



## **PLEASE NOTE**

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the [Table of Public Acts](#).

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## CHAPTER T-8

### TRUSTEE ACT

#### 1. In this Act

#### Definitions

- (a) “contingent right” as applied to land includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest or possibility is or is not ascertained, also a right of entry whether immediate or future, and whether vested or contingent; contingent right
- (b) “convey” and “conveyance” applied to any person include the execution by that person of every necessary or suitable assurance for conveying, assigning, appointing, surrendering or otherwise transferring or disposing of land whereof he is seised or possessed, or wherein he is entitled to a contingent right either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of the conveyance, including the acts to be performed by married women and tenants-in-tail in accordance with the statutes and laws of this province relating thereto; convey and conveyance
- (c) “court” means the Supreme Court of Prince Edward Island; court
- (d) “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; devisee
- (e) “instrument” includes an Act of the Legislature; instrument
- (f) “land” includes incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land; land
- (g) “mentally incompetent person” means a person so found by the court; mentally incompetent person
- (h) “mortgage” and “mortgagee” include and relate to every estate and interest regarded in equity as merely a security for money and every person deriving title under the original mortgagee; mortgage and mortgagee
- (i) “pay” and “payment” as applied in relation to stocks and securities and in connection with the expression “into court” include the deposit or transfer of the same in or into court; pay and payment
- (j) “possessed” applies to receipt of income of, and to any vested estate less than a life estate legal or equitable, in possession or in expectancy, in any land; possessed

|            |   |
|------------|---|
| property   | (k) “property” includes real and personal property, and any estate and interest in any property, real or personal, and any debt, and any chose in action, and any other right or interest, whether in possession or not;  |
| rights     | (l) “rights” includes estates and interests;  |
| securities | (m) “securities” includes stocks, funds and shares;   |
| stock      | (n) “stock” includes fully paid up shares; and, so far as relates to vesting orders made by the court under this Act, includes any fund, annuity or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein;  |
| transfer   | (o) “transfer” in relation to stock, includes the performance and execution of every deed, power of attorney, act and thing on the part of the transferor to effect and complete the title in the transferee;   |
| trust      | (p) “trust” does not include the duties incident to an estate conveyed by way of mortgage; but with this exception “trust” and “trustee” include implied and constructive trusts and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of personal representative of a deceased person. R.S.P.E.I. 1974, Cap. T-9, s.1; 1974(2nd), c.65, s.23. |

## PART I INVESTMENTS

|                              |   |
|------------------------------|---|
| Investment of trust property | <b>2.</b> (1) A trustee may invest trust property in any form of property or security in which a prudent investor might invest, including a security issued by a mutual fund as defined in the <i>Securities Act</i> R.S.P.E.I. 1988, Cap. S-3.   |
| Terms of trust               | (2) Subsection (1) does not authorize a trustee to invest in a manner that is inconsistent with the trust.  |
| Criteria for investment      | (3) A trustee may have regard to the following criteria in planning the investment of trust property, in addition to any others that are relevant to the circumstances: <ul style="list-style-type: none"> <li>(a) general economic conditions;</li> <li>(b) the possible effect of inflation or deflation;</li> <li>(c) the expected tax consequences of investment decisions or strategies;</li> <li>(d) the role that each investment or course of action plays within the overall trust portfolio;</li> <li>(e) the expected total return from income and the appreciation of capital;</li> </ul> |

- (f) other resources of the beneficiaries;
  - (g) needs for liquidity, regularity of income and preservation or appreciation of capital;
  - (h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
- 1997,c.51,s.1.

**3.** In investing trust property, a trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments. 1997,c.51,s.1. Standard of care

**3.1** A trustee must diversify the investment of trust property to an extent that is appropriate having regard to Diversification

- (a) the requirements of the trust; and
- (b) general economic and investment market conditions. 1997, c.51,s.1.

**3.2** 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. 1997,c.51,s.1. Trustee not liable if overall investment strategy prudent

**3.3** A court assessing the damages payable by a trustee for a loss to the trust arising from the investment of trust property may take into account the overall performance of the investments. 1997,c.51,s.1. Liability of trustee

**3.4** (1) A trustee may obtain advice in relation to the investment of trust property. Investment advice

(2) It is not a breach of trust for a trustee to rely upon advice obtained under subsection (1) if a prudent investor would rely upon the advice under comparable circumstances. 1997,c.51,s.1. *Idem*

**3.5** (1) In this section, “agent” includes a stockbroker, investment dealer, investment counsel and any other person to whom investment responsibility is delegated by a trustee. Agent

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

(3) A trustee who delegates authority under subsection (2) must exercise prudence in Standards of prudence *re* agent

- (a) selecting the agent;
- (b) establishing the terms of the authority delegated; and

(c) monitoring the performance of the agent to ensure compliance with the terms of the delegation.

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

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

Where delegation prohibited (6) This section does not authorise a trustee to delegate authority under circumstances in which the trust requires the trustee to act personally.

Investment in mutual funds (7) Investment in a security issued by a mutual fund or in a similar investment is not a delegation of authority with respect to the investment of trust property. 1997,c.51,s.1.

## PART II POWERS OF THE COURT

Appointment of new trustees, where **4.** In any of the following cases

(a) where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, or to any stock or chose in action, either solely or jointly with any other person

- (i) is an infant,
- (ii) is out of the jurisdiction of the court,
- (iii) cannot be found,
- (iv) is a mentally incompetent person,
- (v) is convicted of a crime punishable by sentence to a penitentiary, or is a bankrupt or insolvent, or
- (vi) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action, or to convey or release land or a right therein, according to the direction of the person absolutely entitled thereto, for twenty-eight days next after a request in writing has been made to him by the person so entitled;

(b) where it is uncertain whether a trustee entitled to or possessed of, alone or jointly with another person, any land or right therein or any stock or chose in action is alive or dead;

(c) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land or any stock or chose in action;

(d) where there is no heir or personal representative of a trustee who was entitled to or possessed of land or stock or a chose in action and

has died intestate as to the same, or where it is uncertain who is the heir or personal representative or devisee of such deceased trustee;

(e) where for any other reason it is expedient to appoint a new trustee or new trustees, and it is found difficult, inexpedient, or impracticable to do so without the assistance of the court,

the court 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.P.E.I. 1974, Cap. T-9, s.4.

**5.** The order appointing a new trustee or trustees shall be conclusive evidence of the expediency or necessity for such appointment. R.S.P.E.I. 1974, Cap. T-9, s.5. Evidence of necessity for appointment

**6.** An order appointing a new trustee or new trustees, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated. R.S.P.E.I. 1974, Cap. T-9, s.6. Effect of appointment on responsibility of former or continuing trustees

**7.** Nothing in this Act gives power to appoint a personal representative. R.S.P.E.I. 1974, Cap. T-9, s.7. Appointment not authorized

**8.** In any of the cases mentioned in section 4, whether an order is made for the appointment of a new trustee or new trustees or not, the court may make an order (in this Act called a vesting order) vesting the land in any person, in such manner and for such estate as the court may direct, or releasing or disposing of the contingent right to any person, or 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 person. R.S.P.E.I. 1974, Cap. T-9, s.8. Vesting order *re* s.4

**9.** (1) Where a vesting order is consequential on the appointment by the court of a new trustee, the land or right shall be vested in the persons who, on the appointment, are the trustees. Land vested in

(2) 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 appoints. R.S.P.E.I. 1974, Cap. T-9, s.9. Vested jointly

**10.** (1) When an order has been made by the court under this Act, vesting the legal right to sue or recover any chose in action, or any interest in respect thereof, in any person, the legal right vests accordingly and thereupon the person so appointed may carry on, commence and prosecute in his own name any action, suit or other proceedings for the recovery of such chose in action in the same manner in all respects as the Legal right to sue or recover any chose in action vested, exercise of

person in whose place an appointment has been made could have sued for or recovered such chose in action.

To whom stock may be transferred (2) 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 or any other person according to the order, and all banks, companies, associations and corporations shall obey every order under this section according to its tenor.

Banks, companies etc. to transfer stock in compliance with order (3) After notice in writing of the order such banks, companies, associations or corporations shall not transfer any stock to which the order relates, or pay any dividends thereon, except in accordance with the order.

Court declarations or directions (4) The court 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.P.E.I. 1974, Cap. T-9, s.10.

Shares in ships **11.** 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.P.E.I. 1974, Cap. T-9, s.11.

Contingent right in unborn person, order releasing land **12.** Where any land is subject to a contingent right in an unborn person or 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 court may make an order releasing the land from the contingent right, or 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.P.E.I. 1974, Cap. T-9, s.12.

Order releasing land possessed etc. by infant **13.** Where any person entitled to or possessed of land, or entitled to a contingent right in land, by way of security for money, is a minor, the court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of a trustee who is a minor. R.S.P.E.I. 1974, Cap. T-9, s.13.

Vesting land in person entitled to receive mortgage payments **14.** (1) Where a mortgagee of land has died without having entered into possession or into the receipt of the rents and profits thereof, and the money due in respect of the mortgage has been paid to a person entitled to receive it, or that last mentioned person consents to an order for the reconveyance of the land, the court may make an order vesting the land in such person or persons in such manner and for such estate as the court may direct in any of the following cases:  
 (a) where an heir or personal representative or devisee of the mortgagee is out of the jurisdiction of the court or cannot be found;

- (b) where an heir or personal representative or devisee of the mortgagee on demand made by or on behalf of a person entitled to require a conveyance of the land has stated in writing that he will not convey the same or does not convey the same for the space of twenty-eight days next after a proper deed for conveying the land has been tendered to him by or on behalf of the person so entitled;
- (c) where it is uncertain which of several devisees of the mortgagee was the survivor;
- (d) where it is uncertain as to the survivor of several devisees of the mortgagee, or as to the heir or personal representative of the mortgagee, whether he is living or dead; or
- (e) where there is no heir or personal representative to a mortgagee who has died intestate as to the land, or where the mortgagee has died and is uncertain who is his heir or personal representative or devisee.

(2) Upon proof on oath before the court that the money secured by a mortgage has been duly paid to a person entitled to receive it, but that owing to the death of the parties entitled to the mortgage moneys or of their legal representatives or the unknown address of such persons or for other sufficient cause, the mortgagor or his legal representatives is or are unable to procure a satisfaction of the mortgage, the court may make an order to the effect that the mortgage is satisfied and directing the Registrar of Deeds to register the order and to make such entries in the registry books as are required to be made on the filing of a satisfaction of mortgage, which shall accordingly be done with the like effect. R.S.P.E.I. 1974, Cap. T-9, s.14.

Order for satisfaction of mortgage, where mortgagee etc. absent

**15.** Where any court gives a judgment or makes an order directing the sale or mortgage of land, every person who is entitled to or possessed of the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made, or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Act; and the court may make an order vesting the land or any part thereof for such estate as the court thinks fit in the purchaser or mortgagee, or in any other person. R.S.P.E.I. 1974, Cap. T-9, s.15.

Court order directing sale or mortgage of land, person entitled to possession etc. deemed as trustee

**16.** Where a judgment is given for the specific performance of a contract concerning any land, or for the partition or sale in lieu of partition, or exchange, of any land, or generally where any judgment is given for the conveyance of any land, either in cases arising out of the doctrine of election or otherwise, the court may declare that any of the parties to the action are trustees of the land or any party thereof within the meaning of this Act; or may declare that the interests of unborn persons who might

Judgment for conveyance of land, parties to action may be declared as trustees



claim under any party to the action, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act, and thereupon the court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees. R.S.P.E.I. 1974, Cap. T-9, s.16.

Affect of vesting order

**17.** A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who before the appointment were the trustees (if any) had duly executed all proper conveyances of the land for such estate as the court directs, or if there is no such person, or no such person of full capacity, then as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for the estate as the court directs, and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose right or supposed rights the said provisions respectively relate, had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order. R.S.P.E.I. 1974, Cap. T-9, s.17.

Court appointment of person to convey

**18.** Where a vesting order can be made under any of the foregoing provisions, the court may, if it is more convenient, appoint a person to convey the land or release the contingent right, or to make or join in making the transfer, and a conveyance or release or transfer by that person in conformity with the order shall have the same effect as an order under the appropriate provisions. R.S.P.E.I. 1974, Cap. T-9, s.18.

Application for order for new trustee etc., who may make

**19.** (1) An order under this Act for the appointment of a new trustee or concerning any land, stock or chose in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock or chose in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

Idem

(2) An order under this Act concerning any land, stock or chose in action 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.P.E.I. 1974, Cap. T-9, s.19.

Court appointed trustee, status

**20.** Every trustee appointed by a court of competent jurisdiction shall, as well before as after the trust property becomes by law or by assurance, or otherwise, vested in him, have the same powers, authorities and discretions, and may in all respects act as if he had been originally

appointed a trustee by the instrument, if any, creating the trust. R.S.P.E.I. 1974, Cap. T-9, s.20.

**21.** The court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for vesting order, or, of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be paid or raised out of the land or personal estate in respect whereof the same is made or out of the income thereof, or to be borne and paid in such manner, and by such persons as to the court may seem just. R.S.P.E.I. 1974, Cap. T-9, s.21.

Costs and expenses  
re appointment of  
new trustee or  
vesting order, court  
order

**22.** The powers conferred by this Act as to vesting orders may be exercised for vesting any land, stock or chose in action in any trustee of a charity or society over which the court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the court under its general or statutory jurisdiction. R.S.P.E.I. 1974, Cap. T-9, s.22.

Powers exercisable  
by trustee of charity  
or society

**23.** Where a vesting order is made as to any land under this Act founded

- (a) on an allegation of the personal incapacity of a trustee or mortgagee;
- (b) on an allegation that a trustee or the heir or personal representative or devisee of a mortgagee is out of the jurisdiction of the court or cannot be found, or that it is uncertain which of several trustees or which of several devisees of a mortgagee was the survivor or whether the last trustee or the heir or personal representative or last surviving devisee of a mortgagee is living or dead; or
- (c) on an allegation that any trustee or mortgagee has died intestate without an heir or has died and it is not known who is his heir or personal representative or devisee,

Validity of order of  
court

the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section does not prevent the court from directing a re-conveyance or the payment of costs occasioned by any such order if improperly obtained. R.S.P.E.I. 1974, Cap. T-9, s.23.

### PART III GENERAL PROVISIONS

**24.** Where in any suit the court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant, to serve him with a process of the court, and that he cannot be found, the court may hear and determine the suit and give judgment therein against that person in his character of a trustee, as if he had been duly served, or had entered an appearance in the suit and had also

Judgement against  
trustee

appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character. R.S.P.E.I. 1974, Cap. T-9, s.24.

Breach of trust at instigation or request of beneficiary, impounding interest of beneficiary

**25.** Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may make an order for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him. R.S.P.E.I. 1974, Cap. T-9, s.25.

No escheat where person becomes convict

**26.** Property vested in any person on any trust or by way of mortgage shall not in case of that person becoming a convict be escheated or forfeited to Her Majesty, but shall remain in the trustee or mortgagee, or survive to his co-trustee or descend to his representative as if he had not become a convict; but this enactment does not affect the title to the property so far as relates to any beneficial interest therein of any such trustee or mortgagee. R.S.P.E.I. 1974, Cap. T-9, s.26.

Indemnity to banks, companies, etc., Act is

**27.** This Act, and every order purporting to be made under this Act, shall be a complete indemnity to all banks, companies, associations or corporations, and to all persons for any acts done pursuant thereto; and it is not necessary for the banks, companies, associations or corporations, or for any person to inquire concerning the propriety of the order, or whether the court by which it was made had jurisdiction to make the same. R.S.P.E.I. 1974, Cap. T-9, s.27.

Prothonotary of the Supreme Court of Prince Edward Island, appointment as new trustee

**28.** In all cases in which the court has jurisdiction to appoint a new trustee or new trustees, the court may make an order appointing the corporation known as Prothonotary of the Supreme Court of Prince Edward Island as the new trustee, either in substitution for or in addition to any existing trustee or trustees, and whether there is any existing trustee or trustees or not at the time of making such order; and such corporation may be appointed sole trustee in place of two or more trustees. R.S.P.E.I. 1974, Cap. T-9, s.28; 1974(2nd), c.65, s.23.

Order vesting lands or property in

**29.** By the same or any subsequent order the court may direct that any lands or property subject to the trust vest in the Prothonotary of the Supreme Court of Prince Edward Island, or in the Prothonotary of the Supreme Court of Prince Edward Island and any person or persons, who upon the appointment shall be trustee or trustees, for such estate as the court shall direct. R.S.P.E.I. 1974, Cap. T-9, s.29; 1974(2nd), c.65, s.23.

Receipt in writing for securities etc. payable, discharge of trustee

**30.** The receipt in writing of any trustee for any money, securities or other personal property or effects payable, transferable or deliverable to him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring or

delivering the same from seeing to the application thereof, or being answerable for any loss or misapplication thereof. R.S.P.E.I. 1974, Cap. T-9, s.30.

**31.** Trustees, guardians or committees are entitled to such fair and reasonable compensation for their care, pains and trouble, and their time expended in and about the trust estate, and in such proportions, when there is more than one trustee, as is determined by the court. R.S.P.E.I. 1974, Cap. T-9, s.31.

Compensation for services of trustees, guardians and committees

**32.** The court may, on application, settle the amount and apportionment of the compensation, although the estate is not before the court in any action or proceeding. R.S.P.E.I. 1974, Cap. T-9, s.32.

Court settlement of compensation

**33.** (1) Unless it is otherwise provided by the instrument creating the trust, where a trustee is desirous of being discharged from the trust, and after his discharge there will remain some person to continue to act as trustee to perform the trust, then, if the trustee wishing to be so discharged declares by deed that he is desirous of being discharged from the trust, and if his co-trustee and such other person, if any, as is empowered to appoint trustees, consents by deed to the discharge and to the vesting of the trust property in the remaining trustee alone, the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall by the deed be discharged therefrom under this section, without any new trustee being appointed in his place.

Discharge of trustee

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustee alone shall be executed or done. R.S.P.E.I. 1974, Cap. T-9, s.33.

Trustee to effect vesting

**34.** A separate trustee or separate trustees may be appointed for any of separate trusts created by an instrument or for any part of the trust property in respect of which the trusts are distinct from those relating to any other part of the trust property, notwithstanding that no new trustee or trustees is or are to be appointed for any other of the separate trusts or any other part of the trust property, and the separate trustee may be a person different from any trustee of any other of the separate trusts or any other part of the trust property, but any existing trustee may be appointed or remain such a separate trustee. R.S.P.E.I. 1974, Cap. T-9, s.34.

Appointment of separate trustees for separate trusts

**35.** A person to whom is given any power, whether coupled with an interest or not, other than a power of appointing trustees, may by deed release, limit, or contract not to exercise the power; and after releasing or contracting not to exercise the power, is not capable of exercising it or joining in its exercise; and after limiting the power, is not capable of

Contract not to exercise power

exercising it or joining in its exercise, except as so limited. R.S.P.E.I. 1974, Cap. T-9, s.35.

Disclaimer of power by deed

**36.** (1) A person to whom is given any power, whether coupled with an interest or not, may by deed disclaim the power, and, after disclaimer, is not capable of exercising or joining in the exercise of the power.

Remainder or survivors may continue, unless

(2) On the disclaimer, the power may be exercised by the other person or persons or the survivor or survivors of the other persons, to whom the power is given, unless the contrary is expressed in the instrument creating the power. R.S.P.E.I. 1974, Cap. T-9, s.36.

Power of appointing trustees, contract not to exercise

**37.** A person to whom any power of appointing trustees is given or reserved may by deed, release or limit or contract not to exercise the power; and after releasing or contracting not to exercise the power, shall not be capable of exercising it or joining in its exercise; and after limiting the power, is not capable of exercising it or joining in its exercise, except as so limited. R.S.P.E.I. 1974, Cap. T-9, s.37.

Life tenant or beneficiary of income of trust, release and surrender of interest

**38.** (1) The life tenant or life beneficiary of the income of a trust, including a life tenant or life beneficiary who created the trust, may release and surrender to the trustee his life interest, in whole or in part, at any time or from time to time, by instrument in writing under his hand and seal delivered to the trustee; such release and surrender do not affect in any manner any part of the life interest not so released and surrendered or any other provision of the instrument creating the trust, each of which other provisions shall continue with the same force and effect during the term of the trust limited in the instrument creating it, as if such release and surrender had not been made.

Income received after interest partially released

(2) Income of the trust received by the trustee from time to time during the period subsequent to the release and surrender or if there has been a partial release and surrender only, such part of the income as relates or is in proportion to the part of the life interest so released and surrendered shall be payable as and when received to the person or persons, if any, who are entitled under and pursuant to the provisions of the instrument creating the trust to receive the trust income after the expiration of said life interest so released and surrendered or, if under and pursuant to such provisions there is no person or persons entitled to receive such income, to the person or persons who then would be entitled, had the trust term ended on the date of receipt by the trustee of such income, to receive the principal of the trust under and pursuant to the provisions of the instrument creating it and, if more than one, in the proportions in which they would have been so entitled.

(3) Notwithstanding anything in this section contained, section 39 relating to income is applicable to all income payable to a minor under this section. R.S.P.E.I. 1974, Cap. T-9, s.38.

Application to  
income of minor

**39.** (1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property

Minors, property  
held in trust for,  
payments to

(a) during the minority of any such person, if his interest so long continues, the trustees may, in their sole and absolute discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is

- (i) any other fund applicable to the same purpose, or
- (ii) any person bound by law to provide for his maintenance or education; and

(b) if the person on attaining the age of eighteen years has not a vested interest in the income, the trustees shall from then on pay the income of that property and of any accretion thereto under subsection (2) to him, until he either attains a vested interest therein or dies, or until failure of his interest.

(2) During the minority of any such person if his interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing it and the resulting income thereof from time to time in investments authorized by the instrument, if any, creating the trust, for the investment of moneys subject to the trust, or by this Act, and shall hold those accumulations as follows:

Residue of income,  
accumulation of

(a) if any such person

- (i) attains the age of eighteen years or marries under that age, and his interest in such income during his minority or until his marriage is a vested interest or arises under or by virtue of an instrument in writing executed by the releasor after June 14, 1956 and operating under section 38 of this Act as a release and surrender of a life interest, or
- (ii) on attaining the age of eighteen years or on marriage under that age becomes entitled to the property from which the income arose in fee simple, absolute or determinable or for an entailed interest, or absolutely,

the trustees shall hold the accumulations in trust for such person absolutely, and so that the receipt of the person after marriage, and though still a minor, shall be a good discharge;

(b) in any other case the trustees shall, notwithstanding that such person had a vested interest in the income, hold the accumulations as an accretion to the capital of the property from which the

accumulations arose, and as one fund with such capital for all purposes; but the trustees may, in their sole and absolute discretion, at any time or from time to time during the minority of such person if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

Application to contingent interests (3) This section applies in the case of a contingent interest only if and to the extent that the income is not expressly otherwise disposed of by the instrument creating the trust.

Application to minors (4) Notwithstanding section 38, this section applies to income which pursuant to section 38 is from time to time payable to a person who is for the time being a minor.

Application of vested annuity (5) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the minority of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.

Application of section (6) This section applies  
 (a) to trusts created or arising on or after March 29, 1956, unless its application is expressly excluded by the instrument, if any, creating the trust; and  
 (b) to trusts created or arising before that date, unless  
 (i) on that date a beneficiary of the trust is a resident of the province, in which case this section applies only if and from the time when the court, on the application of the trustees or a beneficiary, and after hearing on such notice as the court may prescribe, orders that this section applies to the trust, or  
 (ii) on that date a trustee of the trust had an office in the province, in which case this section applies only if and from the time when the trustees of the trust, by an instrument in writing signed by the trustees and filed with the Prothonotary, declare their intention that the trust shall be governed by this section. R.S.P.E.I. 1974, Cap. T-9, s.39; 1974(2nd), c.65, s.23.

Discretionary power to distribute capital **40.** (1) Trustees may at any time or from time to time pay, transfer or apply any capital money or property subject to a trust, for the advancement or benefit, in such manner as they may, in their sole and absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in

remainder or reversion, and the payment, transfer or application may be made notwithstanding that the interest of such person is liable to be defeated or extinguished by the exercise of a power of appointment or revocation or by his death, or to be diminished by the increase of the class to which he belongs; but

(a) the money or property so paid, transferred or applied for the advancement or benefit of any person shall not exceed altogether in amount or value one-half of the presumptive or vested share or interest of that person in the trust property;

(b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money or property so paid, transferred or applied shall be brought into account as part of such share and in the case of property at its value at the time of such transfer;

(c) no such payment, transfer or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money or property paid, transferred or applied unless such person is in existence and of full age and consents in writing to such payment, transfer or application; and

(d) if the settlor is acting as trustee of the trust, he is not permitted to make a payment, transfer or application pursuant to this section or to participate in the determination to make or in the making of any payment, transfer or application pursuant to this section, and if one or more persons are acting as co-trustee or co-trustees with such settlor, such other co-trustee or co-trustees shall have full discretion to make payment, transfer, or application pursuant to this section as if he or they were sole trustee or trustees.

(2) This section applies

(a) to trusts created or arising on or after March 29, 1956, unless its application is expressly excluded by the instrument, if any, creating the trust; and

(b) to trusts created or arising before that date, unless

(i) on that date a beneficiary of the trust is a resident of the province, in which case this section applies only if and from the time when the court, on the application of the trustees or a beneficiary, and after hearing on such notice as the court may prescribe, orders that this section applies to the trust, or

(ii) on that date a trustee of the trust had an office in the province, in which case this section applies only if and from the time when the trustees of the trust by an instrument in writing signed by the trustees and filed with the Prothonotary declare their intention that the trust shall be governed by this section.

Application of  
section



Idem (3) Clause 1(d) is deemed to have had effect from April 11, 1963. R.S.P.E.I. 1974, Cap. T-9, s.40; 1974(2nd), c.65, s.23.

#### PART IV PAYMENT INTO COURT BY TRUSTEES

Payment of trust moneys and securities into court **41.** (1) Trustees, personal representatives or other persons including mortgagees, having in their hands or under their control money or securities belonging to a trust, may, and shall when ordered by the court, pay the same into court, and the same shall be dealt with according to the rules and orders of court.

Discharge of trustees (2) The receipt or certificate of the Prothonotary is a sufficient discharge to trustees or other persons for the money or securities so paid into court. R.S.P.E.I. 1974, Cap. T-9, s.41; 1974(2nd), c.65, s.23.

Payment of trust moneys desired by majority of trustees, court order **42.** Where any moneys or securities are vested in any persons as trustees and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the court may order the payment into court to be made by the majority without the concurrence of the other or others; and where any such moneys or securities are deposited with any banker, broker or other depositary, the court may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into court and every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the moneys and securities so transferred paid or delivered. R.S.P.E.I. 1974, Cap. T-9, s.42.

Affidavit by trustees applying for payment, contents **43.** Every trustee or other person shall at the time of the payment file in court an affidavit entitled in the matter of the Act, and of the trust, and setting forth:

- (a) his own name and address;
- (b) the place where he is to be served with any application or notice of any proceeding, rule or order of the court relating to the trust fund;
- (c) the amount of money or securities which he has paid into or deposited in the court;
- (d) a short description of the trust and of the instrument creating it;
- (e) the names of the persons interested in or entitled to the fund or securities to the best of his knowledge and belief. R.S.P.E.I. 1974, Cap. T-9, s.43.

Jurisdiction of court to make orders re trust moneys **44.** Such orders as shall seem fit shall be from time to time made by the court in respect of the trust money, stocks or securities so paid in and deposited, as aforesaid, and for the investment and payment of any such

moneys or of any dividend or interest on any such stocks or securities, and for the transfer and delivery out of any such stocks and securities, and for the administration of any such trusts generally upon an application to be presented in a summary way to the court by such party or parties as to the court shall appear to be competent and necessary in that behalf, and service of such application shall be made upon such person as the court shall direct; and every order made upon any such application shall have the same authority and effect, and shall be enforced and subject to rehearing and appeal in the same manner as if the same had been made in a suit regularly instituted in the court. R.S.P.E.I. 1974, Cap. T-9, s.44.

**45.** If it appears to the court that any such moneys or securities cannot be properly distributed without the institution of one or more suit or suits the court may direct any such suit or suits to be instituted, otherwise the jurisdiction of the court to deal with such moneys or securities is in all respects as full and ample as if an application had been filed in the matter thereof, and the trusts thereof, and all proper parties had been made thereto. R.S.P.E.I. 1974, Cap. T-9, s.45.

Moneys or securities cannot be distributed with a suit, jurisdiction of the court

**46.** When any party or witness has made an affidavit in any proceeding under this Act he is subject to oral cross-examination in the same manner as if the evidence given by him in his affidavit had been given by him orally, and after the cross-examination he may be re-examined orally by or on the part of the party by whom the affidavit was filed, and the party or witness shall be bound to attend before the court, or before the Prothonotary to be so cross-examined upon receiving due and proper notice and payment of the witness fees to which he would be entitled if he had been duly served with a subpoena to give testimony; and the expenses attending the cross-examination and re-examination shall be paid by the parties respectively in like manner, as if the witness so to be cross-examined were the witness of the party cross-examining, and shall be deemed costs in the cause or matter of such parties respectively, unless the court shall otherwise direct. R.S.P.E.I. 1974, Cap. T-9, s.46; 1974(2nd), c.65, s.23.

Oral cross-examination of party or witness who makes affidavit

**47.** An assignee of trust money paid into court under this Act may apply to the court for a stop order, and the practice as to applying therefor and serving the same shall be settled by the court. R.S.P.E.I. 1974, Cap. T-9, s.47.

Application for stop order by assignee of trust money

**PART V  
PROCEDURE**

**48.** (1) Any person entitled to an order under this Act may apply in the first instance to the court, and may give evidence by affidavit or

Application

otherwise, in support of the application before the court, and may serve such person with notice of the application as he may consider entitled to service thereof.

Declaration *re* right of applicant

(2) The court may postpone making any order on the application until the right of the applicant has been declared in a suit duly instituted for that purpose. R.S.P.E.I. 1974, Cap. T-9, s.48.

Hearing the application

**49.** Upon the hearing of the application, the court may direct a reference to the Prothonotary to enquire into any facts, or the court may direct the application to stand over to enable the applicant to adduce evidence, or further evidence, before the court, or to enable notice, or further notice, of the application to be served upon any person. R.S.P.E.I. 1974, Cap. T-9, s.49; 1974(2nd), c.65, s.23.

Jurisdiction of court in making an order

**50.** Upon the hearing of application or suit, the court may dismiss it with or without costs, or may make an order in conformity with this Act. R.S.P.E.I. 1974, Cap. T-9, s.50.

Land subject to an incumbrance sold by court, setting aside sum sufficient for incumbrance

**51.** (1) Where land subject to any incumbrance whether immediately payable or not is sold by the court, or out of court, the court may, on the application of any party to the sale, direct or allow payment into court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in government securities, the court considers will be sufficient by means of the dividends thereof to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the court for special reasons thinks fit to require a larger or additional amount.

Sale of land without incumbrance after setting aside

(2) Thereupon the court may, either after or without any notice to the incumbrancer, declare the land to be freed from the incumbrance and make any order for conveyance or vesting, proper for giving effect to the sale, and give directions for the retention and investment of the money in court.

Order directing payment

(3) After notice served on the persons interested in or entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for it and generally may give directions respecting the application or distribution of the capital or income thereof.

(4) “Incumbrance” includes a mortgage in fee or for a less estate, and a trust for security money, and a lien, and a rent charge, and a charge of a portion, annuity, or other capital or annual sum; and “incumbrancer” has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance or to require payment or discharge thereof. R.S.P.E.I. 1974, Cap. T-9, s.51.

Incumbrance defined

#### PART VI APPLICATION FOR OPINION OF COURT

**52.** (1) Any trustee or personal representative may, without the institution of a suit, apply to the court for the opinion, advice or direction of the court, on any question respecting the management or administration of the trust property or of the assets of any testator or intestate, notice of such application to be served upon, or the hearing thereof to be attended by all persons interested in the application or such of them as the court shall think expedient.

Management or administration of trust property, application to court for opinion

(2) The trustee or personal representative acting upon the opinion, advice or direction given by the court shall be deemed so far as regards his own responsibility to have discharged his duty as trustee or personal representative in the subject matter of the application.

Acting upon opinion, trustee discharged duty

(3) This section does not indemnify any trustee or personal representative in respect of any act done in accordance with such opinion, advice or direction, if such trustee or personal representative has been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction; the costs of such application shall be in the discretion of the court. R.S.P.E.I. 1974, Cap. T-9, s.52.

Application of section