

NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

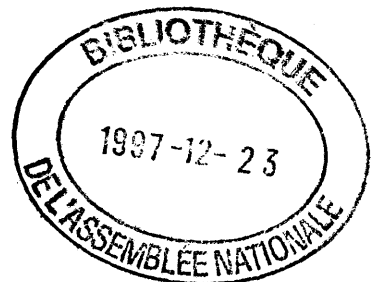
Bill 221

(Private)

An Act respecting TD Trust Company and Central Guaranty Trust Company

Introduction

**Introduced by
Mr Gilles Baril
Member for Berthier**



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Bill 221

(Private)

AN ACT RESPECTING TD TRUST COMPANY AND CENTRAL GUARANTY TRUST COMPANY

WHEREAS Central Guaranty Trust Company is issued from the amalgamation on 31 December 1988, between Central Trust Company, Guaranty Trust Company of Canada, Nova Scotia Savings and Trust Company and Yorkshire Trust Company, and thereafter from the amalgamation on 31 December 1989, between the Central Guaranty Trust Company resulting from that first amalgamation and The Central and Guaranty Trust Corporation, and is governed by the Trust and Loan Companies Act (S.C., 1991, chapter 45);

Whereas under the Winding-up and Restructuring Act (R.S.C., 1985, chapter W-11), the Supreme Court of Ontario (General Division) issued on 31 December 1992, a winding-up order concerning Central Guaranty Trust Company;

Whereas TD Trust Company is a trust company organized under the Trust and Loan Companies Act on 22 June 1992, by the issuance of letters patent, and is governed by that Act;

Whereas on 31 December 1992, The Toronto-Dominion Bank and its subsidiaries acquired substantially all of the assets of Central Guaranty Trust Company;

Whereas during the course of the winding-up of Central Guaranty Trust Company, TD Trust Company, a wholly-owned subsidiary of The Toronto-Dominion Bank, acquired the trusteeship and agency business of Central Guaranty Trust Company pursuant to a commercial agreement providing in particular for the appointment of TD Trust Company as successor to Central Guaranty Trust Company regarding such trusteeship and agency business and, until that process is completed, is acting as agent of Central Guaranty Trust Company;

Whereas that commercial agreement provides that TD Trust Company is not liable for damages arising out of any act or omission on the part of Central Guaranty Trust Company that occurred before 1 January 1993 in respect of the trusteeship and agency business referred to in this Act;

Whereas that commercial agreement was approved by the court during the winding-up proceedings of Central Guaranty Trust Company;

Whereas until 31 December 1992, Central Guaranty Trust Company carried on business in Québec and many persons continue to have contractual relations with it;

Whereas since 1 January 1993, TD Trust Company has been acting as agent of Central Guaranty Trust Company relating to its trusteeship and agency business referred to in the commercial agreement between the two trust companies, including in Québec;

Whereas because of the number of trusts and instances of administration of the property of others involved, it would be impractical to apply to the court to have TD Trust Company appointed as successor to Central Guaranty Trust Company;

Whereas the legislatures of Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Manitoba, Saskatchewan, Alberta and British Columbia have all enacted a statute having the same effect as this Act;

Whereas the enactment by the Parliament of Québec of a statute relating to the transfer of the trusteeship and agency business of Central Guaranty Trust Company to TD Trust Company is in the interest of the persons having relations with the said two trust companies in relation to such trusteeship and agency business, and aims at clarifying their rights and obligations;

Whereas TD Trust Company and Central Guaranty Trust Company have consented to the enactment of this Act;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Effective 1 January 1993, TD Trust Company is substituted *de pleno jure* for Central Guaranty Trust Company with respect to any situation wherein Central Guaranty Trust Company acts for or for the benefit of any person or for private or social utility purposes, as a trust company as defined in section 1 of the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01), notwithstanding by what document or instrument Central Guaranty Trust Company was appointed and whatever title was used to appoint it.

The fact that some of the movables or immovables referred to in this section are situate outside Québec does not prevent such substitution.

2. Subject to sections 5 and 9, where a notarial act or a private writing, a judgment or any other instrument imposes any obligations on Central Guaranty Trust Company in relation to any situation described in section 1, or confers any rights on the same, the name "TD Trust Company" is substituted for the name "Central Guaranty Trust Company".

3. Effective 1 January 1993, TD Trust Company is substituted *de pleno jure* for Central Guaranty Trust Company in all rights related to property, corporeal or incorporeal, movable or immovable, vested in the company in

relation to any situation described in section 1, whether in the form in which it was originally acquired by Central Guaranty Trust Company or otherwise, and such substitution is effective without any need of registration or deposit of this Act or any other document indicating such substitution in any register whatsoever in Québec.

4. Subject to sections 5 and 9, no proceeding exercised by or against Central Guaranty Trust Company in relation to any situation described in section 1, before any court or administrative tribunal or any governmental agency in Québec, shall be suspended or terminated as a result of the coming into force of this Act. However, such proceedings may be continued in the name of TD Trust Company, which shall have the same rights and obligations as if they had been commenced in its name or against it, upon a simple written notice served to all interested parties and deposited in the record of such proceedings.

Subject to sections 5 and 9, any proceeding which may have been exercised by Central Guaranty Trust Company as a trust company or against it with respect to any situation described in section 1, may be exercised by TD Trust Company or against it, which shall have the same rights and obligations and shall be subject to the same liabilities in respect thereof as Central Guaranty Trust Company would have had or been subject to if this Act had not been enacted, and for purposes of examination for discovery or production of documents in relation to any such proceeding, Central Guaranty Trust Company and its officers or employees shall be subject to the same obligations as if this Act had not been enacted.

5. Nothing in this Act affects the rights of a person having any claim against Central Guaranty Trust Company in relation to any situation described in section 1 nor lessens, changes or affects the liability of the company towards such a person.

TD Trust Company is not liable for damages arising out of any act or omission on the part of Central Guaranty Trust Company that occurred before 1 January 1993, which may be qualified as non-performance or bad performance by Central Guaranty Trust Company in respect of its obligations in relation to any situation described in section 1.

6. Any person under an obligation to make payments to Central Guaranty Trust Company in relation to any situation described in section 1, may continue to make such payments to such company until TD Trust Company has given notice to such person in writing that the payments shall be made to TD Trust Company in the future and thereupon the person's obligation is owed to TD Trust Company.

7. For the cancellation, upon TD Trust Company's demand, of the registration of a right or a power of Central Guaranty Trust Company vested in TD Trust Company because of this Act, the document transmitted to the registry office for the registration division concerned or to the register of

personal and movable real rights shall mention that TD Trust Company acts in the rights of Central Guaranty Trust Company pursuant to the substitution operated by this Act and shall refer to this Act.

8. This Act does not change or otherwise affect the rights and obligations of TD Trust Company as successor trustee of Central Guaranty Trust Company.

9. This Act does not affect the replacement of Central Guaranty Trust Company by a trustee other than TD Trust Company made between 1 January 1993 and (*insert here the date of assent to this Act*) upon demand from the settlor, the beneficiary or another interested person.

Moreover, this Act shall not be interpreted as denying to a person who named Central Guaranty Trust Company as trustee or administrator of the property of others or who is beneficiary of such administration the right of such person, if any, to name as such another person other than TD Trust Company.

10. This Act does not apply to the following commercial activities and property of Central Guaranty Trust Company:

(a) property, corporeal or incorporeal, movable or immovable, and each interest in such property, held by Central Guaranty Trust Company, exclusively and for its own use and benefit, and not for the use or benefit of any other person or for any other purpose;

(b) the trusts relating to money received for guaranteed investment and any property, corporeal or incorporeal, movable or immovable, held in trust by Central Guaranty Trust Company with respect to such guaranteed investment except for trusts relating to money received by Central Guaranty Trust Company and any property, corporeal or incorporeal, movable or immovable, held in trust by Central Guaranty Trust Company, 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 (R.S.C., 1985, 5th Supplement, chapter 1) or the Taxation Act (R.S.Q., chapter I-3), or other registered or unregistered deferred income or employee benefit plan;

(c) property, corporeal or incorporeal, movable or immovable, held by Central Guaranty Trust Company or vested in it pursuant to or in respect of the following:

i. any trust deed or other instrument to which section 1 would otherwise apply, wherein Central Guaranty Trust Company 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 1 would otherwise apply, pursuant to which Central Guaranty Trust Company acts as trustee for unit holders in respect of any oil or gas royalty trust fund,

iii. any document or trust to which section 1 would otherwise apply, wherein Central Guaranty Trust Company acts as trustee, manager, advisor, registrar or transfer agent with respect to the Central Guaranty Trust Funds – Canadian Money Market Fund, Central Guaranty Trust Investors Fund (Income and Equity sections), Central Guaranty Property Fund and Central Guaranty Trust Real Estate Fund;

(d) any agreement or other document of any kind whereby Central Guaranty Trust Company is named or may be named, registrar or transfer agent, except for mutual funds not described in subparagraph iii of paragraph c of this section.

11. This Act comes into force on (*insert here the date of assent to this Act*).