



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Bill 247

(Private)

**An Act respecting The Bank of Nova
Scotia Trust Company, Montreal
Trust Company of Canada and
Montreal Trust Company**

Introduced 18 December 1997

Passage in principle 19 June 1998

Passage 19 June 1998

Assented to 20 June 1998

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(Private)

AN ACT RESPECTING THE BANK OF NOVA SCOTIA TRUST COMPANY, MONTREAL TRUST COMPANY OF CANADA AND MONTREAL TRUST COMPANY

WHEREAS Montreal Trust Company of Canada is issued from the amalgamation of Montreal Trust Company of Canada and Wellington Trust Company on 1 January 1992;

Whereas Montreal Trust Company is issued from the amalgamation of Montreal Trust Company, Credit Foncier and Credit Foncier Trust Company on 1 January 1987, under the Act to amalgamate Montreal Trust Company, Credit Foncier and Credit Foncier Trust Company (1986, chapter 135), and received its letters patent of continuance on 17 August 1994, under the Trust and Loan Companies Act (S.C., 1991, chapter 45);

Whereas The Bank of Nova Scotia Trust Company was organized by letters patent issued on 22 June 1992, under the Trust and Loan Companies Act;

Whereas on 11 April 1994, The Bank of Nova Scotia acquired all of the voting shares of Montreal Trustco Inc. and thereby acquired all of the shares of Montreal Trust Company of Canada and Montreal Trust Company, each a wholly-owned subsidiary of Montreal Trustco Inc.;

Whereas The Bank of Nova Scotia Trust Company, a wholly-owned subsidiary of The Bank of Nova Scotia, proposes to acquire part of the trusteeship and agency business of both Montreal Trust Company of Canada and Montreal Trust Company in which one of these two companies acts for or for the benefit of a natural person;

Whereas for that purpose, The Bank of Nova Scotia Trust Company must be appointed as successor trustee to Montreal Trust Company of Canada and Montreal Trust Company in relation to that trusteeship and agency business;

Whereas because of the number of trusts and instances of administration of the property of others involved, it would be impractical to apply to the court to have The Bank of Nova Scotia Trust Company appointed as successor to Montreal Trust Company of Canada and Montreal Trust Company;

Whereas the legislatures of the provinces of New Brunswick, Nova Scotia, Prince Edward Island, Ontario, Manitoba, Saskatchewan, Alberta and British

Columbia have all enacted a statute having the same effect as this Act and a bill having the same effect is currently under review before the legislature of the province of Newfoundland;

Whereas the enactment by the Parliament of Québec of a statute relating to the transfer of the trusteeship and agency business of Montreal Trust Company of Canada and Montreal Trust Company to The Bank of Nova Scotia Trust Company is in the interest of the persons having relations with the said three trust companies in relation to such trusteeship and agency business, and aims at clarifying their rights and obligations;

Whereas The Bank of Nova Scotia Trust Company, Montreal Trust Company of Canada and Montreal Trust Company have consented to and wish the enactment of this Act;

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. From the date set forth in a notice published in the *Gazette officielle du Québec* by The Bank of Nova Scotia Trust Company advising of the acquisition of the trusteeship and agency business of Montreal Trust Company of Canada and Montreal Trust Company referred to in this section by The Bank of Nova Scotia Trust Company, the latter is substituted *de pleno jure* for Montreal Trust Company of Canada and Montreal Trust Company with respect to any situation wherein Montreal Trust Company of Canada or Montreal Trust Company acts for or for the benefit of a natural person, as a trust company as defined in section 1 of the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01), notwithstanding by what document or instrument Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, was appointed and whatever title was used to appoint it.

The fact that some of the movables or immovables referred to in this section are situate outside Québec does not prevent such substitution.

2. Subject to section 8, where a notarial act or a private writing, a judgment or any other instrument imposes any obligations on Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, in relation to any situation described in section 1, or confers any rights on the same, the name “The Bank of Nova Scotia Trust Company” is substituted for the name “Montreal Trust Company of Canada” or “Montreal Trust Company”, as the case may be, from the date set forth in the notice published pursuant to section 1 or from the date on which such instrument comes into force if after the date set forth in such notice.

3. From the date set forth in the notice published pursuant to section 1, The Bank of Nova Scotia Trust Company is substituted *de pleno jure* for Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, in all rights related to property, corporeal or incorporeal, movable or immovable, vested in either of them in relation to any situation described in section 1, whether in the form in which it was originally acquired by Montreal Trust

Company of Canada or Montreal Trust Company, as the case may be, or otherwise, and such substitution is effective without any need of registration or deposit of this Act or any other document indicating such substitution in any register whatsoever in Québec.

4. Subject to section 8, no proceeding exercised by or against Montreal Trust Company of Canada or Montreal Trust Company in relation to any situation described in section 1, before any court or administrative tribunal or any governmental agency in Québec, shall be suspended or terminated as a result of the coming into force of this Act. However, such proceedings may be continued in the name of The Bank of Nova Scotia Trust Company, which shall have the same rights and obligations as if they had been commenced in its name or against it, upon a simple written notice served to all interested parties and deposited in the record of such proceedings.

Subject to section 8, any proceeding which may have been exercised by Montreal Trust Company of Canada or Montreal Trust Company or against either of them, in relation to any situation described in section 1, may be exercised by The Bank of Nova Scotia Trust Company or against it, which shall have the same rights and obligations and shall be subject to the same liabilities in respect thereof as Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, would have had or been subject to if this Act had not been enacted, and for purposes of examination for discovery or production of documents in relation to any such proceeding, Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, and its officers or employees shall be subject to the same obligations as if this Act had not been enacted.

With respect to such proceedings, Montreal Trust Company of Canada and Montreal Trust Company, as the case may be, as well as its officers and employees, are deemed to have been acting for The Bank of Nova Scotia Trust Company with respect to any situation described in section 1.

5. Nothing in this Act affects the rights of a person having any claim in relation to events that occurred before the date set forth in the notice published pursuant to section 1 which may be qualified as non-performance or bad performance by Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, in respect of its obligations in relation to any situation described in section 1, but all such rights as may be enforceable in Québec may be asserted against The Bank of Nova Scotia Trust Company, which shall be responsible for all debts, liabilities and obligations of Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, in respect thereof.

6. Any person under an obligation to make payments to Montreal Trust Company of Canada or Montreal Trust Company in relation to any situation described in section 1, may make such payments to such company until The Bank of Nova Scotia Trust Company has given notice to such person in

writing that the payments shall be made to The Bank of Nova Scotia Trust Company in the future and thereupon the person's obligation is owed to The Bank of Nova Scotia Trust Company.

7. For the cancellation, upon The Bank of Nova Scotia Trust Company's demand, of the registration of a right or a power of Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, vested in The Bank of Nova Scotia Trust Company because of this Act, the document transmitted to the registry office for the registration division concerned or to the register of personal and movable real rights shall mention that The Bank of Nova Scotia Trust Company acts in the rights of Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, pursuant to the substitution operated by this Act and shall refer to this Act.

8. This Act shall not be interpreted as denying to a person who named Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, as trustee or administrator of the property of others, or who is beneficiary of such administration, the right, if applicable, of such person to name such another person other than The Bank of Nova Scotia Trust Company.

9. This Act does not apply to the following property and trusts :

(a) property, corporeal or incorporeal, movable or immovable, and each interest in such property, held by Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, exclusively and for its own use and benefit, and not for the use or benefit of any other person or for any other purpose ;

(b) the trusts relating to money received for guaranteed investment and any property, corporeal or incorporeal, movable or immovable, held in trust by Montreal Trust Company of Canada or Montreal Trust Company with respect to such guaranteed investment, including, without limitation, trusts relating to any registered home ownership savings plan, registered retirement savings plan, retirement income fund, deferred profit sharing plan or income averaging annuity contract, as those terms are defined in the Income Tax Act (R.S.C., 1985, 5th Supplement, chapter 1) or the Taxation Act (R.S.Q., chapter I-3), or other registered or unregistered deferred income or employee benefit plan ;

(c) property, corporeal or incorporeal, movable or immovable, held by or vested in Montreal Trust Company of Canada or Montreal Trust Company or vested in one of these two companies pursuant to or in respect of the following :

i. any trust deed or other instrument to which section 1 would otherwise apply, wherein Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, is or may be a trustee and by virtue of which bonds, debentures or other evidences of indebtedness, warrants or rights have been or may be issued,

ii. any document or trust to which section 1 would otherwise apply, pursuant to which Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, acts as trustee for unit holders in respect of any oil or gas royalty trust fund,

iii. any document or trust to which section 1 would otherwise apply, wherein Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, acts as manager, advisor, registrar or transfer agent, and

iv. any document or trust to which section 1 would otherwise apply pursuant to which Montreal Trust Company of Canada or Montreal Trust Company, as the case may be, acts as custodian or trustee for the benefit of one or more persons under a plan or other arrangement established by a corporation, partnership or other entity or person other than a natural person.

10. This Act comes into force on 20 June 1998.