



[Français](#)

## Trustee Act

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

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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.

## 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).

#### **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.

#### **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).

### **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).

### **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).

### **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).

### **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).

#### **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).

#### 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 mortgage. 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).

### **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).

### **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).

### **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).

### **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).

**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).

### **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).

### **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).

### **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).

### **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).

### **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).

**32.** Repealed: 1998, c. 18, Sched.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

**33.** Repealed: 1998, c. 18, Sched.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

**34.** Repealed: 1998, c. 18, Sched.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

### 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).

### 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).

## 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).

**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).

## 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).

**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).

#### **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).

#### **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).

### 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).

### 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).

#### **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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