

Court of King's Bench of Alberta

Citation: Kuhn v Condominium Corporation No 0627537, 2025 ABKB 298

Date: 20250514
Docket: 2110 00505
Registry: Red Deer

Between:

Darren Kuhn and Joanne Kuhn

Appellants

- and -

Condominium Corporation No. 0627537 (o/a Glennifer Lake Resort Phase 7)

Respondent

**Memorandum of Decision
of the
Honourable Justice G.D.B. Kendell**

Appeal from the Decision by
M. R. Park, Applications Judge
Issued on the 11th day of April, 2024
(2024 ABKB 199, Docket: 2110 00505)

Introduction

[1] This Appeal concerns a specific portion of the Decision of Applications Judge M. Park issued on April 11, 2024, and reported as 2024 ABKB 199 (the “**Decision**”).

[2] In the Decision, Judge Park found that a special levy requiring unit owners to contribute funds to purchase shares in a corporation is not a “prohibited investment” under the governing legislation—namely the *Condominium Property Act*, R.S.A. 2000, C.22 (the “CPA”) and the *Condominium Property Regulation*, Alta Reg 168/200.

Background

[3] By way of background, the Respondent is a condominium corporation created in connection with the seventh and final phase of the Glennifer Lake Resort and Country Club (the “Resort”). The Resort is composed of seven phases, each governed by its own condominium corporation.

[4] The Appellants, Darren Kuhn and Joanne Kuhn (collectively, the “Kuhns”) owned a unit within the seventh phase of the Resort. They sold the unit to a third-party purchaser in March 2021. They remain the owners of a unit developed as part of the third phase of the Resort.

[5] The Resort includes 751 bare land units and various amenities and utility services, including a golf course, marina, pools, tennis courts, a restaurant, water, water treatment, waste processing, and sewer water services. These amenities and services, along with necessary operating permits (collectively the “Resort Properties”), were originally owned by the developer, Resort Development Funding Corporation (“RDFC”).

[6] When the Resort’s development neared completion, RDFC announced its intention to divest itself of these Resort Properties and offered the condominium corporations a right of first refusal. Concerned about the risk of a third-party acquisition, the condominium corporations formed an Acquisition Committee to evaluate options.

[7] The Acquisition Committee proposed that all condominium corporations jointly acquire RDFC by purchasing its shares rather than its assets, ensuring a smooth transfer of both the assets and essential permits. To achieve proportionate ownership, the condominium corporations created a subsidiary company which acquired RDFC shares. The transaction was funded by special levies on unit owners and required—and received—approval through special resolutions passed by each condominium corporation. This transaction is referred to as the “RDFC Share Purchase” in these reasons.

Issues

[8] In my view, the issues to be resolved in this Appeal are as follows:

- a. Is the RDFC Share Purchase *ultra vires* the governing legislation?
- b. Does the RDFC Share Purchase constitute a “prohibited investment” under the governing legislation?
- c. Should the Court grant the Respondent’s Application to approve the RDFC Share Purchase as fit and proper?

Standard of Review

[9] An appeal from an Applications Judge proceeds as a hearing *de novo*, with the applicable standard of review being correctness.

[10] According to Rule 6.14(3), such appeals are conducted based on the record before the Applications Judge but may also include additional evidence that the Appeal Judge considers relevant and material.

[11] In this case, both parties have submitted new evidence, including additional Affidavits.

Analysis

a. Is the RDFC Share Purchase *ultra vires* the governing legislation?

[12] A condominium corporation constitutes a distinct form of property ownership governed by statute. Although the *CPA* designates such entities as “condominium corporations,” they are fundamentally different from business corporations. Specifically, a condominium corporation is a statutory creation with limited, prescribed powers. Unlike entities incorporated under the *Business Corporations Act*, R.S.A. 2000, c. B-9, or the *Companies Act*, R.S.A. 2000, c. C-21, condominium corporations are not vested with the full range of corporate powers and are not recognized as “persons” at law. Their legal authority is confined strictly to the powers expressly conferred upon them by the *CPA*. Consequently, a condominium corporation must refer to the *CPA* to ascertain whether it is empowered to undertake a given action or decision: *Condominium Plan No. 8222909 v. Francis*, 2003 ABCA 234 [*Francis*].

[13] Condominium corporations are prohibited from implementing mechanisms or arrangements that are inconsistent with the provisions of the *CPA*. Any such actions are deemed *ultra vires*—that is, beyond the scope of the condominium corporation’s lawful authority—and are therefore legally void and unenforceable: *Sager v. Condominium Plan No 9523979*, 2015 ABQB 549 at para 17. The doctrine of *ultra vires* applies to actions that exceed the express limits of power granted by the *CPA*, rendering them without legal effect.

[14] I find that the RDFC Share Purchase is *ultra vires* the governing legislation.

i. Contravention of Section 25 of the *CPA*

[15] First, the RDFC share structure was established in contravention of section 25(3)(b) of the *CPA*. In paragraph 62 of its Brief filed on November 22, 2024, the Respondent contends that holding the Resort Properties through a company shields homeowners from joint liability under section 25 of the *CPA*. The Respondent further submits that this arrangement serves the best interests of the owners, and that the *CPA* should be interpreted in a manner that advances owners’ interests.

[16] I do not find the Respondent’s argument to be persuasive. An interpretation that ignores words of an enactment under the pretext of promoting the interests of owners has no basis in law: *Francis* at para 30. The *CPA* specifically provides that third parties have the ability to hold owners jointly liable for the acts of a condominium corporation. The *CPA* does not allow a condominium corporation to evade such liability by creating a company.

ii. The *CPA* does not provide for indirect ownership of real property

[17] Second, as a legal construct, condominiums are simply a system of collective real property ownership and administration of property. Section 4 of the *CPA* envisions this collective ownership as consisting of unit owners holding title to land either in fee simple or by leasehold. The *CPA* does not recognize the condominium corporation as an entity separate from

the unit owners. Consequently, the framework of the *CPA* contemplates only direct ownership of real property by the owners themselves.

[18] The RDFC Share Purchase undermines this statutory framework by introducing an alternative form of ownership not contemplated by the *CPA*. Instead of the Respondent owning the real property directly, it has acquired shares in a limited liability company.

[19] It is a well-established law that upon incorporation, a company becomes a separate legal entity, distinct from its shareholders: *Salomon v. Salomon & Co.*, [1897] A.C. 22 (H.L.) As a result, the assets of a company are owned solely by the company itself, and shareholders have no proprietary interest in any specific company property.

[20] In the within matter, the unit owners hold an interest in the capital stock of the limited liability company, and not in the Resort Properties. This is *ultra vires* the *CPA* that contemplates direct ownership of real property, not shares in a corporate intermediary, as occurred here.

iii. The Issue of Standing

[21] The Respondent also argues that the Appellants lack standing to challenge the RDFC Share Purchase as *ultra vires* because they did not seek that specific relief before Judge Park.

[22] I do not accept this submission.

[23] The issue raised before Judge Park concerned the use of a special levy to finance the purchase of shares in a private Alberta company, which was argued to be *ultra vires*. That argument is, in substance, the same as the one advanced in this proceeding. The relief sought relating to the special levy in the Originating Application filed by the Appellants on April 14, 2021, is, essentially, verbatim the relief sought on appeal. I find no merit in the Respondent's position on this point.

[24] I further note that Judge Park found that the Appellants were unit owners in the seventh phase of the Resort at the time of the impugned conduct, bringing them within the definition of "interested party" contemplated by the *CPA*. He also noted that the Appellants remain owners of a unit in the third phase of the Resort which "eliminates, or at least significantly mitigates, the accountability concern", and were he to dismiss their application on the basis of standing, the Appellants may still have an ability to seek relief against the third phase corporation, resulting in a potential multiplicity of proceedings. The Respondent did not appeal any portion of Judge Park's Decision, and while the appeal before me is a hearing *de novo*, in the absence of an appeal or even an application (if permitted by the *Alberta Rules of Court*), the issue of standing is not properly before me.

b. Does the RDFC Share Purchase constitute a "prohibited investment" under the Governing Legislation?

[25] Given the finding that the RDFC Share Purchase was *ultra vires* the *CPA*, it is not strictly necessary to determine whether it constitutes a "prohibited investment". However, I will address this issue briefly.

[26] The Respondent submits that the acquisition of the Resort Properties through the RDFC Share Purchase constituted a series of capital improvements within the meaning of section 39.1 (2)(d) of the *CPA*, rather than an "investment". Relying on the Decision of Judge Park, the Respondent argues that the purpose of the RDFC Share Purchase was not to generate profit, but

to secure control over the Resort Properties. On that basis, it maintains that the use of a special levy to finance the acquisition was lawful and appropriate.

[27] The Appellants take the position that the RDFC Share Purchase was a “prohibited investment”. They argue that the purchase of shares cannot reasonably be interpreted as a capital improvement within the scope of section 39.1 (2)(d) of the *CPA*. Consequently, the Appellants contend that use of the special levy should be declared void and of no force or effect.

[28] I acknowledge the Respondent’s argument that the transaction was not profit-driven and was aimed at securing control over essential Resort Properties. There is some merit to the view that the underlying intent was to acquire properties integral to the Resort’s operation. In this regard, I am not unsympathetic to the position that the RDFC Share Purchase may fall outside the typical understanding of an “investment” as contemplated by the *CPA*.

[29] However, the manner in which the Respondent went about acquiring the Resort Properties was incorrect, *ultra vires* the *CPA*, and consequently, a prohibited investment. Given this finding, both the special levy and the RDFC Share Purchase are void and of no force and effect.

c. Should the Court grant the Respondent’s application to approve the RDFC Share Purchase as fit and proper?

[30] Given the finding that the RDFC Share Purchase is *ultra vires*, the Respondent’s actions constitute improper conduct within the meaning of section 67 (1) (a) of the *CPA*.

[31] Once improper conduct is established, the Court is granted broad discretion to impose any remedy it considers just and appropriate in the circumstances: *Leeson v. Condominium Plan No. 9925923*, 2014 ABQB 20 at para 20.

[32] As stated by Master Robertson Q.C. in *Lauder v. The Owners: Condominium Plan No. 932 1565* 2021 ABQB 145 at para 232:

Master Schlosser has described section 67(1)(a)(i) as being a kind of “all terrain vehicle”: *Leeson*, at paragraph 20. By that expression I believe he meant that the definition allows the Court to get wherever it wants to go when the obligations under the Act have not been complied with. In my view, the entire section might properly be described as an “all terrain vehicle”. Subsection (2) lists a wide variety of potential remedies that the Court may order, and it then leaves the terrain open with the words “any other directions or make any other order that the Court considers appropriate in the circumstances.”

[33] As a remedial provision, section 67 plays a pivotal role. It serves as the chief mechanism for addressing breaches of the *CPA* and a condominium’s bylaws. That said, the statutory framework does not authorize the Court to impose remedies based solely on what may seem equitable in individual cases. Rather, the legislation aims to ensure predictability and legal certainty for both unit owners and condominium corporations: *Francis* at para 32.

[34] In my view, endorsing the RDFC Share Purchase as “fit and proper” would undermine the legislature’s clear intent regarding collective ownership of real property under the *CPA*. It would effectively allow the Respondent to shield itself behind a limited liability company, avoiding its statutory obligations under the *CPA* and potentially insulating itself—and by extension, the unit owners—from potential liability arising from the acts of the condominium corporation. Moreover, maintaining such a structure raises persistent concerns around

accountability and democratic governance within the condominium corporation as identified by the Appellants.

Conclusion

[35] Given the foregoing, I conclude that the Respondent has engaged in improper conduct as that term is defined in section 67(1)(a) of the *CPA*.

[36] The Appeal is allowed, and the Respondent's Application is dismissed. The RDFC Share Purchase is *ultra vires* of the Respondent's statutory power under the *CPA* and is thus void and of no force or effect.

[37] The Appellants shall have Judgment in the sum of \$6,060.41 plus interest pursuant to the *Judgment Interest Act*, for the full balance of the special levy paid by them.

[38] If there is no agreement, the parties may make a request to speak to costs within 45 days of these Reasons.

[39] Given the significant impact of this Decision not only on the Respondent but on all seven phases of the Resort, I invite Counsel to provide submissions on the amount of time required for the Resort to be in compliance with the *CPA*.

[40] I thank Counsel for their able submissions in this matter.

Heard on the 13th day of December, 2024.

Dated at the City of Red Deer, Alberta this 14th day of May, 2025.

G.D.B. Kendell
J.C.K.B.A.

Appearances:

Roberto Noce, KC and Michael Gibson
for the Appellants

Tamara Price, Kayla Ronnenberg and Brock Melnyk (Student at law)
for the Respondent

APPENDIX
CONDOMINIUM PROPERTY ACT

Subdivision of buildings into units

- 4(1)** A building or land may be designated as a unit or part of a unit or divided into 2 or more units by the registration of a condominium plan under this Act.
- (2)** The Registrar shall not register a condominium plan unless that condominium plan describes 2 or more units in it.
- (3)** For the purposes of the *Land Titles Act*, a condominium plan is deemed on registration to be embodied in the register.
- (4)** This Act applies only with respect to land held in fee simple, excepting from the fee simple all mines and minerals.
- (5)** Notwithstanding subsection (4), if land is held under lease and a certificate of title has been issued under the *Land Titles Act* in respect of the lease, this Act applies to the land described in the certificate of title, excepting from that title all mines and minerals.

RSA 1980 cC-22 s2;1983 c71 s4

Condominium corporation

- 25(1)** On the registration of a condominium plan, there is constituted a corporation under the name “Condominium Corporation No. ___” and the number to be specified is the number given to the plan on registration.
- (2)** A corporation consists of all those persons
- (a) who are owners of units in the parcel to which the condominium plan applies, or
 - (b) who are entitled to the parcel when the condominium arrangement is terminated pursuant to section 60 or 61.
- (3)** Without limiting the powers of the corporation under this or any other Act, a corporation may
- (a) sue for and in respect of any damage or injury to the common property caused by any person, whether an owner or not, and
 - (b) be sued in respect of any matter connected with the parcel for which the owners are jointly liable.
- (4)** Nothing in this Act shall be construed so as to prohibit a corporation from acting by means of agents or its employees.
- (5)** The *Companies Act* and the *Business Corporations Act* do not apply to a corporation.

RSA 1980 cC-22 s20;1983 c22 s2;1996 c12 s19

Control and management

37 (1) A corporation is responsible for the enforcement of its bylaws and the control, management and administration of its real and personal property, the common property and managed property.

(2) Without restricting the generality of subsection (1), the duties of a corporation include the following:

- (a) to keep in a state of good and serviceable repair and properly maintain the real and personal property of the corporation, the common property and managed property;
- (b) to comply with notices or orders by any municipal authority or public authority requiring repairs to or work to be done in respect of the parcel.

(3) A corporation may by a special resolution acquire or dispose of an interest in real property.

(4) A corporation may, subject to the regulations, borrow money for the purpose of carrying out the powers and duties of the corporation under this section.

(5) Money borrowed by the corporation under subsection (4) must be used only for the purpose for which it was borrowed.

RSA 2000 cC-22 s37; [2014 c10 s28](#)

Contributions

39(1) A board may by resolution

- (a) determine from time to time the amounts to be raised for the purposes of the operating account and the reserve fund and may raise those amounts by levying contributions on the owners at regular intervals
 - (i) in proportion to the unit factors of the owners' respective units, or
 - (ii) subject to the regulations, and if provided for in the bylaws, on a basis other than in proportion to the unit factors of the owners' respective units;
- (b) determine from time to time amounts to be raised by special levy and raise those amounts in accordance with [section 39.1](#).

(2) A contribution shall not include any amount for the purpose of collecting from an individual owner

- (a) a monetary sanction under a bylaw made under [section 35\(1\)](#),
- (b), (c) repealed 2013 cS-19.3 s3.

RSA 2000 cC-22 s39; 2013 cS-19.3 s3; [2014 c10 s30](#)

Special levy

39.1(1) A resolution of the board under section 39(1)(b) to approve a special levy must set out the following:

- (a) the purpose of the levy;
 - (b) the total amount to be levied;
 - (c) either
 - (i) the method of determining each unit's proportionate share of the levy by unit factor, or
 - (ii) subject to the regulations, and if provided for in the bylaws, the method for determining each unit's share of the levy on a basis other than the unit factors of the owners' respective units;
 - (d) the date by which the levy is to be paid or, if the levy is payable in instalments, the dates by which the instalments are to be paid.
- (2)** A special levy may be levied to raise money
- (a) for the payment of unexpected and urgent maintenance, repair or replacement of the real and personal property of the corporation, common property or managed property,
 - (b) to cover unexpected shortfalls in the operating account,
 - (c) to increase the balance of the reserve fund to meet the requirements in a reserve fund plan required under the regulations,
 - (d) subject to subsection (3), for the payment of a capital improvement,
 - (e) to satisfy a judgment against the corporation, or
 - (f) for any other purpose provided for in the regulations.
- (3)** If the purpose of the special levy is for the making of a capital improvement, a special resolution is required before the board may approve the special levy.
- (4)** As soon as possible after the passing of a resolution referred to in subsection (1), the board must inform each owner of the following:
- (a) the purpose of the levy;
 - (b) the total amount of the levy;
 - (c) the method used to determine each unit's share of the levy;
 - (d) the amount of the owner's unit's share of the levy;
 - (e) the date by which the levy is to be paid or, if the levy is payable in instalments, the dates by which the instalments are to be paid.
- (5)** If the amount collected exceeds the amount required or for any other reason is not fully used for the purpose set out in the resolution referred to in subsection (1), the corporation must pay the money into the reserve fund.

Investments

43 Subject to [section 37\(3\)](#) and the regulations, a corporation may invest any funds not immediately required by it only in accordance with the regulations.

RSA 2000 cC-22 s43;[2001 c28 s6](#);[2006 c9 s7](#);
[2014 c10 s33](#)

Trust money

43.1(1) Where the corporation or any person is in receipt of money paid to or for the benefit of the corporation, that money and all the proceeds arising from that money are

- (a) legally and beneficially owned by the corporation, and
- (b) deemed to be held in trust for the performance of the duties and obligations in respect of which the payment was made.

(2) Where the corporation is in receipt of money referred to in subsection (1), the corporation shall

- (a) except as otherwise authorized in writing pursuant to a resolution of the board,
 - (i) deposit all the money into a separate account at a bank, trust corporation, credit union or treasury branch within 3 days, exclusive of holidays and Saturdays, from the day that the corporation received the money, and
 - (ii) designate the account as a trust account registered in the name of the corporation,
- and
- (b) keep all trust money intact and not withdraw, convert, direct, borrow or commingle that trust money, other than pursuant to a resolution referred to in clause (a).

[2014 c10 s34](#)

Court ordered remedy

67(1) In this section,

- (a) “improper conduct” means
 - (i) non-compliance with this Act, the regulations or the bylaws by a developer, a corporation, an employee of a corporation, a member of a board or an owner,
 - (ii) the conduct of the business affairs of a corporation in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party,

- (iii) the exercise of the powers of the board in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party,
 - (iii.1) the conduct of an owner that is oppressive or unfairly prejudicial to the corporation, a member of the board or another owner,
 - (iv) the conduct of the business affairs of a developer in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party or a purchaser or a prospective purchaser of a unit, or
 - (v) the exercise of the powers of the board by a developer in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party or a purchaser or a prospective purchaser of a unit;
- (b) “interested party” means an owner, a corporation, a member of the board, a registered mortgagee or any other person who has a registered interest in a unit.
- (2)** Where on an application by an interested party the Court is satisfied that improper conduct has taken place, the Court may do one or more of the following:
- (a) direct that an investigator be appointed to review the improper conduct and report to the Court;
 - (b) direct that the person carrying on the improper conduct cease carrying on the improper conduct;
 - (c) give directions as to how matters are to be carried out so that the improper conduct will not reoccur or continue;
 - (d) if the applicant suffered loss due to the improper conduct, award compensation to the applicant in respect of that loss;
 - (e) award costs;
 - (f) give any other directions or make any other order that the Court considers appropriate in the circumstances.
- (3)** The Court may grant interim relief under subsection (2) pending the final determination of the matter by the Court.

CONDOMINIUM PROPERTY REGULATION
Schedule 2 AR 168/2000

Schedule 2

Definitions

1 In this Schedule,

- (a) “body corporate” includes a company or other body corporate whenever or however incorporated but does not include a corporation incorporated under section 25 of the Act;
- (b) “debentures” includes debenture stock;
- (c) “improved real estate” means an estate in fee simple in land
- (i) on which there exists a building, structure or other improvement used or capable of being used for residential, commercial or industrial purposes,
 - (ii) on which there is being erected such a building, structure or other improvement,
 - (iii) which is serviced with the utilities necessary for such a building, structure or other improvement, but only when the land is being mortgaged for the purpose of erecting the building, structure or other improvement, or
 - (iv) which is being used for agricultural purposes,
- but does not include an estate in fee simple in mines or minerals held separately from the surface;
- (d) “loan corporation” means a loan corporation registered under the *Loan and Trust Corporations Act*;
- (e) “municipal corporation” means
- (i) a municipal authority as defined in the *Municipal Government Act*, or
 - (ii) a municipality or a municipal authority created by legislation similar to the *Municipal Government Act* in another province or territory;
- (f) “securities” includes stocks, debentures, bonds, shares and guaranteed investment certificates or receipts;

(g) “trust corporation” means a trust corporation registered under the *Loan and Trust Corporations Act*.

Authorized corporation investments

2 A corporation may invest any trust money in the corporation’s hands, if the investment is in all other respects reasonable and proper, in any of the following:

- (a) securities of the Government of Canada, the government of any province or territory of Canada, any municipal corporation in any province or territory of Canada, the Government of the United Kingdom or the Government of the United States of America;
- (b) securities the payment of the principal and interest of which is guaranteed by the Government of Canada, the government of a province or territory of Canada, a municipal corporation in any province or territory of Canada, the Government of the United Kingdom or the Government of the United States of America;
- (c) debentures issued by a school division, drainage district, hospital district or health region under the *Regional Health Authorities Act* in Alberta that are secured by or payable out of rates or taxes;
- (d) bonds, debentures or other evidences of indebtedness of a body corporate that are secured by the assignment to a body corporate of payments that the Government of Canada or the government of a province or territory of Canada has agreed to make, if the payments are sufficient
 - (i) to meet the interest on all the bonds, debentures or other evidences of indebtedness outstanding as it falls due, and
 - (ii) to meet the principal amount of all the bonds, debentures or other evidences of indebtedness on maturity;
- (e) bonds, debentures or other evidences of indebtedness
 - (i) of a body corporate incorporated under the laws of Canada or of a province or territory of Canada that has earned and paid
 - (A) a dividend in each of the 5 years immediately

preceding the date of investment at least equal to the specified annual rate on all of its preferred shares, or

(B) a dividend in each year of a period of 5 years ended less than one year before the date of investment on its common shares of at least 4% of the average value at which the shares were carried in the capital stock account of the body corporate during the year in which the dividend was paid,

and

- (ii) that are fully secured by a first mortgage, charge or hypothec to a body corporate on any, or on any combination, of the following assets:

(A) improved real estate;

(B) the plant or equipment of a body corporate that is used in the transaction of its business;

(C) bonds, debentures or other evidences of indebtedness or shares of a class or classes authorized by this section;

- (f) bonds, debentures or other evidences of indebtedness issued by a body corporate incorporated in Canada if at the date of the investment or loan the preferred shares or common shares of that body corporate are authorized investments under clause (i) or (j);
- (g) guaranteed investment certificates or receipts of a trust corporation;
- (h) bonds, debentures, notes or deposit receipts of a loan corporation, trust corporation or credit union;
- (i) preferred shares of any body corporate incorporated under the laws of Canada or of a province or territory of Canada that has earned and paid
 - (i) a dividend in each of the 5 years immediately preceding the date of investment at least equal to the specified annual rate on all of its preferred shares, or

- (ii) a dividend in each year of a period of 5 years ended less than one year before the date of investment on its common shares of at least 4% of the average value at which the shares were carried in the capital stock account of the body corporate during the year in which the dividend was paid;
- (j) fully paid common shares of a body corporate incorporated in Canada or the United States of America that during a period of 5 years that ended less than one year before the date of investment has either
 - (i) paid a dividend in each of those years on its common shares, or
 - (ii) had earnings in each of those years available for the payment of of a dividend on its common shares, of at least 4% of the average value at which the shares were carried in the capital stock account of the body corporate during the year in which the dividend was paid or in which the body corporate had earnings a for the payment of dividends, as the case may be;
- (k) notes or deposit receipts of banks;
- (l) securities issued or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development, approved by the *Bretton Woods and Related Agreements Act* (Canada), but only if the bonds, debentures or other securities are payable in the currency of Canada, the United Kingdom, any member of the British Commonwealth or the United States of America;
- (m) securities issued or guaranteed by Inter-American Development Bank or by Asian Development Bank, but only if the bonds, debentures or other securities are payable in the currency of Canada or the United States of America;
- (n) first mortgages, charges or hypothecs on improved real estate in Canada, but only if
 - (i) the loan does not exceed 75% of the value of the property at the time of the loan as established by a report as to the value of the property made by a person whom the corporation reasonably believed to be a competent valuator, instructed and employed independently of any owner of the property, or
 - (ii) the loan is an insured loan under the National Housing Act, 1954 (Canada) SC 1953-54 c23.

Restrictions on investments

3(1) In determining market values of securities a corporation may rely on published market quotations of a recognized stock exchange in Canada or the United States of America.

- (2) In the case of an investment under section 2(e) the inclusion, as additional security under the mortgages, charges or hypothecs, of any other assets not of a class authorized by this Schedule as investments does not render the bonds, debentures or other evidences of indebtedness ineligible as an investment.
- (3) No investment may be made under section 2(e), (h) or (i) that would at the time of making the investment cause the aggregate market value of the investments made under those clauses to exceed 35% of the market value at that time of the whole trust estate.
- (4) No sale or other liquidation of any investment made under section 2(e), (h) or (i) is required solely because of any change in the ratio between the market value of those investments and the market value of the whole trust estate.
- (5) In case of an investment under section 2(i) or (j), not more than 30% of the total issue of shares of any body corporate may be purchased for any trust.
- (6) No investment shall be made under section 2(j) that, at the time of making the investment, would cause the aggregate market value of the common shares held for any particular trust fund to exceed 15% of the market value of that trust fund at that time.
- (7) No sale or other liquidation of common shares is required under this section solely because of any change in the ratio between the market value of those shares and the market value of the whole trust fund.

Court approved investments

4 In addition to the investments authorized by section 2, a corporation may invest funds in any other securities that the Court of King's Bench on application in any particular case approves as fit and proper, but nothing in this section relieves the corporation of the corporation's duty to take reasonable and proper care with respect to the investments so authorized.

Deposit of trust funds

5 A corporation may, pending the investment of any trust money, deposit it for a time that is reasonable in the circumstances

- (a) in any bank or treasury branch,
- (b) in any trust corporation,
- (c) in any credit union, or
- (d) in any loan corporation.

Registration of securities

6 Except in the case of a security that cannot be registered, a corporation that invests in securities shall require the securities to be registered in the corporation's name, and the securities may be transferred only in the corporation's name.

Variation of investments

7(1) A corporation in the corporation's discretion may

(a) call in any trust funds invested in securities other than those authorized by this Schedule and invest the funds in securities authorized by this Schedule, and

(b) vary any investments authorized by this Schedule.

(2) No corporation is liable for a breach of trust by reason only of the corporation's continuing to hold an investment that since its acquisition by the corporation has ceased to be one authorized by the instrument of trust or by this Schedule.

(3) When a corporation has improperly advanced trust money on a mortgage that would at the time of the investment have been a proper investment in all respects for a lesser sum than was actually advanced, the security is deemed to be an authorized investment for that lesser sum and the corporation is liable to make good only the amount advanced in excess of the lesser amount with interest.

Concurrence by corporation in corporate schemes

8(1) When a corporation holds securities of a body corporate in which the corporation has properly invested money under this Schedule, the corporation may concur in any compromise, scheme or arrangement

(a) for the reconstruction of the body corporate or for the winding-up or sale or distribution of its assets,

(b) for the sale of all or any part of the property and undertaking of the body corporate to another body corporate,

(c) for the amalgamation of the body corporate with another body corporate,

(d) for the release, modification or variation of any rights, privileges or liabilities attached to the securities or any of them, or

(e) whereby

(i) all or a majority of the shares, stock, bonds, debentures and other securities of the body corporate, or of any class of them, are to be exchanged for shares, stock, bonds, debentures or other securities of another body corporate, and

(ii) the corporation is to accept the shares, stock, bonds, debentures or other securities of the other body corporate allotted to the corporation pursuant to the compromise, scheme or arrangement,

in like manner as if the corporation were entitled to the securities beneficially and may, if the securities are in all other respects reasonable and proper investments, accept any securities of any denomination or description of the reconstructed or purchasing or new body corporate instead of or in exchange for all or any of the original securities.

(2) A corporation is not responsible for any loss occasioned by any act or thing done in good faith under subsection (1) and the corporation may, if the securities accepted under subsection (1) are in all other respects reasonable and proper investments, retain them for any period for which the corporation could have properly retained the original securities.

Subscription for securities

9(1) If any conditional or preferential right to subscribe for any securities in any body corporate is offered to a corporation in respect of any holding in the body corporate, the corporation may, as to all or any of the securities,

(a) exercise that right and apply capital money subject to the trust in payment of the consideration, or renounce the right, or

(b) assign for the best consideration that can be reasonably obtained the benefit of that right, or the title to it, to any person, including any beneficiary under the trust,

without being responsible for any loss occasioned by any act or thing so done by the corporation in good faith.

(2) Notwithstanding subsection (1), the consideration for any such assignment shall be held as capital money of the trust.