



The Trustee Act by Douglas A.S. Paterson, Q.C.

Once again, the topic involves an Act of the Legislature that is both complex and important; also – long, legalistic and pervasive in the affairs of a modern society. Section 2 of the Act says it applies to all trusts whenever created and to all Trustees whenever appointed.

A trust is a relationship where property is held by one party (Trustee) for the benefit of another (Beneficiary). They can arise in several different ways and perhaps can even be imposed retroactively! They should be in writing, but not necessarily – they can be implied.

For issues relating to a trust, an application to the Court of Queen’s Bench can be made by a person creating or wanting to create a trust, or a Beneficiary of a trust, or an appointed Trustee (ie Manager) of a trust.

An example of an area in which the Trustee Act applies would be wills and estates. The Executor is considered to be a Trustee holding the deceased’s property in trust during the

administration period of the Estate. The Act sets out certain rules that must be followed by the Trustee. For example, an Executor of an Executor is not the replacement Executor of the Estate being managed by the second referenced Executor if he/she dies. As well, if several Executors are appointed, but one or more dies, the remaining Trustee(s) may continue without further court Order.

This Act is very cerebral and requires conceptual thinking.

In any number of trust situations – estate, corporate shares, charities, spouse’s tax planning – the Trustee can be replaced or added to if the original trust document allows it or by court Order.

In the course of a trust, the Trustee may employ specialists to assist her/him, such as banker, stock broker, solicitor, and the like, provided the need is real and the fees are reasonable. This tool is very useful for any assets Manitoba.

If a Trustee will be out of Manitoba for more than one

month, she/he may appoint a temporary replacement using a Power of Attorney form. It takes effect when the Trustee leaves and is revoked on returning to the Province.

The Act gives a Trustee the necessary power to insure property, renew leases, and give receipts. The Trustee can also negotiate to compromise debts, owing or owed.

The Act has an interesting rule relating to farms and small businesses. If the surviving spouse owns part of the enterprise, the widow(er) may carry on the farm or business at his/her own risk with no recourse against the Estate Executor or administrator if there are losses.

If a person dies with more debts than assets, the Act sets out the rule that all valid creditors are to be treated equally on a proportionate basis, with no preferences when it comes to payment of debts.

If a Trustee has to invest trust monies, the standard of care required by the Trustee is that

of “judgment and care that a person of prudence, discretion and intelligence would exercise in administering the property of others”. It is not a standard of perfection. All investments and deposits must be made in the Trustee’s name.

Trustees are not expected to work for nothing so the Act says a Judge may order a fair and reasonable allowance for the care, pains, and trouble and time expended on behalf of the trust.