

# **The Bank of Nova Scotia Trust Company Act**

CHAPTER 2 OF THE ACTS OF 1997



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CHAPTER 2 OF THE ACTS OF 1997

**An Act Respecting  
The Bank of Nova Scotia Trust Company,  
Montreal Trust Company of Canada  
and Montreal Trust Company**

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**Short title**

**1** This Act may be cited as *The Bank of Nova Scotia Trust Company Act*. 1997, c. 2, s. 1.

**Purpose of Act**

**2** The purpose of this Act is to provide for the transfer of the personal trusteeship business of both Montreal Trust Company of Canada and Montreal Trust Company to The Bank of Nova Scotia Trust Company so that the rights and obligations of those who have relations with Montreal Trust Company of Canada, Montreal Trust Company and The Bank of Nova Scotia Trust Company with respect to that personal trusteeship business may be clearly determined. 1997, c. 2, s. 2.

**“effective date” defined**

**3** In this Act, “effective date” means the date on which The Bank of Nova Scotia Trust Company acquires the personal trusteeship and personal agency business of Montreal Trust Company of Canada and Montreal Trust Company. 1997, c. 2, s. 3.

**Exceptions from application of Act**

- 4 (1)** This Act does not apply to
- (a) real or personal property 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, 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 held by Montreal Trust Company of Canada or Montreal Trust Company under a document or trust to which Section 5 would otherwise apply, that is situate outside the Province, 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 document or trust with respect to that property;

(c) trusts relating to money 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, deposits, 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;

(d) any real or personal property granted to or held by or vested in Montreal Trust Company of Canada or Montreal Trust Company pursuant to or in respect of

(i) any trust indenture or other indenture to which Section 5 would otherwise apply wherein 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 evidences of indebtedness, warrants or rights have been or may be issued,

(ii) any document or trust to which Section 5 would otherwise apply pursuant to which Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, acts as trustee for unit holders in respect of any oil or gas royalty trust fund,

(iii) any document or trust to which Section 5 would otherwise apply pursuant to 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 document or trust to which Section 5 would otherwise apply pursuant to 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) Notwithstanding clause (1)(b),

(a) for all real or personal property situate outside the Province for which Montreal Trust Company of Canada or Montreal Trust Company has been appointed, or is entitled to be appointed, by a court of the Province as personal representative of a deceased per-

son, whether as executor, administrator or otherwise, The Bank of Nova Scotia Trust Company may, upon application to that court, be appointed personal representative in the place of Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, with respect to that property; and

(b) for all real or personal property situate outside the Province not coming within clause (a), but held by Montreal Trust Company of Canada or Montreal Trust Company under a document or trust to which Section 5 applies, for which the Supreme Court of Nova Scotia has jurisdiction under the *Trustee Act* to make an order for the appointment of a new trustee, The Bank of Nova Scotia Trust Company may, upon application to the Supreme Court, be appointed trustee in the place and stead of Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, with respect to that property, and such appointment has for all purposes of the laws of the Province the same effect as if it had been made under the *Trustee Act*.

(3) Sections 7 and 8 apply to every document and trust in respect of which an appointment is made pursuant to subsection (2). 1997, c. 2, s. 4.

#### Successor trustee

5 (1) Subject to Section 4, 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 document, 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 document or trust howsoever 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, wherein or whereby, or of which Montreal Trust Company of Canada or Montreal Trust Company is named as executor, administrator, trustee, personal representative, bailee, escrow agent, committee, tutor, assignee, liquidator, receiver, custodian, guardian, curator, agent or other similar fiduciary, or is named to any other office or position whatsoever by virtue of 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.

(2) Subsection (1) applies to every document 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 document or trust is situate outside the Province.

(3) Where an instrument specified or described in subsection (1) names Montreal Trust Company of Canada or Montreal Trust Company to any office or position described in that subsection and the instrument takes effect after the effective date, The Bank of Nova Scotia Trust Company is deemed to be named

in the instrument in the place of Montreal Trust Company of Canada or Montreal Trust Company, as the case may be. 1997, c. 2, s. 5.

### **Vesting of property**

**6 (1)** Subject to Section 4, all real and personal property and every interest therein 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 natural person or purpose, pursuant to or in respect of every document and trust to which Section 5 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 is vested on the effective date in The Bank of Nova Scotia Trust Company according to the tenor of and at the time indicated or intended by the document or trust, upon the same trusts, and with the same powers, rights, immunities and privileges, and subject to the same obligations and duties as are thereby provided, granted or imposed.

**(2)** For greater certainty, subject to Section 4, for the purpose of every Act affecting the title to property, both real and personal, the vesting of title in The Bank of Nova Scotia Trust Company of every property affected by subsection (1) is effective without the registration or filing of this Act, or of any other instrument, document or certificate showing the change of title, in any public office whatsoever within the jurisdiction of the Province. 1997, c. 2, s. 6.

### **Effect on proceedings**

**7 (1)** No proceeding being carried on and no 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 subsection 5(1) in any court of the Province, or before any tribunal or agency of the Province, pursuant to or in respect of a document or trust to which Section 5 applies, is discontinued or affected on account of this Act but, notwithstanding the *Civil Procedure Rules*, may be continued in the name of The Bank of Nova Scotia Trust Company, which has the same rights, is subject to the same liabilities and shall pay or 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.

**(2)** 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 subsection 5(1) pursuant to or in respect of a document or trust to which Section 5 applies, may be brought or exercised by or against The Bank of Nova Scotia Trust Company, which has the same rights and is subject to the same liabilities in respect thereof as those that Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, would have had if this Act had not been enacted.

**(3)** In a proceeding that has been continued or commenced in the name of The Bank of Nova Scotia Trust Company under subsection (1) or (2), Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, and its officers and employees is 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 document or trust to which Section 5 applies, and for purposes of examination for discovery or production of documents in relation to any such proceeding, Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, and its officers or employees are subject to the same obligations as if this Act had not been enacted. 1997, c. 2, s. 7.

#### **Preservation of claims**

**8** 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 document or trust to which Section 5 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 the Province may be asserted against The Bank of Nova Scotia Trust Company, which 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 document or trust. 1997, c. 2, s. 8.

#### **Method of payment and registration**

**9 (1)** Where a person is under an obligation to make payments in relation to property that is vested in The Bank of Nova Scotia Trust Company by subsection 6(1), 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 shall be made to The Bank of Nova Scotia Trust Company, and thereupon the person's obligation is owed to The Bank of Nova Scotia Trust Company.

**(2)** For greater certainty, any instrument dealing with property that is vested in The Bank of Nova Scotia Trust Company by subsection 6(1), but that 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 Province or in respect of which Montreal Trust Company of Canada or Montreal Trust Company is shown by a document of title as having legal ownership thereof, may be executed by The Bank of Nova Scotia Trust Company and may contain a recital referring to the vesting under this Act.

**(3)** For greater certainty, an instrument executed by The Bank of Nova Scotia Trust Company containing the recital permitted by subsection (2) may be accepted for registration by any public office within the jurisdiction of the Province without further proof of the accuracy of the recital, and every such instrument shall be deemed to be effective in passing title to the property described in the instrument notwithstanding any inaccuracy contained in the recital.

**(4)** In order to show the vesting in The Bank of Nova Scotia Trust Company by subsection 6(1) of any interest in personal property that constitutes a security interest within the meaning of the *Personal Property Security Act* and for which Montreal Trust Company of Canada or Montreal Trust Company is shown as the secured party in any financing statement registered pursuant to that Act, a financing change statement may be registered pursuant to that Act 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. 1997, c. 2, s. 9.

**Effective date**

**10** The Bank of Nova Scotia Trust Company shall determine the effective date and publish a notice in *The Royal Gazette* setting out the effective date and advising that this Act takes effect as of that date. 1997, c. 2, s. 10.

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