

**Society of Saint Vincent de Paul  
Toronto Central Council**

**Policy # 17**

**Statement of Policy and Procedure on Investment  
Management**

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**Approved by:**

**Date:**

**Issued:**

**Effective:**

**Replaces:** Policy #17 – June 2017

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**1 POLICY**

- 1.01 Society of Saint Vincent de Paul, Toronto Central Council's investment portfolio supports the vision, mission and values of the organization.

**2 PURPOSE**

- 2.01 The purpose of this Statement of Policy and Procedure on Investment Management is to set out the requirements for managing the organization's investment portfolio in accordance with the Ontario Trustees Act, Ontario Charities Accounting Act, the Income Tax Act and the common law.

**3 SCOPE**

- 3.01 This policy applies to the Board of Directors (the "Board"), who are permitted by the organization's letters patent to invest the following, collectively referred to in this policy as "Investment Funds":
- (a) Operating funds which the organization does not immediately require for daily operations (also referred to as "Excess Funds"); and
  - (b) Special-purpose funds internally restricted by the Board, or externally restricted by a donor, funder or others (also referred to as "Restricted Funds").

**4 RESPONSIBILITY**

- 4.01 The Board is ultimately responsible for Investment Funds and ensuring that they are invested and managed in compliance with legal requirements.
- 4.02 The Board is responsible for appointing the Finance Committee of the Board to oversee the management and administration of the Investment Funds on behalf of the Board.
- 4.03 The Board is responsible for:
- (a) Exercising the appropriate degree of prudence, care, skill, diligence and judgment required in making investment decisions, delegating investment decisions, setting the asset mix parameters as set out in 6.03, and otherwise managing Investment Funds;
  - (b) Creating and updating an investment policy which is compliant with legal requirements;
  - (c) Ensuring that the organization enters into a written agreement with the Investment Manager, as defined at 4.04(4)(b) below;
  - (d) Receiving, and if approved, implementing the Finance Committee's recommendations regarding this investment policy; and

- (e) Reviewing the Finance Committee's reports on the performance of Investment Funds and compliance with this policy.

4.04 It is the responsibility of the Finance Committee to:

- (a) Understand the legal requirements governing Investment Funds, and the requirements of this policy;
- (b) Keep the Board apprised of any changes in the foregoing requirements;
- (c) Report to the Board on the performance of the Investment Funds and compliance with this policy;
- (d) Make recommendations to the Board regarding the appointment of/delegation to:
  - (i) An approved trust or financial institution to act as depository for Investment Funds (the "Custodian");
  - (ii) The third-party professional investment manager, (the "Investment Manager"); and
  - (iii) More than one Investment Manager (each managing different funds or other portions of the investment portfolio) to spread the risk associated with engaging Investment Managers.
- (e) Make any other recommendations to the Board to improve management of Investment Funds, comply with legal requirements or accomplish any other desired objectives;
- (f) Provide the Investment Manager with this investment policy and any subsequent updated policy;
- (g) Monitor the performance of the Investment Manager and ensure that he or she complies with this policy;
- (h) Report to the Board on the performance of the Investment Manager; and
- (i) Act as a liaison between the Investment Manager and the Board.

4.05 It is the responsibility of the Investment Manager to:

- (a) Manage the Investment Funds on a day-to-day basis in compliance with this policy;
- (b) Provide regular reports to the Board, the Finance Committee and/or its designated representative;
- (c) Meet with the full Board to report on the performance on the Investment Funds and compliance with this policy; and
- (d) Recommend changes to this policy in compliance with or in response to best practice, legislated changes or other factors.

## 5 DEFINITIONS

5.01 "**Canadian Bond Rating Service**" provides credit ratings and analysis of Canadian corporations. It is a subsidiary of Standard & Poor's.

5.02 "**Cash equivalents**" refer to securities which are highly liquid—that is, they can be easily converted to cash, because among other reasons they have maturity terms equal to or less than 12 months and are readily traded in investment markets. Cash equivalents include money-market funds (that is, funds which invest in short-term securities).

5.03 "**DBRS**" is an independent, globally recognized credit rating service.

- 5.04     **“Derivatives”** refer to securities whose prices are dependent on or derived from an underlying asset.
- 5.05     **“Equities”** refer to investments that represent ownership interests in a corporation and include common stocks, trust units, rights warrants, instalment receipts and other instruments which are convertible into common stock.
- 5.06     **“Equity funds”** refer to mutual funds which invest in equities.
- 5.07     **“Excess funds or operating funds”** are funds which are not subject to any restrictions, other than the general requirement that the funds are used for the organization’s charitable purposes. These funds are not immediately required for expenditures.
- 5.08     **Exchange Traded Fund (ETF)**
- An **“inverse ETF”** is an exchange traded fund (ETF) constructed by using various derivatives to profit from a decline in the value of an underlying benchmark. Inverse ETFs allow investors to make money when the market or the underlying index declines, but without having to sell anything short.
- A **“leveraged exchange-traded fund (ETF)”** is a marketable security that uses financial derivatives and debt to amplify the returns of an underlying index. While a traditional exchange-traded fund typically tracks the securities in its underlying index on a one-to-one basis, a leveraged ETF may aim for a 2:1 or 3:1 ratio.
- 5.09     **“Fixed-income securities”** refer to debt or other securities which provide investors with a fixed periodic return and provide for repayment at maturity. These include bonds, preferred shares and debentures.
- 5.10     **“Foreign-pay bonds”** refer to bonds issued locally by a local company, but denominated in a foreign currency.
- 5.11     **“Indexed fund”** refers to a mutual fund that is constructed to match a market index, and is usually bought to provide diversification.
- 5.12     **“Margin investing”** refers to an investment technique where the investor pays a portion of the purchase price of a security and borrows the remainder of the purchase price from the broker. The margin refers to the portion which the investor pays.
- 5.13     **“Market index”** refers to a composite of securities, used to represent the market for the securities and to compare returns on investments.
- 5.14     **“Pooled funds”** are like mutual funds in that investors pool their investment funds to reduce fund costs and access higher returns. Differences include the fact the pooled funds are more exclusive—they may be more focused; have higher minimum investment requirements; and are usually offered to select clients.

- 5.15 **“Restricted funds”** mean funds which the organization must use for purposes specified by the donor, grantor, funder or others. External persons (donors and funders for example) may restrict funds, in which case the funds are externally restricted funds. Alternatively, the Board may restrict funds, in which case the funds are internally restricted funds.
- 5.16 **“Risk tolerance”** is the level of volatility of investment returns which the organization considers acceptable or the ability to sustain temporary loss.
- 5.17 **“Short-selling”** refers to an investment technique involving the sale of “borrowed” security, based on the belief that the value of the security in the investment market will fall, permitting the seller to buy additional securities to replace the borrowed security, and therefore make a gain on the sale of the borrowed security.

## **6 PROCEDURES**

### **6.01 Portfolio Structure – General Objective**

- (a) The organization’s portfolio of Investment Funds shall be structured and managed so as to:
  - (i) Comply with the applicable legislation and the common law;
  - (ii) Preserve its purchasing power (that is, maintain the portfolio’s value on an inflation-adjusted basis);
  - (iii) Maintain appropriate liquidity and cash flow to meet the requirements as periodically determined by the Board in consultation with management; and
  - (iv) Achieve or exceed the long-term rates of return of the composite return index in the “Performance Objectives” section of this policy.
- (b) The investment objectives for each type of fund shall be as follows:
  - (i) Excess/Operating Fund – Maintaining liquidity to satisfy operating cash flow requirements, which means that these funds must be maintained in cash or cash-equivalents; and
  - (ii) Restricted Funds – Preserving capital or maximizing returns without undue exposure to risk.

### **6.02 Risk Tolerance**

- (a) The Society of Saint Vincent de Paul, Toronto Central Council’s risk tolerance, as reflected by the “Benchmark Asset Allocation” described under 6.05 below, shall be “moderate.” The organization accepts that investments with higher potential for appreciation and returns are usually more volatile. For instance, fixed income securities or investments are generally less volatile than investments in common stock.

Additionally, the Society of Saint Vincent de Paul, Toronto Central Council recognizes that components of its investment portfolio which have a longer-term horizon, that is, will not be used in the short term, can better withstand volatility or risk, in pursuit of higher returns.

## 6.03 Asset Class Mix and Ranges

(a) The organization shall maintain the following overall asset classes:

EXTERNALLY RESTRICTED FUNDS			
*The Equities mix shall consist of the following:			
Asset Class	Minimum %	Maximum %	Benchmark Allocation %
Cash/Cash Equivalents	55%	85%	70%
Fixed-income Securities	10%	30%	20%
Equities*	5%	15%	10%
<b>Total</b>			<b>100%</b>

  

Equity Type	Minimum %	Maximum %	Benchmark Allocation %
Canadian Equities	2.5%	7.5%	5%
Non-Canadian Equities	2.5%	7.5%	5%
<b>Total</b>	<b>5%</b>	<b>15%</b>	<b>10%</b>

  

UNRESTRICTED AND INTERNALLY RESTRICTED FUNDS			
**The Equities mix shall consist of the following:			
Asset Class	Minimum %	Maximum %	Benchmark Allocation %
Cash/Cash Equivalents	40%	75%	50%
Fixed-income Securities	10%	40%	25%
Equities**	10%	40%	25%
<b>Total</b>			<b>100%</b>

  

Equity Type	Minimum %	Maximum %	Benchmark Allocation %
Canadian Equities	5%	20%	12.5%
Non-Canadian Equities	5%	20%	12.5%
<b>Total</b>	<b>10%</b>	<b>40%</b>	<b>25%</b>

  

EXCESS OPERATING FUNDS			
Asset Class	Minimum %	Maximum %	Benchmark Allocation %
Cash/Cash Equivalents			100%
<b>Total</b>			<b>100%</b>

(b) The following applies to the asset class mix and ranges above:

- (i) Asset class allocations and mix shall be determined by reference to the market value of investments;
- (ii) Asset class allocations correspond to the market indices used in this policy under 6.05 below;
- (iii) Asset class allocations may deviate from the maximum cash levels and the minimum bond and equity levels if the Investment Manager believes it prudent, for instance, during times of extreme market volatility. If so, the Investment Manager shall immediately notify the Chair of the Finance Committee or its designated representative of the deviation, without delay; and
- (iv) The Investment Manager may deviate from the minima and maxima above for brief periods for other reasons, for instance, while re-balancing the portfolio or if capital market fluctuations are expected to automatically correct deviations within a short period. In these instances, the Investment Manager shall advise the Chair of the Finance Committee, only if the deviations are expected to persist beyond a calendar quarter.

#### 6.04 **Restrictions, Exclusions and Other Constraints**

- (a) Diversification – holdings within each asset category should be reasonably diversified.
- (b) Indexed funds, pooled funds and derivatives:
  - May be included in the investment portfolio;
  - May be included in the investment portfolio for income generation purposes but not for speculative purposes; and
  - Will be classified as cash equivalents, bonds or equities, depending on the nature of their underlying security or capital market that they track.
- (c) The following are not permitted:
  - Margin investing – Purchase of securities on a margin is not permitted
  - Short-selling – Short-selling of securities is not permitted
  - Restrict inverse and leveraged ETFs
  - Commodities
- (d) Holding restrictions – The Board may provide the Investment Manager with a written list of securities or kinds of securities which should not be purchased or held in the investment portfolio (for example, no holdings in companies with known unethical supply chain practices). The Investment Manager shall refrain from purchasing the same, and divest of any existing holdings as soon as is practicable. The Investment Manager shall acknowledge receipt of this list.
- (e) Operating funds/excess funds and restricted funds shall be invested and accounted for separately. Restricted funds combined for investment purposes must still be accounted for and tracked separately.
- (f) **Cash and cash equivalents** — Cash and cash equivalents shall have a minimum credit rating of R-1 (low) (DBRS or Canadian Bond Rating Service equivalent).
- (g) **Fixed-income securities** — Fixed-income securities shall consist of bonds, debentures or preferred shares.
- (h) Bonds shall:
  - Have a minimum credit rating of BBB (DBRS or Canadian Bond Rating Service equivalent) at the time of purchase; and
  - Be liquid.
- (i) Preferred shares shall have a minimum credit rating of Pfd-2 (DBRS or Canadian Bond Rating Service equivalent).
- (j) Individual limits: No single bond, debenture or preference share shall exceed 10 percent of the market value of the fixed-income security asset class. Bonds issued or guaranteed by provincial or federal government or one of their agencies are exempt from this requirement
- (k) Foreign currency holdings: Investments in foreign currency fixed-income securities, including “foreign-pay” bonds, shall not exceed 15 percent of the portfolio.
- (l) Equities may consist of common stock, trust units, rights, warrants, instalment receipts or other instruments convertible to common stock.
- (m) Individual equities or equities held within equity funds must be listed on a major stock exchange, and must be otherwise liquid.
- (n) Individual equities must be of “investment grade” (which essentially means high-quality equities based on the ratings of a credit rating agency like DBRS).

- (o) No individual equity holding should exceed 10 percent of the market value of the equities asset class.
- (p) Donated equities should be sold when received.

#### 6.05 **Performance Objectives**

- (a) The performance of the investment funds portfolio shall be determined by comparing the time-weighted, annualized rate of return of the asset classes of the portfolio to the annualized return of a composite index, as set out below. The portfolio should meet or exceed the composite return index over moving five-year periods.
- (b) The benchmarks are as follows:

<b>Asset Class</b>	<b>Total Return Indexes</b>
Cash/Cash Equivalents	30-day Government of Canada Treasury Bills
Fixed-income Securities	SCM Canadian Bond Universe Index
Canadian Equities	S&P/TSX Index
Non-Canadian Equities	S&P 500, MSCI EAFE Index (\$Cdn)

- (c) The following applies to the performance benchmarks above:
  - (i) Notwithstanding the five-year performance targets described under 6.05(a) above, the Investment Manager may under-perform the composite return index over shorter time intervals;
  - (ii) The Investment Manager shall recognize that significant or multiple short-term underperformances may make it more difficult to achieve the five-year performance targets;
  - (iii) Notwithstanding the five-year performance target described under 6.05(a) above, the Board shall evaluate short-term underperformances to ensure that the Investment Manager remains diligent and prudent, to determine whether investing activities are compliant with this policy, and to assess whether corrective actions are required.

#### 6.06 **Reporting**

- (a) The Investment Manager shall provide the Board with written reports at least quarterly. The reports shall show:
  - Summaries and detailed listings of assets, broken down by investment classes;
  - Details and summaries of transactions occurring within the portfolio (including deposits, withdrawals, capital gains/losses, interest, dividends, management fees); and
  - Details and summaries of the performance of the benchmark portfolio.
- (b) The Investment Manager shall provide an annual compliance statement to the Board, confirming that the portfolio is being managed in compliance with this policy. The Board may request, and the Investment Manager shall provide additional compliance statements during the year.
- (c) At least once per year, the Investment Manager shall meet with the Board

or its delegate to provide information on:

- Compliance with this policy;
- Investment portfolio performance;
- Investment strategies used;
- Existing and forecasted market conditions;
- Planned investment strategies;
- Any other information the Investment Manager considers necessary, or the Board requests.

**6.07 No Delegation**

The Investment Manager shall not delegate its roles and responsibilities to any other person or entity.

**6.08 Ethics and Conflicts of Interest**

- (a) The Investment Manager (and any other fiduciary) shall not derive any personal gain because of their fiduciary responsibility of managing the Investment Funds. This excludes normal fees and expenses incurred from fulfilling responsibilities, as pre-approved by the Board;
- (b) The investment and oversight functions must be carried out in compliance with the Society of Saint Vincent de Paul, Toronto Central Council's code of ethics and the conflict of interest policy; and [*does a code of ethics and the conflict of interest policy exist for the Society*]
- (c) The Investment Manager shall manage the portfolio in compliance with the CFA Institute's Code of Ethics and the Standards of Professional Conduct of the CFA Institute.

**6.09 Termination of the Investment Manager**

- (a) The Board may terminate the Investment Manager for reasons including the following:
  - Investment portfolio performance which falls below the benchmarks;
  - Changes in the Investment Manager's personnel, organizational structure, investment style or philosophy, which could adversely affect the performance or integrity of the investment funds;
  - Failure to adhere to this policy; and
  - Changes in Society of Saint Vincent de Paul, Toronto Central Council's structure or needs, such that the services of the Investment Manager are no longer required.

**7 ATTACHMENTS**

Attachment A — Ontario Charities Accounting Act

Attachment B — Ontario Charities Accounting Act Approved Acts of Executors and Trustees

Attachment C — Ontario Trustees Act



# **Charities Accounting Act**

## **R.S.O. 1990, CHAPTER C.10**

**Consolidation Period:** From November 14, 2017 to the [e-Laws currency date](#).

Last amendment: 2017, c. 20, Sched. 2, s. 1, 2.

Legislative History: 1993, c. 27, Sched.; 1996, c. 25, s. 2; 1997, c. 23, s. 3; 1999, c. 12, Sched. B, s. 1; 2000, c. 26, Sched. A, s. 2; 2001, c. 9, Sched. B, s. 3; 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. A, s. 2; 2009, c. 33, Sched. 2, s. 11; 2009, c. 33, Sched. 6, s. 44; 2017, c. 20, Sched. 2, s. 1, 2.

### **Notice of donation to be given to Public Guardian and Trustee**

**1** (1) Where, under the terms of a will or other instrument in writing, real or personal property or any right or interest in it or proceeds from it are given to or vested in a person as executor or trustee for a religious, educational, charitable or public purpose, or are to be applied by the person for any such purpose, the person shall give written notice to,

- (a) the person, if any, designated in the will or other instrument as the beneficiary or as the person to receive the gift from the executor or trustee; and
- (b) the Public Guardian and Trustee, in the case of an instrument other than a will. 2000, c. 26, Sched. A, s. 2 (1).

### **Charitable corporations, etc., brought within Act**

(2) Any corporation incorporated for a religious, educational, charitable or public purpose shall be deemed to be a trustee within the meaning of this Act, its instrument of incorporation shall be deemed to be an instrument in writing within the meaning of this Act, and any real or personal property acquired by it shall be deemed to be property within the meaning of this Act. R.S.O. 1990, c. C.10, s. 1 (2).

### **Time for giving notice**

(3) The notice shall be given, in the case of an instrument other than a will, within one month after it has been executed, and, in the case of a will, within the same period after the death of the testator. R.S.O. 1990, c. C.10, s. 1 (3).

### **Where notice not necessary**

(4) No notice is necessary where the trust was completely executed before the 31st day of March, 1914, but the remaining sections of this Act nevertheless apply to every such trust. R.S.O. 1990, c. C.10, s. 1 (4).

### **Contents of notice**

(5) The notice shall state the nature of the property coming into the possession or under the control of the executor or trustee. 1997, c. 23, s. 3 (2).

### **Copy of instrument**

(6) The notice shall be accompanied by a copy of the will or other instrument; in the case of a notice under clause (1) (b), the Public Guardian and Trustee may require a notarial copy. 2000, c. 26, Sched. A, s. 2 (2).

### **Section Amendments with date in force (d/m/y)**

1997, c. 23, s. 3 (2) - 28/11/1997

2000, c. 26, Sched. A, s. 2 (1, 2) - 06/12/2000

**1.1** REPEALED: 2009, c. 33, Sched. 2, s. 11 (1).

### **Section Amendments with date in force (d/m/y)**

2001, c. 9, Sched. B, s. 3 - 29/06/2001

2002, c. 18, Sched. A, s. 2 - 29/06/2001

2009, c. 33, Sched. 2, s. 11 (1) - 15/12/2009

### **Executor or trustee to provide information**

**2** An executor or trustee to whom section 1 applies shall, if requested by the Public Guardian and Trustee, provide to the Public Guardian and Trustee particulars in writing respecting,

- (a) the name and address of each executor or trustee of the estate or trust;
- (b) the condition, disposition or other such particulars as requested of the property devised, bequeathed or given or which is in any way held by the executor or trustee; and
- (c) any other matter relating to the administration or management of the estate or trust or any other property held by the executor or trustee, as requested. 2009, c. 33, Sched. 2, s. 11 (2).

### **Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 1 (1) - 22/12/1999

2000, c. 26, Sched. A, s. 2 (4) - 06/12/2000

2009, c. 33, Sched. 2, s. 11 (2) - 15/12/2009

### **Auditing accounts as to charitable legacies or grants**

**3** Whenever required so to do by the Public Guardian and Trustee, an executor or trustee shall submit the accounts of dealings with the property coming into the hands or under the control of the executor or trustee under the terms of the bequest or gift, to be passed and examined and audited by a judge of the Superior Court of Justice. R.S.O. 1990, c. C.10, s. 3; 1999, c. 12, Sched. B, s. 1 (1); 2000, c. 26, Sched. A, s. 2 (4).

### **Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 1 (1) - 22/12/1999

2000, c. 26, Sched. A, s. 2 (4) - 06/12/2000

### **Application to court where executor or trustee in default**

**4** If any such executor or trustee,

- (a) refuses or neglects to comply with section 1, 2 or 3, or with any of the regulations made under this Act;
- (b) is found to have misapplied or misappropriated any property or fund coming into the executor's or trustee's hands;
- (c) has made any improper or unauthorized investment of any money forming part of the proceeds of any such property or fund; or
- (d) is not applying any property, fund or money in the manner directed by the will or instrument,

a judge of the Superior Court of Justice upon the application of the Public Guardian and Trustee, may make an order,

- (e) directing the executor or trustee to do forthwith or within the time stated in the order anything that the executor or trustee has refused or neglected to do in compliance with section 1, 2 or 3, or with the regulations made under this Act;
- (f) requiring the executor or trustee to pay into court any funds in the executor's or trustee's hands and to assign and transfer to the Accountant of the Superior Court of Justice, or to a new trustee appointed under clause (g), any property or securities in the hands or under the control of the executor or trustee;
- (g) removing such executor or trustee and appointing some other person to act in the executor's or trustee's stead;
- (h) directing the issue of an attachment against the executor or trustee to the amount of any property or funds as to which the executor or trustee is in default;
- (i) fixing the costs of the application and directing how and by whom they shall be payable;
- (j) giving such directions as to the future investment, disposition and application of any such property, funds or money as the judge considers just and best calculated to carry out the intentions of the testator or donor;
- (k) imposing a penalty by way of fine or imprisonment not exceeding twelve months upon the executor or trustee for any such default or misconduct or for disobedience to any order made under this section;
- (l) appointing an executor or trustee in place of an executor or trustee who has died, or has ceased to act, or has been removed, or has gone out of Ontario, even if the will or other instrument creating the trust confers the power to make such an appointment upon another executor or trustee or upon any other person. R.S.O. 1990, c. C.10, s. 4; 1999, c. 12, Sched. B, s. 1 (1, 2); 2000, c. 26, Sched. A, s. 2 (4).

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 1 (1, 2) - 22/12/1999

2000, c. 26, Sched. A, s. 2 (4) - 06/12/2000

**Information, documents respecting entities**

**4.1** (1) If an executor or trustee to whom section 1 applies holds a substantial interest in an entity within the meaning of subsection (3), the Public Guardian and Trustee may inquire into the management or operation of the entity and into its relationship to the executor or trustee, and the entity or any director, officer, manager or trustee of the entity shall, if requested by the Public Guardian and Trustee, provide to the Public Guardian and Trustee such information or documents respecting the entity as the Public Guardian and Trustee specifies. 2009, c. 33, Sched. 2, s. 11 (3).

**Same**

(2) Without limiting the generality of subsection (1), the Public Guardian and Trustee may make a request under that subsection for,

- (a) business records of the entity;
- (b) information respecting the assets and liabilities of the entity;
- (c) accounts of income and expenses for the entity;
- (d) financial statements of the entity, including any statements made by an auditor with respect to the financial statements; and
- (e) the particulars of any fees, salary or other remuneration paid to any person by the entity. 2009, c. 33, Sched. 2, s. 11 (3).

**Substantial interest**

(3) An executor or trustee holds a substantial interest in an entity if the following criteria are met:

1. In the case of an entity that is a corporation with share capital, the executor or trustee beneficially owns, controls or has direction over one of the following:
  - i. Shares of any class or series of voting shares of the corporation carrying more than 20 per cent of the voting rights attached to all of the outstanding voting shares of the corporation.
  - ii. Shares of the corporation representing more than 20 per cent of the shareholders' equity of the corporation.
2. In the case of an entity that is a corporation without share capital, the executor or trustee beneficially owns, controls or has direction over membership in a class of membership of the corporation carrying more than 20 per cent of the voting rights attached to all of the outstanding voting membership interests of the corporation.
3. In the case of an entity that is a partnership, the executor or trustee beneficially owns, controls or has direction over a right to one of the following:
  - i. At least 20 per cent of the profits of the partnership.
  - ii. At least 20 per cent of the assets of the partnership on its dissolution.
4. In the case of an entity that is a trust, the executor or trustee beneficially holds an interest in the trust.
5. In the case of any other entity, the aggregate of any ownership interests into which the entity is divided, however designated, that are beneficially owned or controlled by the executor or trustee, or over which the executor or trustee exercises direction, exceeds 20 per cent of all the ownership interests into which the entity is divided. 2009, c. 33, Sched. 2, s. 11 (3).

**Same**

(4) For the purposes of subsection (3), the ownership, control or direction over a thing by the executor or trustee may be,

- (a) direct or indirect; or
- (b) alone or through one or more persons, entities or both. 2009, c. 33, Sched. 2, s. 11 (3).

**Application to court**

(5) On application by the Public Guardian and Trustee, a judge of the Superior Court of Justice may,

- (a) make any order that the judge considers necessary or proper to compel the provision of information or documents required to be provided to the Public Guardian and Trustee under subsection (1);
- (b) fix the costs of the application and direct how and by whom they shall be payable;
- (c) make any order relating to the management, operation, ownership or control of the entity that is in the best interest of the purpose for which the estate or trust is held, including an order,
  - (i) determining who owns, controls or has direction over the entity,
  - (ii) determining who controls the election of the directors of the entity,
  - (iii) ensuring that the ownership, control or direction of the entity is in the best interest of the purpose for which the estate or trust is held, including, if appropriate, requiring the executor or trustee to sell all or some of his or her interest in the entity,
  - (iv) ensuring the proper operation and management of the entity and its assets,
  - (v) protecting or preserving the assets or financial stability of the entity and the assets held by the executor or trustee relating to the entity,
  - (vi) selling some or all of the assets of the entity, or
  - (vii) distributing some or all of the profits of the entity. 2009, c. 33, Sched. 2, s. 11 (3).

#### **Notice**

(6) An application under subsection (5) shall be on notice to the entity, to the executor or trustee and to any other person that a judge directs. 2009, c. 33, Sched. 2, s. 11 (3).

#### **No obstruction**

(7) No person shall obstruct, hinder or interfere with an inquiry conducted under subsection (1), or withhold, conceal or destroy information or documents required to be provided to the Public Guardian and Trustee under that subsection. 2009, c. 33, Sched. 2, s. 11 (3).

#### **Offence and penalty**

(8) Every person who contravenes subsection (7) is guilty of an offence and on conviction is liable to a fine not exceeding \$25,000. 2009, c. 33, Sched. 2, s. 11 (3).

#### **Section Amendments with date in force (d/m/y)**

2009, c. 33, Sched. 2, s. 11 (3) - 15/12/2009

#### **Regulations**

**5** (1) The Attorney General, on the advice of the Public Guardian and Trustee, may make regulations,

- (a) prescribing forms of notices and returns to be made under this Act;
- (b) respecting the practice and procedure upon passing the accounts of an executor or trustee under this Act and the tariff of fees and costs to be applicable thereto;
- (c) requiring returns to be made by any such executor or trustee to any ministry of the Government and the form of such returns;
- (d) regulating the practice and procedure upon applications under section 4. R.S.O. 1990, c. C.10, s. 5 (1); 1996, c. 25, s. 2 (1).

#### **Practice**

(2) Except as otherwise provided by the regulations, the practice and procedure of the Superior Court of Justice apply to proceedings under this Act. R.S.O. 1990, c. C.10, s. 5 (2); 1999, c. 12, Sched. B, s. 1 (3).

(3) REPEALED: 1997, c. 23, s. 3 (3).

#### **Notice of action to set aside will to be served on Public Guardian and Trustee**

(4) Where an action or other proceeding is brought to set aside, vary or construe a will or other instrument described in subsection 1 (1), written notice thereof shall be served upon the Public Guardian and Trustee, and if no one appears as representing the religious, educational, charitable or public institution, or if there is no named beneficiary, or a discretion is given to the executor or trustee as to a choice of beneficiaries, the Public Guardian and Trustee may intervene in the action or

other proceeding and has the right to object or consent and to be heard upon any argument as a party to the action or other proceeding. R.S.O. 1990, c. C.10, s. 5 (4); 2000, c. 26, Sched. A, s. 2 (4); 2009, c. 33, Sched. 2, s. 11 (4).

**Section Amendments with date in force (d/m/y)**

1996, c. 25, s. 2 (1) - 31/10/1996; 1997, c. 23, s. 3 (3) - 28/11/1997; 1999, c. 12, Sched. B, s. 1 (3) - 22/12/1999

2000, c. 26, Sched. A, s. 2 (4) - 06/12/2000

2009, c. 33, Sched. 2, s. 11 (4) - 15/12/2009

**Regulations**

**5.1** (1) The Attorney General, on the advice of the Public Guardian and Trustee, may make regulations,

- (a) providing that acts or omissions that would otherwise require the approval of the Superior Court of Justice in the exercise of its inherent jurisdiction in charitable matters shall be treated, for all purposes, as though they had been so approved;
- (b) requiring the making and keeping of records relating to charitable property and respecting the making, keeping, transfer and disposal of such records. 1999, c. 12, Sched. B, s. 1 (4).

**Limitation**

(2) Regulations under clause (1) (a) may be made only in relation to,

- (a) the giving of benefits from charitable property to,
  - (i) executors and trustees referred to in subsection 1 (1),
  - (ii) corporations deemed by subsection 1 (2) to be trustees within the meaning of this Act,
  - (iii) directors of corporations described in subclause (ii) or of persons described in subclause (i) who are corporations, or
  - (iv) persons who, because of their relationship or connection to a person, corporation or director described in subclause (i), (ii) or (iii), cannot be given such benefits without court approval; and
- (b) the administration and management of charitable property that is held for restricted or special purposes. 1999, c. 12, Sched. B, s. 1 (4); 2000, c. 26, Sched. A, s. 2 (3).

**Governing instrument**

(3) Regulations made under clause (1) (a) do not apply to an act or omission that conflicts with the will or instrument referred to in subsection 1 (1) or with the instrument deemed by subsection 1 (2) to be an instrument in writing under this Act. 1999, c. 12, Sched. B, s. 1 (4).

**General or particular**

(4) Regulations made under this section may be general or particular in their application and, without limiting the generality of the foregoing, may be subject to the conditions set out in the regulations. 1999, c. 12, Sched. B, s. 1 (4).

**Definition**

(5) In this section,

“charitable property” means property that is within the inherent jurisdiction of the court in charitable matters. 1999, c. 12, Sched. B, s. 1 (4).

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 1 (4) - 22/12/1999

2000, c. 26, Sched. A, s. 2 (3) - 06/12/2000

**Collection of funds from the public, right of complaint**

**6** (1) Any person may complain as to the manner in which a person or organization has solicited or procured funds by way of contribution or gift from the public for any purpose, or as to the manner in which any such funds have been dealt with or disposed of. R.S.O. 1990, c. C.10, s. 6 (1).

**Form of complaint**

(2) Every such complaint shall be in writing and delivered by the complainant to a judge of the Superior Court of Justice. R.S.O. 1990, c. C.10, s. 6 (2); 1999, c. 12, Sched. B, s. 1 (5).

**Order for investigation**

(3) Wherever the judge is of opinion that the public interest can be served by an investigation of the matter complained of, he or she may make an order directing the Public Guardian and Trustee to make such investigation as the Public Guardian and Trustee considers proper in the circumstances. R.S.O. 1990, c. C.10, s. 6 (3); 2000, c. 26, Sched. A, s. 2 (4).

**Application of *Public Inquiries Act, 2009***

(4) Section 33 of the *Public Inquiries Act, 2009* applies to an investigation directed under subsection (3). 2009, c. 33, Sched. 6, s. 44 (1).

**Cost of investigation**

(5) The cost of any such investigation, when approved by the Attorney General, forms part of the expenses of the administration of justice in Ontario. R.S.O. 1990, c. C.10, s. 6 (5).

**Report of investigation**

(6) As soon as the Public Guardian and Trustee has completed the investigation, he or she shall report in writing thereon to the Attorney General and to the judge who ordered the investigation. R.S.O. 1990, c. C.10, s. 6 (6); 2000, c. 26, Sched. A, s. 2 (4).

**Order for audit**

(7) Upon receipt of the report, the judge may order a passing of the accounts in question, in which case section 23 of the *Trustee Act* applies, and the judge may make such order as to the costs of the Public Guardian and Trustee thereon as he or she considers proper. R.S.O. 1990, c. C.10, s. 6 (7); 2000, c. 26, Sched. A, s. 2 (4).

**Where section not to apply**

(8) Nothing in this section applies to any religious or fraternal organization or to any person who solicited or procured any funds of any religious or fraternal organization. R.S.O. 1990, c. C.10, s. 6 (8).

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 1 (5) - 22/12/1999

2000, c. 26, Sched. A, s. 2 (4) - 06/12/2000

2009, c. 33, Sched. 6, s. 44 (1) - 01/06/2011

**Definition**

7 In sections 8, 9 and 10,

“charitable purpose” means,

- (a) the relief of poverty,
- (b) education,
- (c) the advancement of religion, and
- (d) any purpose beneficial to the community, not falling under clause (a), (b) or (c). R.S.O. 1990, c. C.10, s. 7; 2009, c. 33, Sched. 2, s. 11 (5).

**Section Amendments with date in force (d/m/y)**

2009, c. 33, Sched. 2, s. 11 (5) - 15/12/2009

**Limitation on use of property**

8 A person who holds an interest in real or personal property for a charitable purpose shall use the property for the charitable purpose. 2009, c. 33, Sched. 2, s. 11 (6).

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 1 (5) - 22/12/1999

2000, c. 26, Sched. A, s. 2 (4) - 06/12/2000

2009, c. 33, Sched. 2, s. 11 (6) - 15/12/2009

#### **Authority for certain public bodies to receive property for charitable purposes**

**9** (1) Subject to section 8, a municipal corporation or local board thereof, a university or a public hospital may receive, hold and enjoy real or personal property devised, bequeathed or granted to it for a charitable purpose, upon the terms expressed in the devise, bequest or grant. R.S.O. 1990, c. C.10, s. 9 (1).

#### **Agreement re administration**

(2) A municipal corporation or local board thereof, university or public hospital holding property under subsection (1) may enter into an agreement with the person devising, bequeathing or granting the property for the holding, management, administration or disposition of the property. R.S.O. 1990, c. C.10, s. 9 (2).

#### **Application of section**

(3) This section applies even if the devise, bequest or grant was made before it was authorized by this section. R.S.O. 1990, c. C.10, s. 9 (3).

#### **Definition**

(4) In this section,

“local board” includes a school board and a conservation authority. 2002, c. 17, Sched. F, Table.

#### **Section Amendments with date in force (d/m/y)**

2002, c. 17, Sched. F, Table - 01/01/2003

#### **Application for order re carrying out trust**

**10** (1) Where any two or more persons allege a breach of a trust created for a charitable purpose or seek the direction of the court for the administration of a trust for a charitable purpose, they may apply to the Superior Court of Justice and the court may hear the application and make such order as it considers just for the carrying out of the trust under the law. R.S.O. 1990, c. C.10, s. 10 (1); 1999, c. 12, Sched. B, s. 1 (5).

#### **Notice to Public Guardian and Trustee**

(2) An application under subsection (1) shall be upon notice to the Public Guardian and Trustee who may appear and be represented by counsel at the hearing. R.S.O. 1990, c. C.10, s. 10 (2); 2000, c. 26, Sched. A, s. 2 (4).

#### **Investigation by Public Guardian and Trustee**

(3) Where the court is of the opinion that the public interest can be served by an investigation of the matter alleged in the application, the court may make an order directing the Public Guardian and Trustee to make such investigation as the Public Guardian and Trustee considers proper in the circumstances and report in writing thereon to the court and the Attorney General. R.S.O. 1990, c. C.10, s. 10 (3); 2000, c. 26, Sched. A, s. 2 (4).

#### **Application of *Public Inquiries Act*, 2009**

(4) Section 33 of the *Public Inquiries Act*, 2009 applies to an investigation directed under subsection (3). 2009, c. 33, Sched. 6, s. 44 (2).

#### **Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 1 (5) - 22/12/1999

2000, c. 26, Sched. A, s. 2 (4) - 06/12/2000

2009, c. 33, Sched. 6, s. 44 (2) - 01/06/2011

#### **Application of *Trustee Act***

**10.1** Except as provided under subsection 10.3 (3), sections 27 to 31 of the *Trustee Act* apply to,

- (a) an executor or trustee referred to in subsection 1 (1);
- (b) a corporation that is deemed to be a trustee under subsection 1 (2); and
- (c) a person referred to in section 8 who is not a person referred to in clause (a) or (b). 2009, c. 33, Sched. 2, s. 11 (7); 2017, c. 20, Sched. 2, s. 1.

#### **Section Amendments with date in force (d/m/y)**

2009, c. 33, Sched. 2, s. 11 (7) - 15/12/2009

2017, c. 20, Sched. 2, s. 1 - 14/11/2017

### **Social investments**

**10.2** (1) This section applies for the purposes of sections 10.3 and 10.4. 2017, c. 20, Sched. 2, s. 2.

#### **Interpretation, social investment**

(2) A social investment is made when a trustee applies or uses trust property in order to,

- (a) directly further the purposes of the trust; and
- (b) achieve a financial return, within the meaning of subsection (3), for the trust. 2017, c. 20, Sched. 2, s. 2.

#### **Interpretation, achieving a financial return**

(3) The application or use of trust property shall be considered as achieving a financial return if the outcome in respect of the trust property is better for the trust in financial terms than expending all the property. 2017, c. 20, Sched. 2, s. 2.

#### **Additional results**

(4) The fact that the application or use of trust property may have other results in addition to the results referred to in clauses (2) (a) and (b) does not prevent it from being regarded as the making of a social investment. 2017, c. 20, Sched. 2, s. 2.

#### **Nature of social investment**

(5) A social investment for the purposes of sections 10.3 and 10.4 is not, for that reason alone, an investment for any other purpose. 2017, c. 20, Sched. 2, s. 2.

#### **Terms of corporate trust**

(6) For the purposes of sections 10.3 and 10.4, the constating documents of a corporation that is deemed to be a trustee under subsection 1 (2) form part of the terms of the trust. 2017, c. 20, Sched. 2, s. 2.

#### **Protection from liability**

(7) A trustee is not liable for loss to the trust arising from the making of a social investment if, in doing so, the trustee acted honestly and in good faith in accordance with the duties, restrictions and limitations that apply under this Act and the terms of the trust. 2017, c. 20, Sched. 2, s. 2.

#### **Section Amendments with date in force (d/m/y)**

2017, c. 20, Sched. 2, s. 2 - 14/11/2017

### **Power to make social investments**

**10.3** (1) A trustee may make social investments, subject to subsection (2). 2017, c. 20, Sched. 2, s. 2.

#### **Limitation**

(2) A social investment may not be made in relation to trust property that is subject to a limitation on capital being expended for the purposes of the trust, unless the trustee expects that making the social investment will not contravene the limitation or the terms of the trust allow for such an investment. 2017, c. 20, Sched. 2, s. 2.

#### **Application of certain investment rules**

(3) Subsections 27 (3) and (4) of the *Trustee Act* apply with necessary modifications with respect to the making of social investments; otherwise, sections 27 to 29 of that Act do not apply to the making of social investments. 2017, c. 20, Sched. 2, s. 2.

#### **Powers may be restricted, excluded**

(4) The power conferred by this section may be restricted or excluded by the terms of the trust. 2017, c. 20, Sched. 2, s. 2.

#### **Section Amendments with date in force (d/m/y)**

2017, c. 20, Sched. 2, s. 2 - 14/11/2017

### **Trustee duties re social investments**

**10.4** (1) Before making a social investment, a trustee shall,

- (a) determine whether, in the circumstances, advice should be obtained respecting the proposed social investment and, if so, obtain and consider the advice; and



- (b) satisfy him, her or itself that it is in the interests of the trust to make the social investment, having regard to the benefit expected to be achieved for the trust. 2017, c. 20, Sched. 2, s. 2.

#### **On-going review**

- (2) A trustee shall, from time to time, review the social investments of the trust property. 2017, c. 20, Sched. 2, s. 2.

#### **Same, advice**

- (3) In undertaking a review under subsection (2), a trustee shall determine whether, in the circumstances, advice should be obtained respecting a social investment and, if so, obtain and consider the advice. 2017, c. 20, Sched. 2, s. 2.

#### **Reliance on advice**

- (4) It is not a breach of trust for a trustee to rely on advice obtained under clause (1) (a) or subsection (3). 2017, c. 20, Sched. 2, s. 2.

#### **Duties may not be restricted, excluded**

- (5) The duties under this section may not be restricted or excluded by the terms of the trust. 2017, c. 20, Sched. 2, s. 2.

#### **Section Amendments with date in force (d/m/y)**

2017, c. 20, Sched. 2, s. 2 - 14/11/2017

#### **Application of Act**

**11** This Act applies despite any provision in any will or other instrument excluding its application or giving to an executor or trustee any discretion as to the application of property, funds or the proceeds thereof to religious, educational, charitable or public purposes. R.S.O. 1990, c. C.10, s. 11.

#### **Other rights and remedies not affected**

**12** This Act does not apply to or affect or in any way interfere with any right or remedy that any person may have under any other Act or in equity or at common law or otherwise. R.S.O. 1990, c. C.10, s. 12.

#### **Consent orders and judgments in charitable matters**

**13** (1) A draft order or judgment that could have been made by the Superior Court of Justice under this Act, under any other Act dealing with charitable matters, or in the exercise of its inherent jurisdiction in charitable matters, shall be deemed to be an order or judgment of that court if the following persons give a written consent to its terms:

1. The Public Guardian and Trustee.
2. Every other person who would have been required to be served in a proceeding to obtain the order or judgment. 1997, c. 23, s. 3 (4); 1999, c. 12, Sched. B, s. 1 (5).

#### **PGT's seal**

- (2) In the case of the Public Guardian and Trustee, the consent shall be sealed. 1997, c. 23, s. 3 (4).

#### **Effective date**

- (3) The terms of the draft order or judgment take effect when it is filed with the Superior Court of Justice. 1997, c. 23, s. 3 (4); 1999, c. 12, Sched. B, s. 1 (5).

#### **Section Amendments with date in force (d/m/y)**

1997, c. 23, s. 3 (4) - 28/11/1997; 1999, c. 12, Sched. B, s. 1 (5) - 22/12/1999

#### ***Charitable Gifts Act***

#### **Definition**

**14** (1) In this section,

“interest in a business” means an interest in a business within the meaning of the *Charitable Gifts Act*, as it read immediately before its repeal. 2009, c. 33, Sched. 2, s. 11 (8).

#### **Obligation to dispose of business interest extinguished**

(2) Despite clause 51 (1) (b) of the *Legislation Act, 2006*, the repeal of the *Charitable Gifts Act* extinguishes all obligations under the *Charitable Gifts Act* to dispose of any interest in a business that are still in existence at the time of the repeal. 2009, c. 33, Sched. 2, s. 11 (8).

**Same**

(3) Subsection (2) applies in respect of obligations that came into existence under the *Charitable Gifts Act* at any time before its repeal. 2009, c. 33, Sched. 2, s. 11 (8).

**Right to application extinguished**

(4) Despite subclause 51 (1) (d) (i) and subsection 51 (2) of the *Legislation Act, 2006*, the repeal of the *Charitable Gifts Act* extinguishes all rights to bring an application under that Act in relation to the obligations to which subsection (2) applies. 2009, c. 33, Sched. 2, s. 11 (8).

**Non-application**

(5) Subsection (4) does not apply in respect of an application relating to an order made under subsection 3 (3) of the *Charitable Gifts Act*, as it read immediately before its repeal. 2009, c. 33, Sched. 2, s. 11 (8).

**Section Amendments with date in force (d/m/y)**

2009, c. 33, Sched. 2, s. 11 (8) - 15/12/2009

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Français

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# Charities Accounting Act

## ONTARIO REGULATION 4/01

### APPROVED ACTS OF EXECUTORS AND TRUSTEES

**Consolidation Period:** From April 1, 2018 to the [e-Laws currency date](#).

Last amendment: 112/18.

Legislative History: 112/18.

*This is the English version of a bilingual regulation.*

#### APPROVAL OF SPECIFIED ACTS

1. (1) The acts authorized by this Regulation that would otherwise require the approval of the Superior Court of Justice in the exercise of its inherent jurisdiction in charitable matters shall be treated, for all purposes, as though they had been so approved. O. Reg. 4/01, s. 1 (1).

(2) Subsection (1) does not constitute authorization of an act that conflicts with one of the following in a particular case:

1. The will or the instrument in writing relating to the property.

2. A court order relating to the will or instrument or relating to the property. O. Reg. 4/01, s. 1 (2).

(3) An executor or trustee must maintain records demonstrating that he, she or it has complied with the requirements of this Regulation when engaging in an act that is authorized under subsection (1). O. Reg. 4/01, s. 1 (3).

(4) An executor or trustee is not required by virtue of this Regulation to give any indemnity or to make any payment. O. Reg. 4/01, s. 1 (4).

#### AUTHORIZATION TO INDEMNIFY

2. (1) In the circumstances and subject to the restrictions set out in this section, an executor or trustee and, if the executor or trustee is a corporation, each director or officer of the corporation may be indemnified for personal liability arising from their acts or omissions in performing their duties as executor, trustee, director or officer. O. Reg. 4/01, s. 2 (1).

(2) An executor, trustee, director or officer cannot be indemnified for liability that relates to their failure to act honestly and in good faith in performing their duties. O. Reg. 4/01, s. 2 (2).

(3) In the circumstances and subject to the restrictions set out in this section, insurance may be purchased to indemnify the executor, trustee, director or officer for the personal liability described in subsection (1). O. Reg. 4/01, s. 2 (3).

(4) The terms of the indemnity or insurance policy must not impair a person's right to bring an action against the executor, trustee, director or officer. O. Reg. 4/01, s. 2 (4).

(5) The executor or trustee or, if the executor or trustee is a corporation, the board of directors of the corporation shall consider the following factors before giving an indemnity or purchasing insurance:

1. The degree of risk to which the executor, trustee, director or officer is or may be exposed.

2. Whether, in practice, the risk cannot be eliminated or significantly reduced by means other than the indemnity or insurance.

3. Whether the amount or cost of the insurance is reasonable in relation to the risk.

4. Whether the cost of the insurance is reasonable in relation to the revenue available to the executor or trustee.

5. Whether it advances the administration and management of the property to give the indemnity or purchase the insurance. O. Reg. 4/01, s. 2 (5).

(6) The purchase of insurance must not, at the time of the purchase, unduly impair the carrying out of the religious, educational, charitable or public purpose for which the executor or trustee holds the property. O. Reg. 4/01, s. 2 (6).

(7) No indemnity shall be paid or insurance purchased if doing so would result in the amount of the debts and liabilities exceeding the value of the property or, if the executor or trustee is a corporation, render the corporation insolvent. O. Reg. 4/01, s. 2 (7).

(8) The indemnity may be paid or the insurance purchased from the property to which the personal liability relates and not from any other charitable property. O. Reg. 4/01, s. 2 (8).

(9) If the executor, trustee, director or officer is deceased, the indemnity or the proceeds of the insurance may be paid to his or her estate. O. Reg. 4/01, s. 2 (9).

## AUTHORIZATION TO PAY

**2.1** (1) In this section,

“corporate trustee” means a corporation deemed by subsection 1 (2) of the Act to be a trustee within the meaning of the Act; (“fiduciaire constitué en société”)

“person connected to a director” means a person determined in accordance with subsection (3). (“personne liée à un administrateur”) O. Reg. 112/18, s. 1.

(2) A corporate trustee may, in the circumstances and subject to the restrictions set out in this section, make payments from the charitable property acquired by it to any of the following persons, for goods, services or facilities provided to it by the person:

1. A director of the corporate trustee.
2. A person connected to a director of the corporate trustee. O. Reg. 112/18, s. 1.

(3) The following are persons connected to a director of the corporate trustee for the purposes of this section, but do not include the corporate trustee itself:

1. A spouse, child, parent, grandparent or sibling of the director.
2. The employer of the director or of a person described in paragraph 1.
3. A corporation with share capital, if, singly or jointly, the director or a person described in paragraph 1 beneficially owns, controls or has direction over more than 5 per cent of the corporation’s shares.
4. A corporation without share capital, if, singly or jointly, the director or a person described in paragraph 1 beneficially owns, controls or has direction over more than 20 per cent of the outstanding voting membership interests of the corporation.
5. A corporation with or without share capital for which the director or a person described in paragraph 1 acts as director or officer.
6. A partnership in which the director or a person described in paragraph 1 is a partner, or in which a corporation described in paragraph 3, 4 or 5 is a partner.
7. A partner in a partnership described in paragraph 6. O. Reg. 112/18, s. 1.

(4) This section does not authorize any of the following:

1. Remuneration or other direct or indirect payment for services provided by a director as a director or employee of the corporate trustee, as the case may be, in that capacity.
2. Direct or indirect payment for providing fundraising services or for selling goods or services for fundraising purposes.
3. Direct or indirect payment made in connection to the purchase or sale of real property. O. Reg. 112/18, s. 1.

(5) Payments made under this section,

- (a) must be made with a view to the corporate trustee’s best interests;
- (b) must be in an amount that is reasonable for the corporate trustee to pay for the goods, services or facilities that are provided;
- (c) must not result in the amount of the corporate trustee’s debts and liabilities exceeding the charitable property’s value, or render the corporate trustee insolvent; and
- (d) must not exceed the amount set out in the agreement referred to in clause (a) of subsection (6) for the goods, services or facilities to be provided. O. Reg. 112/18, s. 1.

(6) Before a corporate trustee’s board of directors may authorize payment for goods, services or facilities under this section,

- (a) every director of the corporate trustee must agree in writing to a maximum amount that can be paid by the corporate trustee for the goods, services or facilities and, if the goods, services or facilities are to be provided by a person connected to a director, that person must also agree in writing to the maximum amount;
- (b) every director of the corporate trustee, other than the director providing the goods, services or facilities or the director to whom the person providing the goods, services or facilities is connected, as the case may be, must agree in writing that he or she is satisfied that the payment is being made in accordance with the requirements, and within the restrictions, of this section; and
- (c) the board of directors must consider any guidance respecting payments made under this section that is issued by the Public Guardian and Trustee and published on a Government of Ontario website. O. Reg. 112/18, s. 1.

(7) In order for a corporate trustee's board of directors to authorize payment under this section, there must be at least four voting directors on the board, not including the director providing the goods, services or facilities or the director to whom the person providing the goods, services or facilities is connected, as the case may be. O. Reg. 112/18, s. 1.

(8) Regardless of whether goods, services or facilities are provided by a director of the corporate trustee or by a person connected to a director of the corporate trustee, neither the director nor any person connected to him or her shall attend any part of a board meeting during which the decision to authorize the payment is discussed, nor vote on the matter. O. Reg. 112/18, s. 1.

(9) The total number of persons receiving payment under this section must not exceed 20 per cent of the number of voting directors on the board. O. Reg. 112/18, s. 1.

(10) The directors of the corporate trustee shall ensure that information respecting payments made under this section in a given year is noted in the corporate trustee's financial statements for that year, and placed before its members at an annual meeting of the members. O. Reg. 112/18, s. 1.

(11) Clauses (5) (c) and (d) and subsections (6) to (10) do not apply with respect to a payment made under this section to a corporation described in paragraph 5 of subsection (3), if neither the director nor a person connected to the director, other than the corporation itself, would receive any benefit from the payment and,

(a) the corporation is a corporation without share capital; or

(b) all of the corporation's shares are owned by the corporate trustee. O. Reg. 112/18, s. 1.

### COMBINING PROPERTY HELD FOR RESTRICTED OR SPECIAL PURPOSES

3. (1) In this section,

"contributed property" means, in respect of an individual property, additional property that is added to, and forms part of, a pre-existing individual property. O. Reg. 4/01, s. 3 (1).

(2) In the circumstances and subject to the restrictions described in this section, an executor or trustee may combine property received by the executor or trustee for a restricted or special purpose with other property received by the executor or trustee for another restricted or special purpose and may hold the combined property in one account in a financial institution or invest it as if it were a single property. O. Reg. 4/01, s. 3 (2).

(3) The property may be combined only if it advances the administration and management of each of the individual properties to do so. O. Reg. 4/01, s. 3 (3).

(4) All gains, losses, income and expenses must be allocated rateably, on a fair and reasonable basis, to the individual properties in accordance with generally accepted accounting principles. O. Reg. 4/01, s. 3 (4).

(5) The executor or trustee must maintain the following records for each of the individual properties, in addition to such other records as may be required by law:

1. The value of the individual property immediately before it becomes part of the combined property, and the date on which it becomes part of the combined property.
2. The value of any portion of the individual property that does not become part of the combined property.
3. The source and the value of contributed property relating to an individual property, and the date on which the contributed property is received.
4. The value of the contributed property immediately before it becomes part of the combined property, and the date on which it becomes part of the combined property.
5. The amount of the revenue received by the combined property that is allocated to the individual property, and the date of each allocation.
6. The amount of the expenses paid from the combined property that are allocated to the individual property, and the date of each allocation.
7. The value of all distributions from the combined property made for the purposes of the individual property, and the purpose and date of each distribution. O. Reg. 4/01, s. 3 (5).

(6) The executor or trustee must maintain the following records for the combined property, in addition to such other records as may be required by law:

1. The value of each individual property that becomes part of the combined property, and the date on which it becomes part of the combined property.
2. The value of contributed property that becomes part of the combined property, the date on which it becomes part of the combined property, and details of the individual property to which the contributed property relates.
3. The amount of the revenue received by the combined property, the amount allocated to each individual property and the date of each allocation.

4. The amount of the expenses paid from the combined property, the amount allocated to each individual property and the date of each allocation.
5. The value of all distributions from the combined property made for the purposes of an individual property and the purpose and date of each distribution. O. Reg. 4/01, s. 3 (6).

Français

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# Trustee Act

## R.S.O. 1990, CHAPTER T.23

**Consolidation Period:** From December 15, 2009 to the [e-Laws currency date](#).

Last amendment: 2009, c. 34, Sched. T, s. 5.

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## Definitions

### 1 In this Act,

“assign” means the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring land of which such person is possessed, either for the whole estate of the person so possessed or for any less estate, and “assignment” has a corresponding meaning; (“céder”, “cession”)

“contingent right” as applied to land includes a contingent and executory interest, and a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility is or is not ascertained, and also a right of entry whether immediate or future, vested or contingent; (“droit éventuel”)

“convey” applied to a person means the execution and delivery by such person of every necessary or suitable assurance for conveying or disposing to another land whereof such person is seized, or wherein the person is entitled to a contingent right, either for the whole estate or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, and “conveyance” has a corresponding meaning; (“transporter”, “transport”)

“devisee” includes the heir of a devisee, and the devisee of an heir, and any person who may claim right by devolution of title of a similar description; (“légataire immobilier”)

“instrument” includes a deed, a will and a written document and an Act of the Legislature, but not a judgment or order of a court; (“acte”)



“land” includes messuages, and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be laid out in the purchase of land, and any share of the same hereditaments and properties, or any of them, and any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency; (“bien-fonds”)

“mortgage” is applicable to every estate, interest or property, in land or personal estate, that is merely a security for money, and “mortgagee” has a corresponding meaning and includes every person deriving title under the original mortgagee; (“hypothèque”, “créancier hypothécaire”)

“personal estate” includes leasehold estates and other chattels real, and also money, shares of government and other funds, securities for money (not being real estate), debts, choses in action, rights, credits, goods, and all other property, except real estate, which by law devolves upon the executor or administrator, and any share or interest therein; (“biens meubles”)

“personal representative” means an executor, an administrator, and an administrator with the will annexed; (“représentant successoral”)

“possessed” is applicable to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in any land; (“possession”)

“securities” includes stocks, funds and shares; (“valeurs mobilières”)

“seized” is applicable to any vested interest for life, or of a greater description, and extends to estates, legal and equitable, in possession, or in futurity, in any land; (“saisi”)

“stock” includes fully paid-up shares, and any fund, annuity, or security transferable in books kept by any incorporated bank, company or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein; (“action”)

“transfer”, in relation to stock, includes the performance and execution of every deed, power of attorney, act or thing, on the part of the transferor to effect and complete the title in the transferee; (“transfert”)

“trust” does not mean the duties incident to an estate conveyed by way of mortgage but, with this exception, includes implied and constructive trusts and cases where the trustee has some beneficial estate or interest in the subject of the trust, and extends to and includes the duties incident to the office of personal representative of a deceased person, and “trustee” has a corresponding meaning and includes a trustee however appointed and several joint trustees; (“fiducie”, “fiduciaire”)

“will” includes,

- (a) a testament,
- (b) a codicil,
- (c) an appointment by will or by writing in the nature of a will in exercise of a power, and
- (d) any other testamentary disposition. (“testament”) R.S.O. 1990, c. T.23, s. 1; 2006, c. 19, Sched. B, s. 23.

#### **Section Amendments with date in force (d/m/y)**

2006, c. 19, Sched. B, s. 23 - 22/06/2006

### **RETIREMENT OF TRUSTEES**

#### **Retirement of trustees**

**2** (1) Where there are more than two trustees, if one of them by deed declares a desire to be discharged from the trust, and if the co-trustees and such other person, if any, as is empowered to appoint trustees, consent by deed to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee who desires to be discharged shall be deemed to have retired from the trust, and is, by the deed, discharged therefrom under this Act without any new trustee being appointed.

#### **Application of section**

(2) This section does not apply to executors or administrators. R.S.O. 1990, c. T.23, s. 2.

## APPOINTMENT OF NEW TRUSTEES

### **Power of appointing new trustees**

**3** (1) Where a trustee dies or remains out of Ontario for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on the trustee, or refuses or is unfit to act therein, or is incapable of acting therein, or has been convicted of an indictable offence or is bankrupt or insolvent, the person nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may by writing appoint another person or other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee dying, remaining out of Ontario, desiring to be discharged, refusing or being unfit or incapable.

### **Survivorship**

(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or where there were two or more trustees, of the last surviving or continuing trustee, are or is capable of exercising or performing any power or trust that was given to or capable of being exercised by the sole or last surviving trustee. R.S.O. 1990, c. T.23, s. 3.

### **Authority of surviving trustee to appoint successor by will**

**4** Subject to the terms of any instrument creating a trust, the sole trustee or the last surviving or continuing trustee appointed for the administration of the trust may appoint by will another person or other persons to be a trustee or trustees in the place of the sole or surviving or continuing trustee after his or her death. R.S.O. 1990, c. T.23, s. 4.

### **Power of court to appoint new trustees**

**5** (1) The Superior Court of Justice may make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee. R.S.O. 1990, c. T.23, s. 5 (1); 2000, c. 26, Sched. A, s. 15 (2).

### **Limitation of effect of order**

(2) An order under this section and any consequential vesting order or conveyance does not operate as a discharge from liability for the acts or omissions of the former or continuing trustees. R.S.O. 1990, c. T.23, s. 5 (2).

### **Section Amendments with date in force (d/m/y)**

2000, c. 26, Sched. A, s. 15 (2) - 06/12/2000

### **What may be done**

**6** On the appointment of a new trustee for the whole or any part of trust property,

#### **increase in number**

- (a) the number of trustees may be increased; and

#### **separate trustees for distinct trusts**

- (b) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, even though no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part; and

#### **where not less than two to be appointed**

- (c) it is not obligatory to appoint more than one new trustee where only one trustee was originally appointed or to fill up the original number of trustees where more than two trustees were originally appointed but, except where only one trustee was originally appointed, a trustee shall not be discharged under section 3 from the trust unless there will be a trust corporation or at least two individuals as trustees to perform the trust; and

#### **execution and performance of requisite deeds and acts**

- (d) any assurance or thing requisite for vesting the trust property, or any part thereof, in the person who is the trustee, or jointly in the persons who are the trustees, shall be executed or done. R.S.O. 1990, c. T.23, s. 6.

### **Powers of new trustee**

**7** Every new trustee so appointed, as well before as after all the trust property becomes by law or by assurance or otherwise vested in the trustee, has the same powers, authorities and discretions, and may in all respects act as if the trustee had been originally appointed a trustee by the instrument, if any, creating the trust. R.S.O. 1990, c. T.23, s. 7; 1993, c. 27, Sched.

### **Section Amendments with date in force (d/m/y)**

1993, c. 27, Sched. - 31/12/1991

### **Nominated trustee dying before testator**

**8** The provisions of this Act relative to the appointment of new trustees apply to the case of a person nominated trustee in a will but dying before the testator. R.S.O. 1990, c. T.23, s. 8.

## **VESTING INSTRUMENTS**

### **Vesting of trust property in new or continuing trustees without conveyance**

**9** (1) Where an instrument, executed after the 1st day of July, 1886, by which a new trustee is appointed to perform any trust, contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any personal estate so subject, shall vest in the person or persons who, by virtue of such instrument, shall become and be the trustee or trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in the trustee, or in the trustees as joint tenants, and for the purposes of the trust, that estate, interest or right.

### **On retirement of a trustee**

(2) Where such an instrument, by which a retiring trustee is discharged under this Act, contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates.

### **Application to mortgages, stocks, shares, etc.**

(3) This section does not extend to land conveyed by way of mortgage for securing money subject to the trust, or to any share, stock, annuity, or property transferable only in books kept by a company or other body, or in a manner prescribed by or under an Act of the Parliament of Canada or of the Legislature.

### **Interpretation for registration purposes**

(4) For the purpose of registration the persons making the declaration shall be deemed the conveying parties, and the conveyance shall be deemed to be made by them under a power conferred by this Act. R.S.O. 1990, c. T.23, s. 9.

## **VESTING ORDERS, ORDERS RELEASING CONTINGENT RIGHTS, ETC.**

### **Vesting orders**

**10** (1) In any of the following cases,

- (a) where the Superior Court of Justice appoints or has appointed a new trustee; or
- (b) where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person is a minor, or is out of Ontario, or cannot be found; or
- (c) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; or
- (d) where it is uncertain whether the last trustee known to have been entitled to or possessed of any land is living or dead; or
- (e) where there is no heir or personal representative of a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; or
- (f) where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required by or on behalf of a person entitled to require a conveyance of the land or a release of the right, to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for fourteen days after the date of the requirement,

the Superior Court of Justice may make an order, vesting the land in any such person in any such manner, and for any such estate, as the court may direct, or releasing, or disposing of the contingent right to such person as the court may direct. R.S.O. 1990, c. T.23, s. 10 (1); 2000, c. 26, Sched. A, s. 15 (2).

### **Vesting of estate**

(2) Where the order is consequential on the appointment of a new trustee, the land shall be vested for such estate as the court may direct in the persons who, on the appointment, are the trustees. R.S.O. 1990, c. T.23, s. 10 (2).

### **Where trustee out of Ontario**

(3) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of Ontario or cannot be found, the land or right shall be vested in such other person, either alone or with some other person. R.S.O. 1990, c. T.23, s. 10 (3).

### **Section Amendments with date in force (d/m/y)**

2000, c. 26, Sched. A, s. 15 (2) - 06/12/2000

### **Orders as to contingent rights of unborn persons**

**11** Where any land is subject to a contingent right in an unborn person, or a class of unborn persons, who, on coming into existence, would, in respect thereof, become entitled to or possessed of the land on any trust, the Superior Court of Justice may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person, or class of unborn persons, would, on coming into existence, be entitled or possessed in the land. R.S.O. 1990, c. T.23, s. 11; 2000, c. 26, Sched. A, s. 15 (2).

### **Section Amendments with date in force (d/m/y)**

2000, c. 26, Sched. A, s. 15 (2) - 06/12/2000

### **Vesting order in place of conveyance by minor mortgagee**

**12** Where any person entitled to or possessed of land, or entitled to any contingent right in land, by way of security for money, is a minor, the Superior Court of Justice may make an order vesting or releasing or disposing of the land or right in like manner as in the case of a minor trustee. R.S.O. 1990, c. T.23, s. 12; 2000, c. 26, Sched. A, s. 15 (2).

### **Section Amendments with date in force (d/m/y)**

2000, c. 26, Sched. A, s. 15 (2) - 06/12/2000

### **Vesting orders as to stock and choses in action**

**13** (1) In any of the following cases,

- (a) where the Superior Court of Justice appoints, or has appointed, a new trustee; or
- (b) where a trustee entitled alone, or jointly with another person, to stock or to a chose in action,
  - (i) is a minor, or
  - (ii) is out of Ontario, or
  - (iii) cannot be found, or
  - (iv) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for or recover a chose in action, according to the direction of the person absolutely entitled thereto, for fourteen days next after a request in writing has been made to the trustee by the person so entitled, or
  - (v) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for or recover a chose in action for fourteen days next after an order of the Superior Court of Justice for that purpose has been served on the trustee; or
- (c) where it is uncertain whether a trustee entitled, alone or jointly with another person, to stock or to a chose in action is alive or dead,

the Superior Court of Justice may make an order vesting the right to transfer, or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action, in any such person as the court may appoint. R.S.O. 1990, c. T.23, s. 13 (1); 2000, c. 26, Sched. A, s. 15 (2).

### **Vesting in new trustee**

(2) Where the order is consequential on the appointment by the court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees. R.S.O. 1990, c. T.23, s. 13 (2).

**Vesting in person having joint interest**

(3) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone, or jointly with any other person whom the court may appoint. R.S.O. 1990, c. T.23, s. 13 (3).

**Appointment of person to transfer**

(4) Where a vesting order may be made under this section, the court may, if it is more convenient, appoint some proper person to make, or join in making, the transfer. R.S.O. 1990, c. T.23, s. 13 (4).

**Transfer, how to be made**

(5) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the court under this Act may transfer the stock to himself, herself or itself, or any other person, according to the order, and all incorporated banks and all companies shall obey every order made under this section. R.S.O. 1990, c. T.23, s. 13 (5).

**After notice of order, no transfer to be made contrary thereto**

(6) After notice in writing of an order under this section, it is not lawful for any incorporated bank or any company to transfer any stock to which the order relates, or to pay any dividends thereon except in accordance with the order. R.S.O. 1990, c. T.23, s. 13 (6).

**Court may make declaration**

(7) The Superior Court of Justice may make declarations and give directions concerning the manner in which the right to any stock or chose in action, vested under this Act, is to be exercised. R.S.O. 1990, c. T.23, s. 13 (7); 2000, c. 26, Sched. A, s. 15 (2).

**Ships, shares in**

(8) The provisions of this Act as to vesting orders apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock. R.S.O. 1990, c. T.23, s. 13 (8).

**Section Amendments with date in force (d/m/y)**

2000, c. 26, Sched. A, s. 15 (2) - 06/12/2000

**TRUSTEES FOR CHARITIES****Exercise of powers in favour of charities, etc.**

**14** The Superior Court of Justice may exercise the powers herein conferred for the purpose of vesting any land or personal estate in the trustee of any charity or society over which the court would have jurisdiction upon action duly instituted. R.S.O. 1990, c. T.23, s. 14; 2000, c. 26, Sched. A, s. 15 (2).

**Section Amendments with date in force (d/m/y)**

2000, c. 26, Sched. A, s. 15 (2) - 06/12/2000

**Power to order a sale in proper cases**

**15** (1) Where land is held by trustees for a charitable purpose and it is made to appear that the land can be no longer advantageously used for such charitable purpose or that for any other reason the land ought to be sold, a judge of the Superior Court of Justice may make an order authorizing the sale thereof and may give such directions in relation thereto and for securing the due investment and application of the money arising from the sale as may be considered proper. R.S.O. 1990, c. T.23, s. 15 (1); 2000, c. 26, Sched. A, s. 15 (2).

**Notice to Public Guardian and Trustee**

(2) No such order shall be made unless notice of the application has been given to the Public Guardian and Trustee. R.S.O. 1990, c. T.23, s. 15 (2).

**Section Amendments with date in force (d/m/y)**

2000, c. 26, Sched. A, s. 15 (2) - 06/12/2000

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## WHO MAY APPLY

### **Who may apply for appointment of new trustee, or vesting order, etc.**

**16** (1) An order under this Act for the appointment of a new trustee, or concerning any land or personal estate, subject to a trust, may be made upon the application of any person beneficially interested therein, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof.

### **In case of mortgaged property**

(2) An order concerning any land or personal estate subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgagee. R.S.O. 1990, c. T.23, s. 16.

## CERTAIN POWERS AND RIGHTS OF TRUSTEES

### **Power and discretion of trustee for sale**

**17** Subject to the *Estates Administration Act*, where a trust for sale or a power of sale of land or personal estate is vested in a trustee, the trustee may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract subject to such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss. R.S.O. 1990, c. T.23, s. 17.

### **Sales by trustees not impeachable on certain grounds**

**18** (1) A sale made by a trustee shall not be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made were unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

### **Collusion between purchaser and trustee**

(2) Such sale shall not, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made were unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for the sale was made. R.S.O. 1990, c. T.23, s. 18.

### **Dedication or sale of land by trustee for municipal highway**

**19** With the approval of the Ontario Municipal Board or of a judge of the Superior Court of Justice, a person who holds land or a charge or claim against it or has control of the legal title, upon any trust or for a specified or particular purpose, may, to the extent of the estate or interest, dedicate or sell, or join in dedicating or selling, to the corporation of the municipality within which it is situate, any portion of the land required by the corporation for the work of establishing, extending, widening or diverting a street, and the Board or the judge may approve thereof if it appears that it will not have the effect of defeating or seriously affecting the substantial objects or intent of the trust or purpose but the approval is not necessary if such dedication or sale is otherwise within such person's powers. R.S.O. 1990, c. T.23, s. 19; 2000, c. 26, Sched. A, s. 15 (2).

### **Section Amendments with date in force (d/m/y)**

2000, c. 26, Sched. A, s. 15 (2) - 06/12/2000

### **Power to authorize receipt of money**

#### **By solicitor**

**20** (1) A trustee may appoint a solicitor as agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust.

#### **By banker**

(2) A trustee may appoint a manager or a branch manager of a bank listed in Schedule I or II to the *Bank Act* (Canada) or a solicitor to be the trustee's agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance or otherwise.

### **Appointment not a breach of trust**

(3) A trustee shall not be charged with a breach of trust by reason only of having made or concurred in making any such appointment.

### **Liability of trustee, in certain cases, not affected**

(4) Nothing in this section exempts a trustee from any liability that would have been incurred if this Act had not been passed, in case the trustee permits any money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor to pay or transfer the same to the trustee. R.S.O. 1990, c. T.23, s. 20.

### **Power to insure buildings**

**21** (1) A trustee may insure against loss or damage by fire, tempest or other casualty, any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding three-fourths of the value of such building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income.

### **Exception**

(2) This section does not apply to any building or property that a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so. R.S.O. 1990, c. T.23, s. 21.

### **Power of trustees of renewable leaseholds to renew**

**22** (1) A trustee of any leaseholds for lives or years that are renewable from time to time may, if the trustee thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future or contingent, in the leaseholds, use the trustee's best endeavours to obtain from time to time a renewed lease of the same land on reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite; but where, by the terms of the settlement or will, the person in possession for life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section does not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

### **To raise money for the purpose**

(2) If money is required to pay for the renewal, the trustee effecting the renewal may pay the same out of any money then held in trust for the persons beneficially interested in the land to be comprised in the renewed lease, and, if the trustee does not hold sufficient money for the purpose, the trustee may raise the money required by mortgage of the land to be comprised in the renewed lease, or of any other land for the time being subject to the uses or trusts to which that land is subject, and no person advancing money upon a mortgage purporting to be made under this power is bound to see that the money is wanted, or that no more is raised than is wanted for the purpose or to see to the due application of the money. R.S.O. 1990, c. T.23, s. 22.

### **Filing of accounts**

**23** (1) A trustee desiring to pass the accounts of dealings with the trust estate may file the accounts in the office of the Superior Court of Justice, and the proceedings and practice upon the passing of such accounts shall be the same and have the like effect as the passing of executors' or administrators' accounts in the court. R.S.O. 1990, c. T.23, s. 23 (1); 2000, c. 26, Sched. A, s. 15 (2).

### **Fixing compensation of trustee**

(2) Where the compensation payable to a trustee has not been fixed by the instrument creating the trust or otherwise, the judge upon the passing of the accounts of the trustee has power to fix the amount of compensation payable to the trustee and the trustee is thereupon entitled to retain out of any money held the amount so determined. R.S.O. 1990, c. T.23, s. 23 (2).

### **Section Amendments with date in force (d/m/y)**

2000, c. 26, Sched. A, s. 15 (2) - 06/12/2000

### **Expenses of trustees**

**23.1** (1) A trustee who is of the opinion that an expense would be properly incurred in carrying out the trust may,

- (a) pay the expense directly from the trust property; or
- (b) pay the expense personally and recover a corresponding amount from the trust property. 2001, c. 9, Sched. B, s. 13 (1).

### **Later disallowance by court**

(2) The Superior Court of Justice may afterwards disallow the payment or recovery if it is of the opinion that the expense was not properly incurred in carrying out the trust. 2001, c. 9, Sched. B, s. 13 (1).

#### **Section Amendments with date in force (d/m/y)**

2001, c. 9, Sched. B, s. 13 (1) - 29/06/2001

#### **Receipts of trustees to be effectual discharges**

**24** The payment of any money to and the receipt thereof by any person to whom the same is payable upon any trust, or for any limited purpose, and such payment to and receipt by the survivors of two or more mortgagees or holders or the executors or administrators of such survivors or their assigns, effectually discharges the person paying the same from seeing to the application or being answerable for the misapplication thereof. R.S.O. 1990, c. T.23, s. 24.

#### **Powers of two or more trustees**

**25** Where a power or trust is given to or vested in two or more trustees jointly it may be exercised or performed by the survivor or survivors of them for the time being. R.S.O. 1990, c. T.23, s. 25.

### **INVESTMENTS**

#### **Investments authorized by other Acts or regulations**

**26** If a provision of another Act or the regulations under another Act authorizes money or other property to be invested in property in which a trustee is authorized to invest and the provision came into force before section 16 of Schedule B of the *Red Tape Reduction Act, 1998*, the provision shall be deemed to authorize investment in the property in which a trustee could invest immediately before the coming into force of section 16 of Schedule B of the *Red Tape Reduction Act, 1998*. 1998, c. 18, Sched. B, s. 16 (1).

#### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. B, s. 16 (1) - 01/07/1999

#### **Investment standards**

**27** (1) In investing trust property, a trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments. 1998, c. 18, Sched. B, s. 16 (1).

#### **Authorized investments**

(2) A trustee may invest trust property in any form of property in which a prudent investor might invest. 1998, c. 18, Sched. B, s. 16 (1).

#### **Mutual, pooled and segregated funds**

(3) Any rule of law that prohibits a trustee from delegating powers or duties does not prevent the trustee from investing in mutual funds, pooled funds or segregated funds under variable insurance contracts, and sections 27.1 and 27.2 do not apply to the purchase of such funds. 2001, c. 9, Sched. B, s. 13 (2).

#### **Common trust funds**

(4) If trust property is held by co-trustees and one of the co-trustees is a trust corporation as defined in the *Loan and Trust Corporations Act*, any rule of law that prohibits a trustee from delegating powers or duties does not prevent the co-trustees from investing in a common trust fund, as defined in that Act, that is maintained by the trust corporation and sections 27.1 and 27.2 do not apply. 1998, c. 18, Sched. B, s. 16 (1); 2001, c. 9, Sched. B, s. 13 (3).

#### **Criteria**

(5) A trustee must consider the following criteria in planning the investment of trust property, in addition to any others that are relevant to the circumstances:

1. General economic conditions.
2. The possible effect of inflation or deflation.
3. The expected tax consequences of investment decisions or strategies.
4. The role that each investment or course of action plays within the overall trust portfolio.
5. The expected total return from income and the appreciation of capital.
6. Needs for liquidity, regularity of income and preservation or appreciation of capital.
7. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries. 1998, c. 18, Sched. B, s. 16 (1).



### **Diversification**

- (6) A trustee must diversify the investment of trust property to an extent that is appropriate to,
- (a) the requirements of the trust; and
  - (b) general economic and investment market conditions. 1998, c. 18, Sched. B, s. 16 (1).

### **Investment advice**

- (7) A trustee may obtain advice in relation to the investment of trust property. 1998, c. 18, Sched. B, s. 16 (1).

### **Reliance on advice**

- (8) It is not a breach of trust for a trustee to rely on advice obtained under subsection (7) if a prudent investor would rely on the advice under comparable circumstances. 1998, c. 18, Sched. B, s. 16 (1).

### **Terms of trust**

- (9) This section and section 27.1 do not authorize or require a trustee to act in a manner that is inconsistent with the terms of the trust. 2001, c. 9, Sched. B, s. 13 (4).

### **Same**

- (10) For the purposes of subsection (9), the constating documents of a corporation that is deemed to be a trustee under subsection 1 (2) of the *Charities Accounting Act* form part of the terms of the trust. 2001, c. 9, Sched. B, s. 13 (4).

### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. B, s. 16 (1) - 01/07/1999

2001, c. 9, Sched. B, s. 13 (2-4) - 29/06/2001

### **Trustee may delegate functions to agent**

- 27.1** (1) Subject to subsections (2) to (5), a trustee may authorize an agent to exercise any of the trustee's functions relating to investment of trust property to the same extent that a prudent investor, acting in accordance with ordinary investment practice, would authorize an agent to exercise any investment function. 2001, c. 9, Sched. B, s. 13 (5).

### **Investment plan or strategy**

- (2) A trustee may not authorize an agent to exercise functions on the trustee's behalf unless the trustee has prepared a written plan or strategy that,
- (a) complies with section 28; and
  - (b) is intended to ensure that the functions will be exercised in the best interests of the beneficiaries of the trust. 2001, c. 9, Sched. B, s. 13 (5).

### **Agreement**

- (3) A trustee may not authorize an agent to exercise functions on the trustee's behalf unless a written agreement between the trustee and the agent is in effect and includes,
- (a) a requirement that the agent comply with the plan or strategy in place from time to time; and
  - (b) a requirement that the agent report to the trustee at regular stated intervals. 2001, c. 9, Sched. B, s. 13 (5).

### **Trustee's duty**

- (4) A trustee is required to exercise prudence in selecting an agent, in establishing the terms of the agent's authority and in monitoring the agent's performance to ensure compliance with those terms. 2001, c. 9, Sched. B, s. 13 (5).

### **Same**

- (5) For the purpose of subsection (4),
- (a) prudence in selecting an agent includes compliance with any regulation made under section 30; and
  - (b) prudence in monitoring an agent's performance includes,
    - (i) reviewing the agent's reports,
    - (ii) regularly reviewing the agreement between the trustee and the agent and how it is being put into effect, including considering whether the plan or strategy of investment should be revised or replaced, replacing the plan or

strategy if the trustee considers it appropriate to do so, and assessing whether the plan or strategy is being complied with,

(iii) considering whether directions should be provided to the agent or whether the agent's appointment should be revoked, and

(iv) providing directions to the agent or revoking the appointment if the trustee considers it appropriate to do so. 2001, c. 9, Sched. B, s. 13 (5).

#### **Section Amendments with date in force (d/m/y)**

2001, c. 9, Sched. B, s. 13 (5) - 29/06/2001

#### **Duty of agent**

**27.2** (1) An agent who is authorized to exercise a trustee's functions relating to investment of trust property has a duty to do so,

(a) with the standard of care expected of a person carrying on the business of investing the money of others;

(b) in accordance with the agreement between the trustee and the agent; and

(c) in accordance with the plan or strategy of investment. 2001, c. 9, Sched. B, s. 13 (5).

#### **No further delegation**

(2) An agent who is authorized to exercise a trustee's functions relating to investment of trust property shall not delegate that authority to another person. 2001, c. 9, Sched. B, s. 13 (5).

#### **Proceeding against agent**

(3) If an agent is authorized to exercise a trustee's functions relating to investment of trust property and the trust suffers a loss because of the agent's breach of the duty owed under subsection (1) or (2), a proceeding against the agent may be commenced by,

(a) the trustee; or

(b) a beneficiary, if the trustee does not commence a proceeding within a reasonable time after acquiring knowledge of the breach. 2001, c. 9, Sched. B, s. 13 (5).

#### **Section Amendments with date in force (d/m/y)**

2001, c. 9, Sched. B, s. 13 (5) - 29/06/2001

#### **Protection from liability**

**28** A trustee is not liable for a loss to the trust arising from the investment of trust property if the conduct of the trustee that led to the loss conformed to a plan or strategy for the investment of the trust property, comprising reasonable assessments of risk and return, that a prudent investor could adopt under comparable circumstances. 1998, c. 18, Sched. B, s. 16 (1).

#### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. B, s. 16 (1) - 01/07/1999

#### **Assessment of damages**

**29** If a trustee is liable for a loss to the trust arising from the investment of trust property, a court assessing the damages payable by the trustee may take into account the overall performance of the investments. 1998, c. 18, Sched. B, s. 16 (1).

#### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. B, s. 16 (1) - 01/07/1999

#### **Regulations, agents**

**30** The Attorney General may make regulations governing or restricting the classes of persons or the qualifications of persons who are eligible to be agents under section 27.1 and establishing conditions for eligibility. 2001, c. 9, Sched. B, s. 13 (6).

#### **Section Amendments with date in force (d/m/y)**

2001, c. 9, Sched. B, s. 13 (6) - 29/06/2001

### **Application, ss. 27-30**

**31** Sections 27 to 30 apply to a trust whether it is created before or after the date section 13 of Schedule B to the *Government Efficiency Act, 2001* comes into force. 2001, c. 9, Sched. B, s. 13 (6).

#### **Section Amendments with date in force (d/m/y)**

2001, c. 9, Sched. B, s. 13 (6) - 29/06/2001

**32** REPEALED: 1998, c. 18, Sched. B, s. 16 (1).

#### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. B, s. 16 (1) - 01/07/1999

**33** REPEALED: 1998, c. 18, Sched. B, s. 16 (1).

#### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. B, s. 16 (1) - 01/07/1999

**34** REPEALED: 1998, c. 18, Sched. B, s. 16 (1).

#### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. B, s. 16 (1) - 01/07/1999

## **TECHNICAL BREACHES OF TRUST**

### **Relief of trustees committing technical breach of trust**

**35** (1) If in any proceeding affecting a trustee or trust property it appears to the court that a trustee, or that any person who may be held to be fiduciarily responsible as a trustee, is or may be personally liable for any breach of trust whenever the transaction alleged or found to be a breach of trust occurred, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the court in the matter in which the trustee committed the breach, the court may relieve the trustee either wholly or partly from personal liability for the same. R.S.O. 1990, c. T.23, s. 35.

### **Exception, investment loss**

(2) Subsection (1) does not apply to liability for a loss to the trust arising from the investment of trust property. 1998, c. 18, Sched. B, s. 16 (2).

#### **Section Amendments with date in force (d/m/y)**

1998, c. 18, Sched. B, s. 16 (2) - 01/07/1999

## **PAYMENT INTO COURT**

### **Payment into court by trustees of trust funds or securities by order of court**

**36** (1) Where any money belonging to a trust is in the hands or under the control of or is vested in a sole trustee or several trustees and it is the desire of the trustee, or of the majority of the trustees, to pay the money into court, the Superior Court of Justice may order the payment into court to be made by the sole trustee, or by the majority of the trustees, without the concurrence of the other or others if the concurrence cannot be obtained. R.S.O. 1990, c. T.23, s. 36 (1); 2000, c. 26, Sched. A, s. 15 (2).

### **Payment or delivery to Accountant of court**

(2) Where any such money is deposited with a banker or broker or other depository, the court may order payment thereof to the Accountant of the Superior Court of Justice, and payment made under the order is valid and takes effect as if it had been made on the authority or by the act of all the persons entitled to the money paid. R.S.O. 1990, c. T.23, s. 36 (2); 2000, c. 26, Sched. A, s. 15 (3).

### **Payment into court by persons holding trust money for trustee**

(3) Where the trustee has been absent from Ontario for a year and is not likely to return at an early date, or in the event of the trustee's death, or where the trustee in Ontario cannot give an acquittance of the money, any person with whom trust money has been deposited or to whose hands trust money has come may make an application similar to that authorized by subsection (1). R.S.O. 1990, c. T.23, s. 36 (3).

**Money found to be due minor, etc., on final passing of accounts to be paid into court**

(4) Where, on the passing of the final accounts of a personal representative, guardian or trustee by a judge of the Superior Court of Justice, there is found to be in the hands of such personal representative, guardian or trustee any money belonging to a minor or to a mentally incapable person, or to a person whose address is unknown, it is the duty of such personal representative, guardian or trustee to pay the money into the Superior Court of Justice to the credit of the person who is entitled to it. R.S.O. 1990, c. T.23, s. 36 (4); 1992, c. 32, s. 27 (1); 2000, c. 26, Sched. A, s. 15 (2).

**Accountant to be furnished with copy of order, etc.**

(5) A certified copy of the order or report of the judge shall be left with the Accountant when the money is paid in, and the person paying it in is entitled to deduct \$5 for costs. R.S.O. 1990, c. T.23, s. 36 (5).

**Payment into court of money to which minor or mentally incapable person entitled**

(6) If a minor or mentally incapable person is entitled to any money, the person by whom the money is payable may pay it into court to the credit of the minor or mentally incapable person. 2000, c. 26, Sched. A, s. 15 (1).

**Same**

(6.1) The payment shall be made to the Accountant of the Superior Court of Justice. 2000, c. 26, Sched. A, s. 15 (1).

**Accompanying affidavit, minor**

(6.2) If the person entitled to the money is a minor, the person by whom it is payable shall deliver an affidavit containing the following to the Accountant at the time of the payment into court:

1. A statement that the money is being paid into court under subsection (6).
2. A statement of the facts entitling the minor to the money.
3. If the affidavit deals with more than one minor beneficiary's entitlement, the amount of each individual entitlement.
4. If the amount being paid into court differs from an amount specified in a document that establishes the minor's entitlement, an explanation of the difference.
5. The minor's date of birth.
6. The full name and postal address of,
  - i. the minor,
  - ii. the minor's parents, or the parent with lawful custody if it is known that only one parent has lawful custody,
  - iii. any person, if known, who has lawful custody of the minor but is not his or her parent, and
  - iv. any guardian of property, if known, appointed under section 47 of the *Children's Law Reform Act*. 2000, c. 26, Sched. A, s. 15 (1).

**Accompanying affidavit, mentally incapable person**

(6.3) If the person entitled to the money is a mentally incapable person, the person by whom it is payable shall deliver an affidavit containing the following to the Accountant at the time of the payment into court:

1. A statement that the money is being paid into court under subsection (6).
2. A statement of the facts entitling the mentally incapable person to the money.
3. The mentally incapable person's date of birth.
4. The full name and postal address of,
  - i. the mentally incapable person,
  - ii. the mentally incapable person's guardian of property, if any, under the *Substitute Decisions Act, 1992*,
  - iii. the person, if known, who holds a continuing power of attorney for property for the mentally incapable person. 2000, c. 26, Sched. A, s. 15 (1).

**Copy of document**

(6.4) An affidavit under subsection (6.2) or (6.3) shall have attached to it, as a schedule, a copy of any document that establishes,

- (a) the person's entitlement to the money;

- (b) the amount to which the person is entitled;
- (c) any conditions to be met before the person is entitled to receive the money, including, in the case of a minor, the attainment of a specified age. 2000, c. 26, Sched. A, s. 15 (1).

### **Discharge**

(6.5) Payment into court in accordance with subsection (6), (6.2) or (6.3), as the case may be, and with subsection (6.4) is a sufficient discharge for the money paid into court. 2000, c. 26, Sched. A, s. 15 (1).

### **Transfer of trust**

(7) Where a trustee desires to be relieved from the trust, the court may order all property held for the trust to be transferred to the Public Guardian and Trustee. R.S.O. 1990, c. T.23, s. 36 (7); 1998, c. 18, Sched. B, s. 16 (3).

### **Disposition**

(8) Money paid into court is subject to the order of the court. R.S.O. 1990, c. T.23, s. 36 (8).

### **P.G.T.**

(9) Where, however, the Public Guardian and Trustee is the guardian of property of the person to whom money is due, as mentioned in subsections (4) and (6), the money shall be paid to the Public Guardian and Trustee. 1992, c. 32, s. 27 (3).

### **Section Amendments with date in force (d/m/y)**

1992, c. 32, s. 27 (1, 3) - 03/04/1995; 1998, c. 18, Sched. B, s. 16 (3) - 01/07/1999

2000, c. 26, Sched. A, s. 15 (1-3) - 06/12/2000

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## **PERSONAL REPRESENTATIVES AND DEVISEES IN TRUST**

### **Removal of personal representatives**

**37** (1) The Superior Court of Justice may remove a personal representative upon any ground upon which the court may remove any other trustee, and may appoint some other proper person or persons to act in the place of the executor or administrator so removed. R.S.O. 1990, c. T.23, s. 37 (1); 2000, c. 26, Sched. A, s. 15 (2).

### **Security by person appointed**

(2) Every person so appointed shall, unless the court otherwise orders, give such security as would be required to be given if letters of administration were granted to the person under the *Estates Act*. R.S.O. 1990, c. T.23, s. 37 (2).

### **Who may apply**

(3) The order may be made upon the application of any executor or administrator desiring to be relieved from the duties of the office, or of any executor or administrator complaining of the conduct of a co-executor or co-administrator, or of any person interested in the estate of the deceased. R.S.O. 1990, c. T.23, s. 37 (3).

### **When new appointment unnecessary**

(4) Where the executor or administrator removed is not a sole executor or administrator, the court need not, unless it sees fit, appoint any person to act in the place of the person removed, and if no such appointment is made the rights and estate of the executor or administrator removed passes to the remaining executor or administrator as if the person so removed had died. R.S.O. 1990, c. T.23, s. 37 (4).

### **Chain of representation**

(5) The executor of any person appointed an executor under this section shall not by virtue of such executorship be an executor of the estate of which his or her testator was appointed executor under this section, whether such person acted alone or was the last survivor of several executors. R.S.O. 1990, c. T.23, s. 37 (5).

### **Copy of order to be filed**

(6) A certified copy of the order of removal shall be filed with the Estate Registrar for Ontario and another copy with the local registrar of the Superior Court of Justice, and such officers shall, at or upon the entry of the grant in the registers of their respective offices, make in red ink a short note giving the date and effect of the order, and shall also make a reference thereto in the index of the register at the place where the grant is indexed. R.S.O. 1990, c. T.23, s. 37 (6); 2000, c. 26, Sched. A, s. 15 (2).

## **Endorsement**

(7) The date of the grant shall be endorsed on the copy of the order filed with the Estate Registrar for Ontario. R.S.O. 1990, c. T.23, s. 37 (7).

## **Section Amendments with date in force (d/m/y)**

2000, c. 26, Sched. A, s. 15 (2) - 06/12/2000

## **RIGHTS AND LIABILITIES OF PERSONAL REPRESENTATIVES**

### **Actions for torts**

#### **Actions by executors and administrators for torts**

**38** (1) Except in cases of libel and slander, the executor or administrator of any deceased person may maintain an action for all torts or injuries to the person or to the property of the deceased in the same manner and with the same rights and remedies as the deceased would, if living, have been entitled to do, and the damages when recovered shall form part of the personal estate of the deceased; but, if death results from such injuries, no damages shall be allowed for the death or for the loss of the expectation of life, but this proviso is not in derogation of any rights conferred by Part V of the *Family Law Act*.

#### **Actions against executors and administrators for torts**

(2) Except in cases of libel and slander, if a deceased person committed or is by law liable for a wrong to another in respect of his or her person or to another person's property, the person wronged may maintain an action against the executor or administrator of the person who committed or is by law liable for the wrong.

### **Limitation of actions**

(3) An action under this section shall not be brought after the expiration of two years from the death of the deceased. R.S.O. 1990, c. T.23, s. 38.

### **Action of account**

**39** A personal representative has an action of account as the testator or intestate might have had if he or she had lived. R.S.O. 1990, c. T.23, s. 39.

### **Powers of executor to whom probate granted**

**40** An administrator with the will annexed or an executor to whom probate is granted has all the power conferred by the testator upon the executor named in his or her will and may in all respects act as effectually as though the administrator or executor alone had been named by the testator as the sole executor. R.S.O. 1990, c. T.23, s. 40.

### **Power of executor to convey land**

**41** Where there is in a will a direction, express or implied, to sell, dispose of, appoint, mortgage, encumber or lease any land, and no person is by the will or otherwise by the testator appointed to execute and carry the same into effect, the executor, if any, named in the will may execute and carry into effect every such direction in respect of such land and any estate or interest therein in the same manner and with the same effect as if appointed by the testator for that purpose. R.S.O. 1990, c. T.23, s. 41.

### **Power of administrator with will annexed to convey land**

**42** Where from any cause a court of competent jurisdiction has committed to a person, who has given security to the satisfaction of such court for any dealing with such land and its proceeds, letters of administration with a will annexed which contains an express or implied power to sell, dispose of, appoint, mortgage, encumber or lease any land, whether such power is conferred on an executor named in the will or the testator has not by the will or otherwise appointed a person to execute it, the administrator may exercise the power in respect of such land in the same manner and with the same effect as if appointed by the testator for that purpose. R.S.O. 1990, c. T.23, s. 42.

### **Conveyance by personal representative in pursuance of a contract by deceased**

**43** Where a person has entered into a contract in writing for the sale and conveyance of land and has died intestate or without providing by will for the conveyance of such land to the person entitled or to become entitled to such conveyance, and where the deceased would be bound, were he or she alive, to execute a conveyance, his or her personal representative shall make and give to the person entitled to the same a good and sufficient conveyance of such land, of such nature as the deceased, if living, would be liable to give, but without covenants, except as against the acts of the grantor, and the conveyance is as valid and effectual as if the deceased were alive at the time of the making thereof, and had executed the same, but does not have any further validity or effect. R.S.O. 1990, c. T.23, s. 43.

### **Power to raise money by sale or mortgage to satisfy charges**

**44** (1) Where by any will coming into operation after the 18th day of September, 1865, a testator charges land, or any specific part thereof, with the payment of debts or with the payment of any legacy or other specific sum of money, and devises the land so charged to executors or to a trustee without any express provision for the raising of such debt, legacy or sum of money out of such land, the devisee may raise such debt, legacy or money by a sale of such land or any part thereof, or by a mortgage of the same.

### **Purchaser's position**

(2) Purchasers or mortgagees are not bound to inquire whether the powers conferred by this section, or any of them, have been duly and correctly exercised by the person acting in virtue thereof. R.S.O. 1990, c. T.23, s. 44.

### **Duties and liabilities of an executor and administrator acting under the powers in this Act**

**45** Every personal representative, as respects the additional powers vested by this Act, and any money or assets received in consequence of the exercise of such powers, is subject to all the liabilities, and compellable to discharge all the duties which, as respects the acts to be done under such powers, would have been imposed upon a person appointed by the testator, or would have been imposed by law upon any person appointed by law, or by any court of competent jurisdiction to execute such power. R.S.O. 1990, c. T.23, s. 45.

### **Survivorship**

**46** (1) Where there are several personal representatives and one or more of them dies, the powers conferred upon them shall vest in the survivor or survivors, unless there is some provision to the contrary in the will.

### **Idem**

(2) Until the appointment of new personal representatives, the personal representatives or representative for the time being of a sole personal representative, or, where there were two or more personal representatives, of the last surviving or continuing personal representative, may exercise or perform any power or trust that was given to, or capable of being exercised by the sole or last surviving personal representative. R.S.O. 1990, c. T.23, s. 46.

## **EFFECT OF REVOCATION OF AN ERRONEOUS GRANT**

### **Revocation of erroneous grant**

#### **Validity of prior acts**

**47** (1) Where a court of competent jurisdiction has admitted a will to probate, or has appointed an administrator, even though the grant of probate or the appointment may be subsequently revoked as having been erroneously made, all acts done under the authority of the probate or appointment, including all payments made in good faith to or by the personal representative, are as valid and effectual as if the same had been rightly granted or made, but upon revocation of the probate or appointment, in cases of an erroneous presumption of death, the supposed decedent, and in other cases the new personal representative may, subject to subsections (2) and (3), recover from the person who acted under the revoked grant or appointment any part of the estate remaining in the person's hands undistributed and, subject to the *Limitations Act, 2002*, from any person who erroneously received any part of the estate as a devisee, legatee or one of the next of kin, or as a spouse of the decedent or supposed decedent, the part so received or the value thereof. R.S.O. 1990, c. T.23, s. 47 (1); 2002, c. 24, Sched. B, s. 47; 2005, c. 5, s. 71 (1).

#### **Expenses**

(2) The person acting under the revoked probate or appointment may retain out of any part of the estate remaining undistributed the proper costs and expenses incurred in the administration. R.S.O. 1990, c. T.23, s. 47 (2).

#### **Fraud**

(3) Nothing in this section protects any person acting as personal representative where the person has been party or privy to any fraud whereby the grant or appointment has been obtained, or after becoming aware of any fact by reason of which revocation thereof is ordered unless, in the latter case, the person acts under a contract for valuable consideration and otherwise binding made before the person becomes aware of the fact. R.S.O. 1990, c. T.23, s. 47 (3).

#### **Definition**

(4) In this section,

“spouse” means a spouse as defined in section 1 of the *Family Law Act, 2005*, c. 5, s. 71 (2).

#### **Section Amendments with date in force (d/m/y)**

2002, c. 24, Sched. B, s. 47 - 01/01/2004

## ADMINISTRATION OF ESTATES

### **Payment of debts**

**48** (1) A personal representative may pay or allow any debt or claim on any evidence that the representative thinks sufficient.

### **Security and settlement**

(2) A personal representative, or two or more trustees acting together, or a sole acting trustee, where, by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof may, if and as they may think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estate or to the trust, and for any of these purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as seem expedient without being responsible for any loss occasioned by any act or thing done in good faith. R.S.O. 1990, c. T.23, s. 48.

### **Application of income of estate of deceased person**

**49** (1) Unless a contrary intention appears from the will,

- (a) the personal representative of a deceased person, in paying the debts, funeral and testamentary expenses, estate, legacy and inheritance taxes, legacies or other similar disbursements, shall not apply or be deemed to have applied any income of the estate in or towards the payment of any part of the capital of any such disbursements or of any part of the interest, if any, due thereon at the date of death of such person;
- (b) until the payment of the debts, funeral and testamentary expenses, estate, legacy and inheritance taxes, legacies, or other similar disbursements mentioned in clause (a), the income from the property required for the payment thereof, with the exception of any part of such income applied in the payment of any interest accruing due thereon after the date of death of the deceased, shall be treated and applied as income of the residuary estate,

but, in any case where the assets of the estate are not sufficient to pay the disbursements in full, the income shall be applied in making up such deficiency. R.S.O. 1990, c. T.23, s. 49 (1); 2009, c. 34, Sched. T, s. 5.

### **Idem**

(2) Subsection (1) shall be deemed always to have been part of the law of Ontario. R.S.O. 1990, c. T.23, s. 49 (2).

### **Part application of other rules validated**

(3) Despite subsections (1) and (2), in any case in which the personal representative has before the 30th day of May, 1961 applied any rule of law or of administration different from the provisions of subsection (1), such application is valid and effective. R.S.O. 1990, c. T.23, s. 49 (3).

### **Section Amendments with date in force (d/m/y)**

2009, c. 34, Sched. T, s. 5 (1, 2) - 15/12/2009

### **In case of deficiency of assets, debts to rank proportionately**

**50** (1) On the administration of the estate of a deceased person, in the case of a deficiency of assets, debts due to the Crown and to the personal representative of the deceased person, and debts to others, including therein debts by judgment or order, and other debts of record, debts by specialty, simple contract debts and such claims for damages as are payable in like order of administration as simple contract debts shall be paid proportionately and without any preference or priority of debts of one rank or nature over those of another but nothing herein prejudices any lien existing during the lifetime of the debtor on any of the debtor's property.

### **Overpayment to creditor**

(2) Where a personal representative pays more to a creditor or claimant than the entitlement under subsection (1), the overpayment does not entitle any other creditor or claimant to recover more than the amount to which the creditor or claimant would be entitled if the overpayment had not been made.

### **Relief from personal liability**

(3) Where a personal representative pays more to a creditor or claimant than the entitlement under subsection (1), the court may relieve the personal representative either wholly or partly from personal liability if it is satisfied that the personal representative has acted honestly and reasonably and for the protection or conservation of the assets of the estate. R.S.O. 1990, c. T.23, s. 50.



### **Liability of executor or administrator in respect of covenants, etc., in leases**

**51** (1) Where a personal representative, liable as such to the rents, or upon the covenants or agreements contained in a lease or agreement for a lease granted or assigned to the testator or intestate, has satisfied all liabilities under the lease or agreement for a lease, which accrued due and were claimed up to the time of the assignment hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised, or agreed to be demised, although the period for laying out the same may not have arrived, and has assigned the lease, or agreement for lease, to a purchaser thereof, the personal representative may distribute the residuary estate of the deceased to and among the parties entitled thereto, without appropriating any part or any further part thereof, as the case may be, to meet any future liability under the lease or agreement for lease.

#### **No personal liability for subsequent claim**

(2) The personal representative so distributing the residuary estate is not personally liable in respect of any subsequent claim under the lease or agreement for lease.

#### **Right to follow assets not affected**

(3) Nothing in this section prejudices the right of the lessor, or those claiming under the lessor, to follow the assets of the deceased into the hands of the person or persons to or among whom they have been distributed. R.S.O. 1990, c. T.23, s. 51.

### **Liability of personal representative in respect of rents, etc., in conveyances on rent-charge, etc.**

**52** (1) Where a personal representative, liable as such to the rent or upon the covenants or agreements contained in any conveyance on chief rent or rent-charge, whether any such rent is by limitation of use, grant or reservation, or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate, has satisfied all liabilities under the conveyance, or agreement for a conveyance, which accrued due and were claimed up to the time of the conveyance hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and has conveyed such property, or assigned such agreement for conveyance to a purchaser thereof, the personal representative may distribute the residuary estate of the deceased to and among the persons entitled thereto, without appropriating any part or any further part thereof, as the case may be, to meet any further liability under the conveyance or agreement for conveyance.

#### **No personal liability for any subsequent claim**

(2) A personal representative so distributing the residuary estate is not personally liable in respect of any subsequent claim under the conveyance or agreement for conveyance.

#### **Right of grantor, etc., to follow assets not affected**

(3) Nothing in this section prejudices the right of the grantor, or those claiming under the grantor, to follow the assets of the deceased into the hands of the person or persons to or among whom they have been distributed. R.S.O. 1990, c. T.23, s. 52.

### **Distribution of assets under trust deeds for benefit of creditors, or of the assets of intestate**

**53** (1) A trustee or assignee acting under the trusts of a deed or assignment for the benefit of creditors generally, or of a particular class or classes of creditors, where the creditors are not designated by name therein, or a personal representative who has given such or the like notices as, in the opinion of the court in which such trustee, assignee or personal representative is sought to be charged, would have been directed to be given by the Superior Court of Justice in an action for the execution of the trusts of such deed or assignment, or in an administration suit, for creditors and others to send in to such trustee, assignee or personal representative, their claims against the person for the benefit of whose creditors such deed or assignment is made, or against the estate of the testator or intestate, as the case may be, at the expiration of the time named in the notices, or the last of the notices, for sending in such claims, may distribute the proceeds of the trust estate, or the assets of the testator or intestate, as the case may be, or any part thereof among the persons entitled thereto, having regard to the claims of which the trustee, assignee or representative has then notice, and is not liable for the proceeds of the trust estate, or assets, or any part thereof so distributed to any person of whose claim there was no notice at the time of the distribution. R.S.O. 1990, c. T.23, s. 53 (1); 2000, c. 26, Sched. A, s. 15 (2).

#### **Right of creditor to follow assets not affected**

(2) Nothing in this section prejudices the right of any creditor or claimant to follow the proceeds of the trust estate, or assets, or any part thereof into the hands of persons who have received the same. R.S.O. 1990, c. T.23, s. 53 (2).

#### **Subs. (1) not to apply to heirs, etc.**

(3) Subsection (1) does not apply to heirs, next of kin, devisees or legatees claiming as such. R.S.O. 1990, c. T.23, s. 53 (3).

#### **Section Amendments with date in force (d/m/y)**

2000, c. 26, Sched. A, s. 15 (2) - 06/12/2000

#### **Exercise of general power by will, effect of**

**54** Property over which a deceased person had a general power of appointment, which he or she might have exercised for his or her own benefit without the assent of any other person, shall be assets for the payment of his or her debts where the same is appointed by will, and, under an execution against the personal representatives of such deceased person, such assets may be seized and sold after the deceased person's own property has been exhausted. R.S.O. 1990, c. T.23, s. 54.

#### **Rights and liabilities of executors of executors**

**55** Executors of executors have the same actions for the debts and property of the first testator as he or she would have had if in life, and are answerable for such of the debts and property of the first testator as they recover as the first executors would be if they had recovered the same. R.S.O. 1990, c. T.23, s. 55.

#### **Liability of personal representative of one who commits waste**

**56** The personal representative of any person who, acting with or without authority as executor or administrator, wastes or converts to his or her own use any part of the estate of any deceased person is liable and chargeable in the same manner as the testator or intestate would have been if he or she had been living. R.S.O. 1990, c. T.23, s. 56.

#### **Deficiency of assets**

**57** (1) On the administration of the estate of a deceased person, in case of a deficiency of assets, every creditor holding security on the estate of the deceased debtor or on the estate of a third person for whom the estate of the deceased debtor is only indirectly or secondarily liable, shall place a value on such security and the creditor shall rank upon the distribution of assets only upon the unsecured portion of the claim after deducting the value of the security, unless the personal representative elects to take over the security as hereinafter provided.

#### **Where personal representative requires creditor to prove claim**

(2) The personal representative of a deceased person who is of the opinion that there may be a deficiency of assets may require any creditor to prove the claim and to state whether security is held for it or any part thereof, and to give full particulars of the same and if such security is on the estate of the deceased debtor or on the estate of a third person for whom the estate of the deceased debtor is only indirectly or secondarily liable, to place a specified value on such security and the personal representative may either consent to the creditor ranking for the amount of the claim after deducting such valuation or may require from the creditor an assignment of the security at an advance of 10 per cent upon the specified value to be paid out of the estate as soon as the personal representative has realized upon such security or is in a position to make payment out of the assets of the estate and in either case the difference between the value at which the security is retained or taken, as the case may be, and the amount of the claim of the creditor, shall be the amount for which the creditor ranks upon the estate of the deceased debtor.

#### **Inspectors, directing of; remuneration of**

(3) Where inspectors have been appointed as hereinafter provided or where the estate is being administered under the direction of or by a court, the personal representative in making an election shall act under the direction of the inspectors or of the court, as the case may be, and the remuneration of the inspectors shall be determined by the judge on the passing of accounts.

#### **Where claim based on negotiable instruments**

(4) If the claim of the creditor is based upon a negotiable instrument upon which the estate of the deceased debtor is only indirectly or secondarily liable and which is not mature or exigible, the creditor shall be considered to hold security within the meaning of this section and shall put a value on the liability of the person primarily liable thereon as the security for the payment thereof, but after the maturity of such liability and its non-payment the creditor is entitled to amend and revalue the claim. R.S.O. 1990, c. T.23, s. 57.

#### **When creditor holding security fails to value same**

**58** Where a creditor fails to value any security held by the creditor which under this Act the creditor is called upon to value, the personal representative may apply to the Superior Court of Justice for an order that unless a specified value is placed on such security and notified in writing to the personal representative, within a time to be limited by the order, such claimant, in respect of the claim or the part thereof for which security is held, is wholly barred of any right to share in the proceeds of the estate unless the judge upon the application of the creditor extends the time for the valuation of the security. R.S.O. 1990, c. T.23, s. 58; 2000, c. 26, Sched. A, s. 15 (2).

#### **Section Amendments with date in force (d/m/y)**

2000, c. 26, Sched. A, s. 15 (2) - 06/12/2000

#### **Calling meeting of creditors where there is a deficiency of assets**

**59** (1) Where in the administration of the estate of a deceased person the personal representative fears that there may be a deficiency of assets or that all the creditors will not be paid in full, the personal representative may call a meeting of creditors and lay before them the situation of the estate and at such meeting inspectors may be appointed by the creditors to assist the personal representative in the administration of the estate and to advise with respect thereto.

#### **Creditors' request for meeting**

(2) In any such case the personal representative shall call a meeting of creditors for the purpose aforesaid at the request in writing of creditors holding 10 per cent of the amount of claims filed against the estate.

#### **Appointment of creditor as an inspector**

(3) In cases where no meeting of creditors has been held, the personal representative may appoint a creditor or creditors as inspector or inspectors to assist in the realizing and management of the estate but in such case the appointment shall be approved by the judge before the inspectors accept office. R.S.O. 1990, c. T.23, s. 59.

### **APPLICATIONS TO COURT FOR ADVICE**

#### **Trustee, etc., may apply for advice in management of trust property**

**60** (1) A trustee, guardian or personal representative may, without the institution of an action, apply to the Superior Court of Justice for the opinion, advice or direction of the court on any question respecting the management or administration of the trust property or the assets of a ward or a testator or intestate. R.S.O. 1990, c. T.23, s. 60 (1); 2000, c. 26, Sched. A, s. 15 (2).

#### **Indemnity of trustee, etc., acting as advised**

(2) The trustee, guardian or personal representative acting upon the opinion, advice or direction given shall be deemed, so far as regards that person's responsibility, to have discharged that person's duty as such trustee, guardian or personal representative, in the subject-matter of the application, unless that person has been guilty of some fraud, wilful concealment or misrepresentation in obtaining such opinion, advice or direction. R.S.O. 1990, c. T.23, s. 60 (2).

#### **Section Amendments with date in force (d/m/y)**

2000, c. 26, Sched. A, s. 15 (2) - 06/12/2000

### **ALLOWANCE TO TRUSTEES AND PERSONAL REPRESENTATIVES**

#### **Allowance to trustees, etc.**

**61** (1) A trustee, guardian or personal representative is entitled to such fair and reasonable allowance for the care, pains and trouble, and the time expended in and about the estate, as may be allowed by a judge of the Superior Court of Justice. R.S.O. 1990, c. T.23, s. 61 (1); 2000, c. 26, Sched. A, s. 15 (2).

#### **Though estate not before the court**

(2) The amount of such compensation may be settled although the estate is not before the court in an action. R.S.O. 1990, c. T.23, s. 61 (2).

#### **Allowance to personal representative for services**

(3) The judge, in passing the accounts of a trustee or of a personal representative or guardian, may from time to time allow a fair and reasonable allowance for care, pains and trouble, and time expended in or about the estate. R.S.O. 1990, c. T.23, s. 61 (3).

#### **Allowance to barrister or solicitor trustee for professional services**

(4) Where a barrister or solicitor is a trustee, guardian or personal representative, and has rendered necessary professional services to the estate, regard may be had in making the allowance to such circumstance, and the allowance shall be increased by such amount as may be considered fair and reasonable in respect of such services. R.S.O. 1990, c. T.23, s. 61 (4).

#### **Where allowance fixed by the instrument**

(5) Nothing in this section applies where the allowance is fixed by the instrument creating the trust. R.S.O. 1990, c. T.23, s. 61 (5).

#### **Section Amendments with date in force (d/m/y)**

2000, c. 26, Sched. A, s. 15 (2) - 06/12/2000

## MISCELLANEOUS

### **Trustees buying or selling**

**62** A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section 1 of the *Vendors and Purchasers Act*. R.S.O. 1990, c. T.23, s. 62.

### **Indemnity**

**63** This Act or an order purporting to be made under it is a complete indemnity to all persons for any acts done under the Act or order, as the case may be. R.S.O. 1990, c. T.23, s. 63.

### **Costs may be ordered to be paid out of estate**

**64** The Superior Court of Justice may order the costs of and incidental to any application, order, direction, conveyance, assignment or transfer under this Act to be paid or raised out of the property in respect of which it is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as the court considers proper. R.S.O. 1990, c. T.23, s. 64; 2000, c. 26, Sched. A, s. 15 (2).

### **Section Amendments with date in force (d/m/y)**

2000, c. 26, Sched. A, s. 15 (2) - 06/12/2000

### **Application of *Perpetuities Act***

**65** Where in the administration of any trust, estate or fund any question relating to the disposition, transmission or devolution of any property arises, including the right of any person to terminate a trust or an accumulation directed under a trust or other disposition, and it becomes relevant to inquire whether any person is or at a relevant date was or will be capable of procreating or giving birth to a child, section 7 of the *Perpetuities Act* applies to any such question as it applies to questions concerning the rule against perpetuities. R.S.O. 1990, c. T.23, s. 65.

### **Application of Act**

**66** Subject to section 67, unless otherwise expressed therein, this Act applies to all trusts whenever created and to all trustees whenever appointed. R.S.O. 1990, c. T.23, s. 66.

### **Powers, etc. under Act and trust instrument**

**67** The powers, rights and immunities conferred by this Act are in addition to those conferred by the instrument creating the trust, and have effect subject to the terms thereof. R.S.O. 1990, c. T.23, s. 67.

### **Express terms of trust instrument to prevail**

**68** Nothing in this Act authorizes a trustee to do anything that the trustee is in express terms forbidden to do, or to omit to do anything that the trustee is in express terms directed to do by the instrument creating the trust. R.S.O. 1990, c. T.23, s. 68.

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Français

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