

The Trustee Act

Repealed

by Chapter T-23.01 of the *Statutes of Saskatchewan, 2009*
(effective January 1, 2010)

Formerly

Chapter T-23 of *The Revised Statutes of Saskatchewan, 1978*
(effective February 26, 1979) as amended by *The Revised
Statutes of Saskatchewan, 1978 (Supplement)*, c.79, and the
Statutes of Saskatchewan, 1980-81, c.31; 1983, c.80; 1990-91,
c. S-66.1; 1992, c.62; 1994, c.10; 1997, c.18; 1998, c.C-45.2
and c.40; 2001, c.33; 2004, c.L-16.1; 2006, c.10; and 2008, c.2.

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER T-23

An act respecting Trustees and Executors and the Administration of Estates

SHORT TITLE

Short title

- 1 This Act may be cited as *The Trustee Act*.

INTERPRETATION

Interpretation

2(1) In this Act “**trustee**” includes an executor or administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee and also includes several joint trustees.

(2) In this Act and in any order made hereunder “**securities**” includes stock, debentures, bonds, shares and guaranteed trust or investment certificates.

R.S.S. 1978, c.T-23, s.2.

INVESTMENTS

Investment

3(1) A trustee may invest trust property in any form of property or security in which a reasonable, prudent investor would invest, including a security issued by a mutual fund as defined in *The Securities Act, 1988* or similar investments.

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

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

- (a) general economic conditions;
- (b) the possible effects of inflation or deflation;
- (c) the expected tax consequences of investment decisions or strategies;
- (d) the role that each investment or course of action plays within the overall portfolio of trust property;
- (e) the expected total return from income and appreciation of capital;
- (f) other resources of the beneficiaries;
- (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.

1998, c.40, s.3.

Standard of care

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

1998, c.40, s.3.

Investment diversity

3.2 A trustee must diversify the investment of trust property to an extent that is appropriate having regard to:

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

1998, c.40, s.3.

Investment advice

3.3(1) A trustee may obtain advice respecting the investment of trust property.

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

1998, c.40, s.3.

Investment values, limitations and inclusions

4(1) In determining market values a trustee may rely upon published market quotations.

(2) No corporation that is a trustee shall invest trust money in its own securities.

(3) to (8) **Repealed.** 1998, c.40, s.4.

R.S.S. 1978, c.T-23, s.4; 1998, c.40, s.4.

Additional assets

5(1) In addition to the investments authorized by section 3 or by the instrument creating the trust, a trustee may, except where the instrument creating the trust expressly prohibits it, invest in any other property or security that a judge of the Court of Queen's Bench, on application in any particular case, approves as fit and proper.

(2) Nothing in subsection (1) relieves the trustee of his or her duty to exercise care, skill, diligence and judgment with respect to investments authorized pursuant to subsection (1).

1998, c.40, s.5.

Deposits in banks, etc.

6(1) Pending the investment of any trust money, a trustee may deposit it, for any period of time that is reasonable in the circumstances, in:

- (a) a chartered bank;
- (b) a credit union that is incorporated under *The Credit Union Act, 1998* or any former *Credit Union Act*;

- (c) Saskatchewan Co-operative Credit Society Limited;
 - (d) a trust company that is licensed under *The Trust and Loan Companies Licensing Act*;
 - (e) a loan company that is licensed under *The Trust and Loan Companies Licensing Act* and that is a member of the Canada Deposit Insurance Corporation;
 - (f) any other body corporate that is empowered to accept moneys for deposit and that has been approved for that purpose by the Lieutenant Governor in Council.
- (2) Where a trustee, other than a trust company registered and entitled to transact business as a trust company in Saskatchewan, deposits trust moneys under subsection (1), he shall open and keep a separate account in his name in the bank or other depository for each trust for which moneys so deposited are held.

R.S.S. 1978, c.T-23, s.6; 1980-81, c.31, s.4;
1998, c.C-45.2, s.476.

Investments to be in trustee's name

7 Except in the case of a security that cannot be registered, a trustee, other than a trust company registered and entitled to transact business as a trust company in Saskatchewan, who invests in securities shall require the securities to be registered in his name as the trustee for the particular trust for which the securities are held, and the securities may be transferred only on the books of the corporation in his name as trustee for such trust estate.

R.S.S. 1978, c.T-23, s.7.

Instrument creating the trust

- 8(1)** The power conferred by this Act relating to trustee investment are in addition to the powers conferred by the instrument, if any, creating the trust.
- (2) Nothing in this Act relating to trustee investments authorizes a trustee to do anything that he is in express terms forbidden to do or to omit to do anything that he is in express terms directed to do by the instrument creating the trust.

R.S.S. 1978, c.T-23, s.8.

Variation of trustee

- 9(1) Repealed.** 1998, c.40, s.6.
- (2) No trustee is liable for any breach of trust by reason only of his continuing to hold an investment that since the acquisition thereof by the trustee has ceased to be one authorized by the instrument of trust or by this Act.
- (3) **Repealed.** 1998, c.40, s.6.

R.S.S. 1978, c.T-23, s.9; 1998, c.40, s.6.

Comprises schemes and arrangements

- 10(1)** Where a trustee holds securities of a corporation in which he has properly invested money under this Act, he may concur in any compromise, scheme or arrangement:
- (a) for the reconstruction of the corporation or for the winding-up or sale or distribution of its assets;

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TRUSTEE

- (b) for the sale of all or any part of the property and undertaking of the corporation to another corporation;
- (c) for the amalgamation of the corporation with another corporation;
- (d) for the release, modification or variation of any rights, privileges or liabilities attached to the securities or any of them;

in like manner, as if he were entitled to the securities beneficially, and may, if the securities are investments authorized by section 3, accept any securities of any denomination or description of the reconstructed or purchasing or new corporation in lieu of or in exchange for all or any of the original securities.

(2) A trustee is not responsible for any loss occasioned by any act or thing done in good faith under subsection (1), and he may, if the securities accepted thereunder are investments authorized by section 3, retain them for any period for which he could have properly retained the original securities.

R.S.S. 1978, c.T-23, s.10; 1998, c.40, s.7.

11 Repealed. 1998, c.40, s.8.

12 Repealed. 1998, c.40, s.9.

RIGHTS AND LIABILITIES OF TRUSTEES

Restriction on liability and right to reimbursement of certain expenses

13(1) In this section, **'trustee'** includes a former trustee.

(2) A trustee:

- (a) is accountable only for money and securities actually received by the trustee even though the trustee signed a receipt for the sake of conformity; and
- (b) is answerable and accountable only for the trustee's own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for those of any banker, broker or other person with whom the trust money or securities mentioned in clause (a) are deposited.

(3) A trustee may reimburse himself or herself for, or pay or discharge out of the trust money, all expenses reasonably incurred in or about the execution of the trustee's trust or powers.

(4) A trustee may:

- (a) be indemnified out of trust money with respect to:
 - (i) liabilities and expenses, including an amount paid to settle an action or satisfy a judgment, arising out of any matter or thing done honestly and in good faith relating to the exercise or attempted exercise of the powers and duties of the trustee; and
 - (ii) legal fees and costs relating to a claim for which this subsection provides an entitlement to an indemnity; and

(b) receive out of the trust money an advance of money for the purpose of meeting an expense for which the trustee may be reimbursed or indemnified pursuant to this section.

(5) A trustee shall repay the money advanced to the trustee pursuant to clause (4)(b) if the trustee is found not to be entitled to be reimbursed or indemnified with respect to the expense for which the advance was made.

2006, c.10, s.3.

Power of court to appoint new trustees

14(1) When it is expedient to appoint one or more new trustees, and it is inexpedient, difficult or impracticable so to do without the assistance of the court, the Court of Queen's Bench 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, and, in particular, and without prejudice to the generality of the foregoing provision, the court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of an indictable offence, or is insolvent.

(2) No order under subsection (1) or consequential vesting order or conveyance shall operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under a power for that purpose contained in an instrument would have operated.

(3) Nothing in this section gives power to appoint a personal representative.

R.S.S. 1978, c.T-23, s.14.

Appointment of new trustees

15(1) Where a trustee dies or desires to be discharged from the trusts or powers in him reposed, or refuses or becomes unfit to act or incapable of acting therein, the person nominated for that purpose by the deed, will or other instrument creating the trust, if any, or if there is no such person or no such person able and willing to act, then the surviving or continuing trustee or trustees, or the personal representative of the last surviving and continuing trustee, may by writing appoint another person or other persons to be a trustee or trustees in place of the trustee or trustees dying or desiring to be discharged or refusing or becoming unfit to act or incapable of acting.

(2) When a new trustee or trustees is or are so appointed all the trust property that for the time being is vested in the surviving or continuing trustees or trustee or in the heirs, executors or administrators of any trustees or trustee shall with all convenient speed be conveyed, assigned and transferred so that it may be legally and effectually vested in the new trustee or trustees either solely or jointly with the surviving or continuing trustees or a surviving or continuing trustee as the case may require.

(3) Every new trustee has, as well before as after such conveyance, assignment or transfer, and every trustee appointed by the court has, the same powers, authorities and discretions and shall in all respects act as if he had originally been nominated a trustee by the deed, will or other instrument creating the trust.

R.S.S. 1978, c.T-23, s.15.

Incidental powers when making appointment

16 On the appointment of a new trustee for the whole or any part of trust property:

- (a) the number of trustees may be increased; and
- (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, notwithstanding that no new trustees or trustee are or is to be appointed for other parts, 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 any such part of the trust property; and
- (c) it shall not be 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 15 unless there remain at least two trustees to perform the trust; and
- (d) any assurance or thing requisite for vesting the trust property or any part thereof jointly in the persons who are the trustees shall be executed or done.

R.S.S. 1978, c.T-23, s.16.

Powers of new trustees

17 Every new trustee so appointed has, as well before as after all the trust property becomes by law or by assurance or otherwise vested in him, 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.S. 1978, c.T-23, s.17.

Interpretation of certain provisions

18 The provisions of this Act relative to a trustee who has died include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the provisions of section 15.

R.S.S. 1978, c.T-23, s.18.

Application of sections 15 to 18

19 Sections 15, 16, 17 and 18 apply only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

R.S.S. 1978, c.T-23, s.19.

Discharge of retiring trustee

20(1) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust and if his co-trustees and such other person, if any, as is empowered to appoint trustees consent by deed to the discharge and to the vesting of the trust property in the co-trustees alone, then the trustees desirous of being discharged shall be deemed to have retired from the trust and shall by the deed be discharged therefrom without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust and has effect subject to the terms of that instrument.

R.S.S. 1978, c.T-23, s.20.

Vesting of trust property in new or continuing trustees without conveyance

21(1) Where an instrument by which a new trustee is appointed to perform a trust contains a declaration by the appointor to the effect that any estate or interest in land subject to the trust or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the instrument become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment but subject to *The Land Titles Act*, operate to vest in those persons as joint tenants and for the purposes of the trust that estate, interest or right.

(2) Where an instrument by which a retiring trustee is discharged 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 but subject as aforesaid, 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.

(3) This section does not extend to any share, stock, annuity or property transferable only in books kept by a company or other body or in manner prescribed by or under an Act of the Legislature.

(4) For the purposes of registration of an instrument the person or persons making the declaration shall be deemed the conveying party or parties and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

R.S.S. 1978, c.T-23, s.21.

Trustee's death

22 Where an estate or interest of inheritance in real property is vested on an express trust in a person solely, the same shall on his death, notwithstanding any testamentary disposition, devolve to and become vested in his executor or administrator in like manner as if the same were personal estate vesting in him and, accordingly, all the like powers for one only of several joint executors or administrators as well as for a single executor or administrator and for all the executors and administrators together to dispose of an otherwise deal with the same, shall belong to the deceased's executor or administrator with all the like incidents but subject to all the like rights, equities and obligations as if the same were personal estate vesting in him, and for the purposes of this section the executor or administrator of the deceased shall be deemed in law his heirs and assigns within the meaning of all trusts and powers.

R.S.S. 1978, c.T-23, s.22.

VESTING ORDERS AND ORDERS RELEASING
CONTINGENT RIGHTS TO LAND

Vesting orders as to land

23(1) In any of the following cases, namely:

- (a) where a trustee either original or substituted is appointed by the court or otherwise; or
- (b) where a trustee dies or desires to be discharged from the trust or refuses or becomes unfit to act or incapable of acting, and the trust property is to be vested in the surviving or continuing trustees; or
- (c) 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 an infant, or is outside Saskatchewan, or cannot be found; or
- (d) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; or
- (e) where it is uncertain whether the last trustee known to have been entitled to or possessed of any land is living or dead; or
- (f) 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
- (g) 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 to a release of the right, to convey the land or 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 Court of Queen's Bench may make an order, in this Act called a vesting order, vesting the land in such person in such manner, and for such estate, as the court may think fit, or releasing or disposing of the contingent right to such person as the court may direct.

(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.

(3) Where the order relates to a trustee entitled jointly with another person, and that trustee is outside Saskatchewan or cannot be found, the land or right shall be vested in the other person, either alone or with some other person.

Orders as to contingent rights of unborn persons

24 Where 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 Court of Queen's Bench may make an order releasing the land from the contingent right, or 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.

R.S.S. 1978, c.T-23, s.24.

Order consequential on judgment for sale of land

25 Where a court gives a judgment or makes an order directing a sale of land, every person who:

(a) is entitled to or possessed of the land, or entitled to a contingent right therein as heir or under the will of a deceased person for payment of those debts the judgment was given or order made; and

(b) is a party to the action or proceedings or is otherwise bound by the judgment or order;

shall be deemed to be so entitled or possessed as a trustee within the meaning of this Act, and the Court of Queen's Bench may make an order vesting the land or any part thereof, for such estate, as that court thinks fit, in the purchaser or any other person.

R.S.S. 1978, c.T-23, s.25.

Order consequential on judgment, for specific performance, etc.

26 Where a judgment is given for the specific performance of a contract concerning land, or for the partition or sale in lieu of partition, or exchange of land, or generally where a judgment is given for the conveyance of land, either in cases arising out of the doctrine of election, or otherwise, the Court of Queen's Bench may declare that any of the parties to the action are trustees of the land, or any part thereof, within the meaning of this Act, or may declare that the interest of unborn persons who might claim under a party to the action, or under the will, or voluntary settlement, of a person deceased, who was during his lifetime a party to the contract or transactions concerning which the judgment was given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act, and thereupon the Court of Queen's Bench may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

R.S.S. 1978, c.T-23, s.26.

EFFECT OF VESTING ORDERS OF LAND

Effect of vesting order

27 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, had duly executed all proper conveyances of the land for such estate as the Court of Queen's Bench 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 such 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 rights or supposed rights those provisions relate, had been an ascertained and existing persons of full capacity, and had executed a conveyance or release to the effect intended by the order.

R.S.S. 1978, c.T-23, s.27.

Orders made upon certain allegations are conclusive evidence

28 Where a vesting order is made as to land, founded on an allegation of the personal incapacity of a trustee, or on an allegation that a trustee is outside Saskatchewan or cannot be found, or that it is uncertain which of the several trustees was the survivor, or on an allegation that a trustee has died intestate without an heir, or has died and it is not known who is his heir or personal representative or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon a question as to the validity of the order; but this section does not prevent the Court of Queen's Bench from directing a conveyance on the payment of costs occasioned by the order if improperly obtained.

R.S.S. 1978, c.T-23, s.28.

APPOINTMENT OF PERSONS TO CONVEY

Power to appoint persons to convey

29 Where a vesting order is made under any of the foregoing provisions, the Court of Queen's Bench may, if it is more convenient, by order appoint a person to convey the land or release the contingent right, and a conveyance or release by that person in conformity with the order has the same effect as an order under the appropriate provisions.

R.S.S. 1978, c.T-23, s.29.

VESTING ORDERS AND ORDERS RELEASING CONTINGENT RIGHTS AS TO STOCKS AND CHOSSES IN ACTION

Vesting orders as to stock and choses in action

30(1) In any of the following cases:

- (a) where the Court of Queen's Bench 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 an infant; or
- (ii) is outside Saskatchewan; 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 him 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 Court of Queen's Bench for that purpose has been served on him; 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 Court of Queen's Bench 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.

(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.

(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.

(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.

(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, or any other person, according to the order, and all chartered banks and all companies shall obey every order made under this section.

(6) After notice in writing of an order under this section it shall not be lawful for any chartered 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.

(7) The Court of Queen's Bench 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.

(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.

EFFECT OF VESTING ORDERS ON CHOSSES IN ACTION

Effect of vesting order

31 Where an order has been made under this Act by the Court of Queen's Bench vesting the legal right to sue for or recover a chose in action, or an interest in respect thereof, in any person, he may carry on, commence and prosecute in his own name an action or proceeding for the recovery of the chose in action in the same manner and with the same rights as the person in whose place he has been appointed.

R.S.S. 1978, c.T-23, s.31.

TRUSTEES FOR CHARITIES

Exercise of powers in favour of charities, etc.

32 The Court of Queen's Bench may exercise the powers herein conferred for the purpose of vesting land or personal estate in the trustee of a charity or society over which the court would have jurisdiction upon action duly instituted.

R.S.S. 1978, c.T-23, s.32.

Power to order sale of land

33(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 that purpose or that for any other reason the land ought to be sold, a judge of the Court of Queen's Bench may make an order authorizing the sale and may give such directions in relation thereto and for securing the due investment and application of the money arising therefrom as may be deemed proper.

(2) No such order shall be made unless notice of the application has been given to the Attorney General of Saskatchewan.

R.S.S. 1978, c.T-23, s.33.

APPLICATION

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

34(1) An order pursuant to this Act appointing a new trustee or concerning any land or personal estate subject to a trust may be made on the application of:

- (a) any person, whether under a disability or not, beneficially interested in the appointment of a new trustee or in the land or personal estate subject to the trust;
- (b) a person duly appointed as a trustee of the land or personal estate; or
- (c) the public guardian and trustee appointed pursuant to *The Public Guardian and Trustee Act*.

(2) A person entitled may apply, upon notice to such persons as the court or judge may think proper, for such an order as he deems himself entitled to.

(3) Upon the hearing of the application the court may direct a reference to inquire into any facts that require investigation, or may direct the application to stand over to enable further evidence to be adduced or further notice to be served.

R.S.S. 1978, c.T-23, s.34; 1997, c.18, s.11; 2001, c.33, s.23.

POWERS OF NEW TRUSTEES

Powers of new trustees

35 Every trustee appointed by the court has, as well before as after the trust property becomes by law or by assurance or otherwise vested in him, 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.S. 1978, c.T-23, s.35.

Costs of application

36 The court may order the costs and expenses incident to an application for an order appointing a new trustee or for a vesting order, or of and incident to any such order or any conveyance or transfer in pursuance thereof, to be paid 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.S. 1978, c.T-23, s.36.

PURCHASE AND SALE

Power of trustee for sale to sell by auction, etc.

37(1) Subject to *The Devolution of Real Property Act*, where a trust for sale or a power of sale is vested in a trustee he 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 loss.

(2) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power and has effect subject to the terms of that instrument.

R.S.S. 1978, c.T-23, s.37.

Power to sell subject to depreciatory conditions

38(1) No sale made by a trustee shall be impeached by a beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

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TRUSTEE

(2) No sale made by a trustee shall, 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 sale was made.

(3) No purchaser upon a sale made by a trustee shall be at liberty to make any objection against the title upon the ground aforesaid.

R.S.S. 1978, c.T-23, s.38.

Fee simple estates of bare trustees vest in personal representatives

39 Upon the death of a bare trustee of corporeal or incorporeal hereditaments of which that trustee was seized in fee simple, the hereditaments shall vest in his legal personal representative.

R.S.S. 1978, c.T-23, s.39.

40 Repealed. R.S.S. (Supp.) 1978, c.79, s.2

Receipts of trustees effectual discharges

41 The *bona fide* payment of money to and the receipt thereof by a person to whom the money is payable upon an express or implied trust or for a limited purpose effectually discharges the person paying the money from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the trust.

R.S.S. 1978, c.T-23, s.41.

LEASES OF MINES AND MINERALS, ETC.

Power of judge to authorize

42 A judge of the Court of Queen's Bench may by order authorize a trustee to lease, grant a *profit a prendre* in respect of or otherwise deal with or dispose of mines and minerals or sand and gravel forming part of the trust estate whether the same have already been worked or not and either with or without the surface or other land, or to grant an easement, right or privilege of any kind over or in relation thereto.

R.S.S. 1978, c.T-23, s.42.

TRUSTEES AND EXECUTORS

Capitalization of part of rents and royalties

43 Subject to the instrument creating the trust, where a trustee leases, grants a *profit a prendre* in respect of or grants an easement, right or privilege of any kind over or in relation to mines and minerals or sand and gravel forming part of the trust estate there shall be set aside by the trustee from the rents and royalties as capital one fourth part thereof where the person or persons for the time being entitled to the benefit of the trust is or are entitled to work the mines and minerals or sand and gravel for his or their own benefit and in other cases three fourth parts thereof, and the remaining three fourth parts or one fourth part thereof respectively shall be payable to the person or persons for the time being entitled to the benefit of the trust.

R.S.S. 1978, c.T-23, s.43.

VARIOUS POWERS AND LIABILITIES

Appointment of agents by trustees for certain purposes

44(1) In this section, “agent” includes a stock broker, investment dealer, investment counsellor and any other person to whom investment responsibility is delegated by a trustee.

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

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

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

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

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

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

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

1998, c.40, s.11.

Powers of trustees to insure trust property

45(1) It is lawful for but not obligatory upon a trustee to insure against loss or damage by fire any building or other insurable property to an amount, including the amount of any insurance already in force, not exceeding three fourth parts of the full value of the building or property, and to pay the premiums 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 entitled wholly or partly to such income.

(2) This section does not apply to a building or property that a trustee is bound forthwith to convey absolutely to a *cestui que trust* upon being requested to do so.

(3) It is lawful for but not obligatory upon a trustee to insure against loss or damage by hail, to an amount not exceeding \$10 per acre, the crops growing or to be grown upon any land that he is farming, or that he has sold or leased on terms made wholly or partly pursuant to *The Crop Payments Act*, or to insure those crops, under a contract of crop insurance, against loss from risks or perils to which they may be exposed; and to pay the premiums out of the income thereof or of any other property subject to the same trusts, without obtaining the consent of any person entitled wholly or partly to such income.

R.S.S. 1978, c.T-23, s.45.

Trustee committing breach of trust at instigation of beneficiary

46 Where a trustee has committed a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may, notwithstanding that the beneficiary is a married woman entitled for her separate use whether with or without a restraint upon anticipation, make such order as seems just 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.S. 1978, c.T-23, s.46.

Power of trustee to give receipts

47 The receipt in writing of a trustee for any money, securities or other personal property or effects payable, transferable or deliverable to him under a trust or power is a sufficient discharge for the same and exonerates the person paying, transferring or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

R.S.S. 1978, c.T-23, s.47.

Power of executors and trustees to compound, etc.

48(1) A trustee 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 he or they may think fit, accept a composition or any security real or personal for a debt or for any property real or personal claimed, and may allow time for payment of a 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 those purposes may enter into, give and execute such agreements, instruments of composition or arrangement and releases and do such other things as to him or them seem expedient without being responsible for loss occasioned by any act or thing so done by him or them in good faith.

(2) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and has effect subject to the terms of that instrument.

R.S.S. 1978, c.T-23, s.48.

Powers of surviving trustees

49 Where a power or trust is given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

R.S.S. 1978, c.T-23, s.49.

Exoneration of trustees in respect of certain powers of attorney

50(1) A trustee acting or paying money in good faith under or in pursuance of a power of attorney is not liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power if this fact was not known to the trustee at the time of his so acting or paying.

(2) Nothing in this section affects the right of a person entitled to the money against the person to whom the payment is made, and the person so entitled has the same remedy against the person to whom the payment is made as he would have had against the trustee.

R.S.S. 1978, c.T-23, s.50.

Powers of disposal of grain

51 A trustee may become a member of a company or association formed for the purpose of buying, selling and marketing grain on the non-profit co-operative plan, and may enter into a contract with the company or association for marketing all grain grown upon the land of the trust estate through such company or association, notwithstanding that the contract may provide for the retention from the purchase price of the grain of a certain sum or percentage to provide a reserve fund or facilities for handling the commodities in which the company or association deals.

R.S.S. 1978, c.T-23, s.51.

MAINTENANCE OF INFANTS

Application of income of infant's trust property to his support

52 Where property is held by trustees in trust for an infant, either absolutely or contingently they may at their sole discretion pay to the guardians, if any, of the infant or otherwise to apply for or towards the maintenance or education of the infant the whole or any part of the income to which the infant may be entitled in respect of that property, whether or not there is a fund applicable to the same purpose or any other person bound by law to provide for such maintenance or education; and the trustees shall accumulate all the residue of the income by way of compound interest by investing it and the resulting income thereof from time to time in proper securities for the benefit of the person who shall ultimately become entitled to the property from which the accumulation has arisen:

Provided that such trustees may at any time, if it appears expedient, apply the whole or any part of the accumulations as if the same were part of the income arising in the then current year.

R.S.S. 1978, c.T-23, s.52.

Application of infant's trust fund to his support

53(1) Where:

- (a) a sum of money is held by an executor or administrator in trust for an infant either:
 - (i) absolutely;
 - (ii) contingently on his attaining the age of eighteen years; or
 - (iii) contingently on the occurrence of an event prior to his attaining the age of eighteen years;
- (b) the fund would be available for distribution to the infant but for his infancy; and

(c) the income from the fund or any other property is insufficient for the maintenance and education of the infant;

the executor or administrator may, subject to subsection (2), by order of a judge of Her Majesty's Court of Queen's Bench for Saskatchewan acting at the judicial centre at which probate or administration was granted, to be obtained *ex parte*, or upon such notice as the judge may direct, pay to the guardian, if any, of the infant or otherwise apply for or towards his maintenance or education the whole or any part of the fund.

(2) In addition to the amounts authorized by the court to be applied towards the infant's maintenance and education, the court may authorize application of any additional amounts that are, in its opinion, required to meet special circumstances or expenditures in the best interests of the infant.

R.S.S. 1978, c.T-23, s.53; 1983, c.80, s.22; 1992, c.62, s.33.

Sale of infant's trust property and application of proceeds to his support where income deficient

54(1) Where personal property is held by trustees in trust for an infant absolutely or contingently on his attaining the age of eighteen years or on the occurrence of an event previously to his attaining that age, and where the income from the property is insufficient for the maintenance and education of the infant, the trustees may, by leave of a judge of the Court of Queen's Bench, to be obtained in a summary manner, sell and dispose of any portion of the property and pay to the guardians, if any, of the infant, or otherwise apply for or towards his maintenance or education, the whole or any part of the money arising from the sale.

(2) If the whole of the money arising from the sale is not immediately required for the maintenance and education of the infant, the trustees shall:

- (a) from time to time invest the surplus moneys and the resulting income therefrom in proper securities; and
- (b) apply such moneys and the proceeds thereof from time to time for the maintenance and education of the infant; and
- (c) hold all the residue of the moneys and interest thereon not required for such maintenance and education for the benefit of the person who shall ultimately become entitled to the property from which the moneys and interest have arisen.

R.S.S. 1978, c.T-23, s.54; 1983, c.80, s.22.

55 Repealed. 1983, c.80, s.22.

PAYMENT INTO COURT BY TRUSTEES

Trust money or securities, how dealt with

56(1) Trustees or the majority of trustees having in their hands or under their control money or securities belonging to a trust or to the estate of a deceased person may pay the same into the Court of Queen's Bench, and the same shall subject to the rules of court be dealt with according to the orders of the Court of Queen's Bench.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities paid into court.

(3) Where 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 others cannot be obtained, the Court of Queen's Bench may on application *ex parte* order payment into court by the majority without the concurrence of the others; and, where any such moneys or securities are deposited with a banker, broker or other depositary, the court may on application *ex parte* 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 the 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.S. 1978, c.T-23, s.56.

Relief of trustees committing technical breach of trust

57 If in any proceeding affecting trustees or trust property it appears to the court that a trustee, whether appointed by the court or by an instrument in writing or otherwise, or that any person who in law may be held to be fiduciarily responsible as a trustee, is or may be personally liable for a breach of trust, but has acted honestly and reasonably and ought fairly to be excused for the breach and for omitting to obtain the directions of the court in the matter in which it was committed, the court may relieve the trustee either wholly or partly from personal liability.

R.S.S. 1978, c.T-23, s.57.

Trustee liability

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

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

2006, c.10, s.4.

Damage assessment

57.2 A court assessing the damages payable by a trustee for a loss arising from the investment of trust property may take into account the overall performance of the investments.

1998, c.40, s.12.

RIGHTS AND LIABILITIES OF EXECUTORS
AND ADMINISTRATORS

58 to 60 Repealed. 1990, c.S-66.1, s.13.

61 to 78 Repealed. 2008, c.2, s.32.

SUMMARY APPLICATION TO COURT FOR ADVICE

Power of trustee, etc., to apply for advice in management of trust property

79(1) A trustee, guardian, executor or administrator may, without the institution of an action, apply in court or in chambers in the manner prescribed by rules of court for the opinion, advice or direction of a judge of the Court of Queen's Bench on any question respecting the management or administration of the trust property or the assets of a testator or intestate.

(2) The trustee, guardian, executor or administrator acting upon the opinion, advice or direction given by the judge shall be deemed so far as regards his own responsibility to have discharged his duty as trustee, guardian, executor or administrator in the subject matter of the application, unless he has been guilty of fraud, wilful concealment or misrepresentation in obtaining the opinion, advice or direction.

R.S.S. 1978, c.T-23, s.79.

ALLOWANCE TO TRUSTEES, ETC.

Fair and reasonable allowance

80 A trustee under a deed, settlement or will, an executor or administrator, a guardian appointed by a court and a testamentary guardian or other trustee, howsoever the trust is created, is entitled to such fair and reasonable allowance for his care, pains and trouble and his time expended in and about the trust estate as may be allowed by the Court of Queen's Bench or a judge thereof or by an officer thereof to whom the matter may be referred.

R.S.S. 1978, c.T-23, s.80.

Allowance made although estate not before court

81 A judge of the Court of Queen's Bench may, on application to him for the purpose, settle the amount of such compensation although the trust estate is not before the court in an action.

R.S.S. 1978, c.T-23, s.81.

Order for executor's trustee's or administrator's allowance

82(1) A judge of Her Majesty's Court of Queen's Bench for Saskatchewan may allow to the executor or trustee or administrator acting under a will or letters of administration a fair and reasonable allowance for his care, pains and trouble and his time expended in or about the executorship, trusteeship or administration of the estate and effects vested in him under the will or letters of administration and in administering, disposing of and arranging and settling the same and generally in arranging and settling the affairs of the estate and may make orders from time to time therefor, and the same shall be allowed to an executor, trustee or administrator in passing his accounts.

(2) Where an application is made for an order dispensing with the passing of accounts, the judge may, by the same order, grant an allowance pursuant to subsection (1).

R.S.S. 1978, c.T-23, s.82; 1992, c.62, s.33.

Where allowance fixed by the instrument

83 Sections 80, 81 and 82 do not apply where the allowance is fixed by the instrument creating the trust.

R.S.S. 1978, c.T-23, s.83.

Allowance to solicitor-trustee for professional services

84 Where a solicitor is a trustee, guardian or personal representative, and has rendered necessary professional services to the estate, regard may be had, in making his allowance, to that circumstance, and the allowance shall be increased by such amount as may be deemed fair and reasonable in respect of those services.

R.S.S. 1978, c.T-23, s.84.

JUDICIAL TRUSTEES

Appointment of judicial trustees

85(1) Where application is made to the Court of Queen's Bench or a judge thereof by or on behalf of the person creating or intending to create a trust, or by or on behalf of a trustee or beneficiary, the court or judge may in its or his discretion appoint a person, hereinafter called a judicial trustee, to be a trustee either jointly with another person or as sole trustee, and, if sufficient cause is shown, in place of all or any existing trustees.

(2) The administration of the property of a deceased person, whether a testator or intestate, is a trust and the executor or administrator a trustee within the meaning of this section.

(3) Any fit and proper person named for the purpose in the application may be appointed a judicial trustee and in the absence of such nomination, or if the court or judge is not satisfied of the fitness of a person so named, an official of the court or other competent person may be appointed, and in any case a judicial trustee shall be subject to the control and supervision of the court as an officer thereof.

(4) The court or judge may, either on request or without request, give to a judicial trustee any general or special directions in regard to the trust or the administration thereof.

(5) There may be paid to a judicial trustee out of the trust property such remuneration, not exceeding the prescribed limits, as the court or judge may assign in each case, and the remuneration so assigned shall, save as the court or judge may for special reasons otherwise order, cover all his work and personal outlay.

(6) Once in every year the accounts of every trust of which a judicial trustee has been appointed shall be audited and a report thereon made to the court by the prescribed persons, and, in case the court or judge so directs, an inquiry into the administration by a judicial trustee of any trust or into any dealing or transaction of a judicial trustee shall be made in the prescribed manner.

R.S.S. 1978, c.T-23, s.85.

No security required from public guardian and trustee

86 Where any bond or security would be required from a private person upon a grant to him of administration or upon his appointment to act in any capacity, the public guardian and trustee appointed under the Act of the Imperial Parliament 6 Edward VII chapter 55 shall not be required to give such bond or security on being appointed to act in such capacity but shall be subject to the same liabilities and duties as if he had given such bond or security.

R.S.S. 1978, c.T-23, s.86; 2001, c.33, s.23.

DISCHARGE OF TRUSTEE

Powers of Court of Queen's Bench

87 When the accounts of a trustee have been passed, or when the passing of such accounts has been dispensed with, the Court of Queen's Bench or a judge thereof may, in its or his discretion, order that the trustee be discharged and that any bond or security given by the trustee be cancelled or delivered to him or his solicitor.

R.S.S. 1978, c.T-23, s.87.