

1980

c 422 Public Trustee Act

Ontario

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CHAPTER 422

Public Trustee Act

1.—(1) The Lieutenant Governor in Council may appoint a member of the bar of Ontario of not less than five years standing to be Public Trustee, and may appoint such persons as officers, clerks and servants in the office of Public Trustee as are necessary for the purposes of this Act. Qualification and staff

(2) The Public Trustee is a corporation sole under the name "Public Trustee" with perpetual succession and an official seal, who may sue and be sued in his corporate name. Public Trustee a corporation
R.S.O. 1970, c. 389, s. 1.

2.—(1) The Lieutenant Governor in Council may appoint one or two persons to act as the deputy or the deputies, as the case may be, of the Public Trustee during his absence or illness, and while so acting each such deputy has all the powers and may perform any of the duties of the Public Trustee. Deputy or deputies

(2) In the case of the death of the Public Trustee, the deputy who in point of time is senior in appointment to office shall act as Public Trustee until the Public Trustee is appointed. Acting Public Trustee
R.S.O. 1970, c. 389, s. 2.

3. In the case of the illness or absence of the Public Trustee or if the office becomes vacant and no deputy has been appointed, the Attorney General is *ex officio* Public Trustee until another appointment is made. When Attorney General to act
R.S.O. 1970, c. 389, s. 3;
1972, c. 1, s. 9 (7).

4. The salaries or other remuneration of the Public Trustee and of the officers, clerks and servants in his office shall be fixed by the Lieutenant Governor in Council and may be paid out of the moneys that are appropriated by the Legislature for that purpose or out of any fund established under this Act, as the Lieutenant Governor in Council from time to time may direct. Salaries
R.S.O. 1970, c. 389, s. 4.

5. The Public Trustee shall discharge the duties imposed upon him by the *Crown Administration of Estates Act*, the *Charities Accounting Act* and any other Act of the Legislature or by the Lieutenant Governor in Council, and he shall also make inquiries from time to time as to property that has escheated, or become forfeited for any cause to the Crown, Duties
R.S.O. 1980, cc. 105, 65

or in which the Crown in right of Ontario may be interested. 1971, c. 50, s. 73 (1), *part*.

Powers of inquiry

R.S.O. 1980, c. 411

6. For the purposes of an inquiry under section 5, the Public Trustee has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act. 1971, c. 50, s. 73 (1), *part*.

Acceptance and execution of trusts

7.—(1) The Public Trustee may be granted letters probate or letters of administration and, with his consent in writing, may be appointed trustee of any will or settlement or other instrument creating a trust or duty in the same manner as if he were a private trustee.

May be appointed sole trustee

(2) The Public Trustee may be appointed sole trustee although the trust instrument contemplates two or more trustees, and any person who is a trustee with the Public Trustee may at any time retire from the trust upon passing his accounts and paying over the balance. R.S.O. 1970, c. 389, s. 7.

Fees and charges

8.—(1) The Public Trustee shall make the charges prescribed by the regulations made under this Act for his services against every estate that comes to his hand to be dealt with.

To be allowed same fees as private trustee

(2) All fees, charges, and expenses that would be allowed to a private trustee shall be allowed to the Public Trustee and shall be collected and accounted for in the manner prescribed by the regulations made under this Act.

Services of staff may be charged for

(3) Notwithstanding this or any other Act, the Public Trustee may in connection with any estate or trust administered or managed by him make a reasonable charge for any service performed by a member of the staff of his office where the service is one for which a charge would be allowed as a disbursement against the estate or trust if performed by a person retained, engaged or employed to perform such service by a private trustee, and every such charge shall for the purpose of such estate or trust be deemed to be a disbursement. R.S.O. 1970, c. 389, s. 8.

Administration fund

9.—(1) All fees, charges, remuneration, refunds of expenses, and all income of the office of every description shall be paid by the Public Trustee into a separate account as prescribed by the regulations made under this Act.

Payments out of account

(2) There shall be paid out of such account the salaries or other remuneration and the expenses of the Public Trustee and the officers, clerks and servants in his office.

(3) From any surplus in such account there may be established an assurance fund as provided by the regulations made under this Act.

Assurance fund

(4) Notwithstanding the *Crown Administration of Estates Act*, the Lieutenant Governor in Council may direct that moneys coming to the hand of the Public Trustee under that Act shall be placed to the credit of such account and applied to the purposes of subsection (2).

Moneys received under R.S.O. 1980, c. 105

(5) The Lieutenant Governor in Council may from time to time direct the payment into the Consolidated Revenue Fund of any balance at the credit of such account.

Payment over of balances

(6) Payments into and out of such account shall be made in such manner and subject to such conditions as are prescribed in the regulations made under this Act. R.S.O. 1970, c. 389, s. 9.

Manner of paying into and out of account

10.—(1) Where the Public Trustee acting in any capacity has in his hands property not exceeding \$2,000 in value of a person who has died and to which his personal representative is entitled, the production to the Public Trustee of,

Delivery up of property \$2,000 or less in value

- (a) an authenticated copy of the probate of the will of the deceased, or of letters of administration of his estate, or of letters of verification of heirship, or of the act of curatorship or tutorship, granted by any court in Canada having power to grant the same, or by any court or authority in a country of the Commonwealth or any colony, dependency or protectorate of any such country, or of any testamentary or testamentative expedite in Scotland;
- (b) an authentic copy of the will of the deceased, if it is in notarial form according to the law of the Province of Quebec; or
- (c) if the deceased died elsewhere than in a place mentioned in clause (a), any authenticated copy of the probate of his will, or of letters of administration of his property, or other document of like import, granted by any court or authority having the requisite power in such matters,

is sufficient justification and authority for the delivering of such property in pursuance of and in conformity with such probate, letters of administration, or other document.

Deposit of
copy of
document

(2) When the authenticated copy or other document of like import is produced to the Public Trustee under subsection (1), there shall be deposited with him a true copy thereof. R.S.O. 1970, c. 389, s. 10.

Losses,
how to be
made good

11. All sums required to discharge any liability for a loss that the Public Trustee, if he were a private trustee, would be personally liable to discharge, shall be made good out of the assurance fund or out of the Consolidated Revenue Fund, but neither the Public Trustee nor any of his officers nor the assurance fund is liable for any loss that would not have imposed liability upon a private trustee. R.S.O. 1970, c. 389, s. 11.

Charitable
and public
trusts

12. The Public Trustee may accept and administer any charitable or public trust. R.S.O. 1970, c. 389, s. 12.

Investment
of money

13. Any money that is available for investment by the Public Trustee shall be invested in investments in which the Treasurer of Ontario and Minister of Economics may invest public money under section 3 of the *Financial Administration Act*. R.S.O. 1970, c. 389, s. 13; 1972, c. 3, s. 17 (1).

R.S.O. 1980,
c. 161

Regulations

14. The Lieutenant Governor in Council may make regulations,

- (a) respecting the office of Public Trustee, imposing duties on the Public Trustee in addition to those imposed by this Act, and prescribing the trusts or duties he is authorized to accept or undertake under this Act, and the security, if any, to be given by the Public Trustee and his officers;
- (b) for fixing the fees and charges in the office of the Public Trustee and the application and disposal of the same;
- (c) respecting the transfer to and from the Public Trustee of any property;
- (d) respecting the accounts to be kept;
- (e) for the establishment of an assurance fund for the purpose of meeting any losses for which the office of Public Trustee may be liable;
- (f) fixing the rate of interest to be allowed upon money in the hands of the Public Trustee and fixing the amount of interest to be charged upon advances made on behalf of any estate and the custody and control of securities held by him for investments;

(g) for constituting an advisory committee for the supervision of the investments or other dealings with property by the Public Trustee, and for providing for the remuneration by fees, or otherwise, of the members of the committee. R.S.O. 1970, c. 389, s. 14; 1971, c. 50, s. 73 (2).

15.—(1) The members of the advisory committee of the Public Trustee are visitors of the office of Public Trustee. Advisory committee

(2) The committee may make such suggestions and recommendations with regard to the general policy respecting the management and conduct of the office of Public Trustee as is considered advisable. Suggestions

(3) The Public Trustee may consult with the committee from time to time as to methods of administration, staff and other matters relating to the office. Consultations

(4) The committee shall make an annual report to the Lieutenant Governor in Council respecting the performance of their duties and the exercise of their powers under this section. R.S.O. 1970, c. 389, s. 15. Annual report

16. Notwithstanding any rule or practice or any Act requiring security, it is not necessary for the Public Trustee to give any security for the due performance of his duty as executor, administrator, trustee, committee, or in any other office to which he may be appointed by order of any court or under any statute. R.S.O. 1970, c. 389, s. 16. Security by Public Trustee not necessary

17. The Provincial Auditor shall examine and report upon the accounts and financial transactions of the Public Trustee. R.S.O. 1970, c. 389, s. 17. Audit

18. Every person employed in the performance of the duties imposed upon the Public Trustee by this or any other Act or by the Lieutenant Governor in Council shall preserve secrecy with respect to all matters that come to his knowledge in the course of such employment and shall not communicate any such matters to any person other than to a person legally entitled thereto or to his legal counsel except as may be required in connection with the administration of this Act and the regulations under this Act or any proceedings thereunder. 1971, c. 50, s. 73 (3), *part.* Matters confidential

19. The Public Trustee shall, at the end of each fiscal year, prepare a report on his operations and submit it to the Attorney General who shall submit the report to the Lieutenant Governor in Council and then lay the report before the Assembly, if it is in session or, if not, at the next ensuing session. 1971, c. 50, s. 73 (3), *part.*; 1972, c. 1, s. 9 (7). Report

