COLLAS CRILL

Retiring trustees: Should I stay or can I go?

JULY 2025

What is a sole trustee to do where it is entitled to resign but no replacement has yet been found?

Confronted with that scenario, Kawaley J of the Grand Court of the Cayman Islands (the **Court**) delivered judgment on 19 June 2025 in *In the matter of the O Trust*[1] on '*principles of law which are not 'run of the mill' under Cayman trusts law*'.[2]

Facts

The O Trust was established in 1993 as a discretionary trust (the **Trust**). X Limited was appointed as trustee in 2008 (the **Trustee**).

Due to a breakdown in the working relationship between the Trustee and the sole beneficiary of the Trust during her lifetime (the **Defendant**), including where the Defendant had '*huffed and puffed*' and '*grumbled*' (as the Court noted) about the Trustee's administration of the Trust,[3] the Trustee sought to retire in 2019 and asked the Defendant to nominate a successor trustee. However, a suitable replacement had not been identified.

The proceedings

Stuck in limbo and faced with what appeared to be unjustified criticism of its trusteeship, the Trustee applied to the Court in September 2023 for permission to retire as trustee and to appoint a new trustee.

Such relief was sought:

i. pursuant to section 10(1) of the Trusts Act (2021 Revision) (the **Trusts Act**), which empowers the Court to appoint a new trustee - including in substitution for an existing trustee - if it is '*inexpedient, difficult or impracticable so to do without the assistance of the Court*'; and/or

ii. under the Court's inherent jurisdiction; and/or

iii. by way of the Court providing approval of the Trustee's proposed exercise of its powers under clause 4.6 of the Trust deed to appoint a new trustee in substitution.

In November 2024, the Trustee sought directions from the Court to progress matters, as the Defendant was no longer represented by Cayman attorneys and appeared not to be actively engaging with the proceedings.

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At a hearing in December 2024, the Court gave directions for a final hearing together with the filing of further evidence, including for the Defendant (who did not appear at that hearing) to have a further and final opportunity to '*tell her story*'[4] and confirm whether she wished to pursue any claims against the Trustee.

In the interim, the Trustee would be '*held before the Court*',[5] whereby it would remain as trustee and be required to file its accounts before the date of the final hearing and on the approval of such accounts by the Court, the Trustee would be entitled to be indemnified from the Trust fund in respect of its costs of such accounting and the application.

As noted by the Court, the order was of '*general legal interest*'[6] as the Court did not routinely make directions of that kind.

The Court noted further that '*against this background of a protracted resignation process, it seemed reasonable to conclude the proposed resignation should be facilitated rather than impeded by the Court.*'[7]

The directions given would therefore facilitate the process for the Trustee to be able to resign and be replaced as soon as possible, in circumstances where there appeared to be reasonable grounds for believing a suitable replacement would be found.

Directions from the Court on a trustee's retirement

In its judgment following the final hearing, the Court determined two questions which were not '*run of the mill*'[8] under Cayman trusts law:

1. whether the Trustee's accounts should be approved, including in light of the Defendant's complaints about how the Trustee had administered the Trust, which fell '*outside the scope of the court's traditional supervisory role in relation to trusts*';[9] and

2. how the Trustee should administer the Trust in the interim while it sought to find a replacement trustee, in circumstances where it could not take significant decisions in the usual way by consulting with the Defendant, due to the strained relationship.

As a matter of Cayman Islands law, the Court has a supervisory jurisdiction over trusts. Where a trustee is faced with difficult circumstances, the Court will ordinarily seek to assist the trustee in the exercise of its fiduciary duties.

This is reflected by section 48 of the Trusts Act which authorises a trustee to apply to the Court for '*an opinion, advice or direction on any question respecting the management or administration of the trust money*'.

Where the trustee acts on such guidance from the Court, it shall be deemed to have discharged its duty in respect of the subject matter of that application provided, however, that a trustee shall not be indemnified if it has committed any fraud, wilful concealment or misrepresentation in obtaining such opinion, advice or direction.

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The Court therefore accepted that it had jurisdiction to make the above directions, setting out its reasoning as follows:

1. Trust accounts

The general legal principle as codified in section 47(2) of the Trusts Act is that '*a trustee may reimburse themselves or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers*'.

The principles in *Mussell v Patience*,[10] which concerned the approval of expenses incurred by an executor of an estate, applied in circumstances where a Trustee was entitled to such an indemnity but a Defendant had invoked the Court's jurisdiction by requiring a Trustee to account for its expenditure.

What was crucial was that it was shown '*(1) that the sum concerned was indeed spent, and (2) that it was spent in the fair execution of the estate administration.*'[11]

2. Holding the trustee before the Court until a replacement can be found

In addition to the Court's broad supervisory jurisdiction over trusts pursuant to section 48 of the Trusts Act, and in the absence of any relevant Cayman Islands authority, the Court considered Canadian authorities on this issue.

In *Evans v Gonder*,[12] the Ontario Superior Court of Justice held that where a trustee is entitled to be discharged, it is not required to demonstrate to the court that it has found a replacement, as the court would instead appoint a new trustee. However, where there is no willing replacement, the court may '*be obliged to keep the trustee before the court, and not discharge him, taking care that the trustee shall not suffer thereby.*'[13] In that case, however, the sole trustee was discharged despite no replacement having been found, leaving the estate without a trustee.

In *Gonder v Gonder Estate*,[14] the Ontario Court of Appeal held that the removal of a sole trustee without appointing a replacement was '*an extreme remedy*'[15] which would only be available in exceptional cases where no other option was realistically available (such as the limited value of the estate and the lack of viable replacement trustees). Even though that case was deemed to be exceptional, the Ontario Court of Appeal held that this course of action should not be undertaken '*without also crafting a mechanism by which the estate could continue to be administered*'.[16]

That decision was approved by the English High Court in *Serious Fraud Office v Litigation Capita Limited*[17] where it was held that the removal of a sole trustee may be permissible in rare circumstances.

In line with the Canadian authorities, the Court held that the Trustee would remain as trustee for the time being (as the Trustee had not sought to be removed without the appointment of its successor) and approved the Trustee's proposal by which it would:[18]

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i. be held before the Court without being discharged until a replacement trustee was found; and

ii. file accounts annually with the Court and serve them upon the Defendant.

Once a replacement trustee was found, the Court indicated that it was prepared to formalise the retirement and appointment, even without the active participation of the Defendant.[19]

Tax considerations for trustees

Kawaley J also made obiter remarks in the judgment in respect of tax which trustees would be well-advised to take note of.

The Trustee had refused to distribute Trust funds to the Defendant in favour of paying those funds directly to the relevant authorities to meet the Defendant's outstanding tax obligations.

Kawaley J noted that Cayman trustees '*routinely ensure that their trusts are not used as vehicles of tax evasion*' and this case was an example of the '*red lines trustees may be required to draw in this regard*'.[20]

Key takeaways for trustees

The somewhat novel circumstances of this case illustrate the importance of the Court's supervisory jurisdiction and the extent to which it may exercise its discretion to assist trustees in resolving administrative challenges.

Where the Court cannot provide an immediate remedy (such as discharging a sole trustee where no replacement has been found), it may instead be willing to make orders which facilitate that process under Court supervision, to ultimately achieve the desired outcome.

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[1] [2025] CIGC (FSD) 56.

[2] At [8].

[3] At [6].

[4] *In the matter of the O Trust* [2025] CIGC (FSD) 1 at [11].

[5] At [9].

[6] At [12].

[7] At [8].

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[8] *In the matter of the O Trust* [2025] CIGC (FSD) 56 at [8].

[9] Ibid.

[10] [2018] EWHC 430 (Ch).

[11] *In the matter of the O Trust* [2025] CIGC (FSD) 56 at [14].

[12] Ontario SCJ, 12 June 2009.

[13] *In the matter of the O Trust* [2025] CIGC (FSD) 56 at [15].

[14] 2010 ONCA 127.

[15] *In the matter of the O Trust* [2025] CIGC (FSD) 56 at [16].

[16] Ibid.

[17] [2022] EWHC 3053 (Comm).

[18] *In the matter of the O Trust* [2025] CIGC (FSD) 56 at [19].

[19] At [20].

[20] At [7].

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