



1980

c 297 Mortmain and Charitable Uses Act

Ontario

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CHAPTER 297

Mortmain and Charitable Uses Act

1.—(1) In this Act,

Interpre-
tation

- (a) “assurance” includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, encumbrance, devise, bequest and every other assurance by deed, will or other instrument, and “assure” and “assuror” have a corresponding meaning;
- (b) “full and valuable consideration” includes such a consideration either actually paid upon or before the making of the assurance, or reserved or made payable to the vendor or any other person by way of rent, rent charge, or other annual payment, in perpetuity, or for any term of years, or other period, with or without a right of re-entry for non-payment thereof, or partly paid and partly reserved, as aforesaid;
- (c) “land” includes tenements and hereditaments corporeal and incorporeal of whatever tenure, but not money secured on land, or other personal estate arising from or connected with land;
- (d) “Minister” means the member of the Executive Council to whom the administration of this Act is assigned by the Lieutenant Governor in Council;
- (e) “will” includes codicil.

(2) The following shall be deemed to be charitable uses within the meaning of this Act, Charitable
uses

- (a) the relief of poverty;
- (b) education;
- (c) the advancement of religion; and
- (d) any purpose beneficial to the community, not falling under the foregoing heads. R.S.O. 1970, c. 280, s. 1.

MORTMAIN

Prohibition
against
mortmain

2.—(1) Land shall not be assured to or for the benefit of or acquired or held by or on behalf of any corporation in mortmain otherwise than under the authority of a licence or of a statute for the time being in force.

Forfeiture

(2) Where land is assured, acquired or held contrary to subsection (1), it shall be forfeited to the Crown upon the expiration of at least six months after notice in writing is given to the corporation of the intention of the Crown to claim the land and upon the Crown registering in the proper land registry office a similar notice against the land.

Effect of
registration
of notice

(3) Upon the registration of such notice against the land, it shall be deemed to be a charge against the land.

Release or
vacation

(4) Such a charge may be released or vacated at any time upon the registration in the proper land registry office of a release or cessation, as the case may be, of the charge.

Right of
disposal

(5) The corporation may dispose of the land free from and clear of any forfeiture or any liability to forfeiture under this section until the expiration of the six months period mentioned in subsection (2) and until the notice mentioned in subsection (2) is registered against the land.

Application
of subss. (2-5)

(6) Subsections (2) to (5) apply to land that was before the 30th day of April, 1954, assured to or for the benefit of or acquired or held by or on behalf of any corporation in mortmain otherwise than under the authority of a licence or of a statute for the time being in force, except where the Crown has entered on and held the land before that date, and to land so assured, acquired or held on or after that date. R.S.O. 1970, c. 280, s. 2, *amended*.

Saving for
rents and
services

3. No forfeiture to the Crown under section 2 merges or extinguishes or otherwise affects any rent or service that may be due to the Crown in respect of any land. R.S.O. 1970, c. 280, s. 3.

Power to
issue
licences in
mortmain

4.—(1) The Lieutenant Governor may in his discretion issue to any person or corporation a licence in such form as he thinks fit to assure land in mortmain in perpetuity or otherwise, and may in his discretion issue to any corporation a licence to acquire land in mortmain, and to hold such land in perpetuity or otherwise.

Powers of
Minister

(2) The Minister may in his discretion and under the seal of his office have, use, exercise and enjoy any power, right or authority conferred on the Lieutenant Governor by subsection (1).

(3) Upon the application for a licence issued under this Act, the applicant shall establish to the satisfaction of the Minister, or such officer as may be charged by him to report thereon, that the provisions of this Act and the regulations have been complied with, and the Minister or such officer may, for that or for any other purpose under this Act, take evidence under oath.

(4) There shall be paid for a licence under this Act such fee as is prescribed by the Lieutenant Governor in Council. R.S.O. 1970, c. 280, s. 4.

5. The Lieutenant Governor in Council may make regulations,

- (a) respecting the evidence required upon the application for a licence under this Act as to the incorporation of the corporation, its powers and objects and its existence as a valid and subsisting corporation;
- (b) respecting the appointment and continuance by the corporation of a person as its representative in Ontario on whom service of process, notices or other proceedings may be made, and the powers to be conferred on such representative;
- (c) respecting the limitations and conditions that may be specified in licences;
- (d) respecting the form, duration and extent of licences, and the form of powers of attorney, applications, notices, statements, returns and other documents relating to applications and other proceedings under this Act;
- (e) prescribing the form of the notices mentioned in subsection 2 (2) and of the release and cessation mentioned in subsection 2 (4);
- (f) prescribing fees for licences under this Act. R.S.O. 1970, c. 280, s. 5.

CHARITABLE USES

6. Save as otherwise provided in this Act, every assurance, other than by will, of land or personal estate to be laid out in the purchase of land to or for the benefit of any charitable use is void unless made,

- (a) to take effect in immediate possession for such charitable use;

- (b) without any power of revocation, reservation, condition or provision for the benefit of the assurer or of any person claiming under him; and
- (c) at least six months before the death of the assuror, and if of stock in the public funds by transfer thereof in the public books kept for the transfer of stock at least six months before such death,

provided that the assurance or any instrument forming part of the same transaction may contain all or any of the following conditions, so however that they reserve the same benefits to persons claiming under the assuror as to the assuror himself, namely,

- (d) the grant or reservation of a peppercorn or other nominal rent;
- (e) the grant or reservation of mines or minerals;
- (f) the grant or reservation of any easement;
- (g) covenants or provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, or as to drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land;
- (h) a right of entry on non-payment of any such rent or on breach of any such covenant or provision; or
- (i) any stipulations of the like nature for the benefit of the assuror or of any person claiming under him,

and provided that nothing in this section applies to or affects any such assurance made for full and valuable consideration. R.S.O. 1970, c. 280, s. 6.

Necessity
for sale

7.—(1) Subject to the provisions hereinafter contained, where land is assured otherwise than by will to or for the benefit of any charitable use, the land shall, notwithstanding anything contained in the deed or other instrument of assurance, be sold within two years from the date of the assurance or within such extended period as may be determined by a judge of the Supreme Court.

Idem

(2) If the land is not sold within the two years or within such extended period, it vests forthwith in the Public Trustee and subsection 10 (2) applies thereto.

(3) A judge of the Supreme Court, if satisfied that the land so assured is required for actual occupation for the purposes of the charity and not as an investment, may by order sanction the retention of the land. When sanctioned R.S.O. 1970, c. 280, s. 7.

EXEMPTIONS

8.—(1) In this section, Interpretation

- (a) "public museum" includes buildings used, or to be used, for the preservation of a collection of paintings or other works of art, or of objects of natural history, or of mechanical, scientific or philosophical inventions, instruments, models or designs, and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories and other offices and premises used or to be used in connection therewith;
- (b) "public park" includes any park, garden, or other land dedicated or to be dedicated to the recreation of the public;
- (c) "school" means a school, or department of a school, at which education is given in literature, art, science or mathematics, or a vocational or technical school;
- (d) "schoolhouse" includes the teacher's dwelling house, the playground, if any, and the offices and premises belonging to or required for a school.

(2) Notwithstanding anything in this Act, land or personal estate to be laid out in the purchase of land, may be assured Assurances for a public park, school, or museum

- (a) for a public park;
- (b) for a public museum;
- (c) for a public library;
- (d) for a school or schoolhouse.

(3) Land assured for the purposes of a school or schoolhouse and not required for actual use and occupation for such purposes or the part thereof not so required shall be sold within two years from the date of the assurance or, in the case of a will, from the death of the testator, or such extended period as may be determined by a judge of the Supreme Court, and the provisions of subsection 10 (2) and of section 12 apply. Sale of land assured for school if not required for actual use R.S.O. 1970, c. 280, s. 8.

Assurances
for certain
purposes

9. Sections 2 and 6 do not apply to,

- (a) an assurance of land or personal estate to be laid out in the purchase of land, to or in trust for any incorporated university, college or school in Ontario, or for the support and maintenance of the students thereat;
- (b) an assurance, otherwise than by will, to trustees on behalf of any society or body of persons, incorporated or unincorporated, associated together for religious purposes, or for the promotion of education, art, literature, science or other like purposes, of land not exceeding two acres, for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected. R.S.O. 1970, c. 280, s. 9.

LAND DEVISED BY WILL

Power to
devise land
for charitable
use

10.—(1) Land may be devised by will to or for the benefit of any charitable use, but, except in the cases provided for by sections 8 and 9 and except as otherwise provided herein, shall, notwithstanding anything to the contrary in the will, be sold within two years from the death of the testator, or such extended period as may be determined by a judge of the Supreme Court.

Where land
remains un-
sold after ex-
piration of
two years

(2) So soon as the two years or such extended period have expired without the completion of the sale of the land, the land vests forthwith in the Public Trustee who shall cause the land to be sold with all reasonable speed and after payment of the costs and expenses incurred in or connected with such sale and proceedings shall pay the proceeds to the trustees for the charity. R.S.O. 1970, c. 280, s. 10.

Where land
subject to
life interest

(3) Where a devise, assurance, gift, grant or conveyance referred to in subsections (1) and (2) of this section or in subsection 8 (3) or subsection 13 (3) is subject to a life interest, life annuity or income for life, the two year period referred to in the said provision shall be two years after the life interest, life annuity or income for life ceases to exist. 1972, c. 85, s. 1 (1).

Personal es-
tate directed
to be laid
out in land

11. Any personal estate by will directed to be laid out in the purchase of land to or for the benefit of any charitable use, shall, except as hereinafter provided, be held to or for the benefit of the charitable use as though there had been no direction to lay it out in the purchase of land. R.S.O. 1970, c. 280, s. 11.

12. A judge of the Supreme Court, if satisfied that land devised by will to or for the benefit of any charitable use, or proposed to be purchased out of personal estate by will directed to be laid out in the purchase of land, is required for actual occupation for the purposes of the charity and not as an investment, may by order sanction the retention or acquisition, as the case may be, of such land. R.S.O. 1970, c. 280, s. 12.

Power to retain land in certain cases

GIFTS AND BEQUESTS TO CERTAIN PUBLIC BODIES

13.—(1) The Government of Ontario, a municipal corporation, a school board, a public library board or association, a public hospital board and trustees empowered to administer or hold property for charitable uses may have, take, hold and enjoy by gift, grant, devise, conveyance or bequest real or personal property of any nature or kind and wherever situate, whether within or outside Ontario, or the proceeds thereof upon the terms expressed in the gift, grant, devise, bequest or conveyance whereby the same is given, granted, devised, bequeathed or conveyed to such body.

Power of certain public bodies to accept gifts to charitable uses

(2) Any such body may, subject always to the provisions of the Act by or under the authority of which it exists and to any law regulating or limiting its power to contract debts, enter into an agreement for the holding, management, administration or disposition of any such property with the person giving, granting, conveying, devising or bequeathing the same to such public body upon such terms as may be agreed upon between the parties to any such gift, grant, devise, bequest or conveyance.

Agreement with donor as to administration

(3) Land so given, granted, devised, bequeathed or conveyed and not required for actual use and occupation for the purposes of the trust upon which it was given, granted, devised, conveyed or assured to such public body shall be sold within two years from the date of the gift, grant, devise, conveyance or assurance or, in the case of a will, from the death of the testator, or such extended period as may be determined by a judge of the Supreme Court, and the provisions of subsection 10 (2) and of section 12 apply.

Necessity for sale within two years

(4) This section applies to gifts, grants, devises, bequests and conveyances heretofore made as well as to such as may hereafter be made. R.S.O. 1970, c. 280, s. 13.

Retroactive effect of section

SUPPLEMENTAL

14.—(1) In every case of a breach or supposed breach of any trust created for charitable purposes, or whenever the

Procedure in cases of breach of a charitable trust, etc., or where order necessary for administration

direction or order of a court is deemed necessary for the administration of any trust for charitable purposes, any two or more persons may present a petition to the Supreme Court stating such complaint and praying such relief as the nature of the case may require, and the court may hear the petition in a summary way, and upon such affidavits or such other evidence as is produced upon the hearing, may determine the same, and make such order therein, and with respect to the costs of the application, as seem just, and any order so made is subject to appeal as if made in an action.

Execution of petition and certificate by Attorney General

(2) Every such petition shall be signed by the persons preferring the same in the presence of and shall be attested by their solicitor, and shall be submitted to and may be allowed by the Attorney General, and such allowance shall be certified by him before any such petition shall be presented. R.S.O. 1970, c. 280, s. 14.

Saving for existing licenses, etc.

15. Nothing in this Act applies so as to limit or restrict the right possessed by any corporation under any other Act, or affect any charter or licence in force when this Act comes into force enabling land to be assured or held in mortmain. R.S.O. 1970, c. 280, s. 15.

