



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

TRUSTEE ACT

PLEASE NOTE

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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TRUSTEE ACT

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TRUSTEE ACT

CHAPTER T-8.1

PART 1 - INTERPRETATION AND APPLICATION

1. Definitions

In this Act,

- (a) **“alter ego trust”** has the same meaning as in the *Income Tax Act* (Canada);
- (b) **“court”**, except in reference to a court of competent jurisdiction, means the Supreme Court;
- (c) **“fiscal period”**, in relation to a trust, means
 - (i) the period identified in the trust instrument as the period adopted for accounting purposes,
 - (ii) where subclause (i) does not apply, the period specified by the trustee as the period adopted for accounting purposes, or
 - (iii) where subclauses (i) and (ii) do not apply, the calendar year;
- (d) **“incapacitated person”** means
 - (i) a represented person as defined under the *Adult Guardianship and Trusteeship Act* R.S.P.E.I. 1988, Cap. A-4.2,
 - (ii) an incompetent person as defined under the *Public Trustee Act* R.S.P.E.I. 1988, Cap. P-32.2, or
 - (iii) a person who is unable to make decisions about financial matters by reason of lack of capacity and has an attorney acting under an enduring power of attorney;
- (e) **“joint spousal or common-law partner trust”** has the same meaning as in the *Income Tax Act* (Canada);
- (f) **“Minister”** means the Minister of Justice and Public Safety and Attorney General;
- (g) **“objects”**, in relation to the objects of a trust, means beneficiaries or purposes;
- (h) **“post-1971 spousal or common-law partner trust”** has the same meaning as in the *Income Tax Act* (Canada);
- (i) **“pre-1972 spousal trust”** has the same meaning as in the *Income Tax Act* (Canada);
- (j) **“Prothonotary”** means the Prothonotary appointed under section 27 of the *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1, and includes the Deputy Prothonotary appointed under that Act when acting for the Prothonotary;
- (k) **“Public Trustee”** means the Public Trustee appointed under section 2 of the *Public Trustee Act*, and on the coming into force of the *Public Guardian and Trustee Act*

- S.P.E.I. 2023, c. 35, the Public Guardian and Trustee continued or appointed under section 3 of that Act;
- (l) **“qualified beneficiary”**, in relation to a trust, means a beneficiary who
 - (i) has a vested beneficial interest in the trust property, or
 - (ii) has delivered notice to a trustee under subsection 96(1) and has not withdrawn the notice under subsection 96(2);
 - (m) **“Registrar”** means the Registrar of the Court of Appeal and Supreme Court and includes a deputy Registrar;
 - (n) **“secured party”** means a person who has a security interest;
 - (o) **“security interest”** means an interest in property that secures payment or the performance of an obligation;
 - (p) **“settlor”**, in relation to a trust created by a will, includes a testator;
 - (q) **“substitute decision-maker”** means
 - (i) an attorney acting under an enduring power of attorney,
 - (ii) a trustee appointed under the *Adult Guardianship and Trusteeship Act*, or
 - (iii) a committee appointed or authorized under the *Public Trustee Act*;
 - (r) **“transfer”**, in relation to property, means to transfer by any method, including
 - (i) to assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest or release, or
 - (ii) to agree to do any of the things referred to in subclause (i);
 - (s) **“trust instrument”** means
 - (i) a deed, will or other legal instrument,
 - (ii) an enactment, other than this Act, or
 - (iii) an oral declaration,that creates or varies a trust, but does not include a judgment or order of a court of competent jurisdiction;
 - (t) **“vest”** includes to vest by means of
 - (i) an order of a court of competent jurisdiction,
 - (ii) the terms of a trust instrument or other legal instrument, or
 - (iii) the operation of subsection 21(1) or (3). *2025,c.18,s.1.*

2. Application of Act

- (1) Subject to this section, this Act applies in respect of a trust created before, on or after the date this section comes into force.

Exceptions

- (2) Subsection (1) is subject to the following provisions of this Act:
 - (a) subsection 38(1);
 - (b) section 40;
 - (c) subsection 42(2);
 - (d) subsection 53(1);
 - (e) section 54;
 - (f) section 55;
 - (g) section 63;

- (h) subsection 70(1);
- (i) section 75;
- (j) section 86;
- (k) section 87.

Non-application of Act

- (3) This Act, except Part 9, does not apply in respect of
 - (a) an implied trust;
 - (b) a resulting trust;
 - (c) a constructive trust; or
 - (d) any other trust that arises by operation of law other than an enactment.

Provisions of trust prevail

- (4) Subject to subsection (5), the provisions of a trust instrument prevail over any contrary provision of this Act.

Exceptions

- (5) The following provisions of this Act prevail over any contrary provision of a trust instrument that is not an enactment:
 - (a) section 9;
 - (b) section 13;
 - (c) section 16;
 - (d) section 17;
 - (e) section 20;
 - (f) section 21;
 - (g) section 23;
 - (h) section 25;
 - (i) section 55;
 - (j) section 59;
 - (k) section 60;
 - (l) section 64;
 - (m) section 70;
 - (n) section 71;
 - (o) section 75;
 - (p) section 78;
 - (q) section 79;
 - (r) section 80;
 - (s) section 83;
 - (t) Part 9;
 - (u) section 90;
 - (v) section 91;
 - (w) section 92.

Non-application to certain trusts

- (6) The following provisions of this Act do not apply to a trust that arises by operation of an enactment:
- (a) Part 2;
 - (b) section 28;
 - (c) section 29;
 - (d) sections 42 to 46;
 - (e) section 50;
 - (f) Part 6;
 - (g) Part 7.

Non-application to secured party

- (7) This Act does not apply to a secured party in possession of the subject matter of the security interest.

Non-application to personal representative

- (8) Where a person is both a personal representative and a trustee with respect to all or part of the same estate, this Act does not apply in respect of a matter relating to the person in the person's capacity as personal representative. *2025,c.18,s.2.*

3. Application of rules of common law, equity

The rules of common law and equity, except insofar as they are inconsistent with the provisions of this Act, continue to apply. *2025,c.18,s.3.*

4. Trust not a person

For greater certainty, nothing in this Act makes a trust a person. *2025,c.18,s.4.*

PART 2 - APPOINTMENT AND REMOVAL OF TRUSTEES

Appointment of Trustee

5. "Designated person" defined

- (1) In this Part, "**designated person**", in relation to a trust, means
- (a) the person determined under subsection (2); or
 - (b) if no person is determined under subsection (2), the Public Trustee.

Determination of designated person

- (2) The person determined for the purposes of clause (1)(a) is the first of the following persons, proceeding in descending order, who is able and willing to act as a designated person:
- (a) the person nominated by the trust instrument for the purpose of appointing a substitute trustee;
 - (b) except in relation to clause 8(2)(a), the continuing trustees;
 - (c) the personal representative of the last remaining trustee;
 - (d) the beneficiary, where the trust arises by operation of an enactment.

Persons shall act by majority

- (3) Where more than one person is nominated by a trust instrument for the purpose of appointing a substitute trustee, the nominated persons may act by majority.

Majority required

- (4) The nominated persons referred to in subsection (3) are unable to act if a majority of them cannot agree on the appointment of a substitute trustee.

Beneficiaries may act jointly

- (5) Where there is more than one beneficiary of a trust and the beneficiaries are determined under subsection (2) to be the designated person, the beneficiaries by majority in interest in the trust property may act jointly as the designated person.

Appointment of designated person

- (6) A designated person, other than a person referred to in clause (2)(b),
- (a) may be self-appointed as a substitute trustee; and
 - (b) may be appointed as a substitute trustee. *2025,c.18,s.5.*

6. Appointment of substitute trustee

- (1) A designated person may appoint in writing a substitute trustee where
- (a) subject to subsection (2), a person who was trustee is deceased or a person appointed as trustee dies before taking office;
 - (b) the trustee is a corporation that is dissolved;
 - (c) a person disclaims the office of trustee; or
 - (d) a person ceases to hold the office of trustee in accordance with section 12.

Exception

- (2) A designated person referred to in clauses 5(2)(c) and (d) or the Public Trustee, as the case may be, may not appoint a substitute trustee under clause (1)(a) where a person appointed under section 7 accepts the office of trustee. *2025,c.18,s.6.*

7. Appointment by sole or last trustee

Subject to the appointment of a substitute trustee by a person nominated by the trust instrument for that purpose, a sole trustee, or the last remaining trustee, may appoint in writing one or more persons to be a substitute trustee after the sole or last remaining trustee's death. *2025,c.18,s.7.*

8. Trustee's temporary absence, incapacity

- (1) This section applies where a trustee is temporarily unable to participate in the administration of the trust by reason of an absence or incapacity that does not result in the trustee ceasing to hold office under clause 12(b).

Authorization or appointment by designated person

- (2) For the period that the trustee referred to in subsection (1) is absent or incapacitated, the designated person may, in writing, for the purpose of administering all or part of the trust or exercising the powers or performing the duties authorized by the designated person,
- (a) authorize a continuing trustee; or
 - (b) where there is no continuing trustee, appoint a person to act as a substitute trustee.

Validity of administration, etc.

- (3) The administration of the trust, exercise of powers or performance of duties by the continuing trustee or substitute trustee is deemed to be as valid as if the absent or incapacitated trustee were not absent or incapacitated and had participated in the administration of the trust, exercise of powers or performance of duties. *2025,c.18,s.8.*

9. Appointment by court

- (1) The court may appoint a substitute or additional trustee where
- (a) the court removes a trustee under section 16; or
 - (b) the court is of the opinion that
 - (i) the appointment of a trustee would otherwise be inexpedient, difficult or impracticable, and
 - (ii) the appointment of a substitute or additional trustee is in the best interests of the objects of the trust.

Powers of court

- (2) In appointing a substitute or additional trustee under subsection (1), the court may do one or more of the following:
- (a) appoint any person, including the Prothonotary, as a trustee;
 - (b) designate the person appointed under clause (a) as a judicial trustee;
 - (c) order that the judicial trustee is to act as a sole trustee, as a co-trustee or in place of all existing trustees.

Officer of court

- (3) A judicial trustee is an officer of the court.

Directions by court

- (4) The court may give directions to a judicial trustee in regard to the trust or the administration of the trust, with or without an application for directions under section 78 or 79.

Compensation for judicial trustee

- (5) The court may determine or provide for the compensation of a judicial trustee, other than the Prothonotary, that is to be paid out of the trust property and designate all or part of the trust property as the source for the compensation. *2025,c.18,s.9.*

10. Disqualifying factors

A person is not qualified to be appointed as a trustee where clauses 14(a) to (d) apply to the person. *2025,c.18,s.10.*

11. Authority of substitute or additional trustee

A substitute or additional trustee appointed in accordance with this Act has the same powers and duties and may in all respects act as if originally appointed as a trustee by the trust instrument. *2025,c.18,s.11.*

Trustee Ceases to Hold Office

12. Trustee ceases to hold office

A person ceases to hold the office of trustee where

- (a) the person resigns the office;
- (b) the person ceases to be qualified to hold the office under section 14; or
- (c) the person is removed as trustee under this Act or under a power conferred by a trust instrument. *2025, c.18, s.12.*

13. Resignation

A person may resign the office of trustee by delivering a written resignation

- (a) to the first of the following persons, proceeding in descending order, who exists in relation to the trust
 - (i) each person nominated by the trust instrument for the purpose of appointing a substitute trustee,
 - (ii) each continuing trustee; or
- (b) if no person exists under clause (a), to the Public Trustee. *2025, c.18, s.13.*

14. Person not qualified to hold office

A person ceases to be qualified to hold the office of trustee if

- (a) the person is an incapacitated person;
- (b) the person has been convicted of an offence involving dishonest conduct under
 - (i) an enactment, or
 - (ii) a law of Canada or another province or territory of Canada;
- (c) the person is an undischarged bankrupt; or
- (d) the person is a corporation that is in liquidation. *2025, c.18, s.14.*

15. Person unfit to hold office

(1) A person is not fit to hold the office of trustee where

- (a) the person
 - (i) fails to demonstrate the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person,
 - (ii) consistently fails to respond to communications from a beneficiary or another trustee, or
 - (iii) is otherwise unwilling or unable, or unreasonably refuses, to act cooperatively with other trustees; and
- (b) the person's conduct is detrimental to the efficient or proper administration of the trust.

Application of subsection (3)

(2) Subsection (3) applies if there are 3 or more trustees.

Removal by majority of trustees

- (3) Where a majority of the trustees have determined in accordance with subsection (1) that a trustee is not fit to hold the office of trustee, the majority of the other trustees may remove the trustee from office by a written resolution setting out the reasons for the removal.

Effective time of resolution

- (4) A resolution under subsection (3) is effective,
- (a) where the trustee that is the subject of the resolution does not request a meeting under subsection (5), 15 days after a copy of the resolution is delivered to that trustee; or
 - (b) where the trustee that is the subject of the resolution requests a meeting under subsection (5), at the conclusion of the meeting, unless the resolution is rescinded.

Request by trustee for meeting

- (5) Within the 15-day period after a copy of the resolution is delivered to the trustee that is the subject of the resolution, that trustee, by delivering a written request to another trustee, may request a meeting with the other trustees to respond to the reasons set out in the resolution.

Timing of meeting

- (6) A meeting requested under subsection (5) shall take place as soon as practicable.

Rescission of resolution

- (7) After the trustee responds to the reasons set out in the resolution, the other trustees may rescind the resolution. *2025, c. 18, s. 15.*

16. Removal by court

- (1) The court may remove a person from the office of trustee where the court determines
- (a) that the person is not fit under section 15 to hold the office of trustee and there are fewer than three trustees; or
 - (b) that
 - (i) the removal of the person under section 15 or under a power conferred by a trust instrument would be inexpedient, difficult or impracticable, and
 - (ii) the removal of the person is in the best interests of the objects of the trust.

Reduction in number of trustees

- (2) Where the court considers a reduction in the number of trustees to be in the best interests of the objects of a trust, the court may
- (a) reduce the number of trustees; and
 - (b) to give effect to the decision under clause (a), remove a person as trustee.

Removal of court-appointed trustee

- (3) The court may remove a trustee appointed by the court under section 9.

Removal by court only

- (4) Despite any other provision of this Act or a power conferred by a trust instrument, a trustee who is designated as a judicial trustee by the court under clause 9(2)(b) may be removed only under subsection (3) of this section. *2025, c. 18, s. 16.*

17. Application by removed trustee

- (1) A person removed as trustee, except a person removed under section 16 or 77, may make an application to the court for an order under subsection (3) of this section,
- (a) in the case of a person removed as trustee under section 15, within 60 days after the date the resolution becomes effective; and
 - (b) in any other case, within 60 days after the earlier of
 - (i) the date of the appointment of a substitute trustee under subsection 6(1), and
 - (ii) the date that the removal as trustee comes to the attention of the person removed.

Conditions for court order

- (2) On an application under subsection (1), the court may make an order under subsection (3) where
- (a) the court is satisfied that the person was removed as trustee based on a mistake of fact or law; and
 - (b) the court considers making the order to be in the best interests of the objects of the trust.

Authority of court

- (3) Subject to subsection (2), the court may
- (a) reinstate the person as trustee on a specified date;
 - (b) declare that the person did not cease to hold the office of trustee during the period following the purported removal; or
 - (c) dismiss the application.

Directions, declaration by court

- (4) Where the court makes an order under subsection (3), the court may also give directions or make a declaration as to the person's status as trustee or the liability of
- (a) a substitute trustee appointed under subsection 6(1);
 - (b) a person who is the subject of the order under subsection (2); or
 - (c) any other person who was a trustee after the person making the application was removed as trustee. *2025, c. 18, s. 17.*

18. Mistaken belief - person unqualified or removed from office

- (1) Where a person is mistakenly believed to have ceased holding the office of trustee under clause 12(b) or (c), the exercise of powers and performance of duties in the administration of the trust by a substitute trustee appointed under section 6 or by any continuing trustees are not invalid only because the belief is based on a mistake of fact or law.

Mistaken belief - person holding office

- (2) Where a person is mistakenly believed to be holding the office of trustee, the exercise of powers and performance of duties in the administration of the trust by the person as trustee or by the trustees are not invalid only because the belief is based on a mistake of fact or law. *2025, c. 18, s. 18.*

19. Former trustee not relieved from liability

Unless the court orders otherwise, where a person ceases to be a trustee, any consequential vesting of trust property in or transfer of trust property to a substitute trustee does not relieve

the former trustee from liability for a breach of trust occurring while that person was a trustee.
2025, c.18, s.19.

PART 3 - VESTING

20. Nature of vesting of trust property

Where trust property vests in more than one trustee, the trust property vests in the trustees as joint tenants. *2025, c.18, s.20.*

21. Vesting effective at time of appointment

- (1) Where a person is appointed as a substitute or additional trustee of a trust, the trust property vests in that person at the time the appointment is effective.

Where person ceases to be trustee

- (2) Where a person ceases to be a trustee of a trust, the trust property ceases to be vested in that person and remains vested in each continuing trustee.

Sole or last trustee

- (3) Where a person who is a sole trustee or the last remaining trustee of a trust ceases to be a trustee and a new trustee has not been appointed or there is otherwise no trustee of a trust, the trust property vests in the court until a new trustee is appointed.

Effect of vesting

- (4) A vesting under this section has the same effect as if the property had been actually transferred to the person in whom or the court in which the property is vested.

Declaration, order not required

- (5) No further declaration or order is required in relation to trust property that vests or ceases to be vested under this section.

Perfecting transfer

- (6) Without limiting subsections (4) and (5), where an enactment provides that property may be transferred only by registration, by an entry in a record or by other specified means, despite the enactment, a person in whom the property vests under this section is entitled to perfect the transfer of the property in accordance with the enactment insofar as the enactment is applicable.

Application of section

- (7) This section applies whether a person ceases to be a trustee, or is appointed as a substitute or additional trustee, in accordance with the terms of the trust or this Act. *2025, c.18, s.21.*

22. Vesting of leasehold property

Where leasehold property vests in a trustee as lessee, the vesting, despite the lease,

- (a) does not require the consent of the lessor;
 - (b) is not a breach of any provision of the lease that prohibits or restricts the disposition of the lessee's interest in the leasehold property; and
 - (c) does not give rise to any forfeiture, right of re-entry or other claim under the lease.
- 2025, c.18, s.22.*

23. Authority of court

- (1) Where the court considers it to be in the best interests of the objects of a trust, the court may, in respect of a person, make an order in a manner and on terms and conditions the court considers appropriate,
- (a) vesting all or part of the trust property in that person; or
 - (b) appointing a person to make or to join in making a transfer of all or part of the trust property to that person.

Who may apply for order

- (2) An order under subsection (1) may be made on application by the Minister or a person referred to in section 84. *2025, c.18, s.23.*

PART 4 - POWERS AND DUTIES OF TRUSTEES**General Administrative Powers****24. Powers, etc., of trustee**

- (1) Subject to this Act and the trustee's fiduciary obligations, a trustee has the powers and capacity of an individual of full capacity in relation to trust property vested in the trustee as if the property were vested in the trustee absolutely and for the trustee's own use.

Specific authority

- (2) Without limiting subsection (1), a trustee may do one or both of the following:
- (a) sell or lease trust property;
 - (b) borrow money for the purpose of carrying out the trust and create a security interest in trust property.

Authority to act with consent of beneficiary

- (3) A trustee may do one or both of the following:
- (a) with the consent of, and for the purpose of providing a residence for, a beneficiary, use the income or capital to which the beneficiary is entitled
 - (i) to purchase or rent living accommodation, or
 - (ii) to construct a residence on land that is part of the trust property or purchased for the construction;
 - (b) with the consent of a beneficiary, appropriate, at fair market value, specific trust property in or towards satisfaction of the share or interest of the beneficiary.
2025, c.18, s.24.

25. Authority conferred by court

- (1) Where, in the administration of a trust, a transfer of trust property that is expedient and in the best interests of the objects of the trust cannot be carried out because the trustee lacks the power, the court may confer the necessary power on the trustee, either generally or in any particular instance and on terms and conditions the court considers appropriate.

Who may apply

- (2) An order under subsection (1) may be made on application by the Minister or a person referred to in section 84. *2025,c.18,s.25.*

Duties

26. Duties of trustee

- (1) In the administration of a trust, a trustee shall act in good faith and in accordance with
- (a) the terms of the trust;
 - (b) the best interests of the objects of the trust; and
 - (c) this Act.

Duty to exercise care, diligence, skill of prudent person

- (2) Subject to section 31, in the performance of a duty or the exercise of a power, whether the duty or power arises by operation of law or the trust instrument, a trustee shall exercise the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person.

Duty to exercise greater care, diligence, skill

- (3) Despite subsection (2) but subject to section 31, where, because of a trustee's profession, occupation or business, the trustee possesses or ought to possess a particular degree of care, diligence and skill that is relevant to the administration of the trust and is greater than that which a person of ordinary prudence would exercise in dealing with the property of another person, the trustee shall exercise that greater degree of care, diligence and skill in the administration of the trust. *2025,c.18,s.26.*

27. Duty to act solely in interest of objects of trust

- (1) A trustee shall exercise the powers and perform the duties of the office of trustee solely in the interests of the objects of the trust.

Duty to avoid conflicts of interest, etc.

- (2) Without limiting subsection (1), a trustee shall not knowingly, except so far as the law or the trust instrument expressly permits, permit a situation to arise
- (a) in which the trustee's personal interest conflicts in any way with the trustee's exercise of the powers or performance of the duties of the office of trustee; or
 - (b) in which the trustee may derive any personal benefit or a benefit for any other person.

Application by trustee to court

- (3) On application by a trustee who shows that an act or declining to act is in the best interests of the objects of the trust, whether or not the beneficiaries consent, the court may make an order, on terms and conditions the court considers appropriate,
- (a) allowing the trustee to act or decline to act, whether or not the trustee may be in a situation that contravenes subsection (1) or (2); or
 - (b) excusing a trustee from liability for contravening subsection (1) or (2).

Timing of order

- (4) An order under clause (3)(b) may be made any time after the contravention of subsection (1) or (2).

Service of notice of application

- (5) A trustee shall serve notice of an application under this section
- (a) to all qualified beneficiaries of the trust, unless otherwise ordered by the court;
 - (b) where a beneficiary of the trust is a minor and has a vested beneficial interest, to the Public Trustee at least 30 days before the date set for the hearing of the application; and
 - (c) where the trust is a charitable trust, to the Minister at least 30 days before the date set for the hearing of the application.

Application to vary order

- (6) On application by the trustee, a qualified beneficiary, the Public Trustee or the Minister, the court may vary an order under this section where
- (a) additional information becomes available after the order is made; or
 - (b) the circumstances under which the order was made have changed.

Jurisdiction of court not limited

- (7) Nothing in this section limits the jurisdiction of the court under sections 60, 61 and 80. 2025, c.18, s.27.

28. Report by trustee

- (1) For each fiscal period of a trust, the trustee shall deliver to the qualified beneficiaries a report in respect of the trust that includes
- (a) for the fiscal period in which the trust is created, a statement of the assets and liabilities of the trust and the value of those assets and liabilities at the time the trust is created;
 - (b) a statement of the assets and liabilities of the trust and the value of those assets and liabilities at the beginning and end of the fiscal period;
 - (c) the basis for the valuations of the assets of the trust, if the trustee considers it practicable;
 - (d) a statement of receipts and their sources for the fiscal period; and
 - (e) a statement of disbursements and their recipients for the fiscal period.

Deadline for report

- (2) A report under subsection (1) in respect of a fiscal period shall be delivered on or before the date that is 60 days after the end of the fiscal period.

Request to view source documents

- (3) On the written request of a qualified beneficiary, the trustee shall allow the beneficiary to inspect the source documents for the statements referred to in subsection (1).

Disclosure limited

- (4) Subject to subsection 29(2), a trustee is not required to disclose information under this section where, in the opinion of the trustee, the disclosure would
- (a) be detrimental to the best interests of any beneficiary or otherwise be prejudicial to the trust property or the administration of the trust;
 - (b) conflict with any duty owed by a trustee as a director of a corporation in which the trust has an ownership interest;
 - (c) reveal the reasons why a trustee did or did not exercise a power conferred by the trust instrument or an enactment;

- (d) place an unreasonable administrative burden on the trustee; or
- (e) place the trustee in breach of obligation, properly assumed by the trustee, to maintain confidence.

Waiver by beneficiary

- (5) A qualified beneficiary may waive, by delivering written notice to the trustee, the right to a report or to specific information in the report that is required to be given under this section.

Revocation of waiver

- (6) A qualified beneficiary may revoke a waiver by delivering written notice to the trustee. *2025, c.18, s.28.*

29. General duty to provide information on request

- (1) Section 28 does not limit the duty under general trust law of a trustee to provide to a beneficiary, on request, accounts or trust information within a reasonable period of time.

Court may order disclosure

- (2) On application by a qualified beneficiary or a beneficiary who has requested information that has not been provided by the trustee, the court may order, on terms and conditions the court considers appropriate, the disclosure of any information regarding
 - (a) the terms of the trust;
 - (b) the administration of the trust; and
 - (c) the assets and liabilities of the trust. *2025, c.18, s.29.*

Investment Powers

30. Power to invest trust property

- (1) A trustee may invest trust property in any form of property in which a prudent investor might invest, including a security issued by a mutual fund as defined in the *Securities Act* R.S.P.E.I. 1988, Cap. S-3.1.

Terms of trust govern investment

- (2) Without limiting subsection 2(4), subsection (1) does not authorize a trustee to invest in a manner that is inconsistent with the terms of the trust.

Investment by corporation

- (3) A corporation that is a trustee may invest trust money in its own securities. *2025, c.18, s.30.*

31. Duty to exercise care, diligence, skill of prudent person

- (1) In investing trust property, a trustee shall exercise the care, diligence and skill that a prudent investor would exercise in making investments.

Duty to exercise greater care, diligence, skill

- (2) Despite subsection (1), where, because of a trustee's profession, occupation or business, the trustee possesses or ought to possess a particular degree of care, diligence and skill that is relevant to the investment of trust property and is greater than that which a prudent investor would exercise in making investments, the trustee shall exercise that greater degree of care, diligence and skill in investing trust property. *2025, c.18, s.31.*

32. Protection from liability for loss

- (1) A trustee is not liable for a loss arising from the investment of trust property where the conduct of the trustee that led to the loss conformed to a plan or strategy for the investment of the trust property that
- (a) comprises reasonable assessments of risk and return; and
 - (b) would be adopted under comparable circumstances by a prudent investor.

Exception

- (2) Despite subsection (1), a trustee is liable for a loss arising from the investment of trust property where
- (a) the trustee is a trustee described in subsection 31(2); and
 - (b) the conduct of the trustee that led to the loss did not conform to a plan or strategy for the investment of the trust property that
 - (i) comprised reasonable assessments of risk and return, and
 - (ii) would be adopted under comparable circumstances by a trustee possessing that degree of care, diligence and skill. *2025,c.18,s.32.*

33. Change in law on assessment of trustee's decisions

- (1) The rule of law that requires the assessment of a trustee's decisions on an investment-by-investment basis is abolished.

Change in law on assessment of damages for breach of trust

- (2) The rule of law for the assessment of damages for breach of trust that prohibits losses from being offset by gains is abolished except in respect of circumstances in which the breach is associated with dishonesty or impropriety by a trustee. *2025,c.18,s.33.*

34. Reference to former *Trustee Act*

- (1) Where the terms of a trust express the powers of the trustee as powers to invest trust property in the investments permitted under a former *Trustee Act*, or a particular provision of a former *Trustee Act*, as it read at any time before its repeal, the terms of the trust are to be interpreted as authorizing the investments permitted under this Part and section 48.

Exception for express prohibition

- (2) Despite subsection (1), where an investment is expressly prohibited by the terms of the trust, the terms of the trust are not to be interpreted as authorizing the investment.

Express permission not affected

- (3) Subsection (1) does not affect a power of the trustee to invest trust property in an investment expressly permitted by the terms of the trust. *2025,c.18,s.34.*

Allocation of Income and Capital**35. "Outgoing" defined**

In sections 38 and 39, "**outgoing**" means an expenditure paid or incurred in administering a trust, including, without limitation, an expenditure arising from or made with respect to repairs, maintenance, insurance, taxes, security interests, debts, calls on shares, annuities and losses. *2025,c.18,s.35.*

36. Duty of trustee

Nothing in this Part affects the duty of a trustee

- (a) to act impartially as between different classes of beneficiaries in the administration of a trust; or
- (b) to invest prudently as provided in section 31. 2025,c.18,s.36.

37. Change in law

The rules of law known as the first and second branches of the rule in *Howe v. Lord Dartmouth* and the rule in *Re Earl of Chesterfield's Trusts* are abolished. 2025,c.18,s.37.

38. Non-application of section

- (1) This section does not apply in respect of the following trusts unless the trust instrument expressly provides that it does apply:

- (a) an alter ego trust;
- (b) a joint spousal or common-law partner trust;
- (c) a post-1971 spousal or common-law partner trust;
- (d) a pre-1972 spousal trust.

Charging outgoing to income or capital

- (2) A trustee may charge all or part of an outgoing to the income or capital of the trust as the trustee considers is

- (a) just and equitable in the circumstances;
- (b) in accordance with ordinary business practice; and
- (c) in the best interests of the objects of the trust.

Allocating amount between income and capital

- (3) Where the amount of an outgoing charged under subsection (2) to the income or capital of the trust is not equal to the amount paid out of the income or capital in respect of the outgoing, a trustee may allocate an amount between income and capital to recover or reimburse the payment in respect of the outgoing.

Depreciation

- (4) Where trust property is subject to depreciation, a trustee may

- (a) deduct from the income earned from the trust property an amount that the trustee considers is
 - (i) just and equitable in the circumstances,
 - (ii) in accordance with ordinary business practice, and
 - (iii) in the best interests of the objects of the trust; and
- (b) add the amount deducted under clause (a) to the capital of the trust. 2025,c.18,s.38.

39. Discretionary allocation trusts

- (1) Where a trustee is expressly directed by the trust instrument to hold trust property on discretionary allocation trusts, the trustee may allocate receipts and charge outgoings to the income and capital of the trust as the trustee considers is just and equitable in the circumstances.

Allocating amount between income and capital

- (2) Where the amount of an outgoing charged under subsection (1) to the income or capital of the trust is not equal to the amount paid out of the income or capital in respect of the outgoing, a trustee may allocate an amount between income and capital to recover or reimburse the payment in respect of the outgoing. 2025, c.18, s.39.

40. Definitions

- (1) In this section,
- (a) “**assets**” means
 - (i) trust property that is subject to a total return investment policy, or
 - (ii) property that is an endowment or similar gift to a non-profit organization and that is subject to a total return investment policy under subsection (5);
 - (b) “**fiscal period**”, in relation to a gift, means
 - (i) the period identified in the terms of the gift as the period adopted for accounting purposes,
 - (ii) if subclause (i) does not apply, the period specified by the trustee as the period adopted for accounting purposes, or
 - (iii) if subclauses (i) and (ii) do not apply, the calendar year;
 - (c) “**specified percentage**” means a percentage specified in the trust instrument or the terms of the gift for the purpose of this section;
 - (d) “**total return investment policy**” means a policy of investing property so as to obtain the optimal return without regard to whether the return is characterized as income or capital;
 - (e) “**trustee**” includes the directors of a non-profit organization who have adopted a total return investment policy under subsection (5);
 - (f) “**valuation period**” means the valuation period determined under subsection (12).

Application of section

- (2) This section applies in respect of an endowment or similar gift given before, on or after the date this section comes into force.

Total return investment policy

- (3) For the purposes of this section, in a trust instrument or the terms of a gift, the following words constitute a reference to a total return investment policy:
- (a) “on percentage trusts”;
 - (b) “total return”, when used with reference to investments.

Direction by settlor

- (4) A settlor may direct, in a trust instrument, the trustee to adopt a total return investment policy with respect to all or part of the trust property.

Property of charitable trust, non-profit organization

- (5) Subject to subsection (6), the trustee of a charitable trust, with respect to trust property, and the directors of a non-profit organization, with respect to property that is an endowment or similar gift to the organization, may adopt a total return investment policy with respect to that property, whether or not the terms of the trust or gift contain a direction to that effect.

Policy prohibited

- (6) A total return investment policy may not be adopted under subsection (5) if in the trust instrument the settlor expressly directs the trustees not to adopt a total return investment policy with respect to that trust property.

Duty of trustee

- (7) Where a total return investment policy is adopted, the trustee shall determine the net value of the assets at the beginning of each valuation period.

Determination of net value of assets

- (8) For the purposes of this section, the net value of the assets is the amount equal to the fair market value of the assets less any liabilities in relation to those assets.

Payment, etc., in each fiscal period

- (9) In each fiscal period, where a total return investment policy is adopted, the trustee shall, in respect of an amount equal to the specified percentage of the net value of the assets at the beginning of the valuation period,
- (a) pay the amount to the persons who would otherwise be the income beneficiaries; or
 - (b) apply the amount to the other objects.

Duty of trustee

- (10) The trustee shall pay or apply an amount under subsection (9) from income earned during the fiscal period from the investment of the assets.

Insufficiency or excess

- (11) The trustee shall
- (a) where the income referred to in subsection (10) is insufficient to pay or apply the amount required under subsection (9), pay or apply an amount from capital equal to the amount by which the income is insufficient; and
 - (b) where the income earned during the fiscal period from the investment of the assets exceeds the amount to be paid or applied under subsection (9), add the amount of the excess to the assets.

Determination of valuation period

- (12) The valuation period for assets that are invested in accordance with a total return investment policy is determined as follows:
- (a) the first valuation period begins
 - (i) one year after the date of the testator's death, in the case of a testamentary trust or gift made in a will, or
 - (ii) on the date of the settlement or the receipt of the gift;
 - (b) the second and subsequent valuation periods begin immediately after the end of the previous valuation period;
 - (c) a valuation period is the shortest of
 - (i) three years,
 - (ii) the period specified in the trust instrument, and
 - (iii) the period selected by the trustee. *2025,c.18,s.40.*

41. Non-application of provision

- (1) Section 87 does not apply to section 39 or 40.

Power to encroach on capital not limited

- (2) Sections 39 and 40 do not limit any other power of a trustee to encroach on capital in favour of a beneficiary. *2025, c. 18, s. 41.*

Distributive Powers**42. Definition of “spouse”**

- (1) In this section and sections 43 to 46, “**spouse**” means a spouse as defined in clause 29(b) of the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1.

Non-application to specified trusts

- (2) Sections 43 to 46 do not apply in respect of the following trusts unless the trust instrument expressly provides that they do apply:
- (a) an alter ego trust;
 - (b) a joint spousal or common-law partner trust;
 - (c) a post-1971 spousal or common-law partner trust;
 - (d) a pre-1972 spousal trust.

Direction to accumulate income - effect

- (3) A direction in a provision of a trust instrument to accumulate income is not in itself evidence of a contrary intention sufficient to have the provision of the trust instrument prevail over a provision in this section and sections 43 to 46. *2025, c. 18, s. 42.*

43. Payment of income to or on behalf of individual

- (1) Where property is held by a trustee in trust for an individual, subject to any interest or charge affecting the trust property, the trustee may do any of the following as the trustee considers reasonable in the circumstances:
- (a) where the individual is a minor, pay all or part of the income earned from the property
 - (i) to the parent, guardian or other person having custody or control of the individual, or
 - (ii) towards the individual’s past, present or future maintenance, education, benefit or advancement in life;
 - (b) where the individual has reached the age of majority and does not have an income or capital interest vested in interest and in possession, pay to, or for the benefit of, the individual all or part of the income earned from the property.

Payment not affected

- (2) A trustee may pay the income earned from the trust property under subsection (1)
- (a) whether the interest of the individual in the trust property is vested or contingent;
 - (b) whether or not there is any other fund available for the same purpose; or
 - (c) whether or not there is any person required by law to provide for the individual. *2025, c. 18, s. 43.*

44. Payment from capital to or on behalf of individual

- (1) Where property is held by a trustee in trust for an individual for any interest in capital, subject to this section and to any interest or charge affecting the trust property, the trustee may pay an amount in respect of the individual towards the following from the capital of the trust, as the trustee considers reasonable in the circumstances:
- (a) where the individual is a minor, towards the individual's past, present or future maintenance, education, benefit or advancement in life;
 - (b) where the individual has reached the age of majority, towards the individual's benefit;
 - (c) where the individual has a child or spouse and the trustee considers the payment or application to be to the benefit of the individual,
 - (i) towards the child's past, present or future maintenance, education, benefit or advancement in life, or
 - (ii) towards the spouse's benefit.

Financing payment

- (2) In order to pay an amount under subsection (1), the trustee may
- (a) create a security interest in a capital asset of the trust; or
 - (b) otherwise transfer a capital asset of the trust.

Payment, etc., not affected by nature of interest

- (3) A trustee may pay an amount under subsection (1) or exercise the power under subsection (2) whether the interest of the individual in the capital
- (a) is vested or contingent; or
 - (b) is in possession or in remainder or reversion.

Limit on payment out of capital

- (4) A trustee shall not pay an amount under subsection (1) in respect of an individual if, as a result of that payment, the total of all amounts paid under that subsection in respect of the individual exceeds the greater of
- (a) half of the value of the interest of the individual; and
 - (b) an amount approved by the court in respect of the individual that is greater than that permitted under clause (a).

Notice to other beneficiary

- (5) Where the court approves an amount under clause (4)(b) in respect of an individual and a trustee pays an amount under subsection (1) in respect of the individual, the trustee shall promptly give written notice to any other beneficiary who, at the time of the payment of the amount, is entitled to receive income from the capital from which the amount was paid, of
- (a) the terms of the order made by the court under clause (4)(b); and
 - (b) the amount paid in accordance with the order.

Limiting factors on payment out of capital

- (6) A trustee shall not pay an amount under subsection (1)
- (a) where the income or accumulated surplus income is available under the terms of the trust for the maintenance, education, benefit or advancement in life of the individual or of the individual's child or spouse, unless the available income or accumulated surplus income is insufficient; or

- (b) where the payment is detrimental to the pecuniary interest of a person who is entitled to a prior life or other interest, whether the interest is vested or contingent, in the amount to be paid, unless
 - (i) the person is of full capacity and consents in writing to the payment, or
 - (ii) the person is not of full capacity and the court approves the payment, on application by the trustee.

Reduction in individual's interest

- (7) Where an amount is paid under subsection (1) in respect of an individual, the individual's interest in the capital of the trust shall be reduced by that amount.

Reduction to be made when interest vests

- (8) Where the individual referred to in subsection (7) does not have a vested interest in the capital of the trust when the amount is paid or applied under subsection (1), the reduction under subsection (7) is to be made when that interest is vested. *2025, c.18, s.44.*

45. Trustee may impose conditions

- (1) Where a trustee pays an amount under subsection 44(1) or, under the terms of the trust, pays an amount from capital for the benefit of an individual or an individual's child or spouse, the trustee may impose conditions on the person receiving the payment or the benefit of the payment, including, without limitation, conditions relating to
 - (a) the repayment of the payment to the trustee;
 - (b) the payment of interest to the trustee; and
 - (c) the giving of security to the trustee by the person receiving the payment.

Authority of trustee

- (2) The trustee may, in relation to a condition imposed under subsection (1),
 - (a) waive all or part of the condition;
 - (b) release a person from an obligation undertaken; or
 - (c) release the security given.

Effect of repayment or recovery

- (3) Where an amount paid under subsection 44(1) is repaid to or recovered by a trustee in accordance with a condition under subsection (1), the amount repaid or recovered is deemed not to have been paid under section 44.

Trustee not bound by restrictions

- (4) When imposing a condition in respect of security under subsection (1), a trustee is not bound by any restrictions on the investment of the trust property.

Protection from liability for loss

- (5) A trustee who has acted in accordance with section 26 in paying an amount under section 44 is not liable for a loss arising from the transaction, including a loss arising because a person breaches a condition imposed by the trustee. *2025, c.18, s.45.*

46. Payment, etc., to minor or incapacitated person

Where a minor or an incapacitated person is entitled to trust money or trust securities, a trustee may pay the money to or transfer the securities to

- (a) the guardian of the minor or the substitute decision-maker for the incapacitated person; or
 - (b) the Public Trustee in trust for the minor or the incapacitated person where
 - (i) there is no guardian of the minor or substitute decision-maker for the incapacitated person, or
 - (ii) the trustee cannot locate the guardian of the minor or the substitute decision-maker for the incapacitated person after making diligent inquiries.
- 2025, c.18, s.46.*

Delegation

47. Delegation by trustee

- (1) Subject to subsections (3) and 48(1), if it is reasonable and prudent, a trustee may appoint a person as agent within or outside the province to exercise any power or perform any duty in the administration of the trust.

Particular purposes

- (2) Without limiting subsection (1) but subject to subsection (3), a trustee may appoint a person as agent
 - (a) to execute documents;
 - (b) to transfer or acquire money or other property; or
 - (c) to give a receipt for any money or other property received by the trustee.

Delegation prohibited

- (3) A trustee shall not appoint an agent to do any of the following:
 - (a) exercise a discretion to distribute or transfer trust property to, or for the benefit of, a beneficiary of the trust;
 - (b) perform the duties of the trustee under subsection 48(2).

Exception

- (4) Subsection (3) does not apply to an appointment of an attorney by power of attorney.
2025, c.18, s.47.

48. Delegation respecting investment of trust property

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

Obligation of trustee

- (2) A trustee who delegates authority under subsection (1) shall determine the investment objectives for the trust and exercise prudence in
 - (a) establishing the terms and limits of the authority delegated; and
 - (b) acquainting the agent with the investment objectives.

Liability for act or omission of agent

- (3) Despite subsection 49(4), a trustee is liable for a loss in the value of the trust property caused by an act or omission of an agent to whom authority is delegated under subsection (1) only if the trustee is in breach of subsection (2) and the loss is a consequence of that breach.

Specified investments not delegation of authority

- (4) Investment in a mutual fund referred to in subsection 30(1) or a similar pooled fund is not a delegation of authority with respect to the investment of trust property. *2025, c. 18, s. 48.*

49. Non-application of section

- (1) This section does not apply in respect of an attorney appointed by power of attorney.

Requirements for appointment of agent

- (2) In appointing an agent, a trustee shall
- (a) personally select the agent; and
 - (b) be satisfied of the agent's suitability to exercise the power or perform the duty for which the agent is to be appointed.

Supervision by trustee required

- (3) A trustee shall exercise reasonable and prudent supervision over an agent appointed by the trustee.

Liability for act or omission of agent

- (4) Subject to subsection (5), a trustee is liable for a loss in the value of the trust property caused by an act or omission of an agent only if the trustee is in breach of subsection (2) or (3) and the loss is a consequence of that breach.

Conduct of financial institution or other person

- (5) A trustee is liable for a loss in the value of the trust property caused by the conduct of a financial institution or another person with whom trust property is deposited or left for safekeeping only if the trustee fails to
- (a) exercise prudence in the selection of the financial institution or other person; or
 - (b) exercise reasonable and prudent supervision over the financial institution or other person.

Restriction on appointment

- (6) A trustee may appoint a co-trustee as an agent only if the appointment would have been reasonable and prudent if the co-trustee had not been a co-trustee.

Sub-delegation by agent permitted

- (7) An agent appointed by a trustee may delegate to a person a power or duty of the agent, subject to any restrictions relating to delegation established by the trustee.

Obligation of agent

- (8) In delegating a power or duty under subsection (7), the agent shall
- (a) personally select the delegate; and
 - (b) be satisfied of the delegate's suitability to exercise the power or perform the duty delegated to the delegate.

Supervision by agent required

- (9) An agent shall exercise reasonable and prudent supervision over a person to whom a power or duty is delegated under subsection (7). *2025, c. 18, s. 49.*

50. Appointment of attorney for specified period

- (1) A trustee may, by power of attorney, appoint an attorney to exercise any powers and perform any duties vested in the trustee, either alone or jointly with another person, for a period not longer than 12 months from the time the power of attorney is to take effect.

Restriction on appointment

- (2) Subject to subsection (3), a trustee may appoint a co-trustee as attorney only if the appointment would have been reasonable and prudent if the co-trustee had not been a co-trustee.

Appointment prohibited

- (3) Where there are only two trustees of a trust and the terms of the trust specify that there shall be a minimum of two trustees, neither trustee may appoint the other trustee as attorney.

Liability for act or omission of attorney

- (4) A trustee who appoints an attorney under subsection (1) is liable for a loss arising from the acts or omissions of the attorney as if those acts or omissions were the acts or omissions of the trustee.

Notice of appointment of attorney

- (5) Not later than seven days after a power of attorney is executed under subsection (1), the trustee shall deliver written notice in accordance with subsections (6) and (7) that an attorney has been appointed.

Notice to specified persons

- (6) A notice referred to in subsection (5) shall be delivered to
- (a) any other trustee of the trust;
 - (b) a person who has the power under the trust instrument, whether alone or jointly, to appoint a new trustee;
 - (c) where there is no person to whom notice can be delivered under clause (a) or (b), the qualified beneficiaries; and
 - (d) where there is no person to whom notice can be delivered under clauses (a) to (c), the Public Trustee.

Information to be provided

- (7) The notice referred to in subsection (5) shall include
- (a) the identity of the attorney;
 - (b) one or more of the following:
 - (i) the mailing address for the attorney,
 - (ii) the electronic mail address for the attorney,
 - (iii) the fax number for the attorney;
 - (c) a description of the powers and duties delegated to the attorney;
 - (d) the reason for the appointment;
 - (e) the date or event on which the appointment is to take effect; and
 - (f) the duration of the appointment.

Effect of failure to comply by trustee

- (8) The failure by a trustee to comply with subsection (5) does not invalidate, as against a third party dealing with the attorney in good faith, any act done or document executed by the attorney. *2025, c.18, s.50.*

General Matters

51. Liability in event of breach by co-trustee

- (1) Subject to this Act, a trustee is not liable for a breach of trust committed by a co-trustee unless the trustee participated in the breach of trust by the trustee's own acts or omissions in relation to the trust property.

Effect of signing of receipt

- (2) Subject to subsections 48(3), 49(4) and (5) and 50(4), a trustee is not liable for a loss in relation to trust property by reason only that the trustee signs a receipt with a co-trustee because of a requirement imposed by the trust instrument that trustees act unanimously. *2025, c.18, s.51.*

52. Power conferred, duty imposed jointly

- (1) Where a power is conferred or a duty is imposed on two or more trustees, the power is conferred and the duty is imposed jointly.

Exercise of power, performance of duty

- (2) Where a power is conferred or a duty is imposed on two or more trustees jointly,
- (a) the power may be exercised or the duty may be performed in accordance with section 53 or 54; and
 - (b) the power may be exercised or the duty may be performed by the survivor of them. *2025, c.18, s.52.*

53. Non-application of section

- (1) This section does not apply in respect of a trust created by a trust instrument executed before this section comes into force.

Trustees act by majority

- (2) Where there are more than two trustees, the trustees may perform their duties and exercise their powers by majority of the trustees holding office.

Where trustee disagrees with majority

- (3) A trustee who disagrees with a decision or act of the majority of trustees may deliver a written statement of disagreement to the other trustees, but, unless the decision or act is unlawful, shall join with the majority in doing anything necessary to carry out that decision or act if it cannot be carried out otherwise.

Effect of written statement

- (4) A trustee who delivers a written statement in accordance with subsection (3) is not liable for a loss or breach of trust arising from the decision or act even if the trustee joins with the majority in accordance with that subsection in order to carry out that decision or act. *2025, c.18, s.53.*

54. Non-application of section

- (1) This section does not apply in respect of a trust created by a trust instrument executed before this section comes into force.

Effect of abstention by trustee

- (2) Where a trustee abstains from participating in a decision or act of the trustees because there is a conflict or potential conflict between the trustee's personal interest and the powers and duties of the office of trustee, or for another good reason, the trustee is deemed not to be holding office for the purpose only of determining whether a decision is made or act is done by a majority of trustees holding office or unanimously by the trustees holding office. *2025, c.18, s.54.*

55. Application of section

- (1) This section applies only to proceeds under a contract of insurance that are payable after this section comes into force.

Allocation of insurance proceeds by trustee

- (2) A trustee shall allocate insurance proceeds to the capital of the trust where
- (a) the trustee entered into a contract of insurance against loss of, or damage to, any trust property;
 - (b) the trustee paid the premiums owing under the contract; and
 - (c) insurance proceeds under the contract are paid to the trustee.

Insurance proceeds under contract of insurance by beneficiary

- (3) Where a beneficiary of a trust enters into a contract of insurance against loss of, or damage to, any trust property, whether or not the beneficiary is required by the trust instrument or by a third party to obtain the insurance, and insurance proceeds under the contract are paid to the beneficiary,
- (a) the beneficiary shall pay the insurance proceeds to the trustee;
 - (b) the trustee shall allocate the insurance proceeds to the capital of the trust; and
 - (c) the trustee shall reimburse the beneficiary for expenses incurred by the beneficiary in entering into the contract of insurance, in the amount that, in the opinion of the trustee, reflects the interests of the other beneficiaries in the trust property.

Use of insurance proceeds by trustee

- (4) A trustee may apply all or part of the insurance proceeds received by the trustee under subsection (2) or (3) to the rebuilding, reinstating, replacing or major repair of the trust property that has been lost or damaged.

Rights of specified persons not affected

- (5) Nothing in this section affects the rights of a secured party, lessor, lessee or other person
- (a) to receive insurance proceeds; or
 - (b) to require that the insurance proceeds be applied to the rebuilding, reinstating, replacing or major repair of the trust property that has been lost or damaged.
- 2025, c.18, s.55.*

56. Effect of notice of matter under another trust

A trustee does not, in the absence of fraud, have notice of an instrument, matter, fact or thing in relation to a trust merely because the trustee has notice of the instrument, matter, fact or thing in the trustee's capacity as trustee of another trust. *2025, c.18, s.56.*



PART 5 - VARIATION AND TERMINATION OF TRUSTS**57. “Arrangement” defined**

In this Part, “**arrangement**” means

- (a) a variation, resettlement or termination of a trust; or
- (b) a variation or deletion of, or an addition to, the powers of a trustee in relation to the management or administration of a trust. *2025, c.18, s.57.*

58. Application of Part

This Part applies whether the interest in the trust property of the object of the trust is vested or contingent or arises by operation of law. *2025, c.18, s.58.*

59. Where court approval not required

An arrangement takes effect without court approval where

- (a) all of the objects of a trust are beneficiaries that are of full capacity; and
- (b) all of the beneficiaries of the trust consent to the arrangement. *2025, c.18, s.59.*

60. Application of section

- (1) This section applies in relation to a trust where one or more of the following are applicable to the trust:

- (a) a beneficiary of the trust is not of full capacity or does not consent to an arrangement;
- (b) a beneficiary of the trust is a charitable organization that is legally incapable in its own right of consenting to an arrangement;
- (c) an object of the trust is a charitable purpose or a non-charitable purpose described under subsection 73(3).

When arrangement takes effect

- (2) An arrangement in relation to a trust referred to in subsection (1) takes effect where
 - (a) in respect of each beneficiary of the trust, other than a beneficiary described in clause (1)(b),
 - (i) each beneficiary who is of full capacity consents to the arrangement, and
 - (ii) the court approves the arrangement under subsection (3) or (5); and
 - (b) the court approves the arrangement under subsection (7), where clause (1)(b) or (c) applies to the trust.

Court approval required

- (3) On application by a beneficiary or trustee and subject to subsection (4), the court may approve an arrangement for the purposes of subclause (2)(a)(ii) on behalf of
 - (a) a person who is not capable of consenting because the person is a minor or is otherwise not of full capacity;
 - (b) an unborn person;
 - (c) a person, whether ascertained or not, who has a vested or contingent interest and whose existence or whereabouts cannot be established despite reasonable measures having been taken to discover that information; or

- (d) a person in respect of an interest of the person that may arise by reason of the person being in a class of persons that may benefit from a power of appointment that may or shall be exercised by the trustees or any other donee of the power.

Applicable conditions

- (4) The court may not approve an arrangement under subsection (3)
 - (a) on behalf of a person referred to in clause (3)(a), (b) or (c) unless the court is satisfied that the arrangement appears to be for the benefit of the person; or
 - (b) on behalf of a person referred to in clause (3)(d) unless the court is satisfied that the arrangement will not be detrimental to the interests of the person.

Where consent is refused

- (5) On application by a beneficiary or trustee and subject to subsection (6), the court may approve an arrangement for the purposes of subclause (2)(a)(ii) on behalf of a person who has the capacity to consent to the arrangement but refuses to consent to the arrangement.

Applicable conditions

- (6) The court may not approve an arrangement on behalf of a person under subsection (5) unless the court is satisfied that
 - (a) the arrangement will not be detrimental to the pecuniary interest of the person;
 - (b) a substantial majority of the beneficiaries, representing a substantial majority of the beneficial interests in the trust property as determined by the monetary value of those interests, have
 - (i) consented to the arrangement, or
 - (ii) had the court approve the arrangement on their behalf under subsection (3); and
 - (c) not approving the arrangement will be detrimental to the administration of the trust and the interests of other beneficiaries.

Court approval - charitable organization, charitable or non-charitable purpose

- (7) On application by any person, the court may approve an arrangement for the purposes of clause (2)(b)
 - (a) on behalf of a charitable organization that is legally incapable of consenting in its own right; or
 - (b) for a charitable purpose or a non-charitable purpose described under subsection 73(3).
2025, c.18, s.60.

61. Notice of application to Public Trustee

- (1) Where a person applies to the court for an order under subsection 60(3) approving an arrangement
 - (a) in respect of a person referred to in clause 60(3)(a) or (b); or
 - (b) in respect of a person referred to in clause 60(3)(c) or (d) who is a minor or an incapacitated person, unless the person is an incapacitated person to whom section 94 applies,the person making the application shall serve notice of the application on the Public Trustee at least 30 days before the date set for the hearing of the application.

Notice of application to Minister

- (2) Where a person applies to the court for an order under subsection 60(7) approving an arrangement, the person shall serve notice of the application on the Minister at least 30 days before the date set for the hearing of the application.

Standing of Public Trustee

- (3) The Public Trustee is entitled to appear and be heard on an application referred to in subsection (1) and is entitled to the costs the court orders.

Standing of Minister

- (4) The Minister is entitled to appear and be heard on an application referred to in subsection (2). *2025, c.18, s.61.*

PART 6 - TRUSTEE COMPENSATION AND ACCOUNTS**62. Definitions**

In this Part,

- (a) “**trust**” includes the estate of a deceased person;
- (b) “**trustee**” includes an executor or administrator of the estate of a deceased person, whether or not the property included in the estate is subject to a trust. *2025, c.18, s.62.*

63. Application of Part

This Part applies in respect of the estate of a person who dies before, on or after the date this Part comes into force. *2025, c.18, s.63.*

64. Entitlement to fair, reasonable compensation

- (1) A person is entitled to fair and reasonable compensation to be paid out of the trust property for services rendered as trustee of the trust.

Charges for professional services of trustee

- (2) As part of the compensation to which a trustee is entitled under subsection (1), a trustee who
- (a) has professional skills; and
- (b) has rendered services to the trust, apart from those generally associated with the office of trustee, that required the exercise of those professional skills,
- is entitled to charge fees at reasonable rates for those services that are reasonably necessary for the purpose of carrying out the trust.

Equal entitlement not presumed

- (3) The trustees of a trust are not presumed to be entitled to equal compensation under subsection (1).

Application to court for determination of amount

- (4) On application by a trustee during the administration of the trust or on the passing of accounts, the court may determine the amount of compensation to which the trustee is entitled under subsection (1).

Factors to be considered

- (5) In determining a trustee's compensation, the court may consider
- (a) the gross value of the trust property at the time compensation is claimed;
 - (b) any change in the gross value of the trust property since compensation was last claimed or the trust was created and the portion of that change attributable to decisions of the trustee;
 - (c) the amount of revenue received and expenditures incurred in administering the trust;
 - (d) the complexity of the work involved in administering the trust, including whether or not any difficult or unusual questions were raised;
 - (e) any unusual difficulties or situations encountered in administering the trust;
 - (f) whether or not the trustee had to instruct on litigation relating to the trust;
 - (g) whether or not the trustee was required to manage a business, be the director of a corporation or perform other additional roles in administering the trust;
 - (h) the amount of skill, labour, responsibility, technological support and specialized knowledge required in administering the trust;
 - (i) the number and complexity of tasks relating to the administration of the trust that were delegated to others;
 - (j) the time expended in administering the trust; and
 - (k) the number of trustees.

Application not subject to trust

- (6) A trustee may make an application under subsection (4) even if the trust instrument provides for the determination of the amount of compensation.

Variation of contract not authorized

- (7) Subsection (4) does not authorize the variation of a contract, with respect to compensation between a settlor and a trustee, that is not part of the trust instrument, whether or not the contract is incorporated by reference in the trust instrument. *2025, c.18, s.64.*

65. Trustee may take payment out of trust property

- (1) During the administration of the trust and without prior authorization of the court, where there is at least one beneficiary who is of full capacity and who has a vested beneficial interest in the trust property, a trustee may take payment out of the trust property in an amount that, in the trustee's opinion, is fair and reasonable compensation for services rendered as trustee of the trust during the period to which the payment relates.

Notice to beneficiaries

- (2) A trustee who takes a payment under subsection (1) shall promptly deliver to the qualified beneficiaries a notice stating
- (a) the amount of the payment;
 - (b) a description of the services rendered; and
 - (c) that, within a specified period of not less than 60 days from the date of the notice, a qualified beneficiary may make an application to the court under subsection (3) if the qualified beneficiary objects to the payment.

Application to court by qualified beneficiary

- (3) On application, within the period specified in the notice in accordance with clause (2)(c), by a qualified beneficiary who objects to the payment taken by a trustee under subsection (1), the

court may determine the amount of compensation, if any, that the trustee may be paid under subsection (1).

Notice stays further payment

- (4) After a trustee is served with a notice of an application made under subsection (3), the trustee may not take any further payment under subsection (1) until the court has disposed of the application. *2025,c.18,s.65.*

66. Reimbursement of expenses during administration of trust

During the administration of the trust and without prior authorization of the court, a trustee may be reimbursed out of the trust property for expenses incurred by the trustee in the administration of the trust. *2025,c.18,s.66.*

67. Court order for passing of accounts

- (1) On application by a qualified beneficiary or a trustee, the court may order that the trustee's accounts be passed on a single occasion or at intervals set by the court.

Notice to beneficiaries

- (2) The qualified beneficiary or trustee making an application under subsection (1) shall serve notice of the application on each of the other qualified beneficiaries.

Where qualified beneficiary is minor or incapacitated person

- (3) Where a qualified beneficiary referred to in subsection (2) is a minor or an incapacitated person and the guardian or committee of the qualified beneficiary is not present at the passing of accounts, the court may determine, at the passing of accounts or at a subsequent hearing, that the qualified beneficiary is to be or is deemed to have been represented by another person who, at the passing of accounts,
- (a) is of full capacity;
 - (b) has a substantially similar interest in the trust property; and
 - (c) is not in a conflict of interest with the qualified beneficiary in relation to any aspect of the accounts. *2025,c.18,s.67.*

68. Trustee's obligation to restore excess payments taken

Where a trustee's compensation as finally determined by the court is less than the total of the payments taken by the trustee without court authorization during the administration of the trust, the trustee shall restore the difference to the trust property. *2025,c.18,s.68.*

69. Exception - compensation of judicial trustee

The provisions in an order under subsection 9(5) concerning compensation of a judicial trustee prevail over any contrary provision of this Part. *2025,c.18,s.69.*

PART 7 - CHARITABLE GIFTS, CHARITABLE TRUSTS AND NON-CHARITABLE PURPOSE TRUSTS

70. Application of section

- (1) This section applies in respect of a gift given before, on or after the date this section comes into force.

Application to court to vary terms of trust or gift

- (2) On application by the trustee of a charitable trust or by the personal representative of a donor of a charitable gift, the court may vary the terms of the trust or gift in accordance with subsection (3) where the court is of the opinion that
- (a) an impracticability, impossibility or other difficulty hinders or prevents giving effect to the terms of the trust or gift; or
 - (b) a variation of the trust or gift would facilitate the carrying out of the intention of the settlor or donor.

Authority of court

- (3) In varying the terms of the trust or gift under subsection (2), the court may
- (a) vary, delete or add to the terms of the trust or gift;
 - (b) vary, delete or add to the powers of a trustee in relation to the management or administration of the trust;
 - (c) vary, delete or add to the powers of the donee in relation to the management or administration of the gift; or
 - (d) where the court makes a finding under clause (2)(a), vary or add to the terms of the trust or gift to provide for a purpose that is as close as is practicable or reasonable to an existing purpose of the trust or gift.

Effect of express provision for gift over or reversion

- (4) For the purposes of a variation under subsection (2), it is irrelevant whether the charitable intent of the settlor or donor was general or specific, except that where the terms of the trust or gift expressly provide for a gift over or a reversion in the event of the lapse or other failure of a charitable purpose, the gift over or reversion, if otherwise valid, may take effect. *2025,c.18,s.70.*

71. Authority of court - sale of property

- (1) Where the court finds that a specific property held in trust for a charitable purpose can no longer be used advantageously for the charitable purpose or should for any other reason be sold, the court may authorize the sale of the property and give directions concerning the conduct of the sale and the application of the proceeds from the sale.

Who may apply to court

- (2) An order under subsection (1) may be made on application by
- (a) the Minister;
 - (b) the trustee; or
 - (c) a person appearing to the court to have a sufficient interest in the matter. *2025,c.18,s.71.*

72. Notice to Minister required

Where an application is made for an order under section 70 or 71 by a person other than the Minister, the order may not be made unless the person has served notice of the application on the Minister at least 30 days before the date set for the hearing of the application. 2025, c. 18, s. 72.

73. Definition, “non-charitable purpose trust”

- (1) In this section, “**non-charitable purpose trust**” means a trust created under subsection (2) or a trust constituted under clause 74(3)(b), (d) or (f).

Non-charitable purpose trust

- (2) Subject to this section, a person may create a trust that
- (a) does not create an equitable interest in any person; and
 - (b) is for a non-charitable purpose described in subsection (3).

Nature of non-charitable purpose

- (3) For the purposes of clause (2)(b), a non-charitable purpose is a non-charitable purpose that is recognized by law as capable of being a valid object of a trust or is
- (a) sufficiently certain to allow the trust to be carried out;
 - (b) not contrary to public policy; and
 - (c) in relation to one or more of the following:
 - (i) a purpose for which a company may be incorporated under section 89 of the *Companies Act* R.S.P.E.I. 1988, Cap. C-14,
 - (ii) the performance of a function of government in Canada,
 - (iii) a matter specified in regulations made under subsection (12).

Indefinite existence

- (4) A non-charitable purpose trust may exist indefinitely.

Authority of court to vary or add to terms of trust

- (5) Subject to subsection (8), where the court is of the opinion that an impracticability, impossibility or other difficulty hinders or prevents giving effect to the terms of a non-charitable purpose trust, the court may
- (a) vary or add to the terms of the trust to provide for a purpose that is as close as is practicable or reasonable to an existing purpose of the trust; or
 - (b) where the court is unable to provide for a purpose that is as close as is practicable or reasonable to an existing purpose of the trust, vary or add to the terms of the trust to provide for a purpose that is consistent with the intention of the original settlement.

Authority of court - obsolete purpose

- (6) Subject to subsection (8), where the court is of the opinion that a change in circumstances since the creation of the non-charitable purpose trust has resulted in a purpose of the trust being obsolete or no longer expedient, the court may vary or add to the terms of the trust to provide for a purpose that is consistent with the intention of the original settlement.

Factors that may be considered

- (7) In exercising its power under subsection (6), the court may consider the views of the settlor or the trustee concerning the obsolescence or expedience of the purpose of the trust and the proposed variation.

Exception

- (8) Subsections (5) and (6) do not apply where
- (a) the trust instrument contains a valid direction concerning the ultimate disposition of the trust property; or
 - (b) the intention of the settlor concerning the ultimate disposition of the trust property can be inferred from the trust instrument and is valid.

Return of trust property

- (9) Despite subsections (5) and (6), where the court cannot determine a substitute purpose for a non-charitable purpose trust, the court may order that the trust property be returned to the settlor or to the settlor's personal representative.

Court may make order to enforce, etc.

- (10) The court may make an order that it considers appropriate
- (a) to enforce a non-charitable purpose trust; or
 - (b) to enlarge or otherwise vary the powers of the trustee of a non-charitable purpose trust.

Who may make application

- (11) An application for an order under this section may be made by
- (a) the Minister;
 - (b) a person appointed specifically by the settlor in the trust instrument to enforce the trust;
 - (c) the settlor;
 - (d) the personal representative of the settlor;
 - (e) the trustee; or
 - (f) a person appearing to the court to have a sufficient interest in the matter.

Regulations

- (12) The Lieutenant Governor in Council may make regulations specifying matters in respect of which a non-charitable purpose trust may be created under subsection (2). *2025, c.18, s.73.*

74. Purposes may be charitable and non-charitable

- (1) A trust is not void by reason only that the objects of the trust consist of a charitable purpose and a non-charitable purpose.

Application by trustee

- (2) A trustee may make an application to the court for an order under this section in relation to a trust described in subsection (1).

Orders of court

- (3) On an application under subsection (2), the court may make one or more of the following orders:
- (a) an order that a charitable purpose constitutes the object of a separate charitable trust, where the court determines that it is practicable to separate the charitable purpose from a non-charitable purpose;
 - (b) an order that a non-charitable purpose constitutes the object of a separate non-charitable purpose trust, where the court determines that
 - (i) the non-charitable purpose is described under subsection 73(3), and

- (ii) it is practicable to separate the non-charitable purpose from the other objects of the original trust;
- (c) an order that the terms of the disposition of property relating to a non-charitable purpose shall be construed as provided in section 75, where the court determines that
 - (i) the non-charitable purpose is not described under subsection 73(3), and
 - (ii) it is practicable to separate the non-charitable purpose from a charitable purpose;
- (d) an order that a charitable purpose and a non-charitable purpose constitute the objects of a separate non-charitable purpose trust, where
 - (i) the court determines that
 - (A) the non-charitable purpose is described under subsection 73(3), and
 - (B) it is not practicable to separate the charitable purpose from the non-charitable purpose, and
 - (ii) the court makes an order under clause (a), (b) or (c) of this subsection separating other objects of the original trust;
- (e) an order that the terms of the disposition of property relating to a charitable purpose and a non-charitable purpose shall be construed as provided in section 75, if
 - (i) the court determines that
 - (A) the non-charitable purpose is not described under subsection 73(3), and
 - (B) it is not practicable to separate the charitable purpose from the non-charitable purpose, and
 - (ii) the court makes an order under clause (a), (b) or (c) separating other objects of the original trust;
- (f) an order that the trust takes effect as a non-charitable purpose trust, where the court determines that
 - (i) the non-charitable purpose is described under subsection 73(3), and
 - (ii) it is not practicable to separate any objects of the trust;
- (g) an order that the terms of the disposition of property purporting to create a trust shall be construed as provided in section 75, where the court determines that
 - (i) the non-charitable purpose is not described under subsection 73(3), and
 - (ii) it is not practicable to separate any objects of the trust.

Trustee shall divide trust property

- (4) Where the court makes an order under clauses (3)(a) to (e), subject to any terms in the trust instrument regarding apportionment of the trust property or the manner in which a power of apportionment may be exercised, the trustee shall divide the trust property as the trustee considers reasonable in the circumstances between any new trusts and powers of appointment.

Effect of certain qualifying terms

- (5) Despite clauses (3)(d) to (g), where the objects of a trust consist of a charitable purpose linked conjunctively or disjunctively with a purpose that is not described specifically but is referred to only by an indefinite qualifying term, such as “benevolent”, “worthy” or “philanthropic”, the trust takes effect as a charitable trust.

Obligation of trustee

- (6) The trustee shall apply all of the property of the trust described in subsection (5) as if only the charitable purpose had been set out in the trust instrument. *2025,c.18,s.74.*

75. Application of section

- (1) This section applies in respect of a disposition described in subsection (2) and made on or after this section comes into force.

Terms of disposition of property construed as power to appoint

- (2) Where the terms of a disposition of property purport to create a trust that
- (a) does not create an equitable interest in any person; and
 - (b) is for a specific non-charitable purpose, other than a non-charitable purpose described under subsection 73(3),
- the terms of the disposition shall be construed, subject to this section, as constituting a power to appoint the income or capital, as the case may be, for a period not exceeding 21 years.

Exception

- (3) Despite subsection (2), the terms of a disposition described in that subsection shall not be construed as constituting a power to appoint if the terms of the disposition provide for an illegal purpose or a purpose contrary to public policy.

Court may declare disposition void

- (4) Despite subsection (2), where the disposition is expressed to be of perpetual duration, the court may declare the disposition to be void if the court is of the opinion that, by voiding the disposition, the result would be closer to the intention of the person disposing of the property than the period of validity provided by this section.

Who may apply for order

- (5) An order under subsection (4) may be made on application by a person referred to in subsection 73(11).

Entitlement to unexpended income or capital - period less than 21 years

- (6) Where the disposition described in subsection (2) provides for the expenditure of all or a specified portion of the income or capital within an annual period or another recurring period that is less than 21 years, and that income or capital is not fully expended within the period that is less than 21 years, the person who would have been entitled to the property that is subject to the power to appoint, if the power to appoint had terminated at the expiration of that period, is entitled to that unexpended income or capital.

Entitlement to unexpended income or capital - period of 21 years

- (7) Where the income or capital that is subject to a power to appoint under subsection (2) is not fully expended within a period of 21 years, the person who would have been entitled to the property that is subject to the power to appoint, if the power to appoint had terminated at the expiration of the 21-year period, is entitled to that unexpended income or capital.

Exception

- (8) Nothing in this section applies to any discretionary power to transfer a beneficial interest in property to any person as a gift. 2025,c.18,s.75.

76. Exemption from execution, etc. - applicable conditions

- (1) Property held in trust for a specific charitable purpose by a trustee or charitable corporation, as opposed to property held for the general purposes of the trust or corporation, is exempt from execution, seizure or attachment to satisfy a judgment against that trustee or corporation except

to the extent that the judgment is based on a liability incurred by the trustee or corporation in relation to that specific charitable purpose.

Retroactive effect

- (2) This section is retroactive to the extent necessary to give full force and effect to its provisions and shall not be construed as lacking retroactive effect in relation to any matter because it makes no specific reference to that matter. *2025,c.18,s.76.*

PART 8 - ADDITIONAL POWERS OF THE COURT

77. Application to court by beneficiary

Where, on application by a beneficiary, the court is satisfied that a trustee has refused or failed to

- (a) perform a duty imposed on the trustee; or
 - (b) consider in good faith the exercise of a power conferred on the trustee,
- the court may
- (c) order the trustee to
 - (i) perform the duty, or
 - (ii) consider in good faith the exercise of the power and satisfy the court that the trustee has given due consideration to the exercise of the power; or
 - (d) remove the trustee. *2025,c.18,s.77.*

78. Application to court - directions

- (1) A trustee may apply to the court for directions on any matter or question of fact, law or discretion arising in respect of a trust.

Application by trustees for resolution of matter

- (2) Without limiting subsection (1), if trustees are deadlocked on any matter arising in respect of a trust, one or more of the trustees may apply to the court for directions respecting the resolution of the matter.

Duty of trustee discharged by compliance with directions

- (3) The duty of a trustee who follows the directions given under subsection (1) or (2) or subsection 9(4) is discharged with respect to the subject matter of the directions, unless the trustee is guilty of fraud, wilful concealment or misrepresentation in obtaining the directions. *2025,c.18,s.78.*

79. Application by trustee for authorization to distribute trust property

- (1) On application by a trustee, the court may authorize the trustee to distribute trust property among the persons entitled to receive the trust property, with the trustee having regard only to
- (a) the persons whom the trustee has been able to locate after making diligent efforts; or
 - (b) the claims or interests that the trustee has been able to determine after making diligent efforts.

Court may give directions

- (2) In making an order under subsection (1), the court may give directions respecting the procedure to be followed by the trustee in relation to a distribution of the trust property, including, without

limitation, directions concerning the notice that shall be given to persons who may have an interest in the distribution of the trust property.

Creditor's rights not prejudiced

- (3) An order under subsection (1) or subsection 9(4) does not prejudice the right of any creditor or claimant to follow the trust property into the hands of a person who receives it. *2025,c.18,s.79.*

80. "Exemption clause" defined

- (1) In this section, "**exemption clause**" means a provision of a trust instrument that excludes or restricts the liability of a trustee, including, without limitation, a provision that purports to
- (a) make the enforcement of the liability of the trustee subject to restrictive or onerous conditions;
 - (b) permit a trustee to act despite a conflict between the trustee's personal interest and the powers and duties of the office of trustee;
 - (c) exclude or restrict any right or remedy in respect of the liability of a trustee, or prejudice any person who pursues such right or remedy;
 - (d) exclude or restrict rules of evidence; or
 - (e) negate a duty that, in the absence of the provision, would otherwise be imposed on the trustee.

Court may relieve from personal liability

- (2) The court may relieve a trustee or former trustee either wholly or partly from personal liability if the court is satisfied that
- (a) the trustee or former trustee is or may be personally liable for a breach of trust; and
 - (b) the trustee or former trustee
 - (i) has acted honestly and reasonably, and
 - (ii) ought fairly to be excused for the breach of trust.

Effect of exemption clause

- (3) Subject to subsection (4), an exemption clause in a trust instrument is effective to relieve, according to its terms, a trustee of liability for a breach of trust.

Court may declare exemption clause ineffective

- (4) Where the court is of the opinion that the conduct of a trustee
- (a) constitutes a breach of trust; and
 - (b) has been so unreasonable, irresponsible or incompetent that, in fairness to the beneficiary, the trustee ought not to be relieved by an exemption clause from liability for the breach of trust,

the court may declare that any exemption clause contained in the trust instrument is ineffective in relation to that breach of trust, and that the liability of the trustee for breach of trust is as if the trust instrument did not contain the clause. *2025,c.18,s.80.*

81. "Breach of trust" defined

- (1) In this section, "**breach of trust**" includes any act or omission that gives rise to the liability of a trustee to the beneficiaries of the trust, regardless of whether the act or omission
- (a) is intentional;
 - (b) is negligent; or

- (c) would give rise to a right for contribution or indemnity apart from this Act.

Application of section

- (2) This section applies only with respect to a breach of trust
- (a) that is the subject of a legal proceeding commenced after this Act comes into force; or
- (b) if no legal proceeding has been commenced for breach of trust, for which a claim for contribution or indemnity is made after this Act comes into force.

No general obligation to contribute or indemnify

- (3) Except as provided in this section, a trustee is not obligated to contribute to or indemnify a co-trustee in relation to a breach of trust.

Where other trustees responsible

- (4) Where a trustee commits a breach of trust, the court, having regard to the responsibility of each trustee for the loss to the trust, may determine the amount the court considers appropriate
- (a) for which each trustee is liable in order to make good the loss to the trust; or
- (b) that a trustee shall contribute to another trustee.

Court may exempt trustee, etc.

- (5) The court may
- (a) exempt a trustee from liability to make a contribution to another trustee; or
- (b) order that any contribution due to, or to be recovered from, a trustee amounts to a complete indemnity.

Court may act despite fraud by trustees

- (6) The powers conferred on the court by this section may be exercised even if the trustee claiming contribution or indemnity or the trustee against whom the claim is made, or both of them, have acted fraudulently in breach of trust.

Where trustee is insolvent

- (7) Where a trustee in breach of trust is insolvent, the court may apportion liability for making good the loss to the trust and any other losses as is appropriate among the solvent co-trustees.

Court may consider reasonableness of settlement

- (8) Where the beneficiaries have settled with a trustee who is in breach of trust and who subsequently seeks contribution from a co-trustee, the court, in making any contribution order and without limiting subsections (4) and (5), may consider whether the settlement was reasonable. *2025, c.18, s.81.*

82. Breach at instigation, etc., of beneficiaries

- (1) Where a trustee commits a breach of trust, and the breach was at the instigation or request or with the consent of some but not all of the beneficiaries, the court may order the beneficiaries who instigated, requested or consented to the breach to contribute to or indemnify the trustee or persons claiming through the trustee.

Court may order all or part of beneficiaries' interest to be used

- (2) Where the court makes an order under subsection (1), the court may order that all or part of the interest of the beneficiaries in the trust is to be used to satisfy the obligation to contribute to or indemnify the trustee or persons claiming through the trustee. *2025, c.18, s.82.*

83. Payment into court by trustee

- (1) A trustee may pay into or deposit in court trust money or trust securities.

Court may order payment into court where trustee not available

- (2) Where a trustee is not available to receive payment or transfer of trust money or trust securities and give a receipt for the trust money or trust securities, the court may order, on application by a person in possession or control of the trust money or trust securities, that the trust money or trust securities be paid into or deposited in court.

Affidavit of trustee

- (3) A trustee referred to in subsection (1) or other person referred to in subsection (2) shall, at the time trust money or trust securities are paid into or deposited in court, file with the Registrar an affidavit in the form required by the Registrar that sets out
- (a) the trustee's or other person's own name and address;
 - (b) the place where the trustee or other person is to be served with an application or notice of a proceeding, rule or order of the court that relates to the trust money or trust securities;
 - (c) the amount of trust money or value of trust securities, as the case may be, that the trustee or other person has paid into or deposited in court;
 - (d) a short description of the trust and of the instrument that created it; and
 - (e) the names of the persons interested in or entitled to the trust money or trust securities, to the best of the trustee's or other person's knowledge and belief.

Receipt by Registrar

- (4) A receipt given by the Registrar for any money or securities paid into or deposited in court under subsection (1) or (2) relieves the trustee or other person paying or depositing the money or securities from any further obligation relating to the money or securities.

Authority of court

- (5) The court may make orders it considers necessary or appropriate regarding the trust money or trust securities paid into or deposited in court under subsection (1) or (2) and for the administration of the trust to which the money or securities are subject. *2025, c.18, s.83.*

84. Who may apply for order of court

Subject to this Act, an order of the court under this Act in respect of a trust may be made on application by

- (a) a beneficiary;
- (b) a trustee; or
- (c) a secured party who has a security interest in the trust property. *2025, c.18, s.84.*

85. Costs of proceedings

- (1) The court may order costs of a proceeding under this Act, in the amounts or proportions the court may order, to be paid
- (a) by or to a party to the proceeding; or
 - (b) out of the trust property.

Costs of transfer of trust property, etc.

- (2) The court may order costs of a transfer of or other transaction respecting trust property, in the amounts or proportions the court may order, to be paid out of the trust property.

Source of payment

- (3) For the purposes of clause (1)(b) or subsection (2), the court may designate all or part of the trust property as the source for the payment. *2025, c.18, s.85.*

PART 9 - PERPETUITIES AND ACCUMULATIONS**86. Modern rule against perpetuities abolished**

- (1) The rule of law known as the modern rule against perpetuities, as modified by the *Perpetuities Act* R.S.P.E.I. 1988, Cap. P-3, is abolished.

Rule in *Whitby v. Mitchell* abolished

- (2) The rule of law known as the rule in *Whitby v. Mitchell*, prohibiting the disposition, after a life interest to an unborn person, of an interest in property to the unborn child or to any other issue of an unborn person, is abolished.

Application

- (3) Subject to subsection (4), subsection (1) applies in relation to
- (a) all interests in property created before, on or after the date this section comes into force; and
 - (b) all trusts created before, on or after the date this section comes into force.

Continued application, *Perpetuities Act*

- (4) Despite subsection (1) and section 111, the *Perpetuities Act*, as it read before the coming into force of this section, continues to apply to an act or step respecting property if
- (a) the act had been done or the step had been taken before the coming into force of this section in reliance on the application of that Act;
 - (b) the act or step is
 - (i) done or taken in reliance on the application of that Act, and
 - (ii) part of a series of acts or steps respecting property, and an act or step that is part of the series had been done or taken before the coming into force of this section in reliance on the application of that Act; or
 - (c) a court of competent jurisdiction has held that an interest or purported interest in property is void for breach of the rule against perpetuities as modified by that Act. *2025, c.18, s.86.*

87. “Disposition” defined

- (1) In this section, “**disposition**” includes the conferring of a power of appointment and any provision by which an interest in property or a right, power or authority over property is disposed of, created or conferred.

Disposition required to be valid

- (2) Where property is settled or disposed of in such a manner that all or part of the income earned from the property may or shall be accumulated, the power or direction to accumulate that

income is valid if the disposition of the accumulated income is or may be valid, but not otherwise.

Non-application of section

- (3) Nothing in this section affects
- (a) the rights of any person or persons to terminate an accumulation that is for the benefit of the person or persons; or
 - (b) any jurisdiction or power of the court under an Act to direct payments from accumulations.

Effective date

- (4) Subject to subsections (5) and (6), this section applies to instruments taking effect before, on or after the date this section comes into force.

Section does not invalidate prior disposition

- (5) Nothing in this section renders invalid any accumulation validly empowered by a disposition taking effect before the date this section comes into force.

Section does not divest vested interest

- (6) Nothing in this section divests or otherwise affects any interest that had become vested as a result of the expiration before the date this section comes into force of a period of accumulation previously permitted or in force. *2025,c.18,s.87.*

PART 10 - GENERAL MATTERS

88. Presumption - ability to have child in future

- (1) Where, in the administration of a trust, a question arises that turns on the ability of a person to have a child at some future time, it shall be presumed that
- (a) a male is able to have a child at the age of 14 years or over, but not under that age; and
 - (b) a female is able to have a child at the age of 12 years or over, but not under that age or over the age of 55 years.

Presumption - inability to have child at time in question

- (2) Despite subsection (1), in the case of a living person, it may be presumed that the person is or will be unable to have a child at the time in question if
- (a) that person provides information or a reason supporting why that person is or will be unable to have a child at that time;
 - (b) there is a decision of the court that that person is or will be unable to have a child at that time; or
 - (c) there is an opinion of a medical practitioner, or an individual entitled to practise medicine under the laws of another jurisdiction, that that person is or will be unable to have a child at that time.

Effect of presumption

- (3) Subject to subsection (4), where, in the administration of a trust, a question is decided by treating a person as able or unable to have a child at a particular time, then the person shall be so treated for the purpose of any related question that may arise in the administration of the trust, even if the evidence on which the finding of ability or inability to have a child at the particular time is proved by subsequent events to have been erroneous.

Court order - protecting right of child

- (4) Where, in the administration of a trust, a question is decided by treating a person as unable to have a child at a particular time and that person subsequently has a child at that time, the court may make an order that it considers appropriate to protect the right that the child would have had in the trust property as if
- (a) that question had not been decided; and
 - (b) that child would, apart from the decision, have been entitled to a right in the trust property.

Effect of adoption of child

- (5) For the purposes of this section, the possibility that a person may at any time have a child by adoption may not be considered in deciding a question that turns on the ability of a person to have a child at some particular time, but if a person does subsequently have a child by adoption, subsection (4) applies in relation to that child.

Trustee not liable for loss

- (6) Subject to subsection (7), a trustee is not liable for a loss arising from a payment of trust money or a transfer of trust property in response to a decision to treat a person as unable to have a child at a particular time where, before the trustee has notice that the person subsequently had a child at the particular time, the trustee
- (a) relies on a decision of the court that that person is or will be unable to have a child at that time; or
 - (b) relies on an opinion of a medical practitioner, or an individual entitled to practise medicine under the laws of another jurisdiction, that that person is or will be unable to have a child at that time.

Exception

- (7) Subsection (6) does not apply if the trustee is guilty of fraud, wilful concealment or misrepresentation in obtaining the decision or opinion. *2025,c.18,s.88.*

89. Beneficiary's entitlement to income

A beneficiary entitled to a contingent interest in trust property is entitled to the income earned from that interest in the trust property before that interest vests in the beneficiary, subject to any other person's interest in that income. *2025,c.18,s.89.*

90. Application of subsection

- (1) Subsection (2) applies to a person who receives notice of the existence of a trust by reason only of the production or registration of a document evidencing
- (a) an appointment of a trustee;
 - (b) a trustee ceasing to hold office; or
 - (c) a vesting of property in a trustee.

Permissible assumptions

- (2) A person to whom this subsection applies may assume without inquiry that
- (a) a former trustee possessed the powers the former trustee exercised or purported to exercise over the trust property; and
 - (b) a current trustee has the powers the current trustee has exercised or purports to exercise over the trust property. *2025,c.18,s.90.*

91. “Purchaser” defined

- (1) In this section, “**purchaser**” means
- (a) a purchaser for value;
 - (b) a secured party; or
 - (c) another person who for value has received an interest in or a claim on trust property.

Purchaser subject to terms of trust

- (2) A purchaser of trust property takes the trust property subject to the terms of the trust if the purchaser, at the time of the purchase, has received notice that
- (a) a former trustee did not possess, or a current trustee does not possess, a power purported to be exercised with respect to the trust property; or
 - (b) a former trustee or current trustee has acted in breach of trust with respect to the trust property. *2025,c.18,s.91.*

92. Protection from liability

Subject to this Act, a person who complies with this Act or an order made under this Act is not liable for a loss arising from anything done or permitted to be done under this Act, unless it was done or permitted to be done in bad faith. *2025,c.18,s.92.*

93. Effect of receipt given by trustee

A receipt given by a trustee for any money or other property received by the trustee relieves the person paying or otherwise transferring the money or other property from any further obligation relating to the money or other property. *2025,c.18,s.93.*

94. Incapacitated person as beneficiary

- (1) Where a beneficiary is an incapacitated person for whom a substitute decision-maker has been appointed, the substitute decision-maker is the representative of that beneficiary for the purposes of this Act.

Validity of action, etc., on behalf of beneficiary

- (2) Without limiting subsection (1),
- (a) any action required or permitted to be taken by the beneficiary;
 - (b) any notice or report required or permitted to be given to the beneficiary; and
 - (c) any consent or agreement required or permitted to be given by the beneficiary
- is validly taken or given if taken by, given to or given by the substitute decision-maker on behalf of the beneficiary.

Minor as beneficiary

- (3) The guardian of the estate of a beneficiary who is a minor is the representative of that beneficiary for the purpose of receiving or taking delivery of any notice or report required or permitted to be given under this Act. *2025,c.18,s.94.*

95. Validity of action, etc., by agent of beneficiary

For the purposes of this Act,

- (a) any action required or permitted to be taken by a beneficiary;
- (b) any notice or report required or permitted to be given to a beneficiary; and

(c) any consent or agreement required or permitted to be given by a beneficiary is validly taken or given if taken by, given to or given by an agent of the beneficiary acting within the scope of the authority conferred by that beneficiary. 2025,c.18,s.95.

96. Notice respecting “qualified beneficiary” status

(1) For the purposes of the definition of “**qualified beneficiary**”, a beneficiary of a trust may deliver written notice to a trustee of the trust advising the trustee that the beneficiary wants to be a qualified beneficiary.

Withdrawal of notice

(2) A beneficiary may withdraw notice under subsection (1) by delivering written notice of the withdrawal to a trustee of the trust. 2025,c.18,s.96.

97. Definition of “electronic”

(1) In this section,

- (a) “**electronic**” has the same meaning as in the *Electronic Commerce Act* R.S.P.E.I. 1988, Cap. E-4.1; and
- (b) “**recorded mail**” means a form of delivery by mail or courier in which receipt of a document or notice is acknowledged in writing.

Delivery of documents

- (2) Where this Act requires a document or notice to be delivered to a person, the document or notice may be delivered
- (a) in person or to a lawyer who is authorized to accept delivery on behalf of the person;
 - (b) by recorded mail; or
 - (c) by electronic transmission. 2025,c.18,s.97.

**PART 11 - TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS,
REPEALS, COMMENCEMENT**

98. Definitions

(1) In this section,

- (a) “**effective date**” means the date this section comes into force;
- (b) “**specified sections**” means the following sections:
 - (i) section 6,
 - (ii) section 30,
 - (iii) section 31,
 - (iv) section 32,
 - (v) section 33,
 - (vi) section 38,
 - (vii) section 39,
 - (viii) section 42,
 - (ix) section 43,
 - (x) section 44,

- (xi) section 45,
- (xii) section 47,
- (xiii) section 48,
- (xiv) section 50,
- (xv) section 52,
- (xvi) section 89.

Validity of prior act, etc.

- (2) Subject to subsection (3), an act or a thing done by a trustee before the effective date that would have been validly done if the specified sections, as they read on the effective date, were in force on the date the act or thing was done is deemed to have been validly done to the extent that the act or thing would have been valid had this section been in force on the date the act or thing was done.

Exception

- (3) Subsection (2) does not apply if the act or thing is the subject matter of a proceeding that was commenced before the effective date.

Retroactive application

- (4) This section is retroactive to the extent necessary to give full force and effect to its provisions and shall not be construed as lacking retroactive effect in relation to any matter because it makes no specific reference to that matter. *2025,c.18,s.98.*

99. Definition, “former Act”

- (1) In this section, “**former Act**” means the *Trustee Act* R.S.P.E.I. 1988, Cap. T-8.

Transitional regulations

- (2) The Lieutenant Governor in Council may make regulations
- (a) respecting the transition to this Act of anything from the former Act; and
 - (b) to deal with any difficulty or impossibility resulting from this Act or the transition to this Act from the former Act. *2025,c.18,s.99.*

Consequential Amendments

Sections 100 to 110 (*These sections make consequential amendments to other Acts. The amendments have been incorporated into those Acts.*)

Repeals

111. Perpetuities Act

The *Perpetuities Act* R.S.P.E.I. 1988, Cap. P-3, is repealed. *2025,c.18,s.111.*

112. Trustee Act

The *Trustee Act* R.S.P.E.I. 1988, Cap. T-8, is repealed. *2025,c.18,s.112.*

113. Variation of Trusts Act

The *Variation of Trusts Act* R.S.P.E.I. 1988, Cap. V-1, is repealed. 2025,c.18,s.113.

