.

13. Prior to the grant of probate or letters of administration to some other person, the public trustee may, if he thinks fit, and subject to the exceptions hereinafter expressed, administer the estate of any deceased person, as if he had been duly appointed executor or administrator in respect thereof.

(2) In the event of some other person or persons domiciled in Alberta being to the knowledge of the public trustee entitled to probate or letters of administration and in the further event of there being, in the opinion of the public trustee, no circumstances requiring an immediate administration of the estate, the public trustee shall, prior to the exercise of the powers conferred by this section, by letter or telegram notify such other person or one of such other persons of his intention to administer the estate, and may if he thinks fit proceed to so administer upon the expiry of one month from the despatch of the said letter or telegram unless within that time an application for probate or letters of administration is made by the person notified, or, as the case may be, upon such application being refused.

(3) In the exercise of the powers conferred by this section the public trustee shall not sell any portion of the property, except such as is of a perishable nature, and shall not lease, exchange, mortgage or partition any portion thereof.

14. Upon the expiry of three months from the death of any person testate and prior to the grant of probate or letters of administration to any other person, the public trustee may apply for letters of administration with the will annexed, and the judge shall make such grant unless the person otherwise entitled to probate or letters of administration shows that the delay in making his application was unavoidable and accidental.

(2) On any such application no costs shall be awarded against the public trustee.

15. Where any grant is made under the last preceding section, the same may be revoked and a new grant made on the application of any person otherwise entitled to probate or letters of administration with the will annexed, upon proof that he has not renounced or refused probate or administration, that he was out of Alberta at the time of the first mentioned grant and that fourteen days' notice in writing of his intention to so apply has been given to the public trustee.

16. Where under any provision of this Act the estate of any deceased person is in whole or in part administered by the public trustee and the right to administer subsequently passes to any other person, then upon such passing all liability upon any contract or otherwise in connection with the said estate shall straightway determine in so far as the public trustee is concerned and shall pass to such other person together with such portion of the estate of the said deceased person as then remains unadministered. All expenses incurred by the public trustee in connection with the said estate or any application in respect thereof shall be a first charge upon the property of the deceased person and shall be paid or duly and to the satisfaction of the public trustee secured to him prior to the grant of probate or letters of administration to any other person, and all things done or omitted by the public trustee under any provision of this Act shall bind any person subsequently obtaining probate or letters of administration as if they had been done or omitted by him.

17. All acts of administration or trusteeship done by the public trustee in his dealings with the property of a deceased or other person and in the *bona fide* belief that he is duly exercising his statutory powers or that a state of facts exists entitling him to exercise such powers shall be as good, valid and effectual as if he were the lawful executor, administrator or trustee of the property with which he deals, and notwithstanding that he is *bona fide* mistaken as to the decease, testacy, intestacy, validity or invalidity of the will of such deceased person or as to the occurrence of any other condition precedent to the exercise of his power, as if such decease, testacy, intestacy, validity, invalidity or occurrence had taken place, existed or was established, as the case may be.

(2) The onus of proving the absence of *bona fides* on the part of the public trustee shall be upon any person who controverts the same.

18. In particular but without prejudice to the generality of the preceding section the public trustee, if he acts in good faith (and the onus of showing a want of good faith on his part shall lie upon the person impeaching his action), shall not be liable by reason of his acceptance as correct and action upon the faith of any written statement by any person of credibility, as to birth, death, marriage or any other matter of pedigree or relationship, or other matter of fact, upon which the title to the trust property or any part thereof may depend, given under the usual office routine of the public trustee.

19. Any person may pay money due to an infant to the public trustee with the consent of the latter and by writing direct him to account to such infant according to the provisions of the law, will or trust instrument, as the case may be; and such writing shall vest in the public trustee all the powers of the person giving the direction.

20. Where an estate is being administered by the public trustee, any person desiring an advance against his share may apply to that effect and the public trustee may make an advance to that person not exceeding in the whole one-half of the value of the share as estimated by the public trustee.

(2) Any such advance with interest thereon as is agreed shall be a first charge on the share, with respect to which it is made and a certificate under the hand and seal of the public trustee stating the amount due for advances and interest at any specified rate by the person to whom such advance was made and the share against which it was made shall be sufficient evidence of the facts stated therein until the contrary is proved.

21. The public trustee shall have such powers with regard to the management and disposal of the trust property as may be from time to time prescribed, provided that such powers shall not be exercised in contravention of the express terms of this Act or of the instrument (if any) creating the trust.

22. The public trustee shall be entitled without instituting an action, and without judicial proceedings, when any question arises under this Act or in the course of his dealings with any trust property or otherwise in the course of his duties to take the opinion of a judge.

(2) Any such question shall be submitted to a judge in such manner and at such time as he may direct, and shall be accompanied by such statement of facts, documents, and other information as he may require; and the public trustee or some other person authorized by him shall, if the judge so desires, attend upon him at such time and place as the judge may appoint.

(3) The judge may before giving his opinion require the attendance of, or communication with, any person interested as trustee or beneficiary, but no such person shall have a right to be heard except in accordance with the judge's direction.

(4) ~~The judge shall give his opinion in writing signed by him and the public trustee shall act in accordance with such opinion, and shall upon the request in writing of any person interested as aforesaid communicate to him the effect of such opinion.~~

(5) The duty of advising upon questions submitted by the public trustee shall be assigned by the Chief Justice to a particular judge of the Supreme Court resident in Edmonton:

Provided that in case of absence, illness or other good cause or upon the request of the judge so assigned any other judge may act for the purpose of this section.

(6) The public trustee acting upon any such opinion shall be indemnified against all acts or things done thereunder, unless in representing the facts he has been guilty of wilful concealment or misrepresentation.

23. Where the public trustee is administering any estate, and such estate or any part thereof cannot be distributed by reason of the fact that it is not known to the public trustee whether any person entitled to or to a part of such estate is alive or dead or where that person is, the public trustee may apply for direction to the judge assigned as aforesaid or to a judge duly acting in his stead.

(2) In considering such application the judge shall order what advertisements are to be issued, and, in the event of the person aforesaid or his personal representative not responding thereto within a reasonable time and duly sending in a claim to the public trustee, shall by further order authorize the latter to distribute such estate or part thereof, disregarding the possible claim of such person and all persons, claiming by, through or under him by derivative title or otherwise howsoever.

(3) Such further order shall exonerate the public trustee from any further liability in respect to such estate or part thereof so dealt with, but nothing herein contained shall prejudice or affect the right of such person or persons to follow the estate or any part thereof into the hands of the persons who have received the same pursuant to such order.

(4) Such order shall contain such provisions as to time, payment of costs and other incidental matters as may seem good to the judge.

24. Save as is hereinafter provided all capital moneys however arising, and whether directed to be invested or not, shall unless there is in the trust instrument direction in express words not to so invest be one common fund, and shall be invested as provided by section 26 hereof; and any investments made from such common fund shall not be made on account of or belong to any particular estate.

(2) The interest payable to the respective estates, the moneys of which form the common fund, shall be at a rate to be from time to time determined by the Lieutenant

Governor in Council, and such rate of interest shall be credited to the respective estates quarterly, namely, on the first day of January, on the first day of April, on the first day of July, and on the first day of October in each year.

(3) On the moneys belonging to any estate no rate shall be allowed higher than per centum per annum on an amount not exceeding \$20,000 and on any amount exceeding \$20,000 not higher than per centum per annum on the first \$20,000 or higher than per centum per annum on the excess.

(4) Subject to the limitations aforesaid as to the rate of interest, the Lieutenant Governor in Council may from time to time make such regulations as he thinks proper as to the payment or nonpayment of interest on moneys belonging to any estate; and as to the period from which interest, if allowed, is to be computed.

25. Where there is in the trust instrument an express prohibition in terms forbidding the investment of the trust moneys in the common fund, such moneys shall not form part of the common fund, and the public trustee may invest such moneys as directed by the trust instrument; but such investments shall not be entitled to the protection afforded by this Act; and any loss or deficiency in respect of any such investments, or of the money received therefrom or realized thereby, shall be borne by the estate to which such moneys belong, or if received and realized would belong.

26. Unless expressly prohibited the public trustee may invest capital moneys—

- (a) In the securities authorized by *The Trustee Ordinance*;
- (b) In the Government securities of the United Kingdom or of any colony or dependency thereof, issued under the authority of the parliament or other legislative authority thereof;
- (c) In debentures issued by any local authority (being the council, or governing authority of a city, town, village, municipal district, school district, or hospital district) under any law now or hereafter in force, secured upon general or special rates or taxes or upon real estate held in fee simple free from incumbrances other than a lease or upon the rents and profits of such real estate. No objection shall be allowed in any court to any rate or tax given as security for loans by the public trustee and no defence shall be heard by any court on any claim for any such rate or tax if such objection or

defence alleges any irregularity in the proceedings for pledging, making or levying such rate or tax or raising such loan, or questions the purpose or object of such loan; nor shall any action or proceedings be allowed by any court for the purpose of questioning the validity of such rate or tax or for restraining the recovery thereof on any such grounds as aforesaid. A certificate under the hand and seal of the public trustee stating that the moneys mentioned therein were advanced by him on the security of any such rate or tax shall, on being produced to any court, be sufficient evidence of the matters therein recited, and shall operate to bar any such action or proceeding as aforesaid, provided that no greater advance shall be made where the debentures are secured upon real estate than three-fifths of the value of such real estate, and if the debentures are secured upon rents and profits, then no advances shall be made unless such rents and profits are sufficient to pay two-thirds more than the annual interest payable in respect of the advance;

- (d) In advances by way of mortgage on the security of any real estate held in fee simple in Alberta and free from incumbrances (not including in such terms leases or easements) in manner and form and to the extent from time to time prescribed;
- (e) In fixed deposits in any chartered bank in Canada.

27. If the common fund is insufficient to meet the lawful claims thereon, the Minister shall, without further appropriation than this Act, pay such sums out of the General Revenue Fund as may be necessary to meet the deficiency.

28. The public trustee may, in order to admit of the moneys in the common fund being kept invested as closely as possible, obtain advances from the Minister or the bank at which the public trustee's account is kept, by hypothecating securities held by him in respect of investments of the common fund. Any such advance shall be for such period not exceeding four months and at such rate of interest as the Minister approves and may be renewed from time to time.

29. The public trustee shall, within thirty days after the close of each year ending on the thirty-first day of March, prepare a balance sheet setting forth—

- (a) The total receipts and expenditure of or in the public trustee's account during such year, and the property and investments held and made during that period;

(b) A Profit and Loss Account setting forth the total revenue and expenditure of the public trustee including advances from the General Revenue Fund, and losses chargeable to such revenue.

(2) The public trustee shall send such balance sheet to the Minister, by whom it shall forthwith be laid before the Legislative Assembly if sitting, or, if not, then within ten days after the commencement of the next ensuing session.

30. If in the public trustee's account the balance at the credit of the profit and loss account is at any time insufficient to meet the charges thereon, the Minister may from time to time, without further appropriation than this Act, advance such sums out of the General Revenue Fund as may be necessary to meet such charges.

(2) Moneys so advanced shall be repaid by the public trustee to the General Revenue Fund so soon as there is in the public trustee's account a balance available for such repayment.

(3) If the balance in the profit and loss account is more than sufficient to meet the charges thereon, the public trustee shall invest one-fourth part of such balance, and shall retain the same with the accumulations thereof as an Assurance and Reserve Fund, out of which the deficiency of any subsequent year may be provided, and shall from time to time, at such times as the Minister directs, pay the remaining three-fourths of the excess into the General Revenue Fund as part thereof.

31. Subject to regulations under this Act and unless a judge otherwise orders, the condition and accounts of any trust shall on an application being made and notice thereof given in the prescribed manner by or on behalf of any trustee or beneficiary be investigated and audited by such solicitor or public accountant as may be agreed on by the applicant and the trustees, or in default of agreement by the public trustee or some person appointed by him:

Provided that (except with the leave of the court) such an investigation or audit shall not be required within twelve months after any such previous investigation or audit and that a trustee or beneficiary shall not be appointed under this section to make an investigation or audit.

32. Where in any conveyancing transaction between the public trustee and any person the solicitor to the public trustee acts for both parties, or where he acts in any matter incidental to his duties, the liability which the solicitor to the public trustee would incur if he were practising on his own account shall be borne by the public trustee in his official capacity.

33. Where by reason of the negligence of any member of the staff of the public trustee any money loss is incurred or any extra payment has to be made, the amount involved may, with the approval of the Minister, be charged to profit and loss without further appropriation than this Act.

34. Any officer who is authorized by the public trustee in writing in that behalf may make any oath or declaration required to be made by the public trustee, under the rules of any court or otherwise, or verify any account and give personal attendance in any court or place in lieu of the public trustee.

(2) The public trustee may authorize in writing any officer to execute transfers and assurances of any real or personal property, to give any consent requiring to be filed in any court or sign any documents or instruments requiring the signature of the public trustee, or to do any other act or thing required to be done by the public trustee.

(3) Such officer shall sign his personal name, adding the words "acting under the authority of the public trustee pursuant to *The Public Trustee Act*," and affix the public trustee's seal of office in cases requiring the use of such seal.

(4) Such authority may either be general or apply to a particular case.

(5) Any such transfer, assurance, consent, document, or instrument executed as aforesaid by an officer so authorized shall have the same effect as if the same were duly executed by the public trustee.

(6) No person shall be concerned to inquire whether such officer is duly authorized, and such officer's signature shall be judicially taken notice of without further proof.

35. The public trustee may at any time require a statutory declaration or other sufficient evidence that a person is alive and is the person to whom any money or property is payable or transferable and may refuse payment or transfer until such declaration or evidence is produced.

36. The Lieutenant Governor in Council may from time to time make regulations—

- (a) Prescribing the appointments which the public trustee is authorized to accept;
- (b) Specifying the matters or services for which charges may be made by the public trustee or in respect of which remuneration shall be payable to him, and fixing, by scale or otherwise, the amounts thereof, or empowering the public trustee so to do;

- (c) Fixing, by scale or otherwise, the professional fees and charges payable in respect of professional services rendered to the public trustee, or under his instructions by the solicitor to the public trustee acting as barrister or solicitor, or by outside barristers or solicitors, or empowering the public trustee so to do;
- (d) Prescribing the powers of the public trustee as to the management or disposal of trust property;
- (e) Prescribing the forms of official instruments and documents to be used in the conduct of the business of the office of the public trustee;
- (f) Defining the right of access to books, accounts, vouchers, and other documents, of an auditor appointed under this Act, the remuneration, and the method of appointment and removal of an auditor;
- (g) For any other matter which by this Act is expressed to be prescribed or which he thinks necessary for the purpose of giving full effect to this Act.

No. ...

SECOND SESSION
FOURTH LEGISLATURE
9 GEORGE V
1919

BILL

An Act to establish the office of
Public Trustee.

Received and read the

First time

Second time

Third time

HON. MR. MITCHELL.

EDMONTON:
J. W. JEFFERY, KING'S PRINTER
A. D. 1919