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

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**(Bill No. 19)**

## **Adult Guardianship and Trusteeship Act**

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

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GOVERNMENT BILL

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Andrea MacRae  
Acting King's Printer  
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**For House  
Use Only**

**Prince Edward Island  
Legislative Assembly**

**AMENDMENTS**

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

**BILL NUMBER: 19**

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**TITLE: Adult Guardianship and Trusteeship Act**

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## ADULT GUARDIANSHIP AND TRUSTEESHIP ACT

BILL NO. 19

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 APPLICATION

#### 1. Definitions

In this Act,

- (a) “**adult**” means a person who is 18 years of age or older;
- (b) “**capacity**” means, in respect of the making of a decision about a matter, the ability of a person, independently or with assistance, to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of a decision and the failure to make a decision;
- (c) “**capacity assessment**” means an assessment conducted under Part 3 of a person’s capacity to make decisions respecting personal matters or financial matters;
- (d) “**capacity assessment report**” means a report completed under section 5;
- (e) “**court**” means the Supreme Court;
- (f) “**custodian**” means a custodian as defined in the *Health Information Act* R.S.P.E.I. 1988, Cap. H-1.41;
- (g) “**Department**” means the Department of Justice and Public Safety;
- (h) “**enduring power of attorney**” means an enduring power of attorney as defined in the *Powers of Attorney and Personal Directives Act* R.S.P.E.I. 1988, Cap. 16.1;
- (i) “**financial matter**” means
  - (i) subject to the regulations, any matter related to the acquisition, disposition, management or protection of property, and
  - (ii) any matter prescribed by regulation;
- (j) “**guardian**” means a person named as a guardian in a guardianship order or a person who becomes a guardian for another person by virtue of the operation of this Act, and includes a temporary or interim guardian;
- (k) “**guardianship order**” means an order of the court made or continued under this Act that appoints a guardian, and includes an interim guardianship order;

- (l) **“health care”** includes
  - (i) an examination, diagnosis, procedure or treatment undertaken to prevent or manage a disease, illness, ailment or health condition,
  - (ii) a procedure undertaken for the purpose of an examination or a diagnosis,
  - (iii) a medical, surgical, obstetrical or dental treatment,
  - (iv) anything done that is ancillary to an examination, diagnosis, procedure or treatment,
  - (v) a procedure undertaken for the purpose of preventing pregnancy, except sterilization that is not medically necessary to protect health,
  - (vi) palliative care, and
  - (vii) a treatment plan;
- (m) **“health care directive”** means a directive as defined in the *Consent to Treatment and Health Care Directives Act* R.S.P.E.I. 1988, Cap. C-17.2;
- (n) **“interested person”** means
  - (i) the Public Guardian and Trustee, and
  - (ii) any adult who is concerned for the welfare of a person in respect of whom a guardianship order or trusteeship order is sought or has been obtained;
- (o) **“lawyer”** means a person who is authorized to practise law in the province pursuant to section 20 of the *Legal Profession Act* R.S.P.E.I. 1988, Cap. L-6.1;
- (p) **“Minister”** means the Minister of Justice and Public Safety and Attorney General;
- (q) **“nearest relative”** means, in respect of a person,
  - (i) the relative of the person who is the first living relative in the following list and, if there are two or more relatives in the same category, at least one of them:
    - (A) a spouse,
    - (B) a child,
    - (C) a parent,
    - (D) a sibling,
    - (E) another relative of the person, and
  - (ii) if there is no living relative of the person listed in subclause (i), an adult friend of the person;
- (r) **“personal directive”** means a personal directive as defined in the *Powers of Attorney and Personal Directives Act*;
- (s) **“personal health information”** means personal health information as defined in the *Health Information Act*;
- (t) **“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;
- (u) **“personal matter”** means, subject to the regulations, any matter, except a financial matter, relating to a person, including without limitation
  - (i) the person’s health care,
  - (ii) the person’s basic needs, including nutrition, clothing and personal care,
  - (iii) where, with whom and under what conditions the person is to live, either permanently or temporarily,
  - (iv) with whom the person may associate,
  - (v) the person’s participation in social activities,

- (vi) the person's participation in any educational, vocational or other training,
- (vii) the person's employment, and
- (viii) any matter prescribed by regulation;
- (v) **"property"** includes, without limitation,
  - (i) things and rights or interests in things,
  - (ii) anything regarded in law or equity as property or an interest in property,
  - (iii) any right or interest that may be transferred for value from one person to another,
  - (iv) any right, including a contingent or future right, to be paid money or to receive any other kind of property, and
  - (v) any cause of action, to the extent that it relates to property or could result in a judgment requiring a person to pay money;
- (w) **"Prothonotary"** means the Prothonotary appointed under section 27 of the *Judicature Act R.S.P.E.I. 1988, Cap. J-2.1*;
- (x) **"public body"** means a public body as defined in the *Freedom of Information and Protection of Privacy Act*;
- (y) **"Public Guardian and Trustee"** means the Public Guardian and Trustee appointed under section 3 of the *Public Guardian and Trustee Act R.S.P.E.I. 1988, Cap. P-29.2*;
- (z) **"qualified practitioner"** means
  - (i) a medical practitioner, and
  - (ii) a member of a profession specified in the regulations;
- (aa) **"Register"** means the Register established under section 12;
- (bb) **"Registrar"** means the Registrar of the Court of Appeal and the Supreme Court appointed under section 28 of the *Judicature Act*;
- (cc) **"represented person"** means a person in respect of whom
  - (i) a guardianship order is in effect,
  - (ii) a trusteeship order is in effect, or
  - (iii) both a guardianship and a trusteeship order are in effect;
- (dd) **"substitute decision-maker"** means, in respect of a person,
  - (i) an attorney appointed in an enduring power of attorney,
  - (ii) an agent appointed in a personal directive,
  - (iii) a guardian or trustee appointed under this Act or another enactment, or
  - (iv) a proxy appointed in a healthcare directive;
- (ee) **"supported decision-making agreement"** means an agreement between adults for the provision of ongoing assistance to one of the adults in making decisions about that adult's financial matters or personal matters, including the provision of ongoing assistance to an adult who is unable to make decisions except with appropriate support;
- (ff) **"trustee"** means a person named as a trustee in a trusteeship order or a person who becomes a trustee for another person by virtue of the operation of this Act, and includes a temporary or interim trustee;
- (gg) **"trusteeship order"** means an order of the court made or continued under this Act that appoints a trustee, and includes an interim trusteeship order.

**2. Principles**

- (1) This Act shall be administered in accordance with the following principles:
- (a) a person is presumed to have capacity to make decisions in respect of the person's financial matters and personal matters until the contrary is determined by the court;
  - (b) a person is entitled to communicate by any means that enables the person to be understood, and the means by which a person communicates is not relevant to a determination of whether the person has capacity to make a decision referred to in clause (a);
  - (c) where a person does not have capacity to make a decision referred to in clause (a), the person's autonomy shall be preserved by ensuring that the least restrictive and least intrusive form of substitute decision-making that is likely to be effective is provided;
  - (d) in determining whether a decision referred to in clause (a) is in a person's best interests, consideration shall be given to
    - (i) any wishes known to have been expressed by the person while the person had capacity, and
    - (ii) any values and beliefs known to have been held by the person while the person had capacity.

**Where capacity in issue**

- (2) Where the capacity of a person is in issue under this Act, the person is deemed to have capacity to instruct a lawyer for the purposes of an application under this Act.

**3. Application of Act**

- (1) Subject to subsection (2), this Act applies in respect of
- (a) an adult who is ordinarily resident in Prince Edward Island; and
  - (b) trusteeship of an adult who is not ordinarily resident in Prince Edward Island, where
    - (i) the real property of that adult is located in Prince Edward Island, or
    - (ii) the court is satisfied that exceptional circumstances make it appropriate to make an order under this Act.

**Application - person under 18**

- (2) An application for an order under this Act may be made in respect of a person who is not an adult if the person will attain the age of 18 years within 12 months.

**Effect of application**

- (3) Where an application is made in respect of a person referred to in subsection (2),
- (a) subject to the regulations, this Act and the regulations apply in respect of the application as if the person were an adult; and
  - (b) an order may be made in respect of the person but does not take effect until the person is an adult.

**PART 2 - ADMINISTRATION****4. Administration**

- (1) The Minister is responsible for the administration of this Act.

**Delegation by Minister**

- (2) The Minister may delegate in writing to an employee of the Department any of the powers, responsibilities and functions of the Minister under this Act that the Minister considers advisable.

**Forms**

- (3) The forms to be used for the purposes of this Act are
- (a) for the purposes of clause 5(b), the prescribed capacity assessment report form; and
  - (b) for all other purposes, the forms set out in the Rules of Civil Procedure.

**PART 3 - CAPACITY ASSESSMENT**

**5. Assessment of capacity**

A qualified practitioner

- (a) may conduct an assessment of a person's capacity that is required for the purposes of this Act or another enactment in accordance with the regulations; and
- (b) after conducting an assessment, shall complete a capacity assessment report respecting the person in the prescribed form.

**6. Personal information, etc. - authority to access, etc.**

- (1) For the purpose of carrying out a capacity assessment of a person, a qualified practitioner may access, collect or obtain from a public body, custodian or other person, personal information or personal health information about the person to be assessed that is relevant to the capacity assessment.

**Personal information, etc. - requirement to disclose**

- (2) A public body, custodian or other person shall disclose to a qualified practitioner personal information or personal health information that is referred to in subsection (1) within 30 days of the request by the qualified practitioner.

**Application to court**

- (3) Where a qualified practitioner is of the opinion that access to information about the person who is the subject of the capacity assessment is needed for the purpose of the capacity assessment and access has not been provided in accordance with subsection (2), the person making the application for which the capacity assessment is required may apply to the court for an order under subsection (4).

**Order of court**

- (4) The court may, on application, make an order directing a public body, custodian or other person to provide personal information or personal health information of a named person to the qualified practitioner for the purposes of this section.

**Access, use and disclosure of personal information, etc.**

- (5) Where a qualified practitioner accesses, collects or obtains personal information or personal health information about a person under this section, the qualified practitioner
- (a) may use and disclose the information only for the purposes of the capacity assessment; and

- (b) shall take reasonable care to ensure the information is kept secure from unauthorized access, use or disclosure.

**Operation of section**

- (6) This section operates notwithstanding the *Freedom of Information and Protection of Privacy Act* and the *Health Information Act*.

**7. Court may order assessment**

- (1) Where a person's capacity to make decisions is in issue in a proceeding under this Act or another enactment, and the person does not consent to a capacity assessment, the court may order a capacity assessment of the person.

**Terms of order**

- (2) An order under subsection (1) may direct the person whose capacity is in issue
  - (a) to undergo the capacity assessment; and
  - (b) to
    - (i) permit a qualified practitioner and any person assisting the qualified practitioner to enter the person's place of residence for the purpose of conducting the capacity assessment, or
    - (ii) attend at another place at the times specified in the order for the purpose of undergoing the capacity assessment.

**8. Failure to comply with court order**

- (1) Where the court is satisfied that a person has failed to comply with an order under subsection 7(1), the court may order any person to locate and apprehend the person who is subject of the order and deliver that person for a capacity assessment in accordance with the order.

**Authority of order**

- (2) An order under subsection (1) is authority for a person to locate and apprehend the person who is the subject of that order and to deliver that person to the health facility or other facility or place named in the order.

**Order directed to peace officer**

- (3) An order under subsection (1) may be directed to a peace officer and the peace officer shall do all things reasonably able to be done to locate, apprehend and deliver the person in accordance with the order.

**Duty on apprehension of person**

- (4) A person who apprehends a person who is the subject of an order under subsection (1) shall promptly
  - (a) inform the person of the reasons for the apprehension and of the person's right to retain and instruct counsel without delay; and
  - (b) tell the person where the person is being taken.

**9. Authority of court where no capacity assessment**

Where a person refuses to undergo a capacity assessment as directed under section 7 or for the purposes of subsections 27(3) or 51(3), or is unable for any reason to undergo a capacity assessment, the court may consider any evidence that the court considers relevant to the



person's capacity and may, if the court considers that the available evidence is sufficient for it to do so, make a determination with respect to the person's capacity.

**10. Where person has capacity**

- (1) Where a qualified practitioner completes a capacity assessment report in respect of a person in accordance with this Act and determines that the person has capacity, the qualified practitioner shall provide a copy of the report to
- (a) the person who is the subject of the capacity assessment;
  - (b) if ascertainable, the persons who are substitute decision-makers for the person who is the subject of the capacity assessment;
  - (c) the person who has requested the assessment for the purposes of an application under this Act; and
  - (d) the court, where the assessment was ordered under subsection 7(1).

**Where person lacks capacity**

- (2) Where a qualified practitioner completes a capacity assessment report in respect of a person in accordance with this Act and determines that the person lacks capacity, the qualified practitioner shall provide a copy of the report to
- (a) the person who is the subject of the capacity assessment;
  - (b) if ascertainable, the persons who are substitute decision-makers for the person who is the subject of the capacity assessment;
  - (c) the person who has requested the assessment for the purposes of an application under this Act;
  - (d) the court, where the assessment was ordered under subsection 7(1); and
  - (e) any person specified in the regulations.

**11. Copy of assessment report**

Where a qualified practitioner is not able to contact or ascertain the identity of a person specified in clause 10(2)(b) or (c) for the purposes of providing a copy of the assessment report, the qualified practitioner shall provide a copy of the capacity assessment report to the Public Guardian and Trustee.

**12. Register**

- (1) The Register is established for the purposes of this Act, and shall be maintained by the Prothonotary.

**Contents of Register**

- (2) The Register shall contain
- (a) copies of orders made under this Act;
  - (b) copies of orders and notices contained in the Committee Register established under the *Public Trustee Act* that are still in force and continued on the coming into force of this Act; and
  - (c) any documents or information prescribed by the regulations.

**Prohibition**

- (3) Notwithstanding the *Freedom of Information and Protection of Privacy Act*, no person shall have access to, use or disclose information in the Register except in accordance with this section and the regulations.

**Permitted access, etc.**

- (4) Subject to the regulations, a person may have access to the information specified in clauses (2)(a) and (b) for the purpose of making an application under this Act.

**Access by represented person**

- (5) A person who is or has been a represented person, or a guardian or trustee on behalf of a represented person, may have access to information in the Register.

**Access to, use and disclosure of information**

- (6) The Public Guardian and Trustee may have access to and may use and, subject to subsection (7), disclose information in the Register, including personal information and personal health information,
- (a) to determine whether a person is the subject of a guardianship or trusteeship order;
  - (b) to determine whether a guardianship or trusteeship order has been reviewed in accordance with the terms of the order; and
  - (c) to exercise the powers and carry out the duties of the Public Guardian and Trustee under this Act or another enactment.

**Disclosure in accordance with regulations**

- (7) The Public Guardian and Trustee may disclose information in the Register in accordance with the regulations.

**PART 4 - GUARDIANSHIP****13. Application of Part**

This Part applies only in respect of a person's personal matters.

**14. Application to court - appointment of guardian**

- (1) An interested person may apply to the court in accordance with this section for an order appointing a guardian for a person.

**Supporting documents**

- (2) An applicant shall file the following documents in support of an application for a guardianship order under subsection (1):
- (a) subject to section 9, two capacity assessment reports prepared by different qualified practitioners respecting the person who is the subject of the application;
  - (b) any other documents specified in the regulations or required by the Rules of Civil Procedure.

**Disclosure required**

- (3) Where the applicant is aware that the person who is proposed in the application as a guardian for a person

- (a) is an employee of a facility in which the person who is the subject of the application resides and through which the person receives personal services or health care;
  - (b) has been convicted of a criminal offence specified in the regulations; or
  - (c) is a member of a class of persons specified in the regulations,
- the applicant shall inform the court of that fact.

**Notice of application**

- (4) Subject to subsection (5), a notice, in the form required by the Rules of Civil Procedure, of an application under subsection (1) shall be personally served on
- (a) the person who is the subject of the application;
  - (b) if ascertainable, the substitute decision-maker of the person referred to in clause (a);
  - (c) if ascertainable, the person who provides day-to-day care or support to the person referred to in clause (a);
  - (d) the nearest relative of the person referred to in clause (a), if different from the persons specified in clauses (b) and (c);
  - (e) the Public Guardian and Trustee; and
  - (f) any other person the court may specify.

**Order dispensing with service**

- (5) The court may make an order dispensing with the requirement for personal service
- (a) under clause (4)(a), where the court is satisfied that
    - (i) notification of an application under this section would be harmful to the person who is the subject of the application, or
    - (ii) the person who is the subject of the application is not able to accept service because of the person's physical or mental infirmity; and
  - (b) under clause (4)(d), where the court is satisfied that the applicant has made reasonable efforts to identify and locate the nearest relative of the person and the relative's identity or location is not reasonably ascertainable.

**Order appointing guardian**

- (6) The court may, on an application under subsection (1), make an order appointing a guardian for a person where the court is satisfied that
- (a) the person does not have the capacity to make decisions about the personal matters that are referred to in the order;
  - (b) less intrusive and less restrictive alternative measures than the appointment of a guardian have been considered or have been implemented and would not likely be or have not been effective to meet the needs of the person; and
  - (c) it is in the person's best interests to make the order.

**Determination of best interests**

- (7) In determining whether it is in the person's best interests to appoint a guardian, the court shall consider all factors relating to the person in respect of which evidence has been provided, including
- (a) subject to section 9, the capacity assessment reports in respect of the person and any other relevant information respecting the person's capacity;
  - (b) any personal directive made by the person;
  - (c) any supported decision-making agreement made by the person;

- (d) whether the person's lack of capacity to make decisions about personal matters that are to be referred to in the order is likely to expose the person to harm;
- (e) the personal matters with respect to which the person needs or will likely need to make decisions;
- (f) the person's cultural, linguistic and spiritual upbringing and ties, and whether it is preferable to appoint a guardian with a similar cultural, linguistic or spiritual background;
- (g) whether the appointment of a guardian would be likely to produce benefits for the person that would outweigh any adverse consequences for the person; and
- (h) any other matter the court considers relevant.

### 15. Application by Public Guardian and Trustee - interim guardian

- (1) The Public Guardian and Trustee may apply to the court for an order appointing the Public Guardian and Trustee as the interim guardian of a represented person where
  - (a) the Public Guardian and Trustee is notified
    - (i) of the death of the represented person's guardian,
    - (ii) of the appointment of a guardian or trustee for the represented person's guardian, or
    - (iii) of the coming into effect, because of the incapacity of the represented person's guardian, of an enduring power of attorney or personal directive made by the guardian; and
  - (b) there is no other guardian or alternate guardian with the authority to act in respect of the matters with respect to which the deceased or incapacitated guardian had authority.

#### Application of section 14

- (2) Subsections 14(3) to (7) apply to an application under this section.

#### Duration

- (3) The Public Guardian and Trustee continues to be the interim guardian of the represented person until
  - (a) a new guardian is appointed by the court; or
  - (b) the court makes an order discharging the Public Guardian and Trustee as interim guardian of the represented person.

### 16. Court appointment of guardian

- (1) The court may appoint, as a guardian for a person, an adult who consents to act as a guardian and who the court is satisfied
  - (a) will act in the best interests of the person; and
  - (b) is suitable to be appointed as a guardian having regard to
    - (i) the views and wishes of the person, if ascertainable,
    - (ii) the relationship between the person and the proposed guardian insofar as it appears relevant to the ability of the proposed guardian to discharge the responsibilities of a guardian,
    - (iii) the apparent ability of the proposed guardian to effectively exercise authority about the personal matters to be referred to in the order,
    - (iv) any matter prescribed by the regulations, and

- (v) any other matter the court considers relevant.

**Evidence to be considered**

- (2) In assessing whether a proposed guardian will act in the best interests of a person, the court may consider evidence of any matter, including a potential conflict of interest that might create a significant risk that the proposed guardian would not act in the person's best interests.

**17. Court appointment of Public Guardian and Trustee**

The court may appoint the Public Guardian and Trustee as a guardian for a person only

- (a) on the application of the Public Guardian and Trustee; or
- (b) with the consent of the Public Guardian and Trustee.

**18. Court appointment - different guardian**

Where the court is satisfied that it is appropriate to make a guardianship order in respect of a person but is not satisfied that the proposed guardian meets the requirements of section 16, the court may, on any notice the court directs, appoint as guardian another person who meets the requirements of section 16.

**19. Multiple guardians**

- (1) Subject to subsection (4), the court may appoint more than one guardian for a person.

**Rules respecting two or more guardians**

- (2) Where the court appoints two or more guardians for a person, the court
  - (a) may grant a guardian exclusive authority to act and make decisions respecting specified personal matters of the person; and
  - (b) may provide that the guardians are to act jointly or separately in respect of any one or more personal matters of the person.

**Separate authority of guardians**

- (3) Except as provided under subsection (2), where two or more guardians are appointed for a person, the guardians may act and make decisions separately respecting the personal matters of the represented person specified in the order.

**Exception**

- (4) This section does not apply where the Public Guardian and Trustee is appointed as a guardian for a person.

**20. Court appointment - alternate guardian**

- (1) The court may appoint an alternate guardian for a person where
  - (a) the person proposed as alternate guardian has given written consent to the appointment; and
  - (b) the court is satisfied that the persons on whom notice of the application for a guardianship order or review of a guardianship order is required to be served have had sufficient notice of the willingness of the person proposed as an alternate guardian to act as alternate guardian.

**Criteria for alternate guardian**

- (2) Section 16 applies to a person proposed as an alternate guardian.

**Commencement of alternate guardianship**

- (3) Subject to the terms of the guardianship order, where an alternate guardian is appointed, the alternate guardian shall act as guardian without further proceedings
- (a) on becoming aware of
- (i) the death of the previous guardian,
  - (ii) the appointment of a guardian or trustee for the previous guardian, or
  - (iii) the coming into effect, because of the previous guardian's incapacity, of a personal directive or enduring power of attorney made by the previous guardian; or
- (b) where authorized in writing by the previous guardian.

**Duration, termination of authorization**

- (4) An authorization under clause (3)(b) shall indicate the period during which the alternate guardian may act as guardian and terminates on the earlier of
- (a) the end of the period indicated on the authorization; or
  - (b) when revoked by the previous guardian.

**Notification to Registrar**

- (5) When an alternate guardian acts as guardian because of an event referred to in clause (3)(a), the alternate guardian shall notify the Registrar in writing and provide evidence of the event, in accordance with the regulations, to the Registrar.

**Authority of alternate guardian**

- (6) Where an alternate guardian acts as guardian, the authority of the alternate guardian is the same as that of the previous guardian.

**"Previous guardian" defined**

- (7) In this section, "**previous guardian**" means a guardian for whom the alternate guardian is designated as alternate in the guardianship order.

**21. Content of guardianship order**

- (1) The court shall, in a guardianship order, grant to the guardian authority to act and make decisions with respect to only those personal matters of the represented person that the court considers necessary, consistent with the principles set out in section 2.

**Specified matters**

- (2) Where the court grants authority to a guardian in a guardianship order, the court shall specify that the guardian has authority to act and make decisions in respect of one or more of the following personal matters of the represented person:
- (a) the represented person's health care;
  - (b) the represented person's basic needs, including nutrition, clothing and personal care;
  - (c) where, with whom and under what conditions the represented person is to live, either permanently or temporarily;
  - (d) with whom the represented person may associate;
  - (e) the represented person's participation in social activities;

- (f) the represented person's participation in any educational, vocational or other training;
- (g) the represented person's employment;
- (h) commencing, continuing or defending a legal proceeding on behalf of the represented person, except a legal proceeding
  - (i) that relates primarily to the financial matters of the represented person,
  - (ii) under Part 5 of the *Children's Law Act* R.S.P.E.I. 1988, Cap. C-6.1, unless specifically authorized by the court,
  - (iii) under the *Divorce Act* (Canada), unless specifically authorized by the court,
  - (iv) in which the represented person is being prosecuted for an offence under an enactment or a federal statute, or
  - (v) under the *Adoption Act* R.S.P.E.I. 1988, Cap. A-4.1;
- (i) any other personal matters the court considers necessary.

**Effect of personal directive**

- (3) Where the court is aware that the person who is the subject of an application for a guardianship order has made a personal directive that is in effect, the court shall not grant to the guardian any authority that may be exercised by an agent under the personal directive unless the authority of the agent is terminated in accordance with section 28 of the *Powers of Attorney and Personal Directives Act*.

**Effect of health care directive**

- (4) Where the court is aware that the person who is the subject of an application for a guardianship order has made a health care directive that is in effect, the court shall not grant to the guardian any authority that may be exercised by a proxy under the health care directive unless the authority of the proxy is terminated in accordance with section 27 of the *Consent to Treatment and Health Care Directives Act*.

**Supported decision-making agreement**

- (5) Where the court is aware that the person who is the subject of an application for a guardianship order has made a supported decision-making agreement that has not been terminated by the person, the court shall consider
  - (a) any wishes that have been expressed by the person in the agreement; and
  - (b) any values or beliefs expressed by the person in the agreement.

**Guardianship order subject to conditions, etc.**

- (6) The court may make a guardianship order subject to any conditions, limits or requirements that it considers necessary.

**Application for review**

- (7) On making a guardianship order, the court may direct that an application for review of the order shall be made on
  - (a) a date, or on the happening of an event, specified by the court; or
  - (b) a date within a specified number of years after the date on which the order is made.

**Review date not specified**

- (8) The court may make a guardianship order without specifying a date under clause (7)(a) or (b) on which an application for review of the order shall be made where the court is satisfied that there is no reasonable likelihood of a significant change in the needs, circumstances or capacity of the represented person that would justify variation or termination of the order.

**22. Authority of guardian**

- (1) A guardian may act, make decisions, give consent and do anything with respect to those personal matters of the represented person that the guardian has been granted authority in the guardianship order to deal with, and may sign documents and do all things necessary to give effect to the authority vested in the guardian.

**Effect of guardian's action, etc.**

- (2) An action taken, decision made, consent given or thing done by a guardian with respect to a personal matter of the represented person referred to in subsection (1) has the same effect for all purposes as if the represented person had taken the action, made the decision, given the consent or done the thing while having capacity.

**23. Exercise of guardian's authority**

- (1) A guardian shall exercise the guardian's authority
- (a) in the represented person's best interests;
  - (b) diligently;
  - (c) in good faith;
  - (d) in a way that encourages the represented person to become, to the extent possible, capable of self-care and of making decisions in respect of personal matters; and
  - (e) in the least intrusive and least restrictive manner that, in the opinion of the guardian, is likely to be effective.

**Effect of personal directive**

- (2) Notwithstanding subsection 22(1), where a guardian has been granted authority with respect to a personal matter about which a personal directive of the represented person contains instructions, the guardian shall exercise the guardian's authority in accordance with any clear and relevant instructions in the personal directive, subject to a contrary order of the court.

**Effect of health care directive**

- (3) Notwithstanding subsection 22(1), where a guardian has been granted authority with respect to a health care decision about which a health care directive of the represented person contains instructions, the guardian shall exercise the guardian's authority in accordance with any clear and relevant instructions in the health care directive, subject to a contrary order of the court.

**Requirement for compliance**

- (4) A guardian shall comply with any conditions, limits or requirements set out in the guardianship order.

**Represented person to be informed of order**

- (5) On the making of a guardianship order, the guardian shall, promptly and in a manner the represented person is likely best to understand, inform the represented person of the guardian's appointment, the extent of the guardian's authority and any conditions, limits or requirements to which the guardianship is subject.

**Represented person to be informed of decisions**

- (6) Subject to the regulations, a guardian shall, within a reasonable time and in a manner that the represented person is likely to best understand, inform the represented person of important decisions made by the guardian for the represented person.



**Notification to Public Guardian and Trustee**

- (7) A guardian shall, within a reasonable time, notify the Public Guardian and Trustee where, after the date of the guardianship order, the guardian
- (a) becomes an employee of a facility in which the represented person resides and through which the represented person receives personal services or health care;
  - (b) is convicted of a criminal offence specified in the regulations; or
  - (c) becomes a member of a class of persons specified in the regulations.

**24. Reimbursement for expenses**

- (1) A guardian is entitled to be reimbursed out of the property of the represented person for direct expenses incurred in exercising the guardian's authority and carrying out the guardian's duties and responsibilities.

**No remuneration, etc.**

- (2) A guardian is not entitled to any remuneration, compensation, fees or allowance for effort made or for time expended on behalf of the represented person in exercising the authority and carrying out the guardian's duties and responsibilities.

**Annual submission of accounts**

- (3) Where a guardian elects to be reimbursed under subsection (1), the guardian shall, on an annual basis, submit the guardian's accounts for examination and approval by the Prothonotary.

**25. Application to court - giving effect to guardian's decision**

- (1) A guardian may apply to the court for an order under this section where the guardian has reason to believe that
- (a) a decision made by the guardian under the guardian's power and authority is not being given effect because
    - (i) the represented person is failing or refusing to act in accordance with the decision, or
    - (ii) a person is obstructing the doing of anything necessary to give effect to the decision; and
  - (b) there would be serious risk to the health or safety of the represented person if the decision were not given effect.

**Notice of application**

- (2) A guardian shall give notice of the application under subsection (1), in the form required by the Rules of Civil Procedure, to the represented person and to a person referred to in subclause (1)(a)(ii), if any.

**Order of court**

- (3) Where the court is satisfied that the circumstances referred to in clauses (1)(a) and (b) exist, the court may make any order the court considers necessary and appropriate to give effect to the decision of the guardian, including, without limitation, an order authorizing a peace officer to assist the guardian or another person in doing anything necessary to give effect to the decision.

**26. Application to court - opinion, advice, direction**

- (1) A guardian may apply, without notice to any person, for the opinion, advice or direction of the court on any question respecting the represented person.

**Effect**

- (2) A guardian acting on the opinion, advice or direction given by the court is deemed, so far as the guardian's responsibility is concerned, to have discharged the guardian's duty as a guardian in respect of the subject matter of the opinion, advice or direction.

**Exception**

- (3) Subsection (2) does not operate to indemnify a guardian in respect of any act done in accordance with an opinion, advice or direction where the guardian is found guilty of any fraud, willful concealment or misrepresentation in obtaining the opinion, advice or direction.

**27. Application for review of guardianship order**

- (1) A represented person, a guardian or an interested person may apply to the court for a review of a guardianship order.

**Application by guardian**

- (2) Notwithstanding subsection (1), a guardian shall apply for a review of a guardianship order
- (a) as required by the terms of the guardianship order;
  - (b) where there has been a significant change in the needs, circumstances or capacity of the represented person that the guardian considers would justify a variation or termination of the order in the represented person's best interests; or
  - (c) where there has been a change in circumstances that affects the guardian's
    - (i) ability to exercise the authority or carry out the duties and responsibilities of a guardian, or
    - (ii) suitability to be a guardian for the represented person.

**Requirement for recent capacity assessment report**

- (3) The person applying for a review of a guardianship order shall file two recent capacity assessment reports, prepared by different qualified practitioners, respecting the represented person with the court
- (a) subject to section 9, where the capacity of the represented person is in issue; or
  - (b) as otherwise required by the regulations.

**Notice of application**

- (4) An applicant shall give notice of the application under subsection (1), in the form required by the Rules of Civil Procedure, to the represented person and to any other person specified by the court.

**Authority of court**

- (5) Subject to clause (6)(a) and subsection (7), on an application for review of a guardianship order, the court may make an order continuing, amending, replacing or terminating the guardianship order on any terms or conditions the court considers appropriate.

**Requirements for order**

- (6) The court
- (a) shall make an order terminating a guardianship order if the court is satisfied that the represented person is no longer in need of a guardian;
  - (b) may make an order terminating or varying a guardianship order, an order discharging a guardian and appointing a new guardian who meets the requirements of section 16, or any other order that the court considers appropriate in the circumstances, where the court is satisfied that
    - (i) a guardian is not acting or is unable, unwilling or refusing to continue to act as guardian,
    - (ii) a guardian has failed to apply for a review of the guardianship order, if applicable, or has otherwise failed to act in accordance with the guardianship order or any conditions, limits or requirements to which the guardianship order is subject,
    - (iii) a guardian has not complied with the duties and responsibilities of a guardian,
    - (iv) a guardian has acted in an improper manner or in a manner that has endangered or might endanger the represented person's well-being,
    - (v) a guardian is no longer suitable to be a guardian for the represented person,
    - (vi) the relationship between a guardian and the represented person has broken down, or
    - (vii) it is in the represented person's best interests to do so; and
  - (c) shall make an order to replace the Public Guardian and Trustee as guardian of a person on the application of an interested person, where the court is satisfied that
    - (i) the person proposed as replacement guardian has given written consent to the appointment,
    - (ii) the persons on whom notice of the application for review of the guardianship order is required to be served have had sufficient notice of the willingness of the person proposed to be appointed as replacement guardian,
    - (iii) the person proposed to be appointed as replacement guardian is eligible for the appointment in accordance with section 16,
    - (iv) the Public Guardian and Trustee has consented in writing to the appointment of the person as guardian for the represented person, or has had the opportunity to make representations to the court respecting the application, and
    - (v) the termination of the appointment of the Public Guardian and Trustee and appointment of the person proposed as replacement guardian is appropriate in the circumstances.

**Conditions for terminating guardianship order**

- (7) Before making an order terminating a guardianship order, the court shall satisfy itself that, if necessary,
- (a) suitable arrangements have been or will be made in respect of the represented person's personal matters; or
  - (b) an application for another guardianship order in respect of the represented person has been or will be made.

**Application for review**

- (8) Subsections 21(6), (7) and (8) apply to an order made under subsection (6).

**28. Inconsistency or conflict**

Where a provision of this Act in respect of the Public Guardian and Trustee's powers and duties as guardian of a represented person is inconsistent or in conflict with a provision of the *Public Guardian and Trustee Act*, the provision of the *Public Guardian and Trustee Act* prevails.

**PART 5 - TRUSTEESHIP****29. Application of Part**

- (1) This Part applies only in respect of a person's financial matters.

**Application of Trustee Act**

- (2) Except as otherwise provided by this Act, the *Trustee Act* R.S.P.E.I. 1988, Cap. T-8, does not apply to a trustee appointed under this Act.

**30. Application to court - appointment of trustee**

- (1) An interested person may apply to the court in accordance with this section for an order appointing a trustee for a person.

**Supporting documents**

- (2) An applicant shall file the following documents in support of an application for a trusteeship order under this section:
- (a) subject to section 9, two capacity assessment reports, prepared by different qualified practitioners, respecting the person who is the subject of the application;
  - (b) any other documents prescribed by the regulations or required by the Rules of Civil Procedure.

**Disclosure required**

- (3) Where the applicant is aware that the person who is proposed in the application as a trustee for a person
- (a) is an undischarged bankrupt;
  - (b) is an employee of a facility in which the person who is the subject of the application resides and through which the person receives personal services or health care;
  - (c) has been convicted of a criminal offence specified in the regulations; or
  - (d) is a member of a class of persons specified in the regulations,
- the applicant shall inform the court of that fact.

**Notice of application**

- (4) Subject to subsection (5), a notice, in the form required by the Rules of Civil procedure, of an application under this section shall be personally served on
- (a) the person who is the subject of the application;
  - (b) if ascertainable, the substitute decision-maker of the person referred to in clause (a);
  - (c) if ascertainable, the person who provides day-to-day care or support to the person referred to in clause (a);
  - (d) the nearest relative of the person referred to in clause (a), if different from the persons specified in clauses (b) and (c);

- (e) the Public Guardian and Trustee; and
- (f) any other person the court may specify.

**Order dispensing with service**

- (5) The court may make an order dispensing with the requirement for service
  - (a) under clause (4)(a), if the court is satisfied that
    - (i) notification of an application under this section would be harmful to the person who is the subject of the application, or
    - (ii) the person who is the subject of the application is not able to accept service because of the person's physical or mental infirmity; and
  - (b) under clause (4)(d), where the court is satisfied that the applicant has made reasonable efforts to identify and locate the nearest relative of the person and the relative's identity or location is not reasonably ascertainable.

**Order appointing trustee**

- (6) The court may, on an application under this section, make an order appointing a trustee for a person, consistent with the principles set out in section 2, where the court is satisfied that
  - (a) the person does not have the capacity to make decisions about the financial matters that are referred to in the order;
  - (b) less intrusive and less restrictive alternative measures than the appointment of a trustee have been considered or have been implemented and would not likely be or have not been effective to meet the needs of the person; and
  - (c) it is in the person's best interests to make the order.

**Basis for determination**

- (7) A determination that a person does not have capacity to make decisions respecting financial matters shall not be made solely on the basis of evidence that the person
  - (a) is making decisions about a financial matter in a manner that a reasonably prudent person would not adopt; or
  - (b) has difficulty communicating about the matter.

**Factors to be considered by court**

- (8) In determining whether it is in the person's best interests to appoint a trustee for the person, the court shall consider all factors relating to the person about which evidence has been provided, including
  - (a) subject to section 9, the capacity assessment reports respecting the person and any other relevant information respecting the person's capacity;
  - (b) any enduring power of attorney given by the person;
  - (c) any supported decision-making agreement made by the person;
  - (d) whether the appointment of a trustee would be likely to produce benefits for the person that would outweigh any adverse consequences for the person; and
  - (e) any other matter the court considers relevant.

**31. Public Guardian and Trustee as interim trustee**

- (1) The Public Guardian and Trustee may apply to the court for an order appointing the Public Guardian and Trustee as interim trustee of the property of a represented person, and authorizing the Public Guardian and Trustee to take interim possession and control of property that is subject to trusteeship, where

- (a) the Public Guardian and Trustee is notified of
  - (i) the death of a represented person,
  - (ii) the appointment of a guardian or trustee for the represented person's trustee, or
  - (iii) of the coming into effect, because of the incapacity of the represented person's trustee, of an enduring power of attorney or personal directive made by the represented person's trustee; and
- (b) there is no other trustee or alternate trustee who has authority to act with respect to the property.

#### **Interim authority of Public Guardian and Trustee**

- (2) On being appointed as interim trustee under subsection (1), the Public Guardian and Trustee may
  - (a) take any action with respect to the property that in the Public Guardian and Trustee's opinion is necessary or advisable to protect and preserve the property;
  - (b) pay the ordinary living expenses of the represented person out of the property; and
  - (c) apply to be appointed as trustee for the represented person.

#### **Duration**

- (3) The Public Guardian and Trustee continues to be the interim trustee of the represented person until
  - (a) a new trustee is appointed by the court; or
  - (b) the court makes an order discharging the Public Guardian and Trustee as interim trustee of the represented person.

#### **Accountability of Public Guardian and Trustee**

- (4) The Public Guardian and Trustee is accountable only for property subject to the trusteeship that comes into the Public Guardian and Trustee's possession or over which the Public Guardian and Trustee exercises control.

#### **Accounting by Public Guardian and Trustee**

- (5) Where a new trustee is appointed, the Public Guardian and Trustee shall provide an accounting to the new trustee for the property subject to the trusteeship that came into the Public Guardian and Trustee's possession or over which the Public Guardian and Trustee exercised control.

#### **Where no application commenced**

- (6) Where an application for the appointment of a trustee for the person is not commenced within 60 days after the date on which the Public Guardian and Trustee was notified of the event referred to in subclause (1)(a)(i), (ii) or (iii), the Public Guardian and Trustee may apply to be appointed as trustee for the person or for a review of the trusteeship order.

#### **Application of section 30**

- (7) Subsections 30(3) to (8) apply to an application under this section.

### **32. Court appointment of trustee**

- (1) The court may appoint as a trustee for a person
  - (a) subject to subsection (2), an adult who consents to act as trustee and who the court is satisfied
    - (i) will act in the best interests of the person, and

- (ii) is suitable to be appointed as trustee having regard to
  - (A) the views and wishes of the person, if ascertainable,
  - (B) the relationship between the person and the individual proposed as trustee, insofar as it appears relevant to the ability of the individual to discharge the responsibilities of trustee,
  - (C) the apparent ability of the individual proposed as trustee to effectively manage the financial affairs of the person,
  - (D) any circumstance, including but not limited to the trustee's place of residence, that could impair the court's ability to exercise effective oversight and control over the trustee,
  - (E) any matter prescribed by the regulations, and
  - (F) any other matter the court considers relevant;
- (b) a trust corporation that consents to act as trustee; or
- (c) subject to section 33, the Public Guardian and Trustee.

**Evidence to be considered**

- (2) In assessing whether a proposed trustee will act in the best interests of a person, the court may consider evidence of any matter, including a potential conflict of interest, that may create a substantial risk that the proposed trustee would not act in the person's best interests.

**Exception, conflict of interest**

- (3) For the purposes of subsection (2), a proposed trustee shall not be considered to have a potential conflict of interest by reason only that the proposed trustee
  - (a) is a relative of the person; or
  - (b) is a beneficiary or potential beneficiary of the person.

**Trustee not ordinarily resident in province**

- (4) Subject to subsection (6), the court may appoint an individual who is not ordinarily resident in Prince Edward Island as a trustee only if the individual provides a bond or other security for the performance of the individual's duties as trustee.

**Bond or security**

- (5) The bond or other security shall be of a nature and value and subject to the terms approved by the court.

**Dispensing with requirement**

- (6) The court may dispense with the requirement for a bond or other security where the court is satisfied that, having regard to other safeguards that are or will be in place, it would be in the represented person's best interests to do so.

**Trustee ordinarily resident in province**

- (7) The court may require a trustee who is ordinarily resident in the province, other than the Public Guardian and Trustee or a trust corporation, to provide a bond or other security in accordance with subsection (5) for the performance of the trustee's duties.

**33. Court appointment of Public Guardian and Trustee**

The court may appoint the Public Guardian and Trustee as trustee for a person only

- (a) on the application of the Public Guardian and Trustee; or

- (b) with the consent of the Public Guardian and Trustee.

**34. Court may appoint different trustee**

Where the court is satisfied that it is appropriate to make a trusteeship order in respect of a person but is not satisfied that the proposed trustee meets the requirements of section 32, the court may, on any notice the court directs, appoint as trustee another person who meets the requirements of section 32.

**35. Multiple trustees**

- (1) Subject to subsection (4), the court may appoint more than one trustee for a person.

**Rules respecting two or more trustees**

- (2) Where the court appoints two or more trustees for a person, the court
- (a) may grant a trustee exclusive authority over specified financial matters of the represented person; and
  - (b) may provide that the trustees are to act together or separately in respect of one or more financial matters of the represented person.

**Joint authority of trustees**

- (3) Except as otherwise provided under subsection (2), if two or more trustees are appointed for a person, the trustees shall act together.

**Exception**

- (4) This section does not apply where the Public Guardian and Trustee is appointed as trustee for a person.

**36. Court appointment - alternate trustee**

- (1) The court may appoint an alternate trustee for a person where
- (a) the person proposed as alternate trustee has given written consent to the appointment; and
  - (b) the court is satisfied that the persons on whom notice of the application for a trusteeship order or review of a trusteeship order is required to be served have had sufficient notice of the willingness of the person proposed as an alternate trustee to act as alternate trustee.

**Criteria for alternate trustee**

- (2) Section 32 applies to a person proposed as an alternate trustee.

**Commencement of alternate trusteeship**

- (3) Subject to the terms of the trusteeship order, where an alternate trustee is appointed, the alternate trustee shall act as trustee without further proceedings
- (a) on becoming aware of
    - (i) the death of the previous trustee,
    - (ii) the appointment of a guardian or trustee for the previous trustee, or



(iii) the coming into effect, because of the previous trustee's incapacity, of a personal directive or enduring power of attorney made by the previous trustee;  
or

(b) where authorized in writing by the previous trustee.

**Duration, termination of authorization**

(4) An authorization under clause (3)(b) shall indicate the period during which the alternate trustee may act as trustee and terminates on the earlier of

(a) the end of the period indicated on the authorization; or

(b) when revoked by the previous trustee.

**Notification to Registrar**

(5) When an alternate trustee acts as trustee because of an event referred to in clause (3)(a), the alternate trustee shall notify the Registrar in writing and provide evidence of the event, in accordance with the regulations, to the Registrar.

**Authority of alternate trustee**

(6) Where an alternate trustee acts as trustee, the authority of the alternate trustee is the same as that of the previous trustee.

**"Previous trustee" defined**

(7) In this section, "**previous trustee**" means a trustee for whom the alternate trustee is designated as alternate in the trusteeship order.

**37. Content of trusteeship order**

(1) The court shall, in a trusteeship order, grant to the trustee authority to act and make decisions with respect to only those financial matters of the represented person that the court considers necessary, consistent with the principles set out in section 2.

**Specified matters**

(2) Where the court grants authority to a trustee in a trusteeship order, the court shall specify that the trustee has authority to act and make decisions in respect of one or more of the following financial matters of the represented person:

(a) the possession and control of the represented person's property;

(b) anything in relation to the real or personal property of the represented person that the represented person could do if the represented person were capable of making decisions with respect to the property;

(c) the trade or business of the represented person;

(d) the transfer of property held in trust by the represented person, either solely or jointly with another, to the person beneficially entitled to the property;

(e) the performance of a contract entered into by the represented person or by the represented person's guardian;

(f) commencing, continuing or defending on behalf of the represented person a legal proceeding, except a legal proceeding

(i) that relates primarily to the personal matters of the represented person,

(ii) that relates to division of matrimonial property or spousal support in respect of a spouse or former spouse of the represented person, unless specifically authorized by the court,

- (iii) that relates to child support in respect of a child of the represented person, unless specifically authorized by the court,
- (iv) under the *Divorce Act* (Canada), unless specifically authorized by the court, or
- (v) in which the represented person is being prosecuted for an offence under an enactment or a federal statute;
- (g) the reimbursement from or payment or discharge from the estate of all reasonable expenses properly incurred in or about the performance of a duty or in the exercise of a power under this Act or the regulations;
- (h) compensation from the estate in accordance with the prescribed fees, for acting as the trustee of the represented person;
- (i) any other financial matters the court considers necessary.

#### Scope of trusteeship order

- (3) Except as otherwise provided by the terms of the trusteeship order, this Act or the regulations, or the *Public Guardian and Trustee Act*, a trusteeship order
  - (a) applies to all of the represented person's real and personal property; and
  - (b) does not authorize
    - (i) subject to subsection (4), the sale, transfer or encumbrance of real property of the represented person,
    - (ii) the purchase of real property on behalf of the represented person, or
    - (iii) those actions on behalf of the represented person that are specified in the regulations.

#### Registration

- (4) The trustee may register the trusteeship order under the *Registry Act* R.S.P.E.I. 1988, Cap. R-10.

#### Designations by trustee

- (5) Unless the trusteeship order provides otherwise, a trustee has the authority, on behalf of the represented person and in accordance with the *Designation of Beneficiaries Under Benefit Plans Act* R.S.P.E.I. 1988, Cap. D-9,
  - (a) to make a designation in an instrument in accordance with the terms of a plan that renews, replaces or converts a similar instrument made by the represented person, if the same beneficiary is designated in both instruments;
  - (b) to make a designation in an instrument in accordance with the terms of a plan that does not renew, replace or convert a similar instrument made by the represented person, if the estate of the represented person is designated as the beneficiary; and
  - (c) to make, change or revoke a designation, if the court authorizes the trustee to do so.

#### Effect of enduring power of attorney

- (6) Where the court is aware that the person who is the subject of an application for a trusteeship order has made an enduring power of attorney that is in effect, the court shall not grant to the trustee any authority that may be exercised by an attorney under the enduring power of attorney unless the authority of the attorney is terminated in accordance with section 14 of the *Powers of Attorney and Personal Directives Act*.

**Supported decision-making agreement**

- (7) Where the court is aware that the person who is the subject of an application for a trusteeship order has made a supported decision-making agreement that has not been terminated by the person, the court shall consider
- (a) any wishes expressed by the person in the agreement; and
  - (b) any values and beliefs expressed by the person in the agreement.

**Trusteeship order subject to conditions, etc.**

- (8) The court may make a trusteeship order subject to any conditions, limits or requirements that it considers necessary.

**Application for review**

- (9) On making a trusteeship order, the court may direct that an application for review of the order shall be made on
- (a) a date, or on the happening of an event, specified by the court; or
  - (b) a date within a specified number of years after the date on which the order is made.

**Review date not specified**

- (10) The court may make a trusteeship order without specifying a date under clause (9)(a) or (b) on which an application for review of the order shall be made where the court is satisfied that there is no reasonable likelihood of a significant change in the needs, circumstances or capacity of the represented person that would justify variation or termination of the order.

**38. Authority of trustee**

- (1) A trustee may act, make decisions, give consent and do anything with respect to those financial matters of the represented person that the trustee has been granted authority in the trusteeship order to deal with, and may sign documents and do all things necessary to give effect to the authority vested in the trustee.

**Effect of trustee's action, etc.**

- (2) An action taken, decision made, consent given or thing done by a trustee with respect to a financial matter of the represented person referred to in subsection (1) has the same effect for all purposes as if the represented person had taken the action, made the decision, given the consent or done the thing while having capacity.

**Duty of person with custody or possession**

- (3) Where a trustee has been granted authority over the property of a represented person under a trusteeship order and has served notice of the trusteeship order on a person who has custody or possession of property of the represented person, that person shall
- (a) on the request of the trustee, send to the trustee any information and allow the trustee to inspect any records in respect of the property that the represented person is entitled to receive or inspect; and
  - (b) comply with any direction given by the trustee regarding the property, including but not limited to a direction to restrict the represented person's access to or use of the property.

**Failure to comply**

- (4) Where a person referred to in subsection (3) fails to comply with a request or direction of a trustee referred to in that subsection, the court may, on application by the trustee, order the person

- (a) to take whatever action is necessary to comply with subsection (3); and
- (b) to compensate the represented person for any loss or damage to the represented person's financial matters caused by the non-compliance.

### **39. Exercise of trustee's authority**

- (1) A trustee shall exercise the trustee's authority
  - (a) in the represented person's best interests;
  - (b) diligently;
  - (c) in good faith;
  - (d) in a way that encourages the represented person to become, to the extent possible, capable of self-care and of making decisions in respect of financial matters; and
  - (e) in the least intrusive and least restrictive manner that, in the opinion of the trustee, is likely to be effective.

#### **Effect of enduring power of attorney**

- (2) Notwithstanding subsection 38(1), where a trustee has been granted authority with respect to a financial matter about which an enduring power of attorney of the represented person contains instructions, the trustee shall exercise the trustee's authority in accordance with any clear and relevant instructions in the enduring power of attorney, subject to a contrary order by the court.

#### **Requirement for compliance**

- (3) A trustee shall comply with any conditions, limits or requirements set out in the trusteeship order.

#### **Expenditures**

- (4) A trustee shall make expenditures out of the represented person's property that are reasonably required for the education, support and care of the represented person.

#### **Exercise of authority for benefit of others**

- (5) Subject to subsection (4), a trustee may exercise the trustee's authority for the benefit of any or all of the following:
  - (a) the spouse of the represented person, if any;
  - (b) any child of the represented person who is under the age of 18 years;
  - (c) any child of the represented person who is an adult and is unable to earn a livelihood because of a physical or mental disability;
  - (d) with the consent of the court, any other person.

#### **Represented person to be informed of order**

- (6) On the making of a trusteeship order, the trustee shall, promptly and in a manner the represented person is likely best to understand, inform the represented person of the trustee's appointment, the extent of the trustee's authority and any conditions, limits or requirements to which the trusteeship is subject.

#### **Represented person to be informed of decisions**

- (7) Subject to the regulations, a trustee shall, within a reasonable time and in a manner that the represented person is likely to best understand, inform the represented person of important decisions made by the trustee for the represented person.

**Notification to Public Guardian and Trustee**

- (8) A trustee shall, within a reasonable time, notify the Public Guardian and Trustee where, after the date of the trusteeship order, the trustee
- (a) becomes bankrupt;
  - (b) becomes an employee of a facility in which the represented person resides and through which the represented person receives personal services or health care;
  - (c) is convicted of a criminal offence specified in the regulations;
  - (d) becomes a member of a class of persons specified in the regulations.

**40. Standard of care, etc.**

- (1) A trustee shall, in managing the financial matters of the represented person, exercise the care, skill and diligence that a reasonably prudent person would exercise in managing the person's own financial matters.

**Liability for breach**

- (2) Where in any proceeding it appears to the court that
- (a) a trustee is or may be personally liable for a breach of any duty arising under this Act; but
  - (b) the trustee has acted honestly and reasonably and ought fairly to be excused for the breach of duty and for omitting to obtain the direction of the court in the matter in which the trustee committed the breach,
- the court may relieve the trustee either wholly or partly from personal liability for the breach.

**41. Application of *Trustee Act***

- (1) Subject to subsection (2), sections 2 to 3.5 of the *Trustee Act* apply to a trustee appointed under this Act, other than the Public Guardian and Trustee.

**Exception**

- (2) Section 3.2 of the *Trustee Act* does not apply in the case of liability for loss arising from a decision or course of action by a trustee that contravenes the express terms of the trusteeship order.

**Effect of trusteeship order**

- (3) A trusteeship order made by the court is deemed to be an instrument creating a trust for the purposes of the *Trustee Act*.

**42. Prohibition**

- (1) A trustee shall not make gifts out of the represented person's property except as provided in this section.

**Permitted gift**

- (2) Subject to the regulations and any specific restrictions in the trusteeship order, a trustee may make a gift out of the represented person's property where
- (a) the property that constitutes the gift is not required to meet the represented person's needs or the needs of a person referred to in subsection 39(5); and

- (b) the trustee has reasonable grounds to believe, based on the actions of the represented person while the represented person had capacity, that the represented person would make the gift if the represented person had capacity.

**Court may authorize gift**

- (3) The court may authorize a trustee to make a gift that is not authorized by subsection (2) where the court is satisfied that it would be appropriate for the trustee to make the gift.

**43. Reasonable efforts to locate will**

- (1) A trustee shall make reasonable efforts to determine whether the represented person has a will.

**Trustee may call in will**

- (2) A trustee may call in or receive a copy of a will made by the represented person from a person who has possession of it and, subject to solicitor-client privilege, that person shall surrender the copy of the will to the trustee on request.

**Where will authorizes access**

- (3) Notwithstanding subsection (2), where a will made by the represented person expressly authorizes the trustee to have access to a copy of the will, a person who has a copy of the represented person's will, including a lawyer, shall provide access to it on the request of the trustee.

**44. Duty to keep property separate**

Except as otherwise specifically provided by an enactment, a trusteeship order or a trusteeship plan approved by the court, a trustee shall

- (a) keep property subject to the trusteeship separate from the trustee's own property; and  
(b) hold any money or financial assets that are subject to trusteeship in a separate account that identifies the represented person as the beneficial owner.

**45. Accounts to be maintained**

- (1) A trustee shall maintain accounts in accordance with the regulations.

**Time to submit accounts**

- (2) A trusteeship order may specify a time by which the trustee shall submit the trustee's accounts for examination and approval by the Prothonotary.

**Application for order to submit accounts**

- (3) The represented person or any interested person may apply at any time to the Prothonotary for an order directing a trustee to submit the trustee's accounts for examination and approval by the Prothonotary.

**Court may direct trustee to submit accounts**

- (4) The court may on its own initiative and at any time direct the trustee to submit the trustee's accounts for examination and approval by the Prothonotary.

**Accounting to personal representative**

- (5) On the death of the represented person, the trustee shall provide an accounting to the represented person's personal representative.

**Application to Prothonotary by personal representative**

- (6) Where the trustee does not provide an accounting under subsection (5) to the satisfaction of the represented person's personal representative, the personal representative may apply to the Prothonotary for an order under subsection (3).

**Accounting by personal representative, etc.**

- (7) The personal representative of a deceased trustee or the attorney or trustee of an incapacitated trustee shall, on request, provide an accounting to
- (a) an alternate trustee who is acting as trustee under clause 36(3)(a);
  - (b) a new trustee appointed by the court; or
  - (c) the Public Guardian and Trustee acting under section 31.

**Period to be covered**

- (8) Subject to the order of the court, an accounting shall cover the period commencing on the latest of the following dates and ending on the date of the request:
- (a) the date on which the trustee began acting as trustee;
  - (b) the date the trustee last provided an accounting;
  - (c) the date occurring exactly three years prior to the request.

**Application to Prothonotary by alternate trustee, etc.**

- (9) Where the personal representative, attorney or trustee does not provide an accounting under subsection (7) to the satisfaction of the alternate trustee, new trustee or Public Guardian and Trustee, the alternate trustee, new trustee or Public Guardian and Trustee may apply to the Prothonotary for an order under subsection (3).

**Submission of accounts to Prothonotary**

- (10) A trustee
- (a) shall submit the trustee's accounts for examination and approval by the Prothonotary when directed to do so by the court; and
  - (b) may submit the trustee's accounts for examination and approval by the Prothonotary at any other time.

**Exception**

- (11) This section does not apply to the Public Guardian and Trustee.

**46. Continuation of authority**

- (1) Where a represented person dies while a trusteeship order is in effect, the trustee's authority continues to the extent necessary for the trustee to preserve and protect the property subject to the trusteeship until the represented person's personal representative exercises authority over the property.

**Application of Public Guardian and Trustee Act**

- (2) This section is subject to sections 10 and 11 of the *Public Guardian and Trustee Act*.

**47. Compensation for trustee**

- (1) Subject to subsection (6), a trustee is entitled to be compensated out of the property of the represented person in accordance with this section.

**Fee schedule**

- (2) A trustee may, in accordance with the regulations, elect to be compensated in accordance with the fee schedule set out in the regulations.

**Conditions on compensation**

- (3) Where a trustee has made an election under subsection (2),
- (a) the trustee is not entitled to take the compensation under the prescribed fee schedule until authorized to do so by the Prothonotary; and
  - (b) the Prothonotary may reduce or eliminate the compensation to which the trustee would otherwise be entitled under the prescribed fee schedule if the Prothonotary is not satisfied that the trustee has adequately discharged the trustee's duties.

**Prothonotary to determine compensation**

- (4) Where a trustee has not made an election under subsection (2), the Prothonotary may determine the trustee's compensation, having regard to the trustee's effort, care and responsibility and the time expended on behalf of the represented person.

**Compensation on interim or final basis**

- (5) A trustee's compensation may be determined and authority to take compensation may be given by the Prothonotary on an interim or final application for examination and approval of the trustee's accounts or as otherwise permitted by the court.

**Compensation to Public Guardian and Trustee**

- (6) The Public Guardian and Trustee shall be compensated for acting as trustee as determined in accordance with the *Public Guardian and Trustee Act*.

**Reimbursement for expenses**

- (7) A trustee is entitled to be reimbursed out of the property of the represented person for direct expenses incurred and disbursements made on behalf of the represented person.

**Annual submission of accounts**

- (8) Notwithstanding section 45, where a trustee elects to be reimbursed under subsection (7), the trustee shall, on an annual basis, submit the trustee's accounts for examination and approval by the Prothonotary.

**48. Property that is the subject of a bequest**

- (1) A trustee may apply to the court for an order authorizing the trustee to sell property that is the subject of a specific gift in the will of the represented person and directing the trustee to place the proceeds of the sale into an identifiable trust account to be administered as the court directs, having regard to the present and future needs of the represented person.

**Gift does not fail**

- (2) Where a trustee complies with an order under subsection (1), the doctrine of ademption does not apply to the property that is the subject of a specific gift in the will of the represented person, and a person who would have acquired a right to the property on the death of the represented person is entitled to receive from the residue of the estate the equivalent of a corresponding right in the proceeds of the property, without interest.



**Where residue insufficient**

- (3) Where the residue of the represented person's estate is not sufficient to pay all entitlements under subsection (2) in full, the persons entitled under subsection (2) shall share the residue in amounts proportional to the amounts to which they would otherwise have been entitled.

**Will prevails**

- (4) Subsections (2) and (3) are subject to a contrary intention in the represented person's will.

**Application by affected person**

- (5) Where a trustee has sold or otherwise disposed of property that was the subject of a specific gift in the will of the represented person otherwise than in accordance with an order under subsection (1), the court on the application of any affected person may make an order that it considers will best give effect to the represented person's testamentary intentions, having regard to the circumstances in which the property was sold.

**Time of application**

- (6) An application under subsection (5) may be made either before or after the death of the represented person.

**49. Application to court - opinion, advice, direction**

- (1) A trustee may apply for the opinion, advice or direction of the court on any question respecting the represented person.

**Effect**

- (2) A trustee acting on the opinion, advice or direction given by the court is deemed, so far as the trustee's responsibility is concerned, to have discharged the trustee's duty as a trustee in respect of the subject matter of the opinion, advice or direction.

**Exception**

- (3) Subsection (2) does not operate to indemnify a trustee in respect of any act done in accordance with an opinion, advice or direction if the trustee is found guilty of any fraud, willful concealment or misrepresentation in obtaining the opinion, advice or direction.

**50. Authority of court - trusteeship order**

- (1) The court may on an application under this Act relating to a trusteeship order
- (a) inquire into a complaint or claim of misconduct, neglect or default on the part of the trustee; and
  - (b) order that the trustee reimburse the represented person to the extent of any loss suffered by the represented person as a result of the misconduct, neglect or default of the trustee and grant judgment accordingly.

**Court may order trial**

- (2) The court may order the trial of an issue of a complaint or claim under clause (1)(a) and may make all necessary direction with respect to it.

**51. Application for review of trusteeship order**

- (1) A represented person, a trustee or an interested person may apply to the court for a review of a trusteeship order.

**Application by trustee**

- (2) Notwithstanding subsection (1), a trustee shall apply for a review of a trusteeship order
- (a) as required by the terms of the trusteeship order;
  - (b) if there has been a significant change in the needs, circumstances or capacity of the represented person that the trustee considers would make a variation or termination of the order in the represented person's best interests; or
  - (c) if there has been a change in circumstances that affects the trustee's
    - (i) ability to exercise the authority or carry out the duties and responsibilities of a trustee, or
    - (ii) suitability to be a trustee for the represented person.

**Requirement for recent capacity assessment report**

- (3) The person applying for a review of a trusteeship order shall file two recent capacity assessment reports, prepared by different qualified practitioners, respecting the represented person with the court
- (a) subject to section 9, where the capacity of the represented person is in issue; or
  - (b) as otherwise required by the regulations.

**Notice of application**

- (4) An applicant shall give notice of the application under subsection (1), in the form required by the Rules of Civil Procedure, to the represented person and to any other person specified by the court.

**Authority of court**

- (5) Subject to clause (6)(a) and subsection (7), on an application for review of a trusteeship order, the court may make an order continuing, amending, replacing or terminating the trusteeship order on any terms or conditions the court considers appropriate.

**Requirements for order**

- (6) The court
- (a) shall make an order terminating a trusteeship order if the court is satisfied that the represented person is no longer in need of a trustee;
  - (b) may make an order terminating or varying a trusteeship order, an order discharging a trustee and appointing a new trustee who meets the requirements of section 32, or any other order that the court considers appropriate in the circumstances, where the court is satisfied that
    - (i) a trustee is not acting or is unable, unwilling or refusing to continue to act as trustee,
    - (ii) a trustee has failed to apply for a review of the trusteeship order, if applicable, or has otherwise failed to act in accordance with the trusteeship order or any conditions, limits or requirements to which the trusteeship order is subject,
    - (iii) a trustee has not complied with the duties and responsibilities of a trustee,
    - (iv) a trustee has acted in an improper manner or in a manner that has endangered or might endanger the property of the represented person,
    - (v) a trustee has been guilty of breach of trust, or
    - (vi) a trustee is no longer suitable to be a trustee for the represented person; and
  - (c) shall make an order to replace the Public Guardian and Trustee as trustee for the person on the application of an interested person where the court is satisfied that

- (i) the person proposed as a replacement trustee has given written consent to the appointment,
- (ii) the persons on whom notice of the application for review of the trusteeship order is required to be served have had sufficient notice of the willingness of the person proposed to be appointed as replacement trustee,
- (iii) the person proposed to be appointed as replacement trustee is eligible for the appointment in accordance with section 32,
- (iv) the Public Guardian and Trustee has consented in writing to the appointment of the person as trustee for the represented person, or has had the opportunity to make representations to the court respecting the application, and
- (v) the termination of the appointment of the Public Guardian and Trustee and appointment of the person proposed as replacement trustee is appropriate in the circumstances.

**Conditions for terminating trusteeship order**

- (7) Before making an order terminating a trusteeship order, the court shall satisfy itself that, if necessary,
  - (a) suitable arrangements have been or will be made in respect of the represented person's financial matters; or
  - (b) an application for another trusteeship order in respect of the represented person has been or will be made.

**Application for review**

- (8) Subsections 37(8), (9) and (10) apply to an order made under subsection (6).

**52. Gift, etc. void against trustee**

A gift, conveyance or transfer of property made by a person who is or becomes a represented person shall be deemed to be void against the trustee of the represented person if

- (a) the gift, conveyance or transfer was not made for full and valuable consideration actually paid or sufficiently secured to the represented person; or
- (b) the purchaser or transferee had notice that the person was a represented person at the time of the gift, conveyance or transfer.

**53. Inconsistency or conflict**

Where a provision of this Act in respect of the Public Guardian and Trustee's powers and duties as trustee of a represented person is inconsistent or in conflict with a provision of the *Public Guardian and Trustee Act*, the provision of the *Public Guardian and Trustee Act* prevails.

## PART 6 - OTHER MATTERS

### Collection, Use and Disclosure of Personal Information

**54. Requirement to disclose personal information, etc.**

- (1) A public body, custodian or other person shall disclose to the Public Guardian and Trustee or another person personal information or personal health information about a person where

- (a) the Public Guardian and Trustee is requesting the information pursuant to subsection 6(2) of the *Public Guardian and Trustee Act*; or
- (b) the other person requesting the information
  - (i) has provided a copy of the capacity assessment reports that determine that the person lacks capacity, and
  - (ii) has certified, in the form approved by the Minister, that the person intends to make an application for a guardianship or trusteeship order in respect of the person to whom the information relates, and the information is relevant and necessary for the application.

**Responsibility of recipient**

- (2) Where personal information or personal health information is disclosed under subsection (1), the person to whom the information is disclosed
  - (a) may use the information only for the purposes of making an application for a guardianship or trusteeship order; and
  - (b) shall take reasonable care to ensure the information is kept secure from unauthorized access, use or disclosure.

**Other access, etc., prohibited**

- (3) A person who intends to make an application for a guardianship order or trusteeship order in respect of another person shall not attempt to access, collect or obtain personal information or personal health information about that person under this section from a public body, custodian or other person, other than personal information or personal health information referred to in subsection (1).

**Entitlement of guardian or trustee**

- (4) A guardian or trustee is entitled to access, collect or obtain from a public body, custodian or other person personal information or personal health information about the represented person that is relevant to the exercise of the authority and the carrying out of the duties and responsibilities of the guardian or trustee.

**Authority to disclose personal information to guardian, trustee**

- (5) A public body, a custodian and an organization shall disclose to a guardian or a trustee personal information or personal health information about a represented person that is referred to in subsection (4).

**Responsibility of guardian or trustee**

- (6) Where a guardian or trustee accesses, collects or obtains personal information or personal health information about a represented person under this section, the guardian or trustee
  - (a) may use and disclose the information only for the purposes of exercising the authority and carrying out the duties and responsibilities of the guardian or trustee; and
  - (b) shall take reasonable care to ensure the information is kept secure from unauthorized access, use or disclosure.

**Other access, etc., prohibited**

- (7) A guardian or trustee shall not attempt to access, collect or obtain personal information or personal health information about the represented person under this section from a public body, custodian or other person other than the personal information or personal health information that the guardian or trustee is entitled to access, collect or obtain under subsection (4).

## Foreign Order

### 55. “Foreign order” defined

- (1) In this section, “**foreign order**” means an order or notice in respect of a person made by a tribunal or body outside of Prince Edward Island that appoints a person having duties comparable to those of a guardian or trustee of the person with respect to the property of that person.

#### **Court may confirm foreign order**

- (2) Where a foreign order is made in any jurisdiction outside of Canada prescribed by regulation or in another province or territory of Canada, the foreign order may be confirmed on an order of the court and, on being confirmed, the foreign order
- (a) is of the same force and effect in the province as if it were issued by the court;
  - (b) is, as regards a person in the province, subject to an order of the court to which a guardianship order is subject and is, as regards property in the province, subject to an order of the court to which a trusteeship order is subject; and
  - (c) is, as regards a person in the province, subject to appeal and review in the same manner as a guardianship order or trusteeship order under this Act.

#### **Court may set review date**

- (3) On making an order under subsection (2), the court may set a date for the review of the confirmed order.

#### **Sealed duplicate or certified copy**

- (4) A duplicate of a foreign order sealed with the seal of the tribunal or body that sealed it or a copy of a foreign order certified by or under the direction of the tribunal or body that granted it is effective as the original.

#### **Preconditions**

- (5) The court may not confirm a foreign order under this section until
- (a) a certificate has been issued by the registrar, clerk or other officer of the tribunal or body that issued the foreign order to the effect that the order is wholly unrevoked and of full effect; and
  - (b) a bond or other security has been given to the court to cover the property in the province of the person in respect of whom the foreign order was made, unless the court dispenses with security.

#### **Service of application and order**

- (6) An application to confirm a foreign order and a copy of the confirmed order shall be served on
- (a) the person who is the subject of the application;
  - (b) each guardian, alternate guardian, trustee and alternate trustee, if any, of the person referred to in clause (a);
  - (c) if ascertainable, each agent, attorney and proxy of the person referred to in clause (a);
  - (d) if ascertainable, the nearest relative of the person referred to in clause (a);
  - (e) the Public Guardian and Trustee, where the Public Guardian and Trustee is not a person referred to in clause (b); and
  - (f) any other person specified by the court.

**Order dispensing with service**

- (7) The court may make an order dispensing with the requirement for personal service
- (a) under clause (6)(a), where the court is satisfied that
    - (i) notification of an application under this section would be harmful to the person who is the subject of the application, or
    - (ii) the person who is the subject of the application is not able to accept service because of the person's physical or mental infirmity; and
  - (b) under clause (6)(d), where the court is satisfied that the applicant has made reasonable efforts to identify and locate the nearest relative of the person and the relative's identity or location is not reasonably ascertainable.

**PART 7 - GENERAL MATTERS****56. Application to court - determination of capacity**

- (1) A person may, without applying for the appointment of a guardian or trustee, apply to the court for a determination as to whether a person lacks capacity in relation to personal or financial matters if the determination is required for the purposes of an enactment or a law of Canada.

**Authority of court**

- (2) On application under subsection (1), the court may determine whether the person who is the subject of the application lacks capacity in relation to personal or financial matters and may make an order accordingly.

**Review by court**

- (3) The court, on application, may review a determination of capacity made under this section.

**57. Effect of termination of order**

- (1) The termination of a guardianship or trusteeship order does not affect the validity of any action taken, decision made, consent given or thing done by a guardian or trustee on behalf of the represented person while the guardianship or trusteeship order was in effect.

**Contract remains binding**

- (2) A contract entered into by a guardian or trustee on behalf of a represented person is binding on the represented person after the guardianship or trusteeship order is terminated to the same extent as if the represented person had entered into the contract while having capacity to enter into the contract.

**58. Order alone does not establish incapacity**

- (1) A guardianship order or trusteeship order is not of itself sufficient to establish that the represented person who is the subject of the order does not have legal capacity to make a testamentary disposition.

**Prohibition**

- (2) A guardian or trustee of a represented person has no power to make, on behalf of a represented person,
- (a) a power of attorney;

- (b) a personal directive; or
- (c) subject to subsection 37(5), a will or other disposition that has testamentary effect.

**59. Offence - guardian**

- (1) A guardian who willfully causes serious mental or physical harm to the represented person or who contravenes subsections 54(6) or (7) is guilty of an offence and is liable on summary conviction to a fine of not more than \$10,000.

**Offence - trustee**

- (2) A trustee who willfully causes damage or loss to the property of the represented person or who contravenes subsection 54(6) or (7) is guilty of an offence and is liable on summary conviction to a fine of not more than \$10,000.

**Offence - general**

- (3) A person who contravenes subsection 54(2) or (3) is guilty of an offence and is liable on summary conviction to a fine of not more than \$10,000.

**60. Protection from liability**

- (1) No action lies against the Minister, the Public Guardian and Trustee, a qualified practitioner or any person acting under the direction of the Minister, Public Guardian and Trustee or qualified practitioner for anything done or omitted to be done in good faith in exercising powers or authority or carrying out duties, responsibilities or functions under this Act or the regulations.

**Protection from liability - guardian**

- (2) No guardian shall be liable for any loss or damage suffered by reason of anything done or omitted to be done by the guardian in the performance of a duty or the exercise of a power under this Act or the regulations if the guardian has acted diligently and in good faith.

**Protection from liability - trustee**

- (3) No trustee shall be liable for any loss or damage suffered by reason of anything done or omitted to be done by the trustee in the performance of a duty or the exercise of a power under this Act or the regulations if the trustee
  - (a) has acted honestly and in good faith; and
  - (b) has exercised the degree of care, diligence and skill required under this Act or the regulations.

**61. Protection from liability - person making allegation, etc.**

No action lies against a person who makes an allegation or report or gives information for the purpose of an application or to assist in deciding whether an application should be made, for making the allegation or report or giving the information, if the person who makes the allegation or report or gives information has reasonable and probable grounds for believing the allegation, report or information is true.

**62. Hearing may be dispensed with**

- (1) Subject to the regulations, the court may consider and determine an application for an order under this Act in the absence of the applicant and any other persons where
  - (a) no person who is entitled to request a hearing has requested a hearing; and

- (b) the court is of the opinion that it is not necessary to hold a hearing.

**Consideration of person's views, etc.**

- (2) On considering and determining an application for an order referred to in subsection (1), the court shall be satisfied that the views and wishes of the person who is the subject of the application are considered where appropriate.

**63. Persons who may appear, etc.**

At a hearing of an application under this Act, any person served with the application and any other person who wishes to make representations and whom the court agrees to hear may appear and make representations.

**64. Private hearing**

- (1) Subject to this section, a hearing of an application under this Act shall be held in private, and access to any records concerning the application shall be restricted unless the court determines otherwise, having regard to the best interests of the person who is the subject of the application.

**Access may be granted**

- (2) Where the court is of the opinion that it would be in the best interests of the person who is the subject of an application or to whom an application relates, in the interests of the proper administration of justice or otherwise appropriate, the court may make an order
- (a) specifying additional persons who may be present at all or part of a hearing;
  - (b) providing that all or part of a hearing is to be held in public; or
  - (c) giving directions respecting access to or publication of information given at a hearing or contained in documents filed with or received by the court.

**65. Appeal to Court of Appeal**

- (1) An appeal on a question of law lies to the Court of Appeal in respect of any order or decision of the court under this Act.

**Interested person may appeal**

- (2) An interested person may appeal under subsection (1) on behalf of a represented person.

**Notice of appeal**

- (3) A notice of appeal shall be served in accordance with the regulations.

**66. Costs of application**

The court or the Court of Appeal may order that all or part of the costs of an application under this Act

- (a) be paid by or from any of the following:
- (i) subject to the regulations, the Government,
  - (ii) the person making the application, where it is satisfied that it would not be a hardship for the person to pay the costs,
  - (iii) the person in respect of whom the application is made, where it is satisfied that it would not be a hardship for the person to pay the costs,
  - (iv) the property of the represented person, where it is satisfied that it would not be a hardship for the represented person to pay the costs;



- (b) be paid by a trustee, where the court has ordered the trustee to reimburse the represented person pursuant to section 50; or
- (c) be paid by the person making the application or a person opposing the application, where it is satisfied that the application or the opposition to the application, as the case may be, is frivolous or vexatious.

**67. Copy of order to Public Guardian and Trustee**

On making an order under this Act, other than an order appointing the Public Guardian and Trustee as guardian, trustee or both guardian and trustee for a person, the court or the Court of Appeal, as the case may be, shall notify the Public Guardian and Trustee and shall provide the Public Guardian and Trustee with a copy of the order on request.

**68. Regulations**

The Lieutenant Governor in Council may make regulations

- (a) establishing standards for the conduct of qualified practitioners under this Act;
- (b) respecting the duties of the Public Guardian and Trustee under this Act, including prescribing additional duties of the Public Guardian and Trustee and specifying how they may or shall be carried out;
- (c) governing applications to the court under this Act, including, without limitation, regulations
  - (i) respecting the documents required to be filed with the application, and
  - (ii) respecting the persons required to be served with notice of the application, the documents required to be served, the manner of service and the time within which service may or shall be effected;
- (d) respecting the definitions of “financial matter” and “personal matter”, including, without limitation, regulations
  - (i) providing that specified matters are or are not financial matters or personal matters,
  - (ii) establishing a mechanism for determining whether a specified matter that has aspects of both a financial matter and a personal matter is to be treated as a financial matter or a personal matter for the purposes of this Act, and
  - (iii) establishing a mechanism for determining whether a legal proceeding relates primarily to the financial matters of a person;
- (e) respecting the application of this Act and the regulations to a person referred to in subsection 3(2);
- (f) respecting capacity assessments, including, without limitation, regulations
  - (i) governing the manner in which capacity assessments shall be conducted and prescribing a form for the purpose,
  - (ii) designating professions whose members are qualified practitioners for the purpose of conducting capacity assessments,
  - (iii) establishing guidelines for capacity assessments, and
  - (iv) respecting the circumstances in which the fee for a capacity assessment may be paid by Government and authorizing the payment of the fee in those circumstances;
- (g) respecting the persons required to be provided with a copy of a capacity assessment report for the purposes of clause 10(2)(e);

- (h) specifying documents and information to be kept in the Register;
- (i) respecting disclosure of information contained in the Register;
- (j) respecting persons who may have access to the information contained in the Register for the purpose of making an application under this Act and the process for obtaining that access;
- (k) specifying classes of persons for the purposes of subsections 14(3), 23(7), 30(3) and 39(8);
- (l) prescribing matters for the purposes of sections 16 and 32;
- (m) respecting notification to be provided to the Registrar;
- (n) respecting the circumstances in which a guardian or trustee is not required to inform a represented person of important decisions made for the represented person;
- (o) respecting circumstances in which a recent capacity assessment report shall be filed;
- (p) respecting the authority of trustees, including, without limitation, regulations
  - (i) specifying property to which a trusteeship order does not apply unless the trusteeship order specifically provides that it applies to the property,
  - (ii) specifying things that a trustee shall not do in relation to the financial matters of the represented person unless the trusteeship order specifically authorizes the trustee to do those things,
  - (iii) specifying circumstances in which a trustee may sell, transfer, encumber or purchase real property without specific authority in the trusteeship order, and
  - (iv) specifying limits on the authority of a trustee to make gifts;
- (q) prescribing a schedule for the compensation of trustees and prescribing the manner in which a trustee may elect to be compensated in accordance with the schedule;
- (r) prescribing a jurisdiction outside Canada for the purposes of subsection 55(2);
- (s) respecting the determination of an application for an order under subsection 62(1);
- (t) respecting payment of all or part of the costs of an application for the purposes of section 66;
- (u) adopting by reference, in whole or in part and with any changes the Lieutenant Governor in Council considers appropriate, a code, standard or rule
  - (i) enacted as or under the law of another jurisdiction, including a jurisdiction outside Canada, or
  - (ii) set by a provincial, national or international body or any other body that may make guidelines, standards or rules;
- (v) respecting the content of accounts to be maintained and submitted by guardians and trustees;
- (w) respecting the examination and approval of accounts submitted by guardians and trustees;
- (x) respecting procedural matters not provided for in the Rules of Civil Procedure;
- (y) defining, for the purposes of this Act, words and expressions used but not defined in this Act;
- (z) respecting any matter necessary and advisable to carry out effectively the intent and purposes of this Act.

**PART 8 - GUARDIANSHIP APPOINTMENT BY COURT****69. Definitions**

- (1) In this section,
- (a) “**court**” means the Supreme Court;
  - (b) “**interested person**” means
    - (i) the public guardian, and
    - (ii) any adult who is concerned for the welfare of a person in respect of whom a guardianship order is sought or has been obtained;
  - (c) “**personal matter**” means any matter, except a financial matter, relating to a person, including without limitation
    - (i) the person’s health care,
    - (ii) the person’s basic needs, including nutrition, clothing and personal care,
    - (iii) where, with whom and under what conditions the person is to live, either permanently or temporarily,
    - (iv) with whom the person may associate,
    - (v) the person’s participation in social activities,
    - (vi) the person’s participation in any educational, vocational or other training,
    - (vii) the person’s employment, and
    - (viii) the carrying on of any legal proceeding that does not relate primarily to the person’s financial matters;
  - (d) “**public guardian**” means the public official empowered with the duty of public guardianship or a person otherwise designated by the Minister.

**Application for guardianship order**

- (2) Any interested person may apply to the court for an order appointing a guardian for a person.

**Documents to be filed**

- (3) An application under subsection (2) shall be accompanied by two certificates of incapacity indicating that in the opinion of two medical practitioners the person named in the application is incapable of managing the person’s personal matters.

**Form to be used**

- (4) The form to be used for the purposes of an application under subsection (2) shall be
- (a) the form set out in the Schedule to this Act; or
  - (b) where a regulation has been made pursuant to subclause 68(f)(i) establishing a form for those purposes, the form set out in the regulations.

**Notice**

- (5) Notice of an application under subsection (2) shall be given by serving a copy of the application on
- (a) the person in respect of whom the application is made;
  - (b) if ascertainable, the nearest relative of the person;
  - (c) the person proposed as guardian; and
  - (d) if the person in respect of whom the application is made is a resident of a psychiatric facility, licensed nursing home, hospital, licensed community care facility or

residential institution, the administrator of the facility, nursing home, hospital, community care facility or institution, as the case may be.

**Appointment of guardian**

- (6) Where the court is satisfied that the person named in an application under subsection (2) is
- (a) in need of guardianship; and
  - (b) unable to make reasonable judgments in respect of matters relating to the person's personal matters,
- and that it is in the best interests of the person that a guardian be appointed, the court shall make an order appointing a guardian for the person.

**Directions**

- (7) An order under subsection (6) may include any directions the court considers appropriate, and may be limited to certain functions in accordance with the needs of the person, or limited in duration.

**Powers of guardian**

- (8) Subject to directions given or other limitations imposed under subsection (7), a guardian may exercise all the rights and powers relating to personal matters that the person could have exercised if the person had capacity.

**Appointment of guardian**

- (9) Where in the opinion of the public guardian, a person is suffering from mental disorder and in need of a guardian and no person is willing or able to make an application for or to be appointed as guardian, the public guardian may make an application under subsection (2) for an order appointing the public guardian or any other person as guardian.

**Continuing review of guardian's activities**

- (10) An order appointing a guardian may, on application, be reviewed by the court and the court shall exercise continuing powers of review of the activities of the guardian, and if the guardian dies, resigns or fails to comply with directions, the court may discharge the guardian and appoint another person in the place of the guardian originally appointed.

**Alternate guardian**

- (11) The court may appoint an alternate guardian to serve in the absence or incapacity of a guardian.

**Protection from liability**

- (12) No action lies against the Minister, the public guardian or a medical practitioner or any person acting under the authority of the Minister, the public guardian or a medical practitioner for anything done or omitted to be done in good faith in exercising powers or authority or carrying out duties, responsibilities or functions under this section.

**Protection from liability - guardian**

- (13) No guardian shall be liable for any loss or damage suffered by reason of anything done or omitted to be done by the guardian in the performance of a duty or the exercise of a power under this section if the guardian has acted diligently and in good faith.

**Repeal**

- (14) This section and the Schedule to this Act are repealed on the date on which Part 4 of this Act comes into force.

## **PART 9 - TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS, REPEAL AND COMMENCEMENT**

### **70. “Former Act” defined**

- (1) In this section, “**former Act**” means the *Public Trustee Act* R.S.P.E.I. 1988, Cap. P-32.2.

#### **Committee under former Act**

- (2) Where the Public Trustee or a person became committee of the estate of an incompetent person under section 14 or 25 of the former Act and was acting in that capacity on the date this section comes into force, the committee continues as the trustee of the represented person under this Act until
- (a) a new trustee is appointed under this Act; or
  - (b) the court makes an order discharging the Public Guardian and Trustee or the person as trustee.

#### **Transitional regulations**

- (3) The Lieutenant Governor in Council may make regulations
- (a) governing applications under this Act in respect of the trusteeship for a represented person continued under subsection (2);
  - (b) respecting the application or the extent of application of any provision of this Act or the former Act to trusteeship continued under subsection (2);
  - (c) respecting the transition to this Act of anything under the former Act, including the interpretation of any transitional provision in this Act;
  - (d) to remedy any confusion, difficulty, inconsistency or impossibility resulting from the transition to this Act from the former Act.

#### **Regulation may be retroactive**

- (4) A regulation made under subsection (3) may be made retroactive to the extent set out in the regulation but shall not provide that it takes effect prior to the date on which this section comes into force.

#### **Regulation prevails**

- (5) Where there is a conflict between a regulation made under subsection (3) and a provision of Part 5, the regulation prevails.

### **71. “Former Act” defined**

- (1) In this section,
- (a) “**former Act**” means the *Mental Health Act* R.S.P.E.I. 1988, Cap. M-6.1;
  - (b) “**public guardian**” means the public official empowered with the duty of public guardianship or a person otherwise designated by the Minister.

#### **Status of application under former Act, etc.**

- (2) Where an application for a guardianship order was commenced under the former Act or section 69 of this Act, but was not completed prior to the coming into force of Part 4 of this Act, the application is deemed to be an application under Part 4 of this Act, unless the court orders otherwise.

**Guardianship order under former Act**

- (3) A guardianship order that is in effect under the former Act or section 69 of this Act immediately before the coming into force of Part 4 of this Act continues as if it were made under this Act, and where a guardian has, in a guardianship order continued under this subsection, been granted power and authority with respect to a matter, the guardian may exercise the power and authority until an order is made on a review of the guardianship order under section 27 of this Act.

**Public guardian as guardian under former Act**

- (4) Where the public guardian is the guardian of a person under the former Act or section 69 of this Act, the Public Guardian and Trustee continues as the guardian of the represented person under this Act until
- (a) a new guardian is appointed under this Act; or
  - (b) the court makes an order discharging the Public Guardian and Trustee as guardian.

**Transitional regulations**

- (5) The Lieutenant Governor in Council may make regulations
- (a) governing applications under this Act in respect of the guardianship of a represented person continued under subsection (3) or (4);
  - (b) respecting the application or the extent of application of any provision of this Act or the former Act to guardianship continued under subsection (3) or (4);
  - (c) respecting the transition to this Act of anything under the former Act, including the interpretation of any transitional provision in this Act;
  - (d) to remedy any confusion, difficulty, inconsistency or impossibility resulting from the transition to this Act from the former Act.

**Regulation may be retroactive**

- (6) A regulation made under subsection (5) may be made retroactive to the extent set out in the regulation but shall not provide that it takes effect prior to the date on which this section comes into force.

**Regulation prevails**

- (7) Where there is a conflict between a regulation made under subsection (5) and a provision of Part 4, the regulation prevails.

**72. Access to Digital Assets Act**

- (1) **The *Access to Digital Assets Act* R.S.P.E.I. 1988, Cap. A-1.1, is amended as provided by this section.**
- (2) **Subclause 1(e)(v) of the Act is repealed.**
- (3) **Clause 2(1)(e) of the Act is repealed.**

**73. 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) **Subsection 15(1) of the Act is repealed and the following substituted:**

**15. Application for guardianship, committee**

(1) Where the Minister has reasonable grounds to believe that an adult who is or may be in need of assistance or protection is unable to make reasonable judgments with respect to the adult's personal welfare or estate, the Minister may make an application to the court under the *Adult Guardianship and Trusteeship Act* R.S.P.E.I. 1988, Cap. A-4.2, for an order appointing a guardian, trustee or both guardian and trustee for the adult.

(3) **Clause 30(d) of the Act is amended by the deletion of the words “Public Trustee Act” and the substitution of the words “Adult Guardianship and Trusteeship Act”.**

**74. 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) **Clause 1(f) of the Act is amended by the deletion of the words “Mental Health Act R.S.P.E.I. 1988, Cap. M-6.1” and the substitution of the words “Adult Guardianship and Trusteeship Act R.S.P.E.I. 1988, Cap. A-4.2,”.**

(3) **Subsection 2(1) of the Act is amended by the addition of the words “, the *Adult Guardianship and Trusteeship Act*” after the words “Mental Health Act”.**

**75. Credit Unions Act**

(1) **The *Credit Unions Act* R.S.P.E.I. 1988, Cap. C-29.1, is amended as provided by this section.**

(2) **Subsection 13(3) of the Act is amended by the deletion of the words “, committee”.**

(3) **Subsection 50(2) of the Act is amended by the deletion of the words “committee of the estate or”.**

**76. Expropriation Act**

(1) **The *Expropriation Act* R.S.P.E.I. 1988, Cap. E-13, is amended as provided by this section.**

(2) **Subsection 9(1) of the Act is amended by the deletion of the words “, committee” and the substitution of the words “, trustee appointed under the *Adult Guardianship and Trusteeship Act* R.S.P.E.I. 1988, Cap. A-4.2,”.**

**77. Family Law Act**

(1) **The *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1, is amended as provided by this section.**

**(2) Subsection 54(3) of the Act is repealed and the following substituted:**

**Agreement on behalf of mentally incompetent person**

- (3) A person authorized pursuant to the *Adult Guardianship and Trusteeship Act* R.S.P.E.I. 1988, Cap. A-4.2, to enter into a domestic contract or give any waiver or consent under this Act on behalf of a person who lacks capacity may do so, subject to the prior approval of the court.

**78. 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) Subsection 16(2) of the Act is amended by the deletion of the words “committee,” and the substitution of the words “trustee,”.

**79. 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 24(4) of the Act is amended by the deletion of the words “committee or” wherever they occur and the substitution of the words “guardian, trustee or”.

**80. Mental Health Act**

- (1) The *Mental Health Act* R.S.P.E.I. 1988, Cap. M-6.1, is amended as provided by this section.
- (2) Section 40 of the Act is repealed.

**81. Partnership Act**

- (1) The *Partnership Act* R.S.P.E.I. 1988, Cap. P-1, is amended as provided by this section.
- (2) Clause 38(a) of the Act is amended by the deletion of the words “his committee” and the substitution of the words “the guardian, trustee”.

**82. 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) Subsection 4(6) of the Act is repealed and the following substituted:

**Capacity determined for other purposes**

- (6) Where it has been determined that a person is incapable of handling the person’s financial matters or personal matters for the purposes of the *Adult Guardianship and Trusteeship Act* R.S.P.E.I. 1988, Cap. A-4.2, the person is considered to lack capacity in respect of financial matters or personal matters, as the case may be, for the purposes of this Act.



**(3) Clause 14(1)(h) of the Act is repealed and the following substituted:**

- (h) on the appointment of a trustee for the attorney pursuant to the *Adult Guardianship and Trusteeship Act*;

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

**Suspension or termination on trusteeship**

- (4) Where the court appoints a trustee for the principal under the *Adult Guardianship and Trusteeship Act*, the court may, by order, suspend or terminate the authority of the attorney under the enduring power of attorney.

**(5) Clause 14(6)(b) of the Act is repealed and the following substituted:**

- (b) an application for the appointment of a trustee under the *Adult Guardianship and Trusteeship Act* has been or will be made in respect of the principal.

**(6) Clause 16(7)(b) of the Act is repealed and the following substituted:**

- (b) an application for the appointment of a trustee under the *Adult Guardianship and Trusteeship Act* has been or will be made in respect of the principal.

**(7) Clause 28(1)(h) of the Act is amended by the deletion of the words “pursuant to the *Mental Health Act*” and the substitution of the words “pursuant to the *Adult Guardianship and Trusteeship Act*”.**

**(8) Subsection 28(4) of the Act is amended by the deletion of the words “under the *Mental Health Act*” and the substitution of the words “under the *Adult Guardianship and Trusteeship Act*”.**

**(9) Subsection 28(6) of the Act is amended by the deletion of the words “under the *Mental Health Act*” and the substitution of the words “under the *Adult Guardianship and Trusteeship Act*”.**

**83. Probate Act**

**(1) The *Probate Act* R.S.P.E.I. 1988, Cap. P-21, is amended as provided by this section.**

- (2) **Section 111 of the Act is amended by the deletion of the words “his committee appointed by the Supreme Court” and the substitution of the words “the trustee appointed pursuant to the *Adult Guardianship and Trusteeship Act* R.S.P.E.I. 1988, Cap. A-4.2”.**

**84. Quieting Titles Act**

**(1) The *Quieting Titles Act* R.S.P.E.I. 1988, Cap. Q-2, is amended as provided by this section.**

**(2) Section 34 of the Act is amended**

- (a) **by the deletion of the words “or committee of the estate” and the substitution of the words “or trustee”; and**

- (b) **by the deletion of the words “no committee of his estate” and the substitution of the words “no trustee”.**

**85. Trustee Act**

- (1) **The *Trustee Act* R.S.P.E.I. 1988, Cap. T-8, is amended as provided by this section.**
- (2) **Section 31 of the Act is amended by the deletion of the words “Trustees, guardians or committees” and the substitution of the words “Trustees or guardians”.**

**86. Workers Compensation Act**

- (1) **The *Workers Compensation Act* R.S.P.E.I. 1988, Cap. W-7.1, is amended as provided by this section.**
- (2) **Subsection 51(1) of the Act is amended by the deletion of the words “committee of” and the substitution of the words “the trustee of”.**

**87. Repeal**

The *Supported Decision Making and Adult Guardianship Act* S.P.E.I. 1997, c. 49, is repealed.

**88. Commencement**

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

SCHEDULE

ADULT GUARDIANSHIP AND TRUSTEESHIP ACT
CERTIFICATE OF INCAPACITY TO MANAGE PERSONAL AFFAIRS

[Subsection 69(4) of the Act]

I, ..... on ..... of ..... in .....
(name of medical practitioner) (day) (month) (year)

have personally completed an examination of

..... of .....
(patient's full name) (address)

I find that this person is, on a continual or habitual basis, not able to

- (a) understand information that is relevant to making decisions;
(b) make or effectively communicate reliable decisions which are necessary for the person's health care, nutrition, accommodation, clothing, hygiene, welfare or other matter essential for ordinary life; and
(c) appreciate the reasonably foreseeable consequences of such decision or lack of decision.

My opinion, therefore, is that this person is incapable of managing the person's personal affairs.

Personal affairs means such matters as residence, health care, legal proceedings, education or training, social contacts.

Note that estate matters (property and financial) are addressed under the Public Trustee Act.

Information/explanation/comment:

Date: ..... Medical Practitioner's Signature: .....

- Two of these certificates of incapacity, each completed by a medical practitioner, must accompany an application for guardianship under section 69 of the Adult Guardianship and Trusteeship Act.

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(Bill No. 19)

**Adult Guardianship and Trusteeship 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:**

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Honourable Antoinette Perry, Lieutenant Governor

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Honourable Darlene Compton, Speaker

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Joseph Jeffrey, Clerk

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

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GOVERNMENT BILL

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2023  
1st SESSION, 67th GENERAL ASSEMBLY