

NATIONAL ASSEMBLY
Thirty-fourth Legislature, second session

1992, chapter 85

AN ACT RESPECTING CERTAIN TRUSTS ESTABLISHED BY COLIN WESLEY WEBSTER

Bill 290

Introduced by Madam Nicole Loiselle, Member for Saint-Henri

Introduced 6 December 1991

Passage in principle 13 May 1992

Passage 13 May 1992

Assented to 14 May 1992

Coming into force: 14 May 1992

Act amended: None



CHAPTER 85

An Act respecting certain trusts established by Colin Wesley Webster

[Assented to 14 May 1992]

Preamble

WHEREAS, by deeds of donation made before a notary on 20 February 1942, 26 February 1943 and 29 May 1944 and registered at the registry office of the registration division of Montréal under numbers 518 736, 545 285 and 582 212, Colin Wesley Webster established trusts for the benefit of his daughter, Beverley Frosst Webster, born on 31 January 1935, and her children and grandchildren;

Whereas Beverley Frosst Webster died on 16 October 1973, leaving five children, their dates of birth ranging from 3 October 1958 to 16 March 1965;

Whereas, at present, three daughters of Beverley Frosst Webster have one or more children of their own, whereas five grandchildren of Beverley Frosst Webster have been born, their dates of birth ranging from 30 June 1986 to 7 January 1992, and whereas it is possible that more grandchildren will be born in the years to come;

Whereas two of the children of Beverley Frosst Webster reside in Ontario, two reside in the United States, each in a different state, and one resides in Québec, whereas, considering the consequences of the diversity in the laws, and in particular in the fiscal laws, applicable to the beneficiaries, it may be advantageous to administer the share of each child separately;

Whereas the three deeds of trust are similar in many ways and whereas, for the purpose of administering the share of each child

separately, the trustees wish to be authorized to disregard the differences between the three deeds and act solely in accordance with the provisions of the third deed;

Whereas the second and third deeds provide that the revenues which have not been paid out at the death of Beverley Frosst Webster shall thereupon be added to the capital and whereas it is expedient that the power to capitalize revenues apply to revenues which have not been paid out at the end of a fiscal year;

Whereas, in the third deed and in the other two deeds, Colin Wesley Webster accords the trustees such powers of administration as are granted to insurance companies under the laws of the Parliament of Canada, with the restriction that not more than \$20 000 be invested by the trustees in any one security, except in bonds issued by the Government of Canada, such restriction being set forth in particular in the second paragraph of paragraph *b* of article III of the deed registered under number 582 212;

Whereas, owing to the increase in the cost of living since 1944, \$20 000 is of much less value today than it was at the time the trust was established, whereas the provision setting a limit of \$20 000 for investment in any one security complicates the administration of the trusts and whereas the children of Beverley Frosst Webster and the trustees consider the fixing of a higher limit to be unnecessary;

Whereas the deeds of trust registered under numbers 545 285 and 582 212 provide that, after the death of the settlor's spouse and his daughter, trustees who are natural persons shall no longer be replaced, and that the trust will be administered solely by a trust company, whereas the deed of trust registered under number 518 736 does not place such a restriction on the replacement of trustees who are natural persons but does provide for a case in which the trustees would not be replaced;

Whereas all three deeds of trust provide a single date for partition, namely upon the death of the last surviving child of Beverley Frosst Webster and whereas, in the eventuality of the establishment of a separate trust for each child, it would be preferable that the dates for partition be different;

Whereas the children of Beverley Frosst Webster wish to participate in the administration of the trusts established for their benefit and the benefit of their descendants;

Whereas the trustees of the first and second trusts are Frank M. Rolph, the surviving spouse of Beverley Frosst Webster and the

father of her children, and the Royal Trust Company, and whereas the sole trustee of the third trust is the said company;

Whereas the person requesting the passing of this Act is the Royal Trust Company;

Whereas the children of Beverley Frosst Webster and Frank M. Rolph have given their consent in writing to the passing of this Act and whereas the provisions of this Act will not adversely affect minor or unborn grandchildren;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

Administra-
tion

1. Frank M. Rolph and the Royal Trust Company, or their successors in the office of trustees of the trusts established by Colin Wesley Webster by the deeds registered at the registry office of the registration division of Montréal under numbers 518 736 and 545 285, and the Royal Trust Company or its successors in the office of trustee of the trust established by Colin Wesley Webster by the deed registered at the said registry office under number 582 212 shall administer the three trusts as if all three were governed by the provisions of the deed registered at the said registry office under number 582 212.

Deed of
trust, am.

2. However, for the purposes of such administration, the deed of trust registered at the registry office of the registration division of Montréal under number 582 212 is amended as follows:

(1) the last sentence of paragraph 2 of article II is replaced by the following sentence: "Any accumulated net revenues remaining in the hands of the Trustees upon the death of the Donee or at the end of a fiscal year shall thereupon be added to and form part of the capital of the Trust Property.";

(2) the first sentence of paragraph 5 of article II is replaced by the following sentence: "5. Upon the death of a child in the first degree of Beverley Frosst Webster, the Trustees shall apportion the property held in trust for the benefit of such child amongst such child's issue by roots.";

(3) article II is amended by inserting, after paragraph 5, the following paragraph:

"5.1 Upon the death of a child of Beverley Frosst Webster leaving no issue, the Trustees shall divide the child's share or the trust

established in the child's benefit in such manner that there shall be one share for each of the child's brothers and sisters then living and one share for the issue of each deceased brother and sister. A share established for the benefit of the issue of a deceased brother or sister shall be subdivided amongst such issue by roots. All such shares shall be governed by the other provisions of this Deed.”;

(4) the second paragraph of paragraph *b* of article III is struck out;

(5) paragraph *f* of article IV is replaced by the following paragraphs:

“*f*) Should any Trustee resign or cease to be a Trustee for any reason, the remaining Trustees may appoint, in writing, a new Trustee without the authorization or intervention of any court; such power of appointment shall exist as long as the Trust.

In accordance with the same rules, any remaining Trustee has the power to appoint two new Trustees should two Trustees resign or cease to be Trustees for any reason.

Two Trustees may fill a vacancy by appointing as Trustee a legal person authorized to exercise this office.

There must be three Trustees in office at all times. However, where there are only one or two thereof, the remaining Trustee or Trustees may carry out conservatory acts and, with the authorization of the court, other acts requiring immediate attention.

“*f.1*) Two Trustees who are natural persons may, by three months' notice in writing, require the resignation of any Trustee which is a legal person.”;

(6) paragraph *h* of article IV is replaced by the following paragraph:

“*h*) Any legal person exercising the office of Trustee is entitled to its customary remuneration for such services.”

Establish-
ment of
trusts

3. The trustees are hereby authorized to establish five trusts of equal capital value, one for each child of Beverley Frosst Webster, from the three trusts referred to in this Act.

Administra-
tion

The newly established trusts shall be administered in accordance with sections 1 and 2 of this Act, and there may be different trustees for each trust.

Powers

The trustees of each trust established under this section may exercise their powers, including the power to replace trustees who cease to hold office as such, independently of the trustees of the other four trusts.

Trustees

4. The trustees of the trust established by the deed registered at the registry office of the registration division of Montréal under number 518 736 become, from 14 May 1992, the trustees of the trust established by the deed registered at the registry office of the registration division of Montréal under number 582 212.

Coming into
force

5. This Act comes into force on 14 May 1992.