
THE BANK OF NOVA SCOTIA TRUST COMPANY ACT, 1997**CHAPTER 40***Assented to July 28, 1997****Contents******Section***

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Interpretation**1. In this Act:**

“**effective date**” means the date on which The Bank of Nova Scotia Trust Company completes the transaction to acquire the personal trusteeship and personal agency business of Montreal Trust Company of Canada and Montreal Trust Company;

“**registrar**” means the registrar appointed under the *Land Title Act* of the land title district in which an application in respect of any registered estate or interest in real property is made.

Purpose

2. The purpose of this Act is to provide for the transfer of the personal trusteeship and personal agency business of Montreal Trust Company of Canada and Montreal Trust Company to The Bank of Nova Scotia Trust Company.

Non-application

3. (1) This Act does not apply to
 - (a) real or personal property that is owned or held by, vested in or granted to Montreal Trust Company of Canada or Montreal Trust Company, and that is held by Montreal Trust Company of Canada or Montreal Trust Company,

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as the case may be, exclusively for its own use and benefit, and not in trust for or for the benefit of any other person or purpose,

- (b) real or personal property that is located outside of British Columbia and is held by Montreal Trust Company of Canada or Montreal Trust Company under a record or trust to which section 4 would otherwise apply and any power, right, immunity, privilege or right of action that may be exercised by or against Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, under any such record or trust with respect to that property,
- (c) trusts relating to moneys received for guaranteed investment and any real or personal property held in trust with respect to any such guaranteed investment of which Montreal Trust Company of Canada or Montreal Trust Company is trustee including, without limitation, trusts with respect to any registered home ownership savings plan, registered retirement savings plan, retirement income fund, deferred profit sharing plan or income averaging annuity contract, as those terms are defined in the *Income Tax Act* (Canada), or other registered or unregistered deferred income or employee benefit plan, or
- (d) any real or personal property granted to or held by or vested in Montreal Trust Company of Canada or Montreal Trust Company under or in respect of
 - (i) any trust indenture or other indenture to which section 4 would otherwise apply in which Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, is or may be a trustee and by virtue of which bonds, debentures or other evidence of indebtedness, warrants or rights have been or may be issued,
 - (ii) any record or trust to which section 4 would otherwise apply under which Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, acts as trustee for unitholders in respect of any oil or gas royalty trust fund,
 - (iii) any record or trust to which section 4 would otherwise apply under which Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, acts as manager, advisor, registrar or transfer agent, and
 - (iv) any record or trust to which section 4 would otherwise apply under which Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, acts as custodian or trustee for the benefit of one or more persons under a plan or other arrangement established by a corporation, partnership or other entity or person other than a natural person.

- (2) Despite subsection (1) (b),

- (a) if a British Columbia court has appointed or has the power to appoint Montreal Trust Company of Canada or Montreal Trust Company as personal representative of a deceased person, whether as executor, administrator or otherwise, for property located outside British Columbia, The Bank of Nova Scotia Trust Company may, on application to that court, be appointed as personal representative with respect to that property in place of Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, and
 - (b) if property located outside British Columbia but not referred to in paragraph (a) is held by Montreal Trust Company of Canada or Montreal Trust Company under a record or trust to which section 4 applies and if the Supreme Court has jurisdiction under section 31 of the *Trustee Act* to make an order for the appointment of a new trustee with respect to that property, The Bank of Nova Scotia Trust Company may, on application to the Supreme Court, be appointed as trustee with respect to that property in place of Montreal Trust Company of Canada or Montreal Trust Company, as the case may be.
- (3) An appointment under subsection (2) (b) has for all purposes under the laws of British Columbia the same effect as if made under section 31 of the *Trustee Act*.
 - (4) Sections 6 and 7 apply to every record and trust in respect of which an appointment is made under subsection (2).

Successor trustee

- 4. (1) Subject to section 3, on the effective date Montreal Trust Company of Canada and Montreal Trust Company are removed and The Bank of Nova Scotia Trust Company is appointed as successor trustee in or in respect of every personal trust, trust deed, trust agreement, instrument of creation, deed of appointment, settlement, assignment, will, codicil or other testamentary record, and every letters testamentary, letters probate, letters of administration, judgment, decree, order, direction, pension plan, benefit plan trust, investment management account, investment administration account, agreement, contract, appointment of any court, judge or other constituted authority and every other record or trust however created, in each case for the benefit of or that relates to a natural person, including every incomplete, inchoate or bare trust, and in every conveyance, mortgage, assignment, appointment or other writing, in, by or of which Montreal Trust Company of Canada or Montreal Trust Company is named as executor, administrator, trustee, personal representative, bailee, committee, tutor, assignee, liquidator, receiver, custodian, guardian, curator, agent or other similar fiduciary, or is named to any other office or position in which any property, interest, or right is vested in, administered or managed by or put in charge of Montreal Trust Company of Canada or Montreal Trust Company, in trust, or in the custody, care or control of Montreal Trust Company of Canada or Montreal Trust Company, in each case for the benefit of or that relates to a natural person.

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- (2) Subsection (1) applies to every record and trust described in that subsection even if the real or personal property held by Montreal Trust Company of Canada or Montreal Trust Company under the record or trust is situate outside British Columbia.
- (3) If a record or an instrument referred to in subsection (1) names Montreal Trust Company of Canada or Montreal Trust Company to any office or position described in that subsection and the record or instrument takes effect after the effective date, The Bank of Nova Scotia Trust Company is deemed to be named to the office or position in that record or instrument in the place of Montreal Trust Company of Canada or Montreal Trust Company, as the case may be.

**Real and personal property held in trust by
Montreal Trust Company of Canada or
Montreal Trust Company**

- 5. (1) In this section, “**Montreal Trust property**” means, all real and personal property and every interest in real and personal property that is granted to, held by or vested in Montreal Trust Company of Canada or Montreal Trust Company, whether by way of security or otherwise, in trust, or in the custody, care or control of Montreal Trust Company of Canada or Montreal Trust Company, for or for the benefit of any other person or purpose, under or in respect of every record and trust to which section 4 applies, and whether in the form in which it was originally acquired by Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, or otherwise.
- (2) Subject to section 3, all Montreal Trust property is vested on the effective date in The Bank of Nova Scotia Trust Company,
 - (a) according to the tenor of the record or trust referred to in subsection (1),
 - (b) at the time indicated or intended by that record or trust, and
 - (c) on the same trusts and with the same powers, rights, immunities and privileges and subject to the same obligations and duties as are provided, granted or imposed by that record or trust.
- (3) Subject to subsection (4) and section 8, for the purposes of every enactment affecting the title to property, both real and personal, the vesting of title in The Bank of Nova Scotia Trust Company of every property referred to in subsection (2) is effective without the registration or filing of this Act or any further or other instrument or record showing the change of title in any public office of the government.
- (4) Provided The Bank of Nova Scotia Trust Company files a copy of this Act in the applicable land title office, The Bank of Nova Scotia Trust Company may, under section 187 of the *Land Title Act*, make an application in respect of any registered estate or interest in the same manner as if this Act effected an amalgamation of Montreal Trust Company of Canada, Montreal Trust Company and The Bank of Nova Scotia Trust Company.

- (5) An application contemplated under subsection (4) must contain a description of the titles or charges affected by the application that is sufficient for the registrar to identify them in the records.
- (6) Nothing in subsections (4) and (5) affects the operation of subsections (1), (2), (3) or any other provision of this Act.

Legal proceedings

- 6.
 - (1) Nothing in this Act requires or permits the discontinuance or abatement of a proceeding being carried on or a power or remedy being exercised by or against Montreal Trust Company of Canada or Montreal Trust Company as executor, administrator, trustee, personal representative or in any other capacity referred to in section 4 (1) in any British Columbia court or before any tribunal or agency, under or in respect of a record or trust to which section 4 applies.
 - (2) Despite the Rules of Court applicable to the Supreme Court, a proceeding, power or remedy referred to in subsection (1) may be continued in the name of The Bank of Nova Scotia Trust Company, which is subject to the same liabilities and must pay or may receive the same costs and awards as if the proceeding had been commenced or defended in the name of The Bank of Nova Scotia Trust Company.
 - (3) A proceeding or a power, right, remedy or right of distress that might have been brought or exercised by or against Montreal Trust Company of Canada or Montreal Trust Company as executor, administrator, trustee, personal representative or in any other capacity referred to in section 4 (1) under or in respect of a record or trust to which section 4 applies, may be brought or exercised by or against The Bank of Nova Scotia Trust Company, which company has the same rights and is subject to the same liabilities in respect of these matters as Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, would have had or been subject to if this Act had not been enacted.
 - (4) In a proceeding that has been continued or commenced in the name of The Bank of Nova Scotia Trust Company under subsection (2) or (3), Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, and its officers and employees are deemed to have been acting on behalf of The Bank of Nova Scotia Trust Company in performing any act, whether before or after this Act comes into force, involving the administration of a record or trust to which section 4 applies, and for the purposes of examination for discovery or production of documents in relation to that proceeding, Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, and its officers and employees are subject to the same obligations as if the Act had not been enacted.

Rights of third parties

- 7.
 - (1) Nothing in this Act affects the rights of any person having a claim against Montreal Trust Company of Canada or Montreal Trust Company in respect of a record or trust to which section 4 applies, or releases, modifies or affects the liability of Montreal Trust Company of Canada or Montreal Trust Company to

any such person, but all such rights as may be enforceable in British Columbia may be asserted against The Bank of Nova Scotia Trust Company, which company is responsible for all debts, liabilities and obligations of Montreal Trust Company of Canada and Montreal Trust Company, as the case may be, in respect of any such record or trust.

Notice

8. (1) If a person is under an obligation to make payments in relation to property that is vested in The Bank of Nova Scotia Trust Company under section 5 (2), the person may make the payments to Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, until The Bank of Nova Scotia Trust Company gives or causes to be given notice in writing to the person that payment must be made to The Bank of Nova Scotia Trust Company.
- (2) If a person receives a notice referred to in subsection (1) the obligation of the person to make payments is owed to The Bank of Nova Scotia Trust Company.
- (3) The Bank of Nova Scotia Trust Company may execute any instrument that purports to transfer any interest in, encumber or otherwise affect the title to property that is vested in The Bank of Nova Scotia Trust Company under section 5 (2) even though
- (a) the property remains registered in the name of Montreal Trust Company of Canada or Montreal Trust Company or any predecessor trust or loan company of Montreal Trust Company of Canada or Montreal Trust Company in any public office of the government, or
 - (b) Montreal Trust Company of Canada or Montreal Trust Company is shown by a record of title as having legal ownership of the property.
- (4) An instrument referred to in subsection (3) may contain a recital referring to the vesting of title to the property in The Bank of Nova Scotia Trust Company under this Act.
- (5) An instrument executed by The Bank of Nova Scotia Trust Company containing the recital permitted by subsection (4)
- (a) may be accepted for registration by any public office of the government without further proof of the accuracy of the recital, and
 - (b) is effective to do that which it purports to do despite any inaccuracy contained in the recital.
- (6) In order to show the vesting in The Bank of Nova Scotia Trust Company under section 5 (2) of any interest in personal property that constitutes collateral within the meaning of the *Personal Property Security Act* and in respect of which Montreal Trust Company of Canada or Montreal Trust Company is shown as the secured party in any financing statement registered under that Act, a financing change statement may be registered in respect of the vesting as if Montreal Trust

Company of Canada or Montreal Trust Company, as the case may be, had assigned its interest to The Bank of Nova Scotia Trust Company.

Publication of effective date

9. The Bank of Nova Scotia Trust Company must publish a notice in the Gazette setting out the effective date and advising that the provisions of this Act take effect as of that date.

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