

Via email (Donna.Molzan@gov.ab.ca)

May 27th, 2026

**Government of Alberta, Alberta Justice, Legal Services Division
Justice and Public Safety and Emergency Services Legal Team**
4th Floor, Bowker Building
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Attention: Donna L. Molzan, KC

Dear Ms. Molzan,

Further to your request of March 12, 2026, STEP Canada has solicited and received the following feedback from its members in Alberta regarding the *Trustee Act*, SA 2022, c. T-8.1 (“the Act”).

We are grateful for the opportunity to provide this feedback. Our members generally welcome the changes introduced by the Act. However, they also identify areas in the legislation that they consider would benefit from clarifying amendments or the publication of additional guidance from Alberta Justice to assist practitioners in understanding and applying the Act.

1. Trustee Reporting and Accounting

Multiple comments from members indicate that the duty to report to beneficiaries under section 29 of the Act is problematic in several respects. In particular:

- The time frame for reporting to qualified beneficiaries (that is, within two months after the end of the trust’s fiscal period) is unworkable and unnecessarily onerous and generally does not align with other compliance obligations of trustees. Notably, the filing deadline for trust tax returns under the *Income Tax Act*, RSC 1985, c. 1 (5th Supp.), paragraph 150(1)(c) is 90 days (about three months) after the end of the trust’s taxation year. Further, where a trust holds shares in a corporation, depending on the corporation’s fiscal year-end, financial statements or other information relating to the corporation’s most recent fiscal period may not be available within two months, or even 90 days, after the end of the trust’s fiscal period. (For example, if the trust and the corporation both have a December 31 year-end, the corporation’s financial information may not be available until June 30 of the following year.)
- The content of beneficiary reporting does not align with typical financial reporting and valuation practices, and no useful reference is made to the level of assurance that is warranted in respect of this reporting.
- The ability of contingent or other beneficiaries to “opt in” to full reporting requirements is unwieldy and places an unreasonable burden on trustees.

The result of the misalignment of these provisions with the practical realities of trust administration is that, in many cases, steps are taken where possible to override the statutory provisions to the maximum extent allowed. This has resulted in a wide variety of approaches to replace the statutory regime, which in some cases negates any effective reporting whatsoever.

Although it is helpful that the creators of trusts are permitted, to a large degree, the freedom to establish their own parameters for trustee reporting and accounting to beneficiaries, the default rules—which apply to trusts that predate the Act or which are otherwise silent on these matters—ought to be grounded in a reasonable and balanced approach that creates an effective reporting regime.

We suggest that section 29 of the Act be carefully reviewed in light of these concerns. At a minimum, we respectfully recommend that the reporting deadline set out in subsection 29(2) be extended to at least three months, perhaps with further extensions being provided for particular circumstances, such as where a trust holds shares of a corporation, discussed above.

2. Replacement Trustee Appointments and “Designated Person”

The drafting of section 9 of the Act as it relates to the appointment of replacement or successor trustees is unclear and problematic. Section 9 identifies a “designated person” in respect of a trust in various circumstances. A problem can arise in cases where there is only one trustee and the trust instrument does not nominate a “designated person” to appoint a replacement trustee, as described in paragraph 9(2)(a). In such cases, we look to paragraph 9(2)(b) to identify the designated person: “the person appointed in writing by the sole trustee to be a replacement trustee after the sole trustee’s death or retirement.” The Act then grants the designated person the authority to appoint a temporary trustee pursuant to section 11 and to appoint a replacement trustee in certain circumstances pursuant to section 15.

Where the trust instrument does not expressly permit the sole trustee to appoint a replacement trustee (or where the sole trustee has not made such an appointment), no designated person can be identified under paragraph 9(2)(b). Alternatively, if the sole trustee has in fact appointed a person as a replacement trustee, there would be no need for a designated person to do so pursuant to section 11 or 15. Paragraph 9(2)(b) therefore appears to have no logical application.

If no designated person is identified under paragraph 9(2)(a) or (b), we next look to paragraph 9(2)(c), which provides that the designated person is the personal representative of the sole trustee. This is problematic where no personal representative exists (for example, where the sole trustee is still living but has resigned, disclaimed their office, or ceased to hold office for some other reason, or in the case of a dissolved corporation).

Where there are multiple trustees, subsection 9(3) of the Act governs how a designated person is identified. Paragraph 9(3)(b) does identify the continuing trustees as the “designated person” authorized to appoint a replacement trustee. However, we suggest that this reference should be amended to “the continuing trustee or trustees.” Further, where no continuing trustee(s) is (are) able and willing to act as a designated person, resort must be had to paragraphs 9(3)(c) and (d), which correspond to paragraphs 9(2)(b) and (c) and which are problematic for the same reasons mentioned above.

The omission of any provision that allows a sole trustee to appoint his, her, or its own successor is curious, especially since paragraph 9(3)(b) effectively affords that authority to the continuing trustees, by identifying them as the “designated person” for that purpose. If the intent of paragraph 9(2)(b) is to permit a sole trustee to designate a replacement trustee, in the absence of a person nominated by the trust instrument for this purpose, then we suggest that this paragraph should simply refer to “the sole trustee.” We further suggest that subsection 15(1) be amended to clarify that a replacement trustee may be appointed in any of the circumstances referenced therein or designated in advance by a designated person, with the appointment of the replacement trustee to become effective upon the occurrence of any of those circumstances.

If there is a rationale for preserving the provisions of section 9 as they currently read, we respectfully request that consideration be given to clarifying the language of these provisions and/or publishing guidance to help practitioners understand how they are supposed to operate.

3. Subsections 19(5) and (6)

A plain reading of subsection 19(5) of the Act suggests that a trustee who wishes to resign, but for whom no replacement will be appointed, must be discharged by the court even if there are multiple trustees acting.

In 2017, the Alberta Law Reform Institute (ALRI) published a report containing 90 recommendations for a new *Trustee Act* for Alberta.¹ The ALRI report clearly states that “[t]he new Act should allow a trustee to resign without court involvement in a multiple trustee situation, even if the trustee will not be replaced,”² and makes the following recommendations:

RECOMMENDATION 21

The new Act should authorize a trustee to resign without court involvement where:

- *The resigning trustee gives written notice of resignation to the designated persons or class of designated persons with authority to appoint a replacement trustee;*
- *If a replacement trustee is required, a suitable replacement trustee is able and willing to act; and*
- *The resigning trustee provides an accounting to beneficiaries. ...*

RECOMMENDATION 25

The new Act should provide that, if there are multiple trustees, a trustee’s resignation is effective upon the earliest of:

- *The appointment of a replacement trustee;*
- *If a replacement is not required, the delivery of both the written resignation of the trustee to the designated person or class of designated person with the authority to appoint a replacement, and an accounting to the beneficiaries; or,*
- *A court order discharging the trustee.*³

However, the emphasized portions of these recommendations are not reflected in the current provisions of the Act.

The ALRI report was referenced numerous times during debate on Bill 12,⁴ which became the Act. In closing the third reading, Alberta Minister of Justice and Solicitor General Tyler Shandro stated that Bill 12 adopts “87 of the 90 recommendations” from the ALRI report, and that “[t]he three remaining, that weren’t accepted, were not adopted because they were minor housekeeping provisions.”⁵ Respectfully, this characterization does not appear to us to be accurate, since recommendations 21 and 25 are very

¹ [Alberta Law Reform Institute, A New Trustee Act for Alberta, Final Report No. 109 \(January 2017\)](#) (“ALRI report”).

² *Ibid.*, at paragraph 299.

³ *Ibid.* (emphasis added).

⁴ [Bill 12, Trustee Act, 3d Sess., 30th Leg., Alberta, 2022.](#)

⁵ [Bill 12, Trustee Act, 3d Sess., 30th Leg., third reading, Alberta Hansard \(April 28, 2022\)](#), at 989 (Tyler Shandro).

important to the mechanics of trust administration and go beyond being minor housekeeping provisions.

Under Alberta's former *Trustee Act*, a trustee could resign only if there were more than two trustees,⁶ and such resignation was "only permitted with the consent and order of the court, whether or not a new trustee is being appointed."⁷ However, this rule in the former Act could be overridden by a trust instrument to the contrary,⁸ whereas subsection 19(6) of the current Act states that section 19 "prevails over any contrary provision in a trust instrument."

In British Columbia and Ontario, if there are more than two trustees, a trustee may resign by deed without needing court approval or to appoint a replacement, so long as the other trustees, and any other person empowered to appoint trustees, consent to the resignation.⁹ Moreover, in British Columbia, this rule can be overridden by a trust instrument containing provisions to the contrary.¹⁰

To address these concerns, we suggest that recommendations 21 and 25 of the ALRI report be fully implemented. We also suggest removing subsection 19(6) of the Act to allow for flexibility over the manner in which trustees can resign. Given the quotation from Hansard cited above, it may also be prudent for Alberta Justice to undertake a full review of the ALRI report to determine which other recommendations were not adopted in the Act and to consider whether, with the benefit of hindsight, such recommendations should be implemented now.

4. Distributions for Minors or Incapacitated Persons

The provisions of section 50 of the Act are very restrictive. In the case of distributions for minors, it is unclear why subsection 50(1) is necessary, given the pre-existing provisions of the *Minors' Property Act*, SA 2004, c. M-18.1. Although subsection 50(1) is subject to any contrary provision of the applicable trust instrument, pursuant to section 3 of the Act, there may be cases in which trustees may question their authority to make distributions to a trustee who is authorized to receive property on behalf of a minor pursuant to the terms of the trust instrument (for example, to a parent or guardian of the minor or to a third party for the exclusive benefit of the minor), in accordance with section 7 of the *Minors' Property Act*, since subsection 50(1) of the Act states that a trustee "must" make the distribution only to the trustee appointed by court order under the *Minors' Property Act* or to the Public Trustee. Moreover, if a trust instrument does not include any specific provisions for distributions to minors, subsection 50(1) prevents the trustees from relying on section 8 of the *Minors' Property Act* to discharge small obligations to a minor.

In the case of distributions for incapacitated persons, there is a similar concern that trustees may question their authority to make distributions to a third party for the exclusive benefit of an incapacitated person (for example, to pay the person's expenses or to contribute to their registered disability savings plan), even if authorized by the trust instrument, given the use of the word "must" in subsections 50(2) and (3) of the Act. In addition, the definition of "incapacitated person" in paragraph 1(f) of the Act and the options for distributions set out in subsection 50(2) do not contemplate the possibility that an incapacitated person who is a beneficiary of a trust may reside outside Alberta and, therefore, may have an attorney or trustee (or the jurisdictional equivalent of those terms) who can validly represent such person's interests under the laws of their jurisdiction of residence. There appears to be no provision in the Act dealing with distributions to incapacitated beneficiaries who reside outside Alberta, leaving a

⁶ [Trustee Act, RSA 2000, c. T-8](#), subsection 15(1) ("the former Act").

⁷ [Donovan W.M. Waters, Mark R. Gillen, and Lionel D. Smith, Waters' Law of Trusts in Canada, 5th ed. \(Toronto: Thomson Reuters Canada, 2021\), 16.II. "Retirement of Trustee" \(online: Westlaw Canada\).](#)

⁸ Former Act, subsection 15(4).

⁹ [Trustee Act, RSBC 1996, c. 464](#), subsection 28(1) ("the BC Act"); [Trustee Act, RSO 1990, c. T.23](#), subsection 2(1).

¹⁰ BC Act, subsection 28(3).

gap in cases where the trust instrument also does not address how distributions to such beneficiaries may be made.

5. Other Feedback

We received questions about the rationale for allowing a beneficiary who has no vested interest in a trust (for example, a beneficiary of a discretionary family trust) to elect to become a qualified beneficiary, pursuant to subparagraph 1(l)(ii) of the Act, and thereby become entitled to detailed disclosure of information about the trust, pursuant to sections 29 and 30 of the Act, which may exceed the information that the trustees would otherwise be required to provide under the terms of the trust. This result would be contrary to the intention of the settlors of many discretionary family trusts, including those who settled trusts long before the Act came into effect. We respectfully suggest that consideration be given to narrowing the application of subparagraph 1(l)(ii) and/or publishing guidance to help practitioners understand the purpose of this provision.

We received a suggestion that the requirement under section 67 of the Act to obtain court approval to terminate a trust, in circumstances where the termination is not expressly provided for in the trust instrument, should be changed to permit a termination in advance of the trust's 21-year anniversary, provided that the trust instrument (or the Act) included a requirement to notify all the beneficiaries of the termination and to provide them with an accounting, which can be approved by the beneficiaries by authorizing the trustees to obtain releases.

We received a request for clarification about how, if at all, the Act applies to estates as trusts. Similarly, there were questions about the extent to which the Act is subject to a contrary provision in the applicable trust instrument. If a trust instrument can prevail over the requirements of section 29, does this mean that it can also prevail over the financial reporting requirement that is built into the resignation provisions of the Act? Or will financial reporting always be required if a trustee chooses to resign under section 19?

Given the lack of judicial interpretation to date, members are also interested to know how (or whether) other practitioners are using certain novel concepts introduced in the Act (for example, the provisions allowing for the appointment of a temporary trustee or for the delegation of a trustee's powers and duties by power of attorney). To the extent that your consultations have generated insight on this point, the publication of such information would be helpful to the broader community.

6. Conclusion

We wish to reiterate that the changes introduced by the Act have generally been welcome. If there are any proposed amendments, clarifications, or guidance about the underlying policy of certain provisions that we can pass on to our membership, we would be pleased to do so. Further, if you or any of your colleagues at Alberta Justice would like to coordinate a presentation to STEP members in Alberta with respect to the Act, any developments that have arisen since its adoption, or any related topics, we would welcome the opportunity to arrange this for our members.

Respectively submitted,



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Chair STEP Canada



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