

# 2009

## CHAPTER T-23.01

### An Act respecting Trustees and making consequential amendments to other Acts

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(Assented to March 31, 2009)

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

## PART I

### Short title, Interpretation and Application of Act

#### Short title

1 This Act may be cited as *The Trustee Act, 2009*.

#### Interpretation

2 In this Act:

- (a) **“capacity”** means the ability:
  - (i) to understand information relevant to making a decision; and
  - (ii) to appreciate the reasonably foreseeable consequences of making or not making a decision;
- (b) **“court”** means the Court of Queen’s Bench;
- (c) **“prescribed”** means prescribed in the regulations;
- (d) **“property attorney”** means a property attorney as defined in *The Powers of Attorney Act, 2002*;
- (e) **“property guardian”** means a property guardian as defined in *The Adult Guardianship and Co-decision-making Act*;

- (f) **“trust”** includes:
- (i) cases where a trustee has some beneficial interest in the subject of the trust; and
  - (ii) the duties incidental to the office of an executor or administrator;
- but does not include the duties incidental to an estate conveyed by way of mortgage;
- (g) **“trust instrument”** means any of the following that creates or varies a trust:
- (i) a deed, will or other writing;
  - (ii) an Act or regulation made pursuant to an Act;
  - (iii) an oral declaration;
- but does not include a judgment or order of the court;
- (h) **“trustee”** means a person who is the trustee of a trust, regardless of how that person is appointed, and includes, unless otherwise provided:
- (i) an executor or administrator;
  - (ii) a property guardian;
  - (iii) the guardian of the property of a child as defined in *The Children’s Law Act, 1997*; and
  - (iv) a person named as a trustee in a will but who died before the testator.

**Application of the Act**

**3** This Act applies to all trusts and trustees unless a contrary intention is expressed:

- (a) in this Act;
- (b) in any other Act or law; or
- (c) in a trust instrument.

**Powers in Act are supplementary**

**4(1)** Subject to subsection (2), the powers, rights and immunities conferred by this Act on a trustee are in addition to those conferred by the trust instrument, if any, creating the trust.

**(2)** Unless otherwise stated in this Act or any other Act, the powers, rights and immunities conferred by this Act on a trustee:

- (a) apply only if, and insofar as, a contrary intention is not expressed in the trust instrument, if any, creating the trust; and
- (b) are to have effect subject to the terms of the trust instrument, if any, creating the trust.

## PART II Applications to Court

### Persons entitled to apply for various court orders

5(1) Any of the following persons may apply to the court for an order appointing a new trustee or concerning any property that is subject to a trust:

- (a) any person creating or intending to create a trust;
- (b) any person beneficially interested in a trust;
- (c) any person appointed as a trustee;
- (d) the property attorney or property guardian of a beneficiary.

(2) Any of the following persons may apply to the court for an order concerning any property that is subject to a mortgage:

- (a) any person beneficially interested in the equity of redemption;
- (b) any person interested in the moneys secured by the mortgage.

(3) If a person applies to the court for an order, the person shall provide notice of the application to the trustees, the beneficiaries of the trust and any other persons that the court considers appropriate.

### Role of courts on application

6 On hearing an application pursuant to section 5, the court may direct:

- (a) that a reference be held to inquire into any facts that require investigation;  
or
- (b) that a trial of an issue be held.

## PART III General Principles Governing Trustees

### Duty of care and duty of good faith

7(1) In discharging his or her duties and exercising his or her powers, a trustee shall exercise that degree of care, skill and diligence that a person of ordinary prudence would exercise, having regard to the skill, experience and qualifications of the trustee.

(2) If a trustee possesses, or because of his or her profession or business ought to possess, a particular level of knowledge or skill that in all the circumstances is relevant to the administration of the trust, the trustee shall employ that particular level of knowledge or skill in the administration of the trust.

(3) A trustee shall administer the trust:

- (a) in good faith; and
- (b) in accordance with:
  - (i) its terms and purposes;
  - (ii) the interests of the beneficiaries of the trust; and
  - (iii) this Act.

**Certain trustees who are remunerated may not be relieved from duty of care**

**8** If a trustee receives remuneration to administer the trust and holds out that he or she possesses special skills or knowledge relevant to the administration of the trust, any clause in a trust that relieves that trustee from the obligation to exercise the duty of care set out in this Act is invalid.

**Conflicts of interest prohibited**

**9** A trustee shall discharge the trustee's duties and exercise the trustee's powers solely in the interests of the beneficiaries of the trust and, without limiting the generality of the foregoing, a trustee shall not knowingly permit a situation to arise:

- (a) in which the trustee's interest conflicts in any way with the discharge of the trustee's duties and the exercise of the trustee's powers; or
- (b) in which the trustee may derive a personal benefit or a benefit for any other person, except so far as the law or the trust instrument expressly permits.

**Court may allow conflicts of interest**

**10(1)** On application to the court, if it is shown that it would not be detrimental to the trust or its beneficiaries, and whether or not any beneficiary withholds consent, the court may make an order:

- (a) permitting a trustee to act notwithstanding that a trustee may be in a position that contravenes the trustee's duty to avoid a conflict of interest; or
- (b) excusing a trustee from liability notwithstanding that the trustee may be in breach of trust for having acted while in a position that contravened the trustee's duty to avoid a conflict of interest.

(2) The court may impose any terms and conditions that the court considers just on an order made pursuant to this section.

**Power to employ agents**

**11(1)** If it is reasonable and prudent to do so, a trustee may engage one or more persons as agents to carry out any act required to be done in the administration of the trust, including:

- (a) executing documents;
- (b) paying, transferring, receiving and investing money or other property; and
- (c) giving discharges for receipts.

(2) Subsection (1) does not authorize the delegation of authority to exercise any discretion respecting transferring or distributing trust property to or among the beneficiaries of the trust.

(3) In engaging an agent, a trustee shall:

- (a) personally select the agent;
- (b) be satisfied as to the agent's suitability to perform the act for which the agent is to be engaged; and
- (c) carry out a reasonable and prudent supervision of the agent.

- (4) A trustee is liable for loss caused by the default of an agent only if:
- (a) the trustee is in breach of subsection (3); and
  - (b) the loss is a consequence of that breach.
- (5) A trustee shall not engage a co-trustee as an agent unless the engagement would have been reasonable and prudent if the co-trustee had not been a co-trustee.
- (6) A trustee who has engaged an agent may authorize the agent in writing to engage another person to carry out any act for which the agent was engaged, unless the trust instrument expressly prohibits the trustee from authorizing the engagement of a sub-agent.

**Powers and duties of surviving trustees**

**12** If a power is conferred or a duty imposed on two or more trustees jointly, the power may be exercised, and the duty may be discharged, by the survivor or survivors of the trustees.

**Representative of sole or surviving trustee**

**13(1)** Until the appointment of a new trustee, the executor or administrator of a sole trustee, or of the last surviving or continuing trustee:

- (a) may exercise any power that may be exercised by the sole or last surviving or continuing trustee; and
- (b) may discharge any duty that could have been discharged by the sole or last surviving or continuing trustee.

(2) In this section, “**executor**” does not include an executor who has renounced his or her executorship.

**PART IV**

**Appointment and Removal of Trustees**

**Application of Part**

**14** This Part does not apply to the appointment and removal of executors or administrators.

**Appointment and removal of trustees**

**15(1)** For the purposes of this Part, a person becomes disqualified to act as a trustee if that person:

- (a) dies;
- (b) disclaims the trust or refuses to act as trustee;
- (c) lacks capacity;
- (d) is a minor;
- (e) is convicted of an offence involving dishonesty;
- (f) is an undischarged bankrupt;
- (g) resigns from the trust; or
- (h) is a corporate trustee that is not registered, if required by law to be registered, or is not licensed, if required by law to be licensed.

- (2) For the purposes of this Part, a person is unfit to act as a trustee if that person:
- (a) is incompetent or otherwise incapable of making decisions necessary to perform the duties of a trustee; or
  - (b) is otherwise unwilling or unable to act co-operatively with other trustees, or unreasonably refuses to act co-operatively with other trustees, and that unco-operativeness hampers the efficient administration of the trust.
- (3) On becoming disqualified to act as a trustee, the person ceases to be a trustee on the date the person became disqualified.
- (4) Subsection (3) applies whether or not a substitute trustee is appointed pursuant to this section.
- (5) Subject to subsection (7), the person nominated in a trust instrument for the purpose of appointing and removing trustees, or if no person is so nominated, the surviving or continuing trustee or the executor or administrator of the last surviving trustee, may in an instrument for that purpose:
- (a) remove an unfit trustee;
  - (b) appoint a substitute for any trustee who:
    - (i) is removed pursuant to clause (a); or
    - (ii) ceases to be a trustee in accordance with subsection (3);
  - (c) appoint a trustee to fill any other vacancy;
  - (d) appoint additional trustees; or
  - (e) appoint a separate set of trustees for any part of the trust property distinct from those relating to any other part.
- (6) For the purposes of clause (5)(e), any existing trustee may be appointed or remain one of a separate set of trustees.
- (7) Except in the circumstance where only one trustee was originally appointed, the powers given by subsection (5) may be exercised only if:
- (a) at least one trustee remains;
  - (b) in a case where there are separate trustees for parts of the trust property, at least one trustee remains for each part; or
  - (c) the Public Guardian and Trustee consents to act as trustee.
- (8) Notwithstanding anything to the contrary in a trust instrument, but subject to subsection (7), if a trustee requests in writing to resign, the trustee ceases to be a trustee on the date the written resignation is received by one other trustee.
- (9) For the purposes of this section, a surviving or continuing trustee includes a trustee who desires to resign or refuses to act as trustee, but does not include:
- (a) a trustee who has disclaimed the trust in writing; or
  - (b) any trustee who is disqualified pursuant to clause (1)(c) or (d).

(10) For the purposes of this section, a person nominated in a trust instrument for the purpose of appointing and removing trustees does not include a person who:

- (a) refuses to act as a trustee;
- (b) is a minor; or
- (c) lacks capacity.

**Power of court to remove and appoint trustees**

**16(1)** If the court is satisfied that it is in the best interests of the trust, the court may:

- (a) remove a trustee, with or without appointment of a substitute;
- (b) appoint an additional trustee; or
- (c) appoint a separate set of trustees for any part of the trust property distinct from those relating to any other part.

(2) For the purposes of clause (1)(c), any existing trustee may be appointed or remain one of a separate set of trustees.

(3) An application to appoint or remove a trustee pursuant to this section may be made by:

- (a) a trustee;
- (b) a beneficiary of the trust;
- (c) a person nominated in a trust instrument for the purpose of appointing and removing trustees; or
- (d) the Public Guardian and Trustee.

(4) If the court is satisfied that it is in the best interests of the trust to appoint a trustee, and no suitable person will accept the appointment, the court may appoint the Public Guardian and Trustee as trustee.

**Powers of new trustee**

**17** A trustee appointed pursuant to this Act has the same power, authority and discretion, and may in all respects act, as if the trustee had been originally appointed as a trustee by any instrument creating the trust both before and after all the trust property is vested in that trustee.

**Effect of instrument**

**18** An instrument appointing or removing a trustee pursuant to section 15 is conclusive evidence of the validity of the appointment or discharge in favour of a purchaser of trust property.



## PART V Vesting

### Vesting

**19(1)** An instrument removing or appointing a trustee pursuant to section 15 may contain an express declaration that the trust property vests in one or more trustees, and that those trustees shall administer the trust, on and from:

- (a) the date of the instrument; or
- (b) any other date stated in the instrument for that purpose.

(2) If an instrument mentioned in subsection (1) does not contain an express declaration, it is an implied declaration in the instrument that the trust property vests in one or more trustees, and that those trustees shall administer the trust, on and from the date of the instrument.

(3) The vesting of trust property in trustees pursuant to this section has the same effect as if a vesting order had been made with respect to the trust property.

(4) Subject to *The Land Titles Act, 2000*, for the purposes of registration or transfer of title to any trust property, the instrument mentioned in subsection (1) or (2) is deemed to be conclusive evidence that the trust property has vested in the trustees named in the instrument.

(5) If a person ceases to be a trustee pursuant to subsection 15(3), the property ceases to be vested in that person.

(6) If a sole trustee ceases to be a trustee and a new trustee has not been appointed and there is no executor or property guardian, the trust property vests in the Public Guardian and Trustee until a new trustee is appointed.

### Vesting orders

**20(1)** If the court is satisfied that it is in the best interests of a trust or its beneficiaries, the court may, on application, vest the trust property, or an interest in the trust property, in one or more persons in any manner, for any estate or interest and on any terms that the court considers appropriate.

(2) If an order pursuant to subsection (1) is consequential on the appointment or removal of a trustee pursuant to this Act, the court shall vest the trust property in the persons who, on the appointment or removal, are the trustees.

### Effect of vesting

**21** A vesting order made pursuant to this Act has the same effect as if the legal or other interest in the trust property had been actually transferred to the person in whom the trust property is to be vested.

### Court orders re charity

**22** The court may exercise the powers conferred by this Act for the purpose of vesting any property in the trustee of any charity over which the court would have jurisdiction on a duly instituted action.

### Court may appoint person to convey, etc., trust property

**23** If a vesting order may be made pursuant to this Act, the court may, instead of making that order, appoint a person to convey, assign or transfer the trust property to the person in whom the trust property would otherwise be vested by the order of the court.

PART VI  
**Investment and Administrative Powers of Trustees**

**Investment**

**24(1)** A trustee may invest trust property in any form of property or security in which a reasonable and prudent investor would invest, including a security issued by a mutual fund as defined in *The Securities Act, 1988* or a similar investment.

(2) Subsection (1) does not authorize a trustee to invest trust property in a manner that is inconsistent with the instrument creating the trust.

(3) In planning the investment of trust property, a trustee shall consider the following factors, in addition to any others that are relevant in the circumstances:

- (a) general economic conditions;
- (b) the possible effects of inflation or deflation;
- (c) the expected tax consequences of investment decisions or strategies;
- (d) the role that each investment or course of action plays within the overall portfolio of trust property;
- (e) the expected total return from income and appreciation of capital;
- (f) other resources of the beneficiaries of the trust;
- (g) needs for liquidity, regularity of income and preservation or appreciation of capital;
- (h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries of the trust.

**Standard of care**

**25** In investing trust property, a trustee shall exercise the care, skill, diligence and judgment that a reasonable and prudent investor would exercise in making investments.

**Investment diversity**

**26** A trustee shall diversify the investment of trust property to an extent that is appropriate having regard to:

- (a) the terms on which the trust property is held; and
- (b) general economic and investment market conditions.

**Non-complying investments**

**27** No trustee is liable for a breach of trust by reason only of the trustee continuing to hold an investment that since its acquisition by the trustee has ceased to be authorized by:

- (a) the trust instrument; or
- (b) this Act.

**Appointment of agents by trustees for certain purposes**

**28(1)** In this section, “agent” includes an investment dealer, investment counsel or any other person to whom investment responsibility is delegated by a trustee.

(2) A trustee may delegate to an agent the degree of authority with respect to the investment of trust property that a reasonable and prudent investor would delegate in accordance with ordinary business practice.

(3) A trustee who delegates authority pursuant to subsection (2) shall exercise prudence and diligence in:

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

(4) In performing a delegated function, an agent owes a duty to the trustee and to the beneficiaries of the trust to exercise reasonable care to comply with the terms of the delegation.

(5) A trustee who complies with subsection (3) is not liable for the decisions or actions of the agent to whom the authority was delegated.

(6) This section does not authorize a trustee to delegate authority if the terms of the trust expressly prohibit the trustee from delegating authority to make investments.

(7) Investment in a security issued by a mutual fund as defined in *The Securities Act, 1988* or in a similar investment is not a delegation of authority with respect to the investment of trust property.

**Investment advice**

**29(1)** A trustee may obtain advice respecting the investment of trust property.

(2) A trustee is not in breach of trust for relying on advice obtained pursuant to subsection (1) if a reasonable and prudent investor would rely on the advice in comparable circumstances.

**Market values of trust investments**

**30** In determining market values, a trustee may rely on published market quotations.

**Prohibition on investments by corporate trustee**

**31** No corporation that is a trustee shall invest trust money in its own securities.

**Investments to be in trustee's name**

**32(1)** Subject to subsection (3), except in the case of a security that cannot be registered, a trustee who invests in securities shall require that the securities:

- (a) be registered in the trustee's name as the trustee for the particular trust for which the securities are held; and
- (b) clearly indicate that the funds are held in trust.

(2) Any securities mentioned in subsection (1) may be transferred only on the books of the corporation in the trustee's name as trustee for that trust property.

(3) Subsection (1) does not apply to a trustee that is a trust corporation and that holds a valid licence issued pursuant to *The Trust and Loan Corporations Act, 1997*.

**Duty to act impartially**

**33(1)** A trustee shall act impartially between income and capital beneficiaries, having regard to the trust property.

(2) The duty to act impartially mentioned in subsection (1) applies:

- (a) whatever the nature of the trust property; and
- (b) whether the trust property is an original asset or an asset acquired subsequently.

**Apportionment of expenditures between income and capital beneficiaries**

**34(1)** In this section, “**outgoing**” means payments and expenditures, whether paid or incurred by the trustee or a beneficiary, in administering the trust or trust property and, without limiting the foregoing, includes payments and expenditures arising from or made with respect to repairs, maintenance, insurance, taxes, security interests, debts, calls on shares, annuities and business and other losses.

(2) Subject to section 33, unless the trust instrument provides otherwise, the trustee:

(a) if he or she considers it to be just and equitable in all the circumstances and to be in accord with sound business practice and in the best interests of the beneficiaries of the trust as a whole, may:

- (i) apportion any outgoing between the income and capital accounts; or
- (ii) charge the outgoing exclusively to either income or capital;

(b) if the whole or part of the outgoing is made out of or charged to capital and if he or she considers it to be just and equitable in all the circumstances, may recoup income from capital; and

(c) may, and if ordered by the court on application shall, deduct from the income derived from trust property that is subject to depreciation or obsolescence those amounts that are fair and reasonable having regard to sound business practice in order to protect the capital of the trust from loss.

(3) For the purposes of clause (1)(c), the trustee shall set aside any amounts that are deducted and shall add those amounts to the capital of the trust so as to become capital for all purposes.

(4) This section does not apply to a trust for the exclusive benefit of the spouse of the testator or settlor, within the meaning of those terms as found in the *Income Tax Act* (Canada).

**Discretionary allocation of receipts between income and capital**

**35(1)** Subject to section 33, unless the trust instrument provides otherwise, the trustee shall allocate receipts to the income and capital accounts in any manner that he or she considers just and equitable in all the circumstances.

(2) For the purposes of this section and section 34 and for determining the relative proportionate interests of beneficiaries of the trust, but without limiting the powers conferred by subsection (1):

(a) income may be understood to be the return in money or property derived from the use of capital; and

(b) capital may be understood to be the property set aside by the trust instrument to be delivered eventually to the person who ultimately will become entitled to the property, while the return or use of the capital is in the meantime taken or received by or held for accumulation for an income beneficiary.

**Powers of trustee respecting trust property**

**36(1)** A trustee may:

(a) subject to Part XI of *The Administration of Estates Act*, sell trust property by public auction or private contract for cash or credit on appropriate security;

(b) dispose of trust property by way of exchange for other property, or if the trust property consists of an undivided share, concur in the partition of the property in which the share is held;

(c) surrender insurance policies, leases or other property subject to onerous obligations of a nature such that it would not be in the best interests of the beneficiaries of the trust to retain the trust property;

(d) grant an option to purchase land, or any easement, right, or privilege of any kind in relation to the land, including mining leases or other disposition of rights to mines and minerals;

(e) subject to Part XI of *The Administration of Estates Act*, enter into or renew a lease as lessee or lessor;

(f) postpone sale or conversion under a trust for sale or conversion for any period that is reasonable in the circumstances;

(g) carry on any business, whether as sole proprietor, partner, limited partner or otherwise, incorporate or otherwise change the form of the business, and dispose of or wind up the business;

(h) manage, maintain, repair, renovate, improve or develop trust property, including in the case of land, subdividing, erecting buildings and entering into agreements with respect to boundaries, party walls, fencing or other matters in connection with trust property;

(i) purchase or rent a living accommodation or construct a house on land held by the trustee for the purpose of providing a home for a person entitled to the income of the money expended with respect to the purchase, rent or construction, as the case may be;

- (j) with the consent of the beneficiary, appropriate, at fair market value, specific trust property in or towards the satisfaction of the share or interest of that beneficiary;
- (k) insure against loss or damage to trust property and against any other risk or liability, and pay insurance premiums out of the trust property;
- (l) borrow funds, with or without giving trust property as security;
- (m) subject to subsection (2), deposit trust funds in:
  - (i) a bank;
  - (ii) a credit union;
  - (iii) a trust corporation that holds a valid licence issued pursuant to *The Trust and Loan Corporations Act, 1997*; and
  - (iv) a loan corporation that holds a valid licence issued pursuant to *The Trust and Loan Corporations Act, 1997* and that is a member of the Canada Deposit Insurance Corporation;
- (n) exercise all rights and powers and satisfy all liabilities incidental to the ownership of shares or obligations of a corporation, or membership in a co-operative or credit union, including the power:
  - (i) to sell or exercise subscription rights;
  - (ii) to exchange the shares and obligations for other shares and obligations;
  - (iii) to join in plans for reconstruction, reorganization or amalgamation;
  - (iv) to enter into pooling or other agreements; or
  - (v) to authorize sale of the assets or undertaking of the corporation, co-operative or credit union;
- (o) pay or assert or contest any claim, and compromise, compound, abandon, submit to mediation or arbitration or otherwise settle any debt, account, claim or thing relating to the trust or trust property; and
- (p) do any other supplementary or ancillary act or thing and execute all instruments that the trustee considers necessary or desirable to carry out the intent and purpose of the powers vested in the trustee.

(2) For the purposes of clause (1)(m), if the trustee is not a trust corporation that holds a valid licence issued pursuant to *The Trust and Loan Corporations Act, 1997*, the trustee shall deposit trust funds in a separate account in the trustee's name in the bank, credit union or other depository for each trust for which moneys so deposited are being held.

**Discharge of person by trustee**

**37** A receipt in writing given by a trustee relieves the person to whom the receipt is given from responsibility for any loss or misapplication of the trust property with respect to which the receipt is given.

**PART VII**  
**Dispositive Powers of Trustee**

**Application of income of minor's trust property to maintenance**

**38(1)** If property is held in trust for a minor, either absolutely or contingently, the trustee may:

- (a) pay all or any part of the income accruing to the minor to any guardian of the minor for the maintenance or education of the minor; or
  - (b) apply all or any part of the income accruing to the minor towards the maintenance or education of the minor.
- (2) The trustee may do the things mentioned in subsection (1):
- (a) whether or not there is a fund for the purpose of maintaining or educating the minor; and
  - (b) whether or not any other person is bound by law to provide for the maintenance or education of the minor.
- (3) The trustee shall accumulate and invest any residue of the income accruing to the minor and:
- (a) apply the accumulated fund to the maintenance or education of the minor; and
  - (b) hold any of the accumulated fund not required for the maintenance or education of the minor for the benefit of the person who shall ultimately become entitled to the property from which the income was derived.

**Application of minor's trust to maintenance**

**39(1)** If trust property is held in trust for a minor, either absolutely or contingently, and the income from the trust property is insufficient for the maintenance and education of the minor, the court may direct the trustee to:

- (a) pay all or any part of the trust property to any guardian of the minor for the maintenance or education of the minor; or
  - (b) apply all or any part of the trust property to the maintenance or education of the minor.
- (2) In addition to the amounts authorized by the court to be applied to the minor's maintenance or education, the court may authorize application of any additional amounts that are, in the court's opinion, required to meet special circumstances or expenditures in the best interests of the minor.

**Sale of minor's trust property and application of proceeds to maintenance**

**40(1)** If personal property is held in trust for a minor, either absolutely or contingently, and the income from the property is insufficient for the maintenance and education of the minor, on application by the trustee, the court may order that the trustee may:

- (a) sell any portion of the property; and

- (b) either:
  - (i) pay all or any part of the money arising from the sale to any guardian of the minor for the maintenance or education of the minor; or
  - (ii) apply all or any part of the money arising from the sale to the maintenance or education of the minor.
- (2) If all of the money arising from the sale is not immediately required for the maintenance or education of the minor, the trustee shall:
  - (a) invest any surplus;
  - (b) apply the surplus to the maintenance and education of the minor; and
  - (c) hold any of the surplus not required for the maintenance and education of the minor for the benefit of the person who shall ultimately become entitled to the property from which the income was derived.

## PART VIII

### Protection of Trustees and Liability of Co-trustees Between Themselves

#### Duty of trustees to act unanimously

**41(1)** Unless the instrument creating the trust provides otherwise, trustees shall act unanimously in discharging their duties and exercising their powers as trustees.

(2) Unless otherwise provided by this Act or any other law, trustees are jointly and severally liable for any matters arising respecting the discharge of their duties or the exercise of their powers.

#### Contribution and indemnity

**42** If a trustee has committed a breach of trust at the instigation or request, or with the written consent, of a beneficiary of the trust, the court may make any order that it considers just to indemnify the trustee, or any person claiming through the trustee, out of the beneficiary's interest in the trust.

#### Restriction on liability and right to reimbursement of certain expenses

**43(1)** In this section, "trustee" includes a former trustee.

- (2) A trustee:
  - (a) is accountable only for money and securities actually received by the trustee even though the trustee signed a receipt for the sake of conformity; and
  - (b) is answerable and accountable only for the trustee's own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for those of any banker, broker or other person with whom the trust money or securities mentioned in clause (a) are deposited.
- (3) A trustee may reimburse himself or herself for, or pay or discharge out of the trust money, all expenses reasonably incurred in or about the execution of the trustee's trust or powers.



- (4) A trustee may:
- (a) be indemnified out of trust money with respect to:
    - (i) liabilities and expenses, including an amount paid to settle an action or satisfy a judgment, arising out of any matter or thing done honestly and in good faith relating to the exercise or attempted exercise of the powers and duties of the trustee; and
    - (ii) legal fees and costs relating to a claim for which this subsection provides an entitlement to an indemnity; and
  - (b) receive out of the trust money an advance of money for the purpose of meeting an expense for which the trustee may be reimbursed or indemnified pursuant to this section.
- (5) A trustee shall repay the money advanced to the trustee pursuant to clause (4)(b) if the trustee is found not to be entitled to be reimbursed or indemnified with respect to the expense for which the advance was made.

**Limitation of trustee's liability for a loss arising out of an investment**

**44** A trustee is not liable for a loss arising from the investment of trust property if the trustee:

- (a) acted honestly and in good faith; and
- (b) with respect to any act or omission that led to the loss:
  - (i) followed a plan or strategy for the investment of the trust property that included reasonable assessments of the risk and return that a reasonable and prudent investor would adopt under comparable circumstances; or
  - (ii) relied on a financial statement or report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to the statement or report.

**Trustee may be relieved of liability for breach of trust**

**45** If a trustee is or may be personally liable for a breach of trust as the result of any act or omission of the trustee or of an agent of the trustee, the court may relieve the trustee either wholly or partly from personal liability if the court is satisfied that the trustee:

- (a) acted honestly and reasonably; and
- (b) ought fairly to be excused:
  - (i) for the breach; or
  - (ii) for omitting to obtain the directions of the court in the matter in which it was committed.

**Payment into court**

**46(1)** Subject to subsections (5) and (6), a trustee may pay trust money or trust securities into court.

(2) If a trustee is not available to give discharge, the court may, on the application of a person in possession or control of trust money or trust securities, order that the trust money or trust securities be paid into court.

- (3) The receipt or certificate of the proper officer of the court is a sufficient discharge to a trustee or other person for money or securities paid into court pursuant to subsection (1) or (2).
- (4) The court may, on application, make orders it considers necessary or appropriate:
- (a) respecting the trust money or trust securities paid into court pursuant to subsection (1); and
  - (b) for the administration of the trust to which the trust money or trust securities are subject.
- (5) If a minor or a person lacking capacity is entitled to trust money or trust securities, a trustee may pay them to:
- (a) in the case of a minor:
    - (i) the guardian of the minor if authorized by a court order; or
    - (ii) the Public Guardian and Trustee; or
  - (b) in the case of a person lacking capacity:
    - (i) the person's property guardian; or
    - (ii) the Public Guardian and Trustee.
- (6) A trustee may pay trust money or trust securities to the Public Guardian and Trustee in trust for a minor or person lacking capacity if:
- (a) there is no guardian of the minor or property guardian of the person lacking capacity who is entitled to trust money or trust securities; or
  - (b) the trustee cannot locate the guardian of the minor or property guardian of the person lacking capacity after making diligent inquiries.

**Application to court for advice or direction**

- 47(1)** A trustee may apply to court for the opinion, advice and direction of the court on any question respecting the management or administration of the trust, including any question affecting the rights or interests of a person or class of persons claiming to be interested in the trust.
- (2) On an application pursuant to subsection (1), the court may direct the trustee to do or abstain from doing any particular act respecting the management or administration of the trust.
- (3) Unless a trustee has been guilty of fraud, misrepresentation or wilful concealment in obtaining the opinion, advice and direction of the court, a trustee acting on the opinion, advice and direction of the court is deemed to have discharged his or her duty as a trustee with respect to the matter on which the opinion, advice and direction was sought.

**Beneficiary may apply to court for order**

48(1) A beneficiary of a trust may apply to the court for an order respecting a trustee pursuant to this section if the trustee refused or failed:

- (a) to discharge a duty imposed on the trustee; or
- (b) to consider in good faith whether or not to exercise any power conferred on the trustee.

(2) On an application pursuant to this section and if the court is satisfied that the trustee did the things mentioned in subsection (1), the court may:

- (a) order the trustee to:
  - (i) satisfy the court that the trustee has given or will give due good faith consideration to the exercise of the power conferred on the trustee; or
  - (ii) discharge the duty imposed on the trustee; or
- (b) remove the trustee.

PART IX  
**Variation of Trusts**

**Authority of court to approve variation for trusts re persons**

49(1) In this section, “**person**” includes an association of persons.

(2) If property is held on trusts arising before, on or after the coming into force of this Part under any will, trust, settlement or other disposition, the court may, on the application of any interested party, make an order on behalf of a person mentioned in subsection (4):

- (a) varying or revoking all or any of the trusts; or
- (b) enlarging the powers of the trustee with respect to managing or administering any of the property subject to the trusts.

(3) An interested party making an application pursuant to this section shall serve a copy of the application on the Public Guardian and Trustee.

(4) The court may make an order pursuant to subsection (2) on behalf of:

- (a) any person having an interest, whether vested or contingent, under the trusts who by reason of being a minor or other incapacity is incapable of assenting;
- (b) any person, whether ascertained or not, who may become entitled to an interest under the trusts at a future date or on the happening of a future event;
- (c) any person unborn; or
- (d) any person with respect to any interest of that person that may arise by reason of any discretionary power given to anyone on the failure or determination of any existing interest that has not failed or determined.

(5) The court may make an order pursuant to this section whether or not there is any other person beneficially interested who is capable of assenting to the arrangement.

(6) The court shall not approve an arrangement on behalf of any person coming within clause (4)(a), (b) or (c) unless the carrying out of the arrangement appears to be for the benefit of that person.

**Authority of court to approve variations – re trusts for charitable or non-charitable purposes**

**50(1)** If property is held on trusts arising before, on or after the coming into force of this Part under any will, trust, settlement or other disposition, the court may, on the application of any interested party, make an order on behalf of a charitable or non-charitable purpose that is the subject of the trusts:

- (a) varying or revoking all or any of the trusts;
- (b) enlarging the powers of the trustee with respect to managing or administering any of the property subject to the trusts;
- (c) merging all or any of the trusts with another trust; or
- (d) resettling any interest under the trust.

(2) The court may make an order pursuant to this section whether or not there is any other person beneficially interested who is capable of assenting to the arrangement.

(3) The court shall not approve an arrangement unless it is satisfied that in all the circumstances at the time of the application to the court the arrangement appears to be of a justifiable character.

**Authority of court to approve variations – re dispositions formerly subject to rule against perpetuities**

**51(1)** If a will, trust, settlement or other disposition creates an interest in property that might be void if the rules against perpetuities or the *Accumulations Act* were still part of the law of Saskatchewan, the court, on the application of an interested party, may maintain, vary or terminate that interest on any terms that the court considers appropriate.

(2) This section does not apply to the trusts of a plan, trust or fund established for the purpose of providing pensions, retirement allowances, annuities or sickness, death or other benefits to employees or to their surviving spouses, dependants or other beneficiaries.

**PART X**

**Trustee Compensation and Passing of Accounts**

**Remuneration**

**52(1)** Unless remuneration is determinable by the trust instrument, a trustee is entitled to a reasonable allowance for administration of an estate, including remuneration for professional services rendered to the estate by a lawyer who is a trustee.

- (2) The amount of remuneration is the amount fixed by the court:
  - (a) on an application; or
  - (b) on passing of accounts.
- (3) The court may vary a term of a trust or instrument creating a trust that fixed the remuneration of a trustee other than by contract between the settlor or testator and the trustee, if that term does not provide for sufficient remuneration.

**Interim remuneration**

- 53(1)** A trustee may receive remuneration for services rendered before passing accounts pursuant to section 54 if notice is given to the beneficiaries of the trust.
- (2) The notice required by subsection (1) must include:
    - (a) full details of the remuneration sought and of the services to which the remuneration relates; and
    - (b) a statement that the recipient of the notice may object to the proposed remuneration within 60 days after the date of the notice.
  - (3) Anyone entitled to notice pursuant to subsection (1) may object to the remuneration proposed by application to the court within 60 days after the date of the notice.

**Passing of accounts**

- 54(1)** A trustee may apply to the court for an order passing the accounts of the trustee.
- (2) The procedure to be followed on an application pursuant to subsection (1) is the procedure for the passing of executors' and administrators' accounts.
  - (3) Unless mistake or fraud is shown, an order of the court passing the accounts of a trustee is binding on any person interested in the trust who:
    - (a) was notified of the proceedings, present at the proceedings or represented at the proceedings; or
    - (b) claims through a person mentioned in clause (a).
  - (4) Except in the case of an executor, administrator or trustee who must pass accounts in accordance with *The Administration of Estates Act*, when administration of the trust has been completed:
    - (a) a trustee, on passing accounts, is discharged; and
    - (b) any bond or security given by the trustee must be cancelled or delivered to him or her.

**Accounting**

- 55(1)** On the request of a beneficiary of the trust, or the beneficiary's property attorney or property guardian, a trustee shall provide an accounting to the beneficiary.
- (2) If a beneficiary of the trust, or the beneficiary's property attorney or property guardian, has been unable to obtain an accounting from the trustee in accordance with subsection (1), the beneficiary of the trust, or the beneficiary's property attorney or property guardian, may apply to the court for an order directing the trustee to provide an accounting to the court or to the beneficiary.

(3) Notwithstanding anything to the contrary in the terms of a trust, if a beneficiary of the trust or other interested person has requested information concerning the accounts of a trustee, and the trustee has refused to comply with the request in a reasonable and timely manner, the court may order the trustee to pass accounts in accordance with section 54.

**Accounting to Public Guardian and Trustee on behalf of minor or dependent adult**

**56(1)** If the Public Guardian and Trustee gives notice to the trustee of intent to monitor the beneficial interest of a minor or dependent adult in the trust property, the trustee shall provide the Public Guardian and Trustee with an accounting of decisions made, actions taken and consent given with respect to the trust property.

(2) If the Public Guardian and Trustee has been unable to obtain an accounting from the trustee in accordance with subsection (1), the Public Guardian and Trustee may apply to the court for an order directing the trustee to provide an accounting of decisions made, actions taken and consent given with respect to the trust property.

PART XI

**Abolition of Rules Against Perpetuities and Accumulations**

**Interpretation of Part**

**57** In this Part and in section 51:

- (a) “**Accumulations Act**” means the Act of Great Britain, being chapter 98 of 39 & 40 George III, known as the *Accumulations Act*, 1800;
- (b) “**modern rules against perpetuities**” includes the operation of the rule with regard to remoteness of vesting and perpetual duration and with regard to testamentary executory interests in personalty;
- (c) “**rules against perpetuities**” includes:
  - (i) the modern rules against perpetuities; and
  - (ii) the rule in *Whitby v. Mitchell*.

**Rules against perpetuities cease to apply**

**58** The rules against perpetuities are no longer the law of Saskatchewan.

**Accumulations Act repealed**

**59** The *Accumulations Act* is repealed insofar as it is part of the law of Saskatchewan.

**Application of this Part**

**60(1)** Except as provided in subsections (2) and (3), this Part applies to:

- (a) all interests in property created before, on or after the coming into force of this Part; and
- (b) all trusts, whether taking effect before, on or after the coming into force of this Part.

(2) The law as it was before the coming into force of this Part continues to apply to an act or step respecting property or a transfer of property if:

(a) before the coming into force of this Part the act or step respecting property or transfer of property had been taken in reliance on the application of the rules against perpetuities or the *Accumulations Act*; and

(b) in the opinion of the court hearing the matter, it is just and equitable that the rules against perpetuities and the *Accumulations Act* should continue to apply.

(3) The law as it was before the coming into force of this Part continues to apply to an interest or purported interest in property if the court has held the interest or purported interest in property to be void for breach of the rules against perpetuities or the *Accumulations Act*.

## PART XII Repeal, Transitional and Consequential

### R.S.S. 1978, c.T-23 repealed

**61** *The Trustee Act* is repealed.

### R.S.S. 1978, c.V-1 repealed

**62** *The Variation of Trusts Act* is repealed.

### Transitional

**63(1)** In this section, “**effective date**” means the date that section 1 of this Act comes into force.

(2) This Act applies to every trust mentioned in section 3 whether it was created before, on or after the effective date.

(3) This Act does not affect the legality or validity of any act or thing done before the effective date that was done in conformity with the law in force immediately before the effective date.

### Consequential amendments

**64** The provisions of the Acts set out in the schedule to this Act are amended by striking out “*The Trustee Act*” and substituting “*The Trustee Act, 2009*”.

### S.S. 2000, c.C-4.111, section 5 amended

**65** Clause 5(3)(a) of *The Certified Management Accountants Act* is amended by striking out “*The Trustee Act*” and substituting “*The Trustee Act, 2009*”.

### R.S.S. 1978, c.C-17, section 15 amended

**66** Section 15 of *The Community Cablecasters Act* is amended by striking out “*The Trustee Act*” and substituting “*The Trustee Act, 2009*”.

### S.S. 2006, c.M-10.3, section 6 amended

**67** Clause 6(3)(a) of *The Medical Radiation Technologists Act, 2006* is amended by striking out “*The Trustee Act*” and substituting “*The Trustee Act, 2009*”.

S.S. 1988-89, c.M-23.2, section 21 amended

**68 Clause 21(b) of *The Municipal Board Act* is amended by striking out “section 3 of *The Trustee Act*” and substituting “section 24 of *The Trustee Act, 2009*”.**

R.S.S. 1978, c.M-39, section 14 amended

**69 Clause 14(h) of *The Mutual Medical and Hospital Benefit Associations Act* is amended by striking out “section 3 of *The Trustee Act*” and substituting “section 24 of *The Trustee Act, 2009*”.**

S.S. 2006, c.R-22.0002, section 6 amended

**70 Clause 6(3)(a) of *The Respiratory Therapists Act* is amended by striking out “*The Trustee Act*” and substituting “*The Trustee Act, 2009*”.**

### PART XIII Coming into Force

#### Coming into force

- 71(1)** Subject to subsections (2) to (5), this Act comes into force on proclamation.
- (2) Section 65 of this Act comes into force on the coming into force of section 1 of *The Certified Management Accountants Act*.
- (3) Section 66 of this Act comes into force on the coming into force of section 1 of *The Community Cablecasters Act*.
- (4) Section 67 of this Act comes into force on the coming into force of section 1 of *The Medical Radiation Technologists Act, 2006*.
- (5) Section 70 of this Act comes into force on the coming into force of section 1 of *The Respiratory Therapists Act*.

#### Schedule

[Section 64]

Act	Provision
<i>The Agrologists Act, 1994</i> S.S. 1994, c.A-16.1	6(3)(a)
<i>The Architects Act, 1996</i> S.S. 1996, c.A-25.1	6(3)(a)
<i>The Assessment Appraisers Act</i> S.S. 1995, c.A-28.01	5(3)(a)
<i>The Canadian Information Processing Society of Saskatchewan Act</i> S.S. 2005, c.C-0.2	5(3)(a)
<i>The Cemeteries Act, 1999</i> S.S. 1999, c.C-4.01	27(1) 27(2) 42(1)
<i>The Certified General Accountants Act, 1994</i> S.S. 1994, c.C-4.11	5(3)(a)
<i>The Certified Management Consultants Act</i> S.S. 1998, c.C-4.12	5(3)(a)



<b>Act</b>	<b>Provision</b>
<i>The Chartered Accountants Act, 1986</i> S.S. 1986, c.C-7.1	5(3)
<i>The Chiropractic Act, 1994</i> S.S. 1994, c.C-10.1	5(3)(a)
<i>The Condominium Property Act, 1993</i> S.S. 1993, c.C-26.1	60(1)
<i>The Crown Minerals Act</i> S.S. 1984-85-86, c.C-50.2	23.8(1)
<i>The Dental Disciplines Act</i> S.S. 1997, c.D-4.1	6(3)(a)
<i>The Dietitians Act</i> S.S. 2001, c.D-27.1	5(3)(a)
<i>The Engineering and Geoscience Professions Act</i> S.S. 1996, c.E-9.3	6(3)(a)
<i>The Forestry Professions Act</i> S.S. 2006, c.F-19.2	6(3)(a)
<i>The Funeral and Cremation Services Act</i> S.S. 1999, c.F-23.3	85(2)
<i>The Interior Designers Act</i> S.S. 1995, c.I-10.02	5(3)(a)
<i>The Land Surveyors and Professional Surveyors Act</i> S.S. 1995, c.L-3.1	6(3)(a)
<i>The League of Educational Administrators, Directors and Superintendents Act, 1991</i> S.S. 1990-91, c.L-9.02	7(2)
<i>The Legal Profession Act, 1990</i> S.S. 1990-91, c.L-10.1	76(6)(b)
<i>The Licensed Practical Nurses Act, 2000</i> S.S. 2000, c.L-14.2	5(3)(a)
<i>The Medical Laboratory Technologists Act</i> S.S. 1995, c.M-9.3	5(3)(a)
<i>The Midwifery Act</i> S.S. 1999, c.M-14.1	5(3)(a)
<i>The Milk Control Act, 1992</i> S.S. 1992, c.M-15.1	8(g)
<i>The New Generation Co-operatives Act</i> S.S. 1999, c.N-4.001	262(10)(b)
<i>The Occupational Therapists Act, 1997</i> S.S. 1997, c.O-1.11	5(3)(a)

<b>Act</b>	<b>Provision</b>
<i>The Paramedics Act</i> S.S. 2007, c.P-0.1	6(3)(a)
<i>The Pharmacy Act, 1996</i> S.S. 1996, c.P-9.1	4(3)
<i>The Physical Therapists Act, 1998</i> S.S. 1998, c.P-11.11	5(3)(a)
<i>The Podiatry Act</i> S.S. 2003, c.P-14.1	5(3)(a)
<i>The Psychologists Act, 1997</i> S.S. 1997, c.P-36.01	5(3)(a)
<i>The Public Guardian and Trustee Act</i> S.S. 1983, c.P-36.3	2(1)(j) 6.1(b) 41(2)
<i>The Real Estate Act</i> S.S. 1995, c.R-1.3	6.1(4)(a) 48(2)
<i>The Regional Health Services Act</i> S.S. 2002, c.R-8.2	29(3) 39(2)
<i>The Registered Music Teachers Act, 2002</i> S.S. 2002, c.R-11.1	5(3)(a)
<i>The Registered Nurses Act, 1988</i> S.S. 1988-89, c.R-12.2	5(3)
<i>The Registered Psychiatric Nurses Act</i> S.S. 1993, c.R-13.1	5(3)(a)
<i>The Residential Tenancies Act, 2006</i> S.S. 2006, c.R-22.0001	29(a)
<i>The Saskatchewan Applied Science Technologists and Technicians Act</i> S.S. 1997, c.S-6.01	5(3)(a)
<i>The Saskatchewan Gaming Corporation Act</i> S.S. 1994, c.S-18.2	25.6(3)(c) 31
<i>The Social Workers Act</i> S.S. 1993, c.S-52.1	6(3)(a)
<i>The Speech-Language Pathologists and Audiologists Act</i> S.S. 1990-91, c.S-56.2	5(3)
<i>The Urban Municipal Administrators Act</i> S.S. 1980-81, c.U-8.1	24
<i>The Veterinarians Act, 1987</i> S.S. 1986-87-88, c.V-5.1	5(3)
<i>The Workers' Compensation Act, 1979</i> S.S. 1979, c.W-17.1	160(1)