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CHAIR:

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1st SESSION, 67th GENERAL ASSEMBLY
Province of Prince Edward Island
2 CHARLES III, 2023

(Bill No. 20)

Public Guardian and Trustee Act

Hon. Bloyce Thompson
Minister of Justice and Public Safety and Attorney General

GOVERNMENT BILL

Andrea MacRae
Acting King's Printer
Charlottetown, Prince Edward Island

**For House
Use Only**

**Prince Edward Island
Legislative Assembly**

ASSEMBLY / SESSION / YEAR
67th General Assembly / 1st / 2023

AMENDMENTS

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TITLE: Public Guardian and Trustee Act

#	SECTION	AMENDMENT	DATE

<p>NOTED:</p> <p>_____</p> <p style="text-align: center;">COMMITTEE CLERK</p>	<p>CERTIFIED CORRECT:</p> <p>_____</p> <p style="text-align: center;">CHAIR, IN COMMITTEE</p>
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PUBLIC GUARDIAN AND TRUSTEE ACT

BILL NO. 20

2023

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

PART 1 - INTERPRETATION AND ADMINISTRATION

1. Definitions

In this Act,

- (a) “**child**” means a person who is under the age of 18 years;
- (b) “**court**” means the Supreme Court except where the context requires otherwise;
- (c) “**custodian**” means a custodian as defined in the *Health Information Act* R.S.P.E.I. 1988, Cap. H-1.41;
- (d) “**Department**” means the Department of Justice and Public Safety;
- (e) “**employee**” means an employee as defined in the *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8;
- (f) “**former Act**” means the *Public Trustee Act* R.S.P.E.I. 1988, Cap. P-32.2;
- (g) “**lawyer**” means a person who is a member in good standing of the Law Society of Prince Edward Island or a member of the legal profession in another province or territory;
- (h) “**Minister**” means the Minister of Justice and Public Safety and Attorney General;
- (i) “**parent**” means a parent as defined in clause 1(s) of the *Children’s Law Act* R.S.P.E.I. 1988, Cap. C-6.1;
- (j) “**personal health information**” means personal health information as defined in the *Health Information Act*;
- (k) “**personal information**” means personal information as defined in the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F-15.01;
- (l) “**personal representative**” includes
 - (i) an executor of a will,
 - (ii) an administrator, with or without will annexed, of an estate, and
 - (iii) where a personal representative is also a trustee of all or part of an estate, the personal representative and trustee;

- (m) “**Prothonotary**” means the Prothonotary appointed under section 27 of the *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1;
- (n) “**public body**” means a public body as defined in the *Freedom of Information and Protection of Privacy Act*;
- (o) “**Public Guardian and Trustee**” means the Public Guardian and Trustee appointed pursuant to subsection 3(1);
- (p) “**represented person**” means a person for whom the Public Guardian and Trustee acts as a guardian or trustee or both guardian and trustee.

2. Minister responsible

The Minister is responsible for the administration of this Act.

PART 2 - OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE

3. Appointment of Public Guardian and Trustee

- (1) The Lieutenant Governor in Council shall appoint an employee of the Department who is a lawyer with at least five years’ experience in the practice of law as the Public Guardian and Trustee.

Corporation sole

- (2) The Public Guardian and Trustee is a corporation sole.

Appointment of Deputy

- (3) The Minister may appoint an employee of the Department as
 - (a) a Deputy Public Guardian;
 - (b) a Deputy Public Trustee; or
 - (c) a Deputy Public Guardian and Trustee.

Authority of Deputy

- (4) An employee appointed pursuant to subsection (3) may, subject to the direction of the Public Guardian and Trustee, exercise the powers and functions of the Public Guardian and Trustee under this Act except for those powers and functions of the Public Guardian and Trustee as litigation guardian or litigation administrator set out in section 14.

Continuation of appointment

- (5) The appointment of the person appointed as the Public Trustee under subsection 2(1) of the former Act is continued as the appointment of the Public Guardian and Trustee.

Continuation of Public Trustee

- (6) The Public Trustee, a corporation sole established under subsection 2(2) of the former Act, is continued as the Public Guardian and Trustee.

4. Acting designation

- (1) The Minister may temporarily designate an employee of the Department to act as the Public Guardian and Trustee where
 - (a) the Public Guardian and Trustee is unable to act as Public Guardian and Trustee by reason of illness, a conflict of interest or other cause; or

- (b) no Public Guardian and Trustee has been appointed under section 3.

Conditions, restrictions

- (2) The Minister may impose terms and conditions or restrictions on a designation under subsection (1) as the Minister considers appropriate.

Qualifications

- (3) No employee shall be designated under subsection (1) unless the employee is a lawyer with at least five years' experience in the practice of law.

Powers, etc.

- (4) Subject to any terms and conditions or restrictions imposed by the Minister pursuant to subsection (2), an employee referred to in subsection (1) has the powers, responsibilities and functions of the Public Guardian and Trustee under this Act.

Duration of designation

- (5) The designation of an employee as an acting Public Guardian and Trustee continues
- (a) until the Public Guardian and Trustee is able to resume the duties of the office;
 - (b) until a Public Guardian and Trustee is appointed under section 3; or
 - (c) for a term specified by the Minister.

5. Designation of employees

The Minister shall designate one or more employees of the Department to carry out the duties assigned by the Public Guardian and Trustee.

6. Authority of Public Guardian and Trustee

- (1) The Public Guardian and Trustee may, subject to this Act and the *Adult Guardianship and Trusteeship Act* R.S.P.E.I. 1988, Cap. A-4.2, act
- (a) as a personal representative;
 - (b) as a guardian, trustee or both guardian and trustee for a person who lacks capacity to make a decision about the person's own affairs;
 - (c) as trustee of a trust, or hold or administer property in any other fiduciary capacity; and
 - (d) in any capacity in which the Public Guardian and Trustee is authorized to act by an order of the court under this Act or another enactment.

Authority to collect, use, disclose information

- (2) Notwithstanding the *Freedom of Information and Protection of Privacy Act* and the *Health Information Act*, the Public Guardian and Trustee may, for the purposes of this Act, including making an inquiry or investigation to determine whether a person lacks capacity to make a decision about the person's own affairs, collect, use and disclose personal information about the person from a public body or another person, and personal health information about the person from a custodian or another person, whether or not the Public Guardian and Trustee is a guardian, a trustee or both guardian and trustee for that person.

No right of access

- (3) Notwithstanding section 6 of the *Freedom of Information and Protection of Privacy Act*, a person does not have a right of access under that Act to a record that is created by or for or that is in the custody or control of the Public Guardian and Trustee or the Department and that

relates to the exercise of the authority of the Public Guardian and Trustee in relation to a matter referred to in subsection (1).

PART 3 - PARTICULAR FUNCTIONS OF THE PUBLIC GUARDIAN AND TRUSTEE

Administration of Estates and Trusts

7. Public Guardian and Trustee as administrator

- (1) The Public Guardian and Trustee may apply to the court to be the administrator of the estate of a deceased person in accordance with the *Probate Act* R.S.P.E.I. 1988, Cap. P-21.

Application or consent required

- (2) The court shall not appoint the Public Guardian and Trustee as the administrator of an estate unless the Public Guardian and Trustee
- (a) has made an application under subsection (1); or
 - (b) has consented in writing to the appointment.

8. Public Guardian and Trustee as trustee

- (1) The Public Guardian and Trustee may be appointed trustee of any settlement or other instrument creating a trust in the same manner as if the Public Guardian and Trustee were a private trustee.

Consent required for appointment

- (2) The court shall not appoint the Public Guardian and Trustee as a trustee unless the Public Guardian and Trustee has consented in writing to the appointment.

Consent also required for other appointment

- (3) No person shall appoint the Public Guardian and Trustee as a trustee unless the Public Guardian and Trustee has consented in writing to the appointment.

9. Authority relating to property of child

- (1) Where, in the opinion of the Public Guardian and Trustee, it would be in the best interests of a child for whom the Public Guardian and Trustee holds property, the Public Guardian and Trustee may
- (a) expend all or any portion of the property for the benefit of the child; or
 - (b) if the value of the property held for the child does not exceed the prescribed amount, transfer the property to the child's parent.

Authority to convert property into money

- (2) The Public Guardian and Trustee may convert all or a portion of the property into money, by sale or otherwise, for the purpose of expending or transferring the proceeds in accordance with subsection (1).

Acknowledgement required

- (3) Prior to transferring property under this section, the Public Guardian and Trustee shall obtain an acknowledgement of responsibility from the person to whom the property is transferred under clause (1)(b).

Effect of transfer - Public Guardian and Trustee

- (4) A transfer of property to a person under this section discharges the Public Guardian and Trustee's responsibility to the child with respect to that property.

Effect of transfer - holder of property

- (5) A person to whom property is transferred under this section holds the property as a trustee for the child and may expend the property only for the benefit of the child.

Authority of court

- (6) Where the Public Guardian and Trustee declines to exercise a power conferred by subsection (1), the court may, on application, direct the Public Guardian and Trustee to take any action referred to in subsection (1) that, in the court's opinion, is in the child's best interests.

Limitation

- (7) This section
- (a) is subject to the terms of a will or other instrument under which the Public Guardian and Trustee holds the property; and
 - (b) does not restrict any power or discretion the Public Guardian and Trustee would have other than under this section.

10. Authority to pay certain expenses and debts

- (1) Prior to transferring property under subsection (2), the Public Guardian and Trustee shall use any of the property referred to in that subsection to pay for the following in accordance with the order of priority set out in section 19 of the *Probate Act*:
- (a) the reasonable funeral, burial or cremation expenses of the deceased person;
 - (b) the debts of the deceased person.

Authority to transfer to personal representative

- (2) Where the Public Guardian and Trustee holds property not exceeding the prescribed amount in value for a deceased person and to which the deceased person's personal representative or one or more heirs of the deceased person is entitled, the Public Guardian and Trustee may transfer the property to the personal representative or to one or more of the heirs of the deceased person, as the case may be, on receipt of,
- (a) where the person resided in Canada, a copy of the will of the deceased person or of letters of administration granted by a court in the province or territory where the deceased person resided;
 - (b) where the person resided outside of Canada, an authenticated copy of the probate of the will of the deceased person or of letters of administration granted by a court or tribunal that, in the opinion of the Public Guardian and Trustee, has authority to grant probate or administration in respect of the deceased person's estate; or
 - (c) where the person died intestate, proof satisfactory to the Public Guardian and Trustee that establishes the entitlement of one or more heirs to the property of the deceased person under Part IV of the *Probate Act*.

Terms respecting transfer

- (3) A transfer of property to the personal representative or the heir of a deceased person under this section shall be in accordance with the terms of the will, probate or letters of administration or Part IV of the *Probate Act*, as the case may be.

Effect of transfer - Public Guardian and Trustee

- (4) A transfer of property to a personal representative or the heir of a deceased person under this section discharges the Public Guardian and Trustee's obligation to the deceased person's estate with respect to that property.

11. Unclaimed property of deceased person

Where the Public Guardian and Trustee holds property for a deceased person and that property is not claimed by any person entitled to the property within five years of the date of the death of the deceased person, that property

- (a) is the property of the Government of Prince Edward Island; and
(b) shall be converted by the Public Guardian and Trustee into cash and paid to the Minister of Finance.

12. Payment into Operating Fund

- (1) The Minister of Finance shall pay any payments received under section 11 into the Operating Fund.

Application to court

- (2) A person claiming to be entitled to any money paid to the Minister of Finance under section 11 may make an application to the court for a judgment or order determining that person's rights in respect of the money if
- (a) the application is made within 10 years after the money has been paid to the Minister of Finance; or
(b) where the person claiming to be entitled to the money, on the expiry of the 10-year period referred to in clause (a), is under the age of 19 years, lacks capacity or is out of the province, the application is made within
- (i) 10 years after the person attains the age of 19 years, regains capacity or returns to the province, as the case may be, or
(ii) 30 years after the money was paid to the Minister of Finance under section 11, whichever period expires first.

Inquiries by court

- (3) The court may, on application under subsection (2), make inquiries to determine the entitlement of the applicant or other persons to the money claimed.

Authority of court

- (4) The court may order the Minister of Finance to pay a person the money paid to the Minister of Finance under section 11 where the court is satisfied that the person is entitled to the money.

Copy of order to Public Guardian and Trustee

- (5) The Minister of Finance shall provide a copy of an order under subsection (4) to the Public Guardian and Trustee.

13. Limitation of liability - change in value

- (1) No action for damages or other legal proceedings lies or shall be instituted against the Minister, the Minister of Finance, the Public Guardian and Trustee or any other person acting under the authority of this Act for any change in the value of

- (a) any property of the estate of a person held by the Public Guardian and Trustee before or after the death of that person;
- (b) any money of the estate of a deceased person after it is paid to the Minister of Finance under section 11.

Limitation of liability - payment

- (2) No action for damages or other legal proceedings lies or shall be instituted against the Minister, the Minister of Finance, the Public Guardian and Trustee or any other person acting under the authority of this Act with respect to money that the Minister of Finance was ordered to pay to another person under subsection 12(4).

Litigation

14. Public Guardian and Trustee as litigation guardian

- (1) The Public Guardian and Trustee shall act as the litigation guardian of persons where required under an enactment or the Rules of Civil Procedure.

Application by Public Guardian and Trustee - litigation guardian

- (2) The Public Guardian and Trustee may, on application by the Public Guardian and Trustee, be appointed as litigation guardian in respect of a child or a person under a disability where there is no other person who is willing and, in the opinion of the court, suitable to act as litigation guardian.

Application by Public Guardian and Trustee - litigation administrator

- (3) The Public Guardian and Trustee may, on application by the Public Guardian and Trustee, be appointed as the litigation administrator in respect of the estate of a deceased person where there is no personal representative, beneficiary, heir or other appropriate person who is willing and, in the opinion of the court, suitable to act as litigation administrator.

Prohibition

- (4) The court shall not appoint the Public Guardian and Trustee as litigation guardian or as litigation administrator of the estate of a deceased person unless the Public Guardian and Trustee is provided with the opportunity, before being appointed, to make representation to the court with respect to the appointment.

Costs

- (5) The same costs as are payable to litigation guardians or litigation administrators, as the case may be, under the Rules of Civil Procedure are payable to the Public Guardian and Trustee when acting in those capacities, and costs recovered by the Public Guardian and Trustee shall be paid into the Operating Fund.

No security for costs

- (6) The Public Guardian and Trustee shall not, when acting as litigation guardian or litigation administrator, be required to give security for costs in any proceeding.

Payment of funds

- (7) Where the Public Guardian and Trustee acts on behalf of a person under this section, a payment to the person shall, unless otherwise ordered by the court, be payable to the Public Guardian and Trustee on behalf of that person.

Audit

- (8) Financial transactions by the Public Guardian and Trustee on behalf of a person for whom payment is received under subsection (7) shall be subject to audit in accordance with this Act.

Assessment of costs

- (9) Where the amount payable under subsection (7) is to be ascertained by the deduction of unassessed costs from a fund, the Prothonotary shall, on application by the Public Guardian and Trustee, assess those costs as soon as practicable.

15. Written notice for payment

- (1) Where a represented person is entitled to money in court, it shall be paid to the Public Guardian and Trustee upon the Public Guardian and Trustee's written notice to the court.

Court order not required

- (2) For greater certainty, the Public Guardian and Trustee is not required to obtain a court order for the purposes of subsection (1).

Under Adult Guardianship and Trusteeship Act

16. Public Guardian and Trustee as guardian, trustee or both

- (1) The Public Guardian and Trustee may become a guardian, trustee or both guardian and trustee for a person in accordance with the *Adult Guardianship and Trusteeship Act*.

Consent or leave required

- (2) Where the Public Guardian and Trustee is a guardian, trustee or both guardian and trustee for a person pursuant to the *Adult Guardianship and Trusteeship Act*, no person shall bring or defend an action on behalf of that person without
- (a) the written consent of the Public Guardian and Trustee; or
 - (b) leave of the court.

Leave of court

- (3) On application, the court may grant leave under clause (2)(b), where notice has been provided to the Public Guardian and Trustee, subject to any terms as to security for costs or otherwise that the court considers appropriate.

Authority of Public Guardian and Trustee

- (4) The Public Guardian and Trustee may
- (a) determine whether or not to commence or defend proceedings respecting a represented person;
 - (b) intervene in proceedings in respect of the estate of the represented person; and
 - (c) take charge of any property of the represented person.

17. Public Guardian and Trustee as guardian, trustee or both

Subject to this Act, the Public Guardian and Trustee, while acting as the guardian, trustee or both guardian and trustee of a person, has the powers, authority and duties of a guardian, trustee or both guardian and trustee, as the case may be, as set out in the *Adult Guardianship and Trusteeship Act*.

18. Effect of contract on behalf of represented person

- (1) Where the Public Guardian and Trustee enters into a contract on behalf of a represented person, the contract is binding on the person both during the period of incapacity and after the person regains capacity in the same manner and to the same extent as if the represented person had made the contract with full capacity.

Title may be conveyed

- (2) Where a sale of land has been made by the Public Guardian and Trustee on behalf of a represented person, the Public Guardian and Trustee may convey the title notwithstanding that the person regains capacity before a conveyance or transfer of land has been executed or registered.

19. Obligations and powers respecting estate

- (1) Where the Public Guardian and Trustee holds property for a represented person and the represented person dies, the Public Guardian and Trustee
- (a) shall, subject to sections 9, 10 and 11, conserve the deceased's estate; and
 - (b) has the powers regarding the deceased's estate that the Public Guardian and Trustee had while the deceased was alive.

Duration

- (2) Subsection (1) applies until a personal representative for the deceased's estate takes possession of the property.

20. Application to court for direction

- (1) The Public Guardian and Trustee may apply to the court for direction as to the disposal of property held for a person where
- (a) the Public Guardian and Trustee ceases to be a trustee for the person; and
 - (b) the person has refused or neglected to take possession of any or all of the person's property held by the Public Guardian and Trustee.

Authority of court on application

- (2) On application under subsection (1), the court may make any order it considers appropriate, including, but not limited to, an order that the Public Guardian and Trustee continue to manage the estate of the person with all the rights and powers that the Public Guardian and Trustee would have if the Public Guardian and Trustee had not ceased to be the trustee for the person.

Further authority of court

- (3) Where the Public Guardian and Trustee manages an estate of a person pursuant to an order under subsection (2), the court may, on application, make any further order it considers appropriate, including, but not limited to, an order that the management of the estate by the Public Guardian and Trustee be terminated.

PART 4 - GENERAL

21. Fees and expenses

- (1) The Public Guardian and Trustee
- (a) may, subject to the regulations, charge a person a fee that the Public Guardian and Trustee considers reasonable for any service, including legal services, that the Public Guardian and Trustee provides to the person for a task or function performed by the Public Guardian and Trustee for the benefit of the person; and
 - (b) is entitled to recover from a represented person any expense reasonably incurred by the Public Guardian and Trustee on that person's behalf, in accordance with this Act.

Authority to charge and recover

- (2) The Public Guardian and Trustee may charge and recover fees and expenses
- (a) before and after providing a service or incurring an expense; or
 - (b) periodically, while providing services under an ongoing relationship with a person.

Lien by Public Guardian and Trustee

- (3) The Public Guardian and Trustee has a lien against the real and personal property of a person for the fees and expenses incurred by the Public Guardian and Trustee on the person's behalf.

Lien may be registered

- (4) The Public Guardian and Trustee may register a lien referred to in subsection (3)
- (a) against real property, in accordance with the *Registry Act* R.S.P.E.I. 1988, Cap. R-10; and
 - (b) against personal property, in accordance with the *Personal Property Security Act* R.S.P.E.I. 1988, Cap. P-3.1.

22. Funds may be withheld to cover costs

Where the Public Guardian and Trustee is having accounts passed with respect to the administration of a person's estate, the Public Guardian and Trustee may withhold sufficient funds from the estate to adequately secure the costs of or arising from the passing of accounts.

23. Limitation of liability

No action lies against the Minister, the Public Guardian and Trustee or any person acting under the direction of the Minister or the Public Guardian and Trustee for anything done or omitted to be done in good faith in exercising any powers or authority or carrying out duties, responsibilities or functions in accordance with this Act.

24. Security not required

Notwithstanding any enactment, the Public Guardian and Trustee is not required to give security for the due performance of the Public Guardian and Trustee's duties.

25. Annual audit

The accounts and financial transactions of the Public Guardian and Trustee shall be audited annually by the Auditor General or a qualified auditor appointed by the Public Guardian and Trustee, and the audited statements shall be provided to the Minister.

26. Investment by Public Guardian and Trustee

Any money held by the Public Guardian and Trustee that is available for investment may be invested by the Public Guardian and Trustee in securities in which trustees are authorized to invest under the *Trustee Act* R.S.P.E.I. 1988, Cap. T-8.

27. Application of section

(1) This section applies where

- (a) a person who is not a resident of Prince Edward Island is declared, in accordance with the law of another province or territory in Canada, to be incapable of managing the person's own affairs; and
- (b) the person has an estate in Prince Edward Island.

Appointment by Minister

(2) The Minister may appoint the official of another province or territory in Canada to administer the estate of a non-resident person in Prince Edward Island where the official is charged with the duty of administering the person's estate in the other province or territory.

Proof of official's appointment

(3) An order in council or other instrument of the other province or territory appointing the official and any other certificates or orders purporting to appoint the official as a trustee for the non-resident person shall be sufficient proof of the appointment.

Authority of official

(4) The official appointed under subsection (2)

- (a) has the same rights, powers, privileges and immunities as the Public Guardian and Trustee under this Act with respect to the administration of the non-resident person's estate; and
- (b) shall perform the same duties and is subject to the same obligations as the Public Guardian and Trustee under this Act.

28. Regulations

The Lieutenant Governor in Council may make regulations

- (a) respecting the office of the Public Guardian and Trustee;
- (b) imposing duties on the Public Guardian and Trustee in addition to those imposed by this Act;
- (c) prescribing the trusts or duties that the Public Guardian and Trustee is authorized to accept or undertake under this Act;
- (d) respecting the transfer to and from the Public Guardian and Trustee of any property;
- (e) prescribing the amount of property that may be transferred for the purposes of clause 9(1)(b) and subsection 10(2);
- (f) respecting the accounts to be kept by the Public Guardian and Trustee;
- (g) respecting the investment of property held by the Public Guardian and Trustee;
- (h) fixing the rate of interest to be paid for money held by the Public Guardian and Trustee;
- (i) fixing the rate of interest to be charged upon advances made on behalf of an estate;

- (j) establishing an advisory committee to provide recommendations with respect to
 - (i) the general policy respecting the management and conduct of the office of the Public Guardian and Trustee, and
 - (ii) for the supervision of investments or other dealings with property by the Public Guardian and Trustee;
- (k) prescribing the remuneration of members of the advisory committee referred to in clause (j);
- (l) fixing the fees and charges in the office of the Public Guardian and Trustee, and the application, collection and disposal of those fees and charges;
- (m) respecting any matter the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the intent and purposes of this Act.

PART 5 - TRANSITION, CONSEQUENTIAL AMENDMENTS, REPEAL AND COMMENCEMENT

29. Transitional regulations

- (1) The Lieutenant Governor in Council may make regulations the Lieutenant Governor in Council considers necessary or advisable for the orderly transition from the former Act to this Act.

Expiry of authority to make regulations

- (2) The authority to make or amend a regulation made under subsection (1), but not the authority to revoke a regulation made under subsection (1), ends three years after the date on which subsection (1) comes into force.

30. Proceeding continued by Public Guardian and Trustee as litigation guardian

- (1) Where the Official Guardian is acting on behalf of a person in accordance with section 33 of the *Judicature Act* on the date immediately prior to the coming into force of this section, the proceeding shall be continued by the Public Guardian and Trustee in accordance with this Act.

Proceeding continued by Public Guardian and Trustee as trustee, etc.

- (2) Where the Public Trustee
 - (a) is a trustee of an estate under the former Act, the Public Guardian and Trustee continues as the trustee of the estate;
 - (b) is the administrator of an estate, the Public Guardian and Trustee continues as the administrator of the estate;
 - (c) is acting as litigation guardian or litigation administrator, the proceeding shall be continued by the Public Guardian and Trustee in accordance with this Act;
 - (d) is acting as committee of a person under subsection 16(1) of the former Act, the Public Guardian and Trustee continues as trustee in accordance with this Act and the *Adult Guardianship and Trusteeship Act*; and
 - (e) is acting as guardian of a person under section 40 of the *Mental Health Act*, the Public Guardian and Trustee continues as guardian in accordance with this Act and the *Adult Guardianship and Trusteeship Act*.

31. Adult Protection Act

- (1) **The *Adult Protection Act* R.S.P.E.I. 1988, Cap. A-5, is amended as provided by this section.**
- (2) **Section 1 of the Act is amended**
 - (a) **by the repeal of clause (l); and**
 - (b) **by the repeal of clause (n.1) and the substitution of the following:**
 - (n.1) **“Public Guardian and Trustee” means the person appointed as Public Guardian and Trustee under the *Public Guardian and Trustee Act* R.S.P.E.I. 1988, Cap. P-29.2;**
- (3) **Section 20 of the Act is amended**
 - (a) **in subsection (4), by the deletion of the words “Official Guardian” and the substitution of the words “Public Guardian and Trustee”; and**
 - (b) **in clause (5)(c), by the deletion of the words “Official Guardian” and the substitution of the words “Public Guardian and Trustee”.**
- (4) **Section 24 of the Act is repealed and the following substituted:**

24. Inform Public Guardian and Trustee

Where the Minister has reasonable grounds to believe that there is considerable risk of immediate, serious harm to the estate of an adult who is or may be in need of protection, the Minister may inform the Public Guardian and Trustee, who may take any action that is authorized under the *Public Guardian and Trustee Act*.

32. Consent to Treatment and Health Care Directives Act

- (1) **The *Consent to Treatment and Health Care Directives Act* R.S.P.E.I. 1988, Cap. C-17.2, is amended as provided by this section.**
- (2) **Subclause 1(p)(i) of the Act is amended by the deletion of the words “, the *Public Trustee Act* R.S.P.E.I. 1988, Cap. P-32.2”.**

33. Fatal Accidents Act

- (1) **The *Fatal Accidents Act* R.S.P.E.I. 1988, Cap. F-5, is amended as provided by this section.**
- (2) **Subsections 16(2) and (3) of the Act are amended by the deletion of the words “Public Trustee” wherever they occur and the substitution of the words “Public Guardian and Trustee”.**

34. Freedom of Information and Protection of Privacy Act

- (1) **The *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F-15.01, is amended as provided by this section.**

- (2) **Clause 32(1)(h) of the Act is amended by the deletion of the words “Public Trustee or a person exercising public guardianship functions” and the substitution of the words “Public Guardian and Trustee”.**
- (3) **Clause 37(1)(w.1) of the Act is repealed and the following substituted:**
- (w.1) to the Public Guardian and Trustee appointed under *Public Guardian and Trustee Act* R.S.P.E.I. 1988, Cap. P-29.2, for the purposes of managing the estate of a person under the *Public Guardian and Trustee Act*;

35. Health Information Act

- (1) **The *Health Information Act* R.S.P.E.I. 1988, Cap. H-1.41, is amended as provided by this section.**
- (2) **Subsection 4(2) of the Act is amended by the addition of the following after clause (d):**
- (d.1) the *Public Guardian and Trustee Act* R.S.P.E.I. 1988, Cap. P-29.2;

36. Human Tissue Donation Act

- (1) **The *Human Tissue Donation Act* R.S.P.E.I. 1988, Cap. H-12.1, is amended as provided by this section.**
- (2) **Clause 1(d) of the Act is repealed and the following substituted:**
- (d) **“Public Guardian and Trustee”** means the Public Guardian and Trustee appointed under the *Public Guardian and Trustee Act* R.S.P.E.I. 1988, Cap. P-29.2;
- (3) **Section 8 of the Act is amended by the deletion of the words “Official Guardian” wherever they occur and the substitution of the words “Public Guardian and Trustee”.**

37. Insurance Act

- (1) **The *Insurance Act* R.S.P.E.I. 1988, Cap. I-4, is amended as provided by this section.**
- (2) **Subsection 169(3) of the Act is amended by the deletion of the words “Public Trustee” and the substitution of the words “Public Guardian and Trustee”.**
- (3) **Subsections 204(1), (2), and (3) of the Act are amended by the deletion of the words “Public Trustee” and the substitution of the words “Public Guardian and Trustee”.**

38. Judicature Act

- (1) **The *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1, is amended as provided by this section.**
- (2) **Clause 1(k) of the Act is repealed.**
- (3) **Section 33 of the Act is repealed.**

(4) **Subsection 33.1(7) of the Act is amended by the deletion of the words “despite subsection 33(5)” and the substitution of the words “despite subsection 14(1) of the *Public Guardian and Trustee Act* R.S.P.E.I. 1988, Cap. P-29.2”.**

(5) **Subsection 71(10) of the Act is repealed.**

39. Powers of Attorney and Personal Directives Act

(1) **The *Powers of Attorney and Personal Directives Act* R.S.P.E.I. 1988, Cap. P-16.1, is amended as provided by this section.**

(2) **Clause 1(1)(s) of the Act is repealed and the following substituted:**

(s) **“Public Guardian and Trustee”** means the Public Guardian and Trustee appointed under the *Public Guardian and Trustee Act* R.S.P.E.I. 1988, Cap. P-29.2;

(3) **Subclause 14(1)(f)(iv) of the Act is amended by the deletion of the words “Public Trustee” and the substitution of the words “Public Guardian and Trustee”.**

(4) **Subsection 14(3) of the Act is repealed and the following substituted:**

Notice to Public Guardian and Trustee

(3) Where the authority of an attorney under an enduring power of attorney is terminated under clause (1)(g) and there is no longer an attorney with authority to act on behalf of the principal, the attorney shall give written notice of the termination of authority to the Public Guardian and Trustee.

(5) **Clause 15(2)(d) of the Act is amended by the deletion of the words “Public Trustee” and the substitution of the words “Public Guardian and Trustee”.**

(6) **Subclause 28(1)(f)(iv) of the Act is amended by the deletion of the words “a public officer charged with the duty of public guardianship or the Public Trustee” and the substitution of the words “the Public Guardian and Trustee”.**

(7) **Subsection 28(3) of the Act is repealed and the following substituted:**

Notice to Public Guardian and Trustee

(3) Where the authority of an agent under a personal directive is terminated under clause (1)(g) and there is no longer an agent with authority to act on behalf of the principal, the agent shall give written notice of the termination of authority to the Public Guardian and Trustee.

(8) **Subclause 32(3)(c)(ii) of the Act is repealed and the following substituted:**

(ii) the Public Guardian and Trustee, or

(9) **Subsection 34(1) of the Act is amended by the deletion of the words “a public officer charged with the duty of public guardianship, the Public Trustee” and the substitution of the words “the Public Guardian and Trustee”.**

40. Probate Act

- (1) **The *Probate Act* R.S.P.E.I. 1988, Cap. P-21, is amended as provided by this section.**
- (2) **Section 53 of the Act is amended**
 - (a) **in subsection (5), by the deletion of the words “Official Guardian” and the substitution of the words “Public Guardian and Trustee”; and**
 - (b) **in subsection (6), by the deletion of the words “Public Trustee” and the substitution of the words “Public Guardian and Trustee”.**

41. Provincial Administrator of Estates Act

- (1) **The *Provincial Administrator of Estates Act* R.S.P.E.I. 1988, Cap. P-23, is amended as provided by this section.**
- (2) **The Act is amended in the following provisions by the deletion of the words “Public Trustee” wherever they occur and the substitution of the words “Public Guardian and Trustee”:**
 - (a) **section 2;**
 - (b) **section 3;**
 - (c) **section 4;**
 - (d) **section 5;**
 - (e) **section 6;**
 - (f) **section 7;**
 - (g) **section 8;**
 - (h) **section 9;**
 - (i) **section 10;**
 - (j) **section 11;**
 - (k) **section 12;**
 - (l) **subsection 14(2);**
 - (m) **section 15;**
 - (n) **subsections 16(1) and (2);**
 - (o) **section 17;**

(p) **the Schedule to the Act.**

42. Survival of Actions Act

- (1) **The *Survival of Actions Act* R.S.P.E.I. 1988, Cap. S-11, is amended as provided by this section.**
- (2) **Subsection 12(2) of the Act is amended by the deletion of the words “Public Trustee” wherever they occur and the substitution of the words “Public Guardian and Trustee”.**

43. Victims of Crime Act

- (1) **The *Victims of Crime Act* R.S.P.E.I. 1988, Cap. V-3.1, is amended as provided by this section.**
- (2) **Subsection 26(3) of the Act is amended by the deletion of the words “Public Trustee” and the substitution of the words “Public Guardian and Trustee”.**

44. Repeals

- (1) **The *Public Trustee Act* R.S.P.E.I. 1988, Cap. P-32.2, is repealed.**
- (2) **The *Act to Amend the Public Trustee Act* S.P.E.I. 1997, c. 69, is repealed.**

45. Commencement

This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

(Bill No. 20)

Public Guardian and Trustee Act

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	November 7, 2023
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

SIGNATURES:

Honourable Antoinette Perry, Lieutenant Governor

Honourable Darlene Compton, Speaker

Joseph Jeffrey, Clerk

Hon. Bloyce Thompson
Minister of Justice and Public Safety and Attorney General

GOVERNMENT BILL

2023
1st SESSION, 67th GENERAL ASSEMBLY