

Repeal of the Mortmain and Charitable Uses Act and Amendment of the Charities Accounting Act In Ontario

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*The Mortmain and Charitable Uses Act*¹ of Ontario was repealed effective June 15, 1982, by the *Mortmain and Charitable Uses Repeal Act, 1982*,² Those provisions of *The Mortmain and Charitable Uses Act* requiring a corporation to acquire a licence in mortmain in order to hold land in Ontario were not re-enacted, however the provisions of that Act governing the holding of land in Ontario by charities were transferred to the *Charities Accounting Act*.³

Under *The Mortmain and Charitable Uses Act*, restrictions were imposed on the right of a charity to hold land. Pursuant to that Act, every assurance of land or personal estate to be laid out in the purchase of land to or for the benefit of any charitable use, including land devised by will for such use, was void unless made to take effect on immediate possession for such charitable use.⁴

Under Section 7 of *The Mortmain and Charitable Uses Act*, land assured otherwise than by will to, or for, the benefit of any charitable use, was required to be sold within two years from the date of the assurance or within such extended period as may be determined by a judge of the Supreme Court and, if the land was not sold within two years or within such extended period, it vested forthwith in the Public Trustee. Pursuant to subsection (3) of Section 7, a judge of the Supreme Court "if satisfied that the land so assured is required for actual occupation for the purposes of the charity and not as an investment", could by order sanction the retention of the land. This was the only ground on which the judge could sanction the retention of land. Similar provisions were provided in Section 12 with respect to land devised by will to or for the benefit of any charitable use. If land was required to be sold by the Public Trustee under either of the provisions, the Public Trustee was required to cause the land to be sold with all reasonable speed and, after payment of the costs and expenses incurred in, or connected with, such sale, to pay the proceeds to the charity.⁵

Public parks, schools, schoolhouses and public museums were exempted from the provisions.⁶

The Mortmain and Charitable Uses Act also prohibited the holding of land by a corporation unless statute permitted it to the particular corporation or the corporation was granted a licence by the Crown through the designated Minister.⁷ As noted above, this provision was repealed and not re-enacted.

The main purpose of the Act was to prevent charities affected by the Act from

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holding land for investment, and this concept has been carried over to the new provisions under the *Charities Accounting Act*.⁶

By the *Mortmain and Charitable Uses Repeal Act, 1982*, and the *Charities Accounting Amendment Act, 1982*,⁸ which came into force on June 15, 1982, the automatic vesting of land owned by charities in the Public Trustee of Ontario was eliminated, and land which had vested in the Public Trustee prior to the new legislation was deemed never to have vested in the Public Trustee unless the Public Trustee had conveyed the land or registered a notice vesting the land in him under Section 66 of the *Charities Accounting Act*.⁹

Under the new provisions, the Public Trustee may register a notice in the land registry office that he intends to sell the land if he considers that land held for a charitable purpose has not been actually used and occupied for the charitable purpose for a period of three years, is not required for the actual use and occupation for the charitable purpose, and will not be required for actual use and occupation for the charitable purpose in the immediate future. This will cause the land to vest in the Public Trustee.¹⁰ Provision is made whereby a charity may apply to the Supreme Court for an order re-vesting in it land which is vested in the Public Trustee if the Court is satisfied that the land has been actually used and occupied by the charitable purpose within the preceding three years, is required for actual use and occupation for the charitable purpose or will be required for actual use and occupation for the charitable purpose in the immediate future.¹¹ The court has no power to authorize retention of land by a charity if it is held for investment purposes only.

The new Act also provides that a municipal corporation or local board thereof, a university or public hospital, may receive, hold and enjoy real or personal property devised, bequeathed or granted to it for a charitable purpose, upon the terms expressed in the devise, bequest or grant.¹²

Further, such organization may enter into an agreement with the person devising, bequeathing or granting the property for the holding, management, administration or disposition of the property.¹³ It should be noted that the specific exemptions in the *Mortmain and Charitable Uses Act* for a public park, a public museum, a public library and a school or schoolhouse were not carried forward; however, this provision permitting municipal corporations or boards, universities and public hospitals to hold real property should be more flexible and encompass a broader range of organizations which may, in effect, be exempted from the provisions regarding the holding of land by such organizations.

The *Charities Accounting Act* (Section 6d.) also provides a procedure whereby persons alleging a breach of a trust created for a charitable purpose may apply to the Supreme Court for an order requiring that the trust be carried out.¹⁴ The Public Trustee may appear and be represented by counsel at such a hearing.¹⁵ Further, the Court may, if it is of the opinion that the public interest can be served by an investigation of the matter alleged in such an application, make an order directing the Public Trustee to make such investigation as the Public Trustee considers proper in the circumstances and report in writing to the Court and the Attorney General.¹⁶

As a general rule, the amendments effected by the repeal of the *Mortmain and Charitable Uses Act* and the *Charities Accounting Act* are welcome. Licences in mortmain are no longer required to enable a charity to hold land in Ontario, and the new provisions regarding the retention of land by a charity do not provide for an automatic vesting in the Public Trustee. Many persons involved with charities were, however, disappointed that the amendments did not permit the retention by a charity of land for investment purposes. When similar provisions were first introduced into English law, one of the objectives was to break up large land holdings held in perpetuity by charities. The economic considerations which gave rise to such laws, many consider, are not applicable today. They therefore advocate the abolition of the rule which precludes a charity from investing in real estate for investment purposes only. However, at least for the present, the law in Ontario is that a charity may not hold land for investment but may retain property which it requires for its own charitable purposes until such time as the Public Trustee of Ontario takes steps to vest the land in the Public Trustee.

The other common law provinces and territories do not have legislation equivalent to the repealed *Mortmain and Charitable Uses Act*, or the *Charities Accounting Act* of Ontario. In such provinces and the territories, the Attorney General would have the power to protect charities.¹⁷

FOOTNOTES

- ¹ R.S.O. 1980, c. 297.
- ² S.O. 1982, c. 12.
- ³ R.S.O. 1980, c. 65, as amended.
- ⁴ R.S.O. 1980, c. 297, sections 6 and 10.
- ⁵ *Ibid*, section 10(2).
- ⁶ *Ibid*, section 8.
- ⁷ *Ibid*, section 2(1).
- ⁸ S.O. 1982, c. 11.
- ⁹ *Ibid*, section 1(2).
- ¹⁰ R.S.O. 1980, c. 65, section 6b. (2).
- ¹¹ *Ibid*, section 6b (5).
- ¹² *Ibid*, section 6c (1).
- ¹³ *Ibid*, section 6c (2).
- ¹⁴ *Ibid*, section 6d (1).
- ¹⁵ *Ibid*, section 6d (2).
- ¹⁶ *Ibid*, section 6d (3).
- ¹⁷ See D.W.M. Waters, *Law of Trusts in Canada*, Toronto: Carswell, 1974, 535.