

UNIFORM CONFLICT OF LAWS RULES FOR TRUSTS ACT

1. (1) In this Act

Definitions

“law” means the rules of law in force in a province or territory of Canada other than the rules of conflict of laws;

“law”

“settlor” means a person who creates a trust;

“settlor”

“trust” means a legal relationship that exists when

“trust”

- (a) assets are under the control of a trustee,
- (b) the assets constitute a separate fund and are not a part of the estate of the trustee,
- (c) title to the assets stands in the name of the trustee or in the name of another person on behalf of the trustee, and
- (d) the trustee has the power and the duty, in respect of which the trustee is accountable, to hold, manage, employ, dispose of or deliver the assets in accordance with the terms of the legal relationship and the special duties imposed by law;

“trustee” means a person who has control of assets for the benefit of a beneficiary or for a specified purpose;

“trustee”

“validity of a trust” means essential validity of a trust.

“validity of a trust”

(2) For the purpose of this Act

Existence of trust

- (a) the reservation by a settlor of rights and powers, and the fact that a trustee may have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust, and
- (b) the fact that a settlor is a trustee or a beneficiary, or both, of a trust created by the settlor is not inconsistent with the existence of a trust unless the settlor is both the sole trustee and the sole beneficiary of a trust created by the settlor.

2. (1) This Act applies if the law governing the trust as determined under this Act is that of a province or territory of Canada *[and if the *Uniform International Trusts Act* does not apply to the trust].

Application of Act

(2) This Act applies to trusts arising before it comes into force as well as to trusts arising after it comes into force, but

shall not be construed as affecting the law to be applied in relation to anything done or omitted under a trust before the coming into force of this Act.

(3) This Act does not apply to preliminary issues relating to the validity of instruments or acts by which trusts are created.

(4) This Act does not apply to the extent that the law governing the trust as determined under this Act does not provide for the type of trust involved.

**[(5) This Act does not apply to a trust that exists only by virtue of a judicial declaration.]

***[(6) This Act does not apply to trusts imposed by statute.]

Crown is bound

****[3. This Act binds the Crown.]

Law governing trust

4. (1) A trust is governed by the law chosen by the settlor, which choice may be express or implied.

(2) If the law chosen by the settlor to govern the trust does not provide for the type of trust involved, the choice is not effective and the trust is governed by the law with which it is most closely connected.

(3) If the settlor has not chosen the law to govern the trust, the trust is governed by the law with which it is most closely connected.

(4) In ascertaining the law with which a trust is most closely connected, reference shall be made in particular to

- (a) the place of administration of the trust expressly or impliedly chosen by the settlor, or
- (b) failing the choice referred to in paragraph (a), the place of residence or business of the trustee, or, if there are two or more trustees, the place where the administration of the trust is principally carried out.

Law governing severable aspects of trust

5. (1) Severable aspects of a trust, including the validity of a trust, the construction of a trust, the administration of a trust, and different assets subject to a trust, may be governed by different laws determined in accordance with section 4.

(2) The law governing the validity of a trust determines whether the question to be resolved is one of validity, construction or administration.

6. The law governing the validity of a trust determines whether that law or the law governing the administration or any other severable aspect of a trust may be replaced by another law.

Replacement of law governing trust

****[7. The residence of a trust is the place where the administration of a trust is carried out or is principally carried out.]

Residence of trust

8. (1) Nothing in this Act shall be construed as requiring that recognition or effect be given to a trust or a severable aspect of a trust if the significant elements of the trust or aspect, other than the settlor's choice of law, are most closely connected with a jurisdiction the law of which does not provide for the type of trust or aspect involved.

Recognition and enforcement of trusts

(2) Nothing in this Act shall be construed as requiring that recognition or effect be given to a trust or a severable aspect of a trust if the giving of recognition or effect would be contrary to the public policy of (enacting jurisdiction) or would contravene a fundamental principle of the law of a jurisdiction having a stronger policy interest in the matter than has any other jurisdiction.

*****[(3) Nothing in this Act shall be construed as requiring that recognition or effect be given to a trust that exists only by virtue of a judicial declaration in another jurisdiction, or to a severable aspect of such a trust, if (the appropriate court in enacting jurisdiction) is satisfied that there is a substantial reason for refusing to give recognition or effect to the trust or aspect.]

*****[(4) Nothing in this Act shall be construed as requiring that recognition or effect be given to a trust imposed by statute in another jurisdiction, or to a severable aspect of such a trust, if (the appropriate court in enacting jurisdiction) is satisfied that there is substantial reason for refusing to give recognition or effect to the trust or aspect.]

*****[9. If there is a conflict between a provision of this Act and a provision of Part II of the *Uniform Wills Act* with respect to the law governing a trust created by a will or a severable aspect of such a trust, this Act prevails.]

Conflict with Uniform Wills Act

- *These words will be required only in jurisdictions that have brought the Trusts Convention into force.
- **Optional provision for use by jurisdictions that wish to exclude constructive trusts, and those resulting trusts that exist only by virtue of a judicial declaration, from the scope of the Act.
- ***Optional provision for use by jurisdictions that wish to exclude statutory trusts from the scope of the Act. Jurisdictions that wish to restrict the exclusion to statutory trusts imposed for fiscal purposes should adopt an appropriately revised version of subsection 2(6).
- ****Optional provision for use by jurisdictions that wish to bind the Crown.
- *****Optional provision for use by jurisdictions that wish to establish by statute the residence of a trust.
- *****This provision will not be required in jurisdictions where subsection 2(5) is included.
- *****This provision will not be required in jurisdictions where subsection 2(6) is included. If a revised version of subsection 2(6) is included with respect to statutory trusts imposed for fiscal purposes, an appropriately revised version of subsection 8(4) will be required.
- *****This provision will be required only if the enacting jurisdiction has enacted Part II of the *Uniform Wills Act* or comparable provisions.