

Eligible investments under the Insurance Companies Act of Canada

Jacques Caya

Volume 51, numéro 2, 1983

URI : <https://id.erudit.org/iderudit/1104315ar>

DOI : <https://doi.org/10.7202/1104315ar>

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Éditeur(s)

HEC Montréal

ISSN

0004-6027 (imprimé)

2817-3465 (numérique)

[Découvrir la revue](#)

Citer ce document

Caya, J. (1983). Eligible investments under the Insurance Companies Act of Canada. *Assurances*, 51(2), 199–211. <https://doi.org/10.7202/1104315ar>

Résumé de l'article

Dans le numéro d'avril 1983, a paru la première partie de l'article de M. Jacques Caya intitulé « Registration under the insurance companies act of Canada ». Nous en donnons ici la deuxième, intitulée « Eligible investments under the insurance companies act of Canada », tout en attirant l'attention du lecteur sur les modifications que le législateur se prépare à apporter à la loi. Comme nous le notions précédemment, nous faisons paraître le texte de M. Caya tel quel, quitte à le modifier ultérieurement au fur et à mesure que s'appliqueront les exigences nouvelles; ce qui peut prendre un bon moment, si l'état de la politique ne se prête pas à une action rapide.

Eligible investments under the Insurance Companies Act of Canada

by

JACQUES CAYA ⁽¹⁾

II

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1. **Assets of the following classes in which the company has invested its funds :**
 - a) the bonds, debentures, stocks or other evidences of indebtedness of or guaranteed by the government of
 - (i) Canada or any province thereof, or
 - (ii) the country in which the head office of the company is situated or a province or state thereof ;
 - b) the bonds, debentures or other evidences of indebtedness of or guaranteed by a municipal corporation in Canada, or of a school corporation in Canada, or secured by rates or taxes levied under the authority of a province of Canada on property situated in such province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec upon real estate or by such rates or taxes ;

⁽¹⁾ M. Caya est vice-président de *Société Canadienne de Gestion de Réassurance, Inc.*, membre du groupe Sodarcn.

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- c) the bonds or debentures of a corporation that are secured by the assignment to a trust corporation in Canada of an annual payment that the Government of Canada has agreed to make, where such annual payment is sufficient to meet the interest falling due on the bonds or debentures outstanding and the principal amount of the bonds or debentures maturing for payment in the year in which the annual payment is made ;
- d) the bonds or debentures issued by a charitable, educational or philanthropic corporation that are secured by the payment, assignment or transfer to a trust corporation in Canada of subsidies, payable by or under the authority of a province of Canada, sufficient to meet the interest as it falls due on the bonds or debentures and the principal amount of the bonds or debentures on maturity ;
- e) the bonds, debentures or other evidences of indebtedness of a Canadian corporation that are fully secured by statutory charge upon real estate or upon the plant or equipment of the corporation used in the transaction of its business, if interest in full has been paid regularly for a period of at least ten years immediately preceding the vesting thereof in trust upon the securities of that class of the corporation then outstanding ;
- f) the bonds, debentures or other evidences of indebtedness issued by an authority or other body without share capital established and empowered pursuant to a statute of Canada or of any province thereof to administer, regulate the administration of, provide or operate port, harbour, airport, bridge, highway, tunnel, transportation, communication, sanitation, water, electricity or gas services or facilities and for any of these purposes to levy, impose or make taxes, rates, fees or other charges that may be used only in carrying out the objects of the authority or other body and are sufficient to meet its operating, maintenance and debt service charges ;
- g) the bonds, debentures and other securities issued or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development ap-

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proved by subsection 2(1) of the Bretton Woods Agreements Act ;

- g.1) the bonds, debentures and other securities issued or guaranteed by Inter-American development Bank or by Asian development Bank ;
- h) the bonds, debentures or other evidences of indebtedness of a Canadian corporation that are fully secured by a mortgage, charge or hypothec to a trustee or to the company upon any, or any combination, of the following assets ;
 - (i) real estate or leaseholds,
 - (ii) the plant or equipment of a corporation or partnership that is used in the transaction of the business of that corporation or partnership, or
 - (iii) bonds, debentures or other evidences of indebtedness or shares, of a class specified in this section as assets that may be vested in trust, or cash balances, if such bonds, debentures or other evidences of indebtedness, shares or cash balances are held by a trustee ;

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and the inclusion, as additional security under the mortgage, charge or hypothec, of any other assets not of a class specified in this schedule shall not render such bonds, debentures or other evidences of indebtedness ineligible as assets that may be vested in trust ;

- i) obligations or certificates issued by a trustee to finance the purchase of transportation equipment for a corporation incorporated in Canada to be used on railways or public highways if the obligations or certificates are fully secured by :
 - (i) an assignment of the transportation equipment to, or the ownership thereof by, the trustee, and
 - (ii) a lease or conditional sale thereof by the trustee to the corporation ;
- j) the bonds, debentures or other evidences of indebtedness
 - (i) of a Canadian corporation if, at the date of vesting

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thereof in trust, the preferred or common shares of the corporation are eligible for vesting in trust under paragraph l) or m) and the aggregate of

- (A) the amount of the total indebtedness of the corporation on the date of vesting in trust, and
- (B) where the bonds, debentures or other evidences of indebtedness to be vested in trust are part of a new issue by the corporation, the amount of additional indebtedness to be incurred by the corporation as the result of that issue,

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does not exceed three times the aggregate of the average amounts of paid-in capital, contributed surplus, retained earnings, and total indebtedness of the corporation, each such average amount being calculated as one-fifth of the aggregate of the relevant amounts determined as at the end of each of the five financial years of the corporation immediately preceding the date of vesting in trust, and for the purposes of this subparagraph.

- (C) where the corporation at the date of a proposed vesting in trust owns beneficially, directly or indirectly, more than fifty percent of the common shares of one or more other corporations and the accounts of the corporation and those other corporations are normally presented to the shareholders of the corporation in consolidated form, the amount of paid-in capital, contributed surplus, retained earnings and total indebtedness at any relevant time may be determined on the basis of a consolidation of the accounts of the corporation and those other corporations, and
- (D) where the corporation is a corporation continuing or formed as a result of the amalgamation or merger of two or more corporations the amount of paid-in capital, contributed surplus, retained earnings and total indebtedness for any relevant time prior to the amalgamation or merger shall be deemed to be identical with the corresponding amounts determined on the basis

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of a consolidation of the accounts of the amalgamated or merged corporations,

- (ii) of a Canadian corporation, where the earnings of the corporation in a period of five years ended less than one year before the date of vesting thereof in trust have been equal to at least ten times and in each of any four of the five years have been equal to at least one and one-half times the annual interest requirements at the date of vesting in trust on the total indebtedness of or guaranteed by the corporation ; and for the purposes of this subparagraph

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- (A) where the bonds, debentures or other evidences of indebtedness to be vested in trust are part of a new issue by the corporation, the additional annual interest requirements that will result from that issue shall be taken into account in determining the annual interest requirements at the date of vesting in trust on the total indebtedness of or guaranteed by the corporation.
- (B) where the corporation on the date of vesting in trust owns, directly or indirectly, more than fifty percent of the common shares of another corporation, the earnings of the corporations during the period of five years may be consolidated with due allowance for any minority interests and in that event the interest requirements of the corporations shall be consolidated and such consolidated earnings and consolidated interest requirements shall be taken as the earnings and interest requirements of the corporation,
- (B.1) where the corporation is a corporation continuing or formed as a result of the amalgamation or merger of two or more corporations, it is deemed to have had earnings and annual interest requirements for any relevant period prior to the date of the amalgamation or merger, identical with the earnings and annual interest requirements of the amalgamated or merged corporations determined on the basis of a consolidation of their accounts, and

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- (C) « earnings » means earnings available to meet interest charges on indebtedness.
- (iii) of a Canadian corporation that are guaranteed by another Canadian corporation
 - (A) where such other corporation meets the requirements set out in subparagraph m)(ii) and such bonds, debentures or other evidences of indebtedness would be eligible for vesting in trust by the company under subparagraph (i) if they had been issued by the guaranteeing corporation, or
 - (B) where the bonds, debentures or other evidences of indebtedness of the issuing corporation would be eligible for vesting in trust under subparagraph (ii) if they had been issued by the guaranteeing corporation, or
- (iv) of a Canadian corporation that are guaranteed by a corporation incorporated outside Canada
 - (A) where the guaranteeing corporation meets the requirements set out in subparagraph m) (ii) and such bonds, debentures, or other evidences of indebtedness would be eligible for vesting in trust by the company under subparagraph (i) if they had been issued by the guaranteeing corporation and that corporation were a Canadian corporation, or
 - (B) where the bonds, debentures, or other evidences of indebtedness of the guaranteeing corporation would, if it were a Canadian corporation, be eligible for vesting in trust under subparagraph (ii).
- k) guaranteed investment certificates issued by a trust company incorporated in Canada if, at the date of vesting thereof in trust, the preferred shares or the common shares of the trust company are eligible for vesting in trust under paragraph l) or m) ;
- l) the preferred shares of a Canadian corporation if

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- (i) the corporation has paid a dividend in each of the five years immediately preceding the date of vesting of the preferred shares in trust at least equal to the specified annual rate upon all of its preferred shares, or
 - (ii) the common shares of the corporation are at the date of vesting of the preferred shares in trust eligible for vesting in trust under paragraph m) ;
- m) the fully paid common shares of a Canadian corporation share, during a period of five years that ended less than one year before the date of vesting thereof in trust, the corporation
- (i) paid in each of at least four of the five years, including the last year of that period, a dividend upon its common shares, or
 - (ii) earned in each of at least four of the five years, including the last year of that period, an amount available for the payment of a dividend upon its common shares, of at least four percent of the average value at which the issued common shares of the corporation were carried in the capital stock account of the corporation during the year in which the dividend was paid or in which the amount was earned, as the case may be, but
 - (iii) except as provided in paragraph n), a company shall not vest in trust more than thirty percent of the common shares of any corporation,
 - (iv) a company shall not vest its own shares in trust,
 - (v) a company registered to transact the business of life insurance shall not vest in trust the shares of a corporation transacting the business of life insurance,
 - (vi) if, at the date of a proposed vesting in trust, the corporation owns beneficially, directly or indirectly, more than fifty percent of the common shares of one or more other corporations, and if the accounts of the corporation and those other corporations are normally presented to the shareholders of the corporation in consolidated form, the company shall not

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vest in trust the shares of that corporation unless the requirement in subparagraph (i) or (ii) is met on the basis of the consolidated accounts of the corporation and those other corporations, and

(vii) where it is proposed to vest in trust the shares of a corporation continuing or formed as a result of the amalgamation or merger of two or more corporations, that corporation is deemed, for the purposes of this paragraph, to have dividend and earnings records for any relevant period prior to the date of the amalgamation or merger identical with the dividend and earnings records of the amalgamated or merged corporations determined on the basis of a consolidation of their accounts ;

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- n) a company may vest in trust, subject to such terms and conditions as may be prescribed by the Governor in Council, more than thirty percent of the common shares of a corporation incorporated in Canada to acquire, hold, maintain, improve, lease or manage real estate or leaseholds in Canada ;
- o) ground rents, mortgages or hypothecs on real estate or leaseholds in Canada, where the amount of the mortgage or hypothec together with the amount of indebtedness under any mortgage or hypothec on the real estate or leasehold ranking equally with or superior to the mortgage or hypothec that is vested in trust does not exceed three-quarters of the value of the real estate or leasehold covered thereby ;
- p) mortgages or hypothecs on real estate or leaseholds in Canada or bonds or notes secured by such mortgages or hypothecs, notwithstanding that the mortgage or hypothec exceeds the amount that the company otherwise may vest in trust, if the excess is guaranteed or insured by, or through an agency of, the Government of Canada or of a province thereof or is insured by a policy of mortgage insurance issued by an insurance company registered under this Act or the Canadian and British Insurance Companies Act ;
- q) real estate or leaseholds for the production of income in

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Canada either alone or jointly with any corporation or jointly with any person administering a trust governed by a registered pension fund or plan or a deferred profit sharing plan, as defined in the Income Tax Act, if

(i) a lease of the real estate or leasehold is made to, or guaranteed by

(A) the Government of Canada or of any province or an agency of any such government of a municipality in Canada or any agency thereof, or

(B) a corporation, the preferred shares or the common shares of which are, at the date of vesting of the real estate or leasehold in trust, eligible for vesting in trust under paragraph l) or m), and

(ii) the lease provides for a net revenue sufficient to yield a reasonable interest return during the period of the lease and to repay at least eighty-five percent of the amount invested in the real estate or leasehold within the period of the lease but not exceeding thirty years from the date of investment,

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but a parcel of real estate or a leasehold may not be included in the assets vested in trust if the total investment by the Company therein exceeds four percent of the accepted value of the total assets in Canada of the company ;

r) real estate or leaseholds for the production of income in Canada either alone or jointly with any corporation or jointly with any person administering a trust governed by a registered pension fund or plan or a deferred profit sharing plan, as defined in the Income Tax Act, if the real estate or leasehold has produced, in each of the three years immediately preceding the date of vesting thereof in trust, net revenue in an amount that, if received in each year following the date of investment, would be sufficient to yield a reasonable interest return on the amount invested in the real estate or leasehold and to repay at least eighty-five percent of that amount within the portion of the economic lifetime of the improvements to the real estate or leasehold that remained at the date of investment but not exceeding forty years from that date ; but a parcel of real

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estate or a leasehold may not be included in the assets vested in trust if the total investment by the company therein exceeds four percent of the accepted value of the total assets in Canada of the company.

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- s) real estate in Canada required by the company for its actual use or occupation or reasonably required by it for the natural expansion of its business or acquired by foreclosure of a mortgage on real estate where the mortgage is vested in trust under this Act ; or
 - t) cash balances in Canadian funds in the hands of the trustee or in a trust account maintained by the trustee in a chartered bank in Canada.

2. Mortgages and other titles for repayment of loans secured by :

- a) any of the bonds, debentures or other evidences of indebtedness, shares or other securities that may be vested in trust by the company under section 1 of this schedule, but the amount at which the mortgage or other title so secured may be vested in trust shall not exceed the amount at which the bonds, debentures, or other evidences of indebtedness, shares or other securities might be vested in trust under section 1 of this schedule ;
- b) real estate or leaseholds for a term of years or other estate of interest in real estate in Canada, where the amount of the loan together with the amount of indebtedness under any mortgage or other charge on the real estate or interest therein ranking equally with or superior to the loan does not exceed three-quarters of the value of the real estate or interest therein, subject to the exception that a company that has real estate vested in trust may, upon sale thereof, vest in trust a mortgage or other title accepted as part payment and secured thereon for more than three-quarters of the sale price of the real estate ; or
- c) real estate or leaseholds in Canada, notwithstanding that the loan exceeds the amount that the company may otherwise vest in trust, if the excess is guaranteed or insured by, or through an agency of, the Government of Canada or of a province thereof or is insured by a policy of mortgage insurance issued by an insurance company registered un-

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der this Act or the Canadian and British Insurance Companies Act.



3. Where a company has vested in trust the securities of a corporation and as a result of a bona fide arrangement for the reorganization or liquidation of the corporation or for the amalgamation of the corporation with another corporation, the company acquires in exchange for such securities, bonds, debentures or other evidences of indebtedness or shares not eligible under the foregoing provisions of this schedule for vesting in trust, the bonds, debentures or other evidences of indebtedness or shares so acquired may be vested in trust for the purposes of this Act.

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4. Investments or loans not eligible under the foregoing provisions of this schedule for vesting in trust, including investments in real estate or leaseholds, subject to the following provisions :
 - a) an investment in real estate or leaseholds shall be vested in trust only if the investment was made in Canada, either alone or jointly with any corporation or jointly with any person administering a trust governed by a registered pension fund or plan or a deferred profit sharing plan, as defined in the Income Tax Act, but a parcel of real estate or a leasehold may not be included in the assets vested in trust if the total investment therein exceeds two percent of the accepted value of the total assets in Canada of the company ;
 - b) this section shall be deemed not to enlarge the authority conferred by sections 1 and 2 of this schedule to vest in trust mortgages or any one parcel of real estate or any one leasehold, or loans on real estate or leaseholds, and not to affect the operation of subparagraphs 1(m) (iii) to (v) of this schedule; and
 - c) the total accepted value of the investments and loans vested in trust under this section, excluding those that are or, at any time since vesting in trust, have been eligible for vesting in trust apart from this section, shall not exceed

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- (i) in the case of investments in real estate or leaseholds, other than for the production of income, two percent of the accepted value of the total assets in Canada of the company,
 - (ii) in the case of investments in real estate or leaseholds, including real estate or leaseholds other than for the production of income, seven percent of the accepted value of the total assets in Canada of the company, and
 - (iii) in the case of loans and investments other than investments in real estate or leaseholds, seven percent of the accepted value of the total assets in Canada of the company.

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- 5. Notwithstanding the foregoing provisions of this schedule, a company may vest in trust, loans and investments made pursuant to the National Housing Act.
- 5.1 If a company is designated a bank or lender, as the case may be, under the Canada Student Loans Act, the Farm Improvement Loans Act, the Fisheries Improvement Loans Act or the Small Businesses Loans Act, the company may vest in trust guaranteed loans made under and in accordance with the provisions of any of those Acts for which it has been designated a bank or lender.

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- 6. The total accepted value of the common shares vested in trust by any company under this schedule shall not at any time exceed twenty-five percent of accepted value of the total assets in Canada of the company.

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- 7. The total accepted value of the real estate or leaseholds vested in trust by a company under paragraph 1 (r) and section 4 of this schedule shall not exceed fifteen percent of the accepted value of the total assets in Canada of the company.

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8. A company shall not vest in trust bonds, debentures or other evidences of indebtedness on which payment of principal or interest is in default.
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Forces, Volume 60-61. 1982.

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À signaler le dernier numéro de *Forces* en grande partie consacré aux grands bureaux d'ingénieurs conseils canadiens ayant leur siège social au Québec. Il y a là un phénomène assez remarquable. Grâce à Hydro-Québec qui a donné accès à ses grands travaux, les ingénieurs canadiens du Québec ont pris une importance considérable. Comme quoi c'est en forgeant que l'on devient forgeron. Cette fois, il s'agissait de barrages, de matériel électrique d'une puissance considérable, d'installations tout à fait remarquables. Or, les bureaux d'ingénieurs de la province se sont révélés de façon assez étonnante dans ce domaine. Ils ont essaimé non seulement en Amérique, mais surtout en Afrique et en Afrique du Nord en particulier.

Comme quoi lorsque les portes sont ouvertes dans de grandes entreprises, ceux qui y travaillent peuvent apprendre un métier précieux et, par la suite, s'ils ont de l'initiative, fonder leurs propres entreprises et leur donner une importance considérable dans le monde entier. Ce fut le cas des ingénieurs. *Forces* mentionne également les entreprises de la maison Bombardier et ce nouveau vidéo, appelé Télidon, dont l'informatique fait de plus en plus usage, tant au Canada qu'à l'étranger. Il s'oppose avec succès à des organismes semblables imaginés en Angleterre en particulier. Télidon est actuellement employé un peu partout dans le monde. C'est une autre réalisation canadienne que la revue a tenu à souligner.