

Bill No. 22 of 1949.

A BILL TO PROVIDE FOR A PUBLIC TRUSTEE TO
ADMINISTER THE ESTATES OF INFANTS,
DECEASED PERSONS AND OTHERS

NOTE.

This Bill enacts a new Act to be known as "*The Public Trustee Act*".

This new Bill consolidates in one Act provisions which were formerly found in *The Official Guardian Act*, *The Estates of the Mentally Incompetent Act*, *The Judicature Act*, and *The Trustee Act*.

The Public Trustee appointed under this new Act replaces the Official Guardian, the Administrator of Estates of the Mentally Incompetent and the Public Administrators appointed pursuant to *The Judicature Act*. The consolidation of duties and offices effected by this new Act will facilitate administration and eliminate a great deal of duplication and thereby result in considerable saving of time and effort. For example, instead of three separate sets of records, together with the necessary books of account, trust accounts, and so forth, under the new Act there will be only one set of books and one official to administer them.

Section 3 provides for the appointment of a barrister and solicitor of not less than five years' standing to be Public Trustee, and also provides for the appointment of an Acting Public Trustee in the case of illness or absence of the Public Trustee.

Sections 4, 5 and 6 of the Bill correspond to sections 4, 6 and 7 of *The Official Guardian Act* which they replace.

Section 7 provides for the payment of money and other property to which an infant is entitled for whose estate no person has been appointed guardian to the Public Trustee who is required to account to the infant for it.

Section 8 dealing with the maintenance and education of infants is similar to section 14 of *The Official Guardian Act*.

Sections 9 and 10 deal with estates of missing persons. The Public Trustee is authorized, after investigation, to take possession of the property of missing persons and to preserve the same pending an order of a judge of the Supreme Court. If a judge is satisfied that a person is a missing person the judge may so declare and appoint the Public

Trustee as trustee of the property of the missing person. Sections 10 and 11 replace sections 9 and 10 of *The Official Guardian Act*.

Sections 12 to 22 dealing with the estates of mentally incompetent persons correspond to the former sections 27 to 40 of *The Estates of the Mentally Incompetent Act*.

Sections 23 to 28 replace the sections relating to the duties of Public Administrators under *The Judicature Act*. Section 23 provides for the appointment of the Public Trustee as a trustee, executor, administrator, guardian or committee. Section 24 of the Bill corresponds to section 47 of *The Judicature Act*. Section 25 enables the Public Trustee to wind up the affairs of a person dying with an estate not exceeding one hundred dollars without filing application for letters of administration. This will facilitate the payment of necessary expenses and the winding-up of these small estates with a minimum of cost and delay. Section 26 is comparable to section 51 of *The Judicature Act*. However, the amount has been increased from two hundred to one thousand dollars. Here again no formal application for letters of administration is necessary with a view to saving time and expense in the administration of these small estates. The Public Trustee is required to file, in the office of the clerk of the court, a statement of his accounts relating to the administration of any such estate.

Section 27 provides that where a person dies intestate with an estate exceeding one thousand dollars and no application for letters of administration has been made the Public Trustee may apply. However, if the Public Trustee knows of any other person who would be entitled to letters of administration he is required to give that person one month's notice in writing before making application himself. If the other person entitled applies for and obtains a grant of letters of administration after receipt of the notice the Public Trustee has no right to apply. Provision is also made for the revocation of any grant to the Public Trustee upon the application of any other person entitled to letters of administration.

Sections 29 and 30 relate to the common fund and they replace sections 59 and 60 of *The Trustee Act*.

Sections 31 to 34 replace sections 5, 11, 12 and 13 of *The Official Guardian Act*.

Sections 35 and 36 replace sections 29 and 34 of *The Estates of the Mentally Incompetent Act*.

Section 37 enables the Public Trustee to delegate certain of his duties to officers employed by him.

Sections 38, 39, 41 and 42 are similar to sections 15 to 18 of *The Official Guardian Act*.

Section 40 is similar to section 41 of *The Estates of The Mentally Incompetent Act*.

Section 43 provides that the Public Trustee shall be the successor in office of the Official Guardian, the Administrator of Estates of the Mentally Incompetent and of the Public Administrators appointed pursuant to *The Judicature Act*. All the property vested in those three officials is transferred to the Public Trustee under this Act as are also all of their appointments and duties.

Section 44 repeals *The Official Guardian Act*.

The date of coming into force of the Act is fixed for the first day of July, 1949, thereby giving time to arrange for the necessary administrative changes to be put into effect.

KENNETH A. MCKENZIE,
Acting Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 22 of 1949.

An Act to Provide for a Public Trustee to Administer the Estates of Infants, Deceased Persons and Others.

(Assented to _____, 1949.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

SHORT TITLE

1. This Act may be cited as "*The Public Trustee Act*".

INTERPRETATION

2. In this Act, unless the context otherwise requires,—
 - (a) "convict" means any person against whom judgment of death or of imprisonment for a period of three years or more has been pronounced or recorded by any court of competent jurisdiction within the Province and who is not deceased and has not undergone his full term of imprisonment or any punishment substituted in lieu of the punishment first adjudged to him and has not been pardoned;
 - (b) "court" means the Supreme Court of Alberta or any of the District Courts in Alberta;
 - (c) "hospital" means a public hospital or institution for the confinement, maintenance, care or treatment of persons mentally incompetent;
 - (d) "judge" means a judge of any of the said courts;
 - (e) "mentally incompetent" includes every person who is or who is deemed to be mentally diseased or a mental defective, or a drug addict; and
 - (i) who is detained or under treatment for a mental disease or infirmity in a hospital; or
 - (ii) who is on probation from a hospital; or
 - (iii) who is under the care or in the custody of or placed under supervision by the Provincial Psychiatrist or the Minister of Health;
 - (f) "Minister" means the Attorney General;
 - (g) "missing person" means a person who cannot be found and whose present place of abode is unascertainable;
 - (h) "Public Trustee" means the person appointed as Public Trustee pursuant to the provisions of this

Act, and includes the Official Guardian, the Administrator of Estates of the Mentally Incompetent, and the Public Administrators.

ESTABLISHMENT OF PUBLIC TRUSTEE

3.—(1) The Lieutenant Governor in Council shall appoint a barrister and solicitor of not less than five years' standing, to be Public Trustee with such powers and duties as are given to or imposed upon him by this Act, and such further powers and duties as may from time to time be prescribed by the Lieutenant Governor in Council.

(2) The Public Trustee shall hold office during pleasure.

(3) The Lieutenant Governor in Council may appoint a person to act as the Acting Public Trustee, in the case of the illness or absence of the Public Trustee or of a vacancy in the office, and the person so appointed shall have all the powers, rights and duties of the Public Trustee.

(4) The Lieutenant Governor in Council may from time to time appoint such deputies, officers and clerks as may be necessary for the purpose of this Act.

POWERS AND DUTIES OF PUBLIC TRUSTEE

4. The Public Trustee may,—

- (a) act as guardian *ad litem* of the estate of any infant;
- (b) act in the administration of estates;
- (c) act as custodian of property of missing persons, convicts or deceased persons;
- (d) act as judicial trustee of the estate of any deceased person upon order of the court;
- (e) either alone or jointly with any other person or persons, accept and carry out any trust provided that he is appointed for that purpose either in the instrument creating the trust, or if appointed after the creation of the trust, he is so appointed with the consent of the majority of the persons beneficially interested therein who are for the time being of full age and capable in law of giving a valid consent;
- (f) act as guardian of the estate of any infant made a ward of the Province under the provisions of *The Child Welfare Act*;
- (g) act in such other capacity and do such other acts, matters and things as the Public Trustee is authorized or required to do by the Rules of Court or by order of a judge or by order of the Lieutenant Governor in Council or under this Act;
- (h) act as guardian or custodian of the estate of any infant who has property vested in him or who is entitled either immediately or after an interval either certainly or contingently to any property under an intestacy or under a will, settlement, trust

deed, or in any other manner whatsoever, and for whose estate no person has been appointed guardian by the issue of letters of guardianship;

- (i) act as the committee of the estate of any mentally incompetent person.

5.—(1) The Public Trustee shall be served with notice of every application made to a court in respect of the property or estate of an infant, missing person or convict, and such service may be made by delivering to the Public Trustee a copy of the statement of claim, originating notice, petition or other process originating the matter wherein the application is made together with copies of all affidavits and other material to be used on the application, and from the time of such service the Public Trustee shall be guardian *ad litem* of the estate of the infant or trustee of the property of the missing person or convict, as the case may be, unless and until the court otherwise orders, and the Public Trustee or any other guardian appointed by the court for an infant shall take all such proceedings as he may deem necessary for the protection of the interests affected and shall attend actively to such interests and for that purpose communicate with all proper parties.

(2) No such application shall be proceeded with until the Public Trustee is represented thereat or has expressed his intention of not being so represented.

6.—(1) The clerk of any court to which application is made for letters of guardianship of the estate of an infant or probate of a will or letters of administration or for the resealing of either of them shall, where an infant, missing person or convict is interested in the estate thereby affected, send to the Public Trustee particulars of every such application and of the estate and persons entitled to an interest therein, and such clerk shall also send to the Public Trustee particulars of all further applications affecting the estate of the infant, missing person or convict.

(2) No such application shall be proceeded with until the Public Trustee is represented thereat or has expressed his intention of not being so represented.

7. Any money other than wages or salary and any property to which an infant is entitled under an intestacy or under a will, settlement, trust deed, or in any other manner whatsoever, and for whose estate no person has been appointed guardian by the issue of letters of guardianship, shall be paid or transferred to the Public Trustee who shall account to the infant according to the provisions of the law, will or trust instrument, as the case may be.

MAINTENANCE AND EDUCATION OF INFANTS

8. In any case where an infant is entitled to share in the estate of an intestate and such share has been paid to the

Public Trustee as guardian of the estate of such infant or for the benefit of the infant, or where property is held by the Public Trustee as trustee for an infant not being subject to the terms of a will, trust deed, or other instrument governing the trust,—

- (a) if the share or property of the infant does not exceed in value the sum of ten thousand dollars then with respect to such infant the Public Trustee may from time to time expend or may advance to any person who has the lawful custody of the infant, such sum or sums as the Public Trustee in his discretion may deem necessary for or towards the maintenance and education of the infant, and for such purpose may resort to capital and may sell or convert any of the real or personal property held on behalf of the infant;
- (b) if the share or property of the infant exceeds in value the sum of ten thousand dollars, the Public Trustee may apply the income from the share or property for the maintenance or education of the infant and may from time to time apply to a judge of the Supreme Court on summary application for an order authorizing him to expend, or to advance to any person having the lawful custody of the infant so much of the share or property as the judge deems proper for the maintenance and education of the infant, and upon the making of any such order, the court may authorize the sale or conversion of any of the real or personal property held on behalf of the infant for the purpose of making the payments or advances thereby authorized.

ESTATES OF MISSING PERSONS

9. When it is brought to the attention of the Public Trustee that a person appears to be a missing person within the meaning of this Act, the Public Trustee may after investigation take possession of the lands, money, personal estate and effects of the missing person and safely keep, preserve and protect the same pending an order of a judge of the Supreme Court.

10.—(1) If it be proved to the satisfaction of a judge of the Supreme Court that a person is a missing person within the meaning of this Act, the judge may so declare and by order may appoint the Public Trustee as trustee of the property of the missing person.

(2) The Public Trustee shall have power on order of a judge of the Supreme Court to mortgage, lease, sell or otherwise dispose of any of the real or personal property of a missing person; and upon the production of any instrument effecting any such disposition of land, together with the order aforesaid or a certified copy thereof, the Registrar of the

Land Registration District within which such land is situated shall deal with the instrument in the same manner as if it were executed by the missing person.

11.—(1) The Public Trustee without any further order of a judge of the Supreme Court may in his discretion pay out of the capital or income of the property of any person declared to be a missing person,—

- (a) all sums of money which the missing person might otherwise have been liable to pay;
- (b) such payments and allowances as may be necessary for the support or maintenance of any wife or child or reputed child of such missing person, or of any other relative or reputed relative of such missing person dependent upon him for support.

(2) The Public Trustee shall not make any distribution of the estate of any missing person to any person other than as provided in subsection (1) until the expiration of two years from the time at which he was declared to be a missing person, and then only when directed so to do by an order of judge of the Supreme Court.

ESTATES OF MENTALLY INCOMPETENTS

12.—(1) The Public Trustee shall be the committee of the estate of every mentally incompetent person who has no other committee.

(2) All the estate of whatsoever kind, nature or tenure, of any mentally incompetent person, in respect of which the Public Trustee is acting as committee, shall forthwith upon the commencement of his duties as committee vest in the Public Trustee, who shall have full power and authority to sell, dispose of or otherwise deal with the real and personal estate or any part thereof as he may think fit.

(3) Upon the admission of a mentally incompetent person to a hospital, the Public Trustee may issue a certificate in Form A as set out in the Schedule to this Act which shall be conclusive evidence of his appointment and of his power and authority to sell, dispose of or otherwise deal with the real or personal property of the mentally incompetent person.

(4) The Public Trustee may file the certificate or a true copy thereof in the Land Titles Office for the Land Registration District in which any of the real property of the mentally incompetent person is situated, and upon receipt of the certificate the Registrar of Land Titles shall register it, and until he receives notice from the Public Trustee of the withdrawal of the certificate he shall not accept for registration any instrument affecting the mentally incompetent person's lands except an order of the court, a certified copy of a writ of execution, a caveat, or any document subsequent to the notice properly registerable in the course of proceedings

for foreclosure or sale, unless the instrument is duly executed by the Public Trustee or the registration is authorized by him.

13.—(1) The authority of the Public Trustee shall continue with respect to the estate of a mentally incompetent person who has escaped from a hospital or from supervision or custodianship after his escape and until he is completely discharged.

(2) Upon the removal of a mentally incompetent person from a hospital on trial by his friends, or his release or discharge pursuant to the provisions of *The Mental Diseases Act* or *The Mental Defectives Act* or his escape therefrom, the Public Trustee may retain the control and administration of the estate so long as it is in his discretion necessary or desirable in the interests of such person or his estate.

(3) The Public Trustee shall not be replaced by another person in his office as committee of the estate of a mentally incompetent person without the order of the Lieutenant Governor in Council.

14. The Public Trustee while acting as committee of the estate of a mentally incompetent person shall have power to manage, handle, administer, sell, dispose of or otherwise deal with the estate of such person as fully and to the same extent as could be done by such person if mentally competent.

15.—(1) In the event of the Public Trustee entering into contract on behalf of a mentally incompetent person while the latter is detained in a hospital, or on probation therefrom, the contract shall be binding on that person after his complete discharge from the hospital, in the same manner and to the same extent as if he himself had made it; and, if the person fails to carry out his obligations thereunder after his discharge, the Public Trustee may do so in the same manner as he might have done if the person had remained under detention.

(2) Where a sale of land has been made by the Public Trustee while the owner was so detained, or on probation, the Public Trustee shall have power to convey title, notwithstanding that the owner is discharged before a conveyance or transfer of the land so sold has been executed or registered.

16. A recital in a lease, mortgage, conveyance or other document that a mentally incompetent person is confined to a hospital and that the Public Trustee is his committee, shall be evidence of the facts recited.

17.—(1) The Public Trustee shall be liable to render an account of his administration of an estate in the same manner as a committee appointed by the court.

(2) Upon the termination of his administration of a mentally incompetent person's estate and from time to time during the course of his administration, the Public Trustee may retain out of the estate of the person such amounts as may be necessary to pay any amounts due to the Government in respect of such person.

18.—(1) When a mentally incompetent person whose estate the Public Trustee is administering dies, the Public Trustee shall retain possession of the estate of the deceased pending a grant of probate or letters of administration or letters of administration with will annexed or the appointment of the Public Trustee by the Lieutenant Governor in Council, and the Public Trustee shall continue to have and exercise with respect to the estate the powers had and exercised by him while the deceased was alive.

(2) The Lieutenant Governor in Council may in any case where it is deemed expedient so to do, appoint the Public Trustee to be administrator of the estate of the deceased, and the Public Trustee upon appointment shall have all the powers and duties of an administrator appointed by the court with respect to the estate.

(3) The Public Trustee may apply to the court having jurisdiction for letters of administration or letters of administration with will annexed with respect to the estate of the deceased, and on complying with the practice and procedure of the court in so far as applicable, he shall be entitled to such letters in priority to the next-of-kin of the deceased or any other person interested in the deceased's estate.

(4) The Public Trustee shall forthwith, upon receipt of an Order in Council containing the appointment, file in the District Court with the Clerk of the District Court for the judicial district in which the mentally incompetent person had his place of residence as well as in every judicial district where any property of the mentally incompetent person, real or personal, is situated, a duly certified copy thereof, and the Clerk shall file the copy among his records without fee, and upon the filing of the same with the Clerk of the District Court for a judicial district, no grant of probate or letters of administration or letters of administration with will annexed shall thereafter be issued by that Court unless and until the appointment of the Public Trustee by the Lieutenant Governor in Council has been rescinded.

(5) Where a mentally incompetent person admitted to a hospital dies possessed of personal property not exceeding five hundred dollars in value and where no probate of his will or letters of administration of his estate has been granted in the Province, the Public Trustee, without obtaining any order or authority from a court or from the Lieutenant Governor in Council or otherwise, may, out of the personal property give or distribute in his discretion wearing apparel and articles of personal use or ornaments to or among one or more of the family and relatives of the deceased, and may

sell personal property not so dealt with and apply the proceeds towards payment of sums due and debts incurred for the burial of the deceased, and for the maintenance of the deceased in hospital, and may do all things necessary to complete the administration of the estate.

19. Where the Public Trustee is administering the estate of a mentally incompetent person who,—

- (a) is a beneficiary under the will of a deceased person and there is no executor or the executor has renounced probate; or
- (b) is entitled to the estate or a portion of the estate of a deceased intestate and there is no administrator of his estate; or
- (c) is the executor of a will or the administrator of the estate of a deceased person;

the Public Trustee may apply to the court having jurisdiction for letters of administration or letters of administration with will annexed or letters of administration *de bonis non* with respect to the estate in question and upon complying with the practice and procedure of the court in so far as applicable he shall be entitled to such letters in priority to the next-of-kin of the deceased or any other person interested in his estate.

ESTATES OF NON-RESIDENT MENTALLY INCOMPETENT PERSONS

20.—(1) Where a mentally incompetent person who is detained in an asylum, mental hospital or other public institution in another province has estate in this Province, the Lieutenant Governor in Council may appoint an official of the other province, who is charged with the duty of managing, handling, administering or caring for the estate of the mentally incompetent person therein, to be administrator of his estate in this Province, and the Order in Council making the appointment shall be conclusive proof that all the conditions precedent to the appointment have been fulfilled.

(2) The appointee under an Order in Council issued under subsection (1) shall possess the same rights, powers, privileges and immunities as are conferred by this Act upon the Public Trustee and he shall be subject to the same obligations and shall perform the same duties; and the provisions of this Act shall apply to him with the necessary modifications in the same manner as to the Public Trustee.

(3) All courts, court officials and registrars of registration divisions and district registrars of land titles offices shall be bound by the Order in Council appointing the official in the same manner and to the same extent as they are bound by an Order in Council appointing the Public Trustee to be committee of an estate under this Act.

21. Upon the commencement of the guardianship no action or other proceeding in any court or seizure of the sheriff or extra-judicial proceedings against the mentally incompetent person or his estate shall be commenced or continued without leave of a judge of the Supreme Court, which leave may be granted only upon motion of which notice has been given to the Public Trustee, and subject to such terms as to security for costs or otherwise as to the judge may appear just or expedient.

22. The time during which a mentally incompetent person is confined in a hospital for mental diseases shall not, as against him, be computed for the purposes of *The Limitation of Actions Act* or any other Act or law limiting a time within which an action is required to be commenced or proceedings taken; but the Public Trustee may take action or proceed notwithstanding that the period limited for commencing action or proceedings would, but for this section, have elapsed subsequently to the date of the committal of the mentally incompetent person to the hospital.

ADMINISTRATION OF ESTATES

23. Where the Lieutenant Governor in Council or a court or judge now or hereafter is empowered to appoint a trustee, executor, administrator, guardian or committee, the Public Trustee may be appointed to any of such appointments, and any person who now or hereafter is empowered to make such appointments may appoint the Public Trustee to any of such appointments if he consents thereto.

24. When any person dies whether testate or intestate and his lands, personal estate and effects have not been taken possession of by his executors or next-of-kin, the Public Trustee is hereby empowered to take possession of the lands, personal estate and effects forthwith and to safely keep preserve and protect the same, and pending the grant of probate to an executor or the issue of letters of administration, as the case may be, the Public Trustee shall have all the powers of an executor or administrator, except that he shall not sell any property unless in his opinion the estate might suffer loss if a sale is not effected.

25.—(1) When a person dies possessed of personal property, the gross value of which as estimated by the Public Trustee does not exceed one hundred dollars and where no probate of his will or letters of administration of his estate has been granted in the Province, the Public Trustee without obtaining any order or authority from a court or otherwise, may out of the personal property give or distribute, in his discretion, wearing apparel and articles of personal use or ornaments to or among one or more of the family and relatives of the deceased, and may sell property not so dealt with and apply the proceeds towards payment of sums due

and debts incurred for the burial of the deceased, and may do all things necessary to complete the administration of the estate.

(2) A letter signed by the Public Trustee addressed to the manager of any branch of any bank or other person in possession of any property belonging to a deceased, advising that the Public Trustee is administering the estate of the said deceased pursuant to this section, shall be conclusive evidence that the Public Trustee is the administrator of the estate of the deceased.

26.—(1) When any person dies intestate, in or out of the Province, leaving property therein, the gross value of which as estimated by the Public Trustee does not at the time of the election hereinafter mentioned exceed one thousand dollars, and no person has taken out letters of administration, the Public Trustee may and in lieu of obtaining letters of administration file in the office of the clerk or deputy clerk of the judicial district or sub-judicial district within which the deceased person had his last known place of abode, or the property within the Province is situate, an election in writing setting forth the name of the deceased, his residence and occupation so far as then known to the Public Trustee, and of his estate so far as then known and electing to administer.

(2) On the election being filed the Public Trustee shall be the duly constituted administrator of the property of the deceased and the filing of the election shall be conclusive evidence of his right to administer.

(3) There shall be no fee payable to any court officer in respect of the right to administer obtained by filing an election.

(4) If after filing the election the gross value of the property to be administered is found to exceed fifteen hundred dollars, the Public Trustee shall, as soon as practicable thereafter, file in the office of the clerk of the court a memorandum stating that fact and may proceed in the ordinary manner to obtain letters of administration.

(5) A copy of any election certified as a correct copy by the Clerk of the District Court shall be equivalent to an exemplification of letters of administration for all purposes; and no fee under any rule of court shall be payable in respect thereof except a fee of one dollar.

(6) If after filing the election the Public Trustee subsequently discovers that the election is invalid or ineffective by reason of the discovery of a will, or for any other reason, then the Public Trustee may file in the office of the clerk of the court a memorandum setting out the facts and certifying that the election already filed is ineffective.

(7) Upon such memorandum being filed, the election to administer shall cease to be of any effect whatever.

(8) After the administration of the estate has been completed the Public Trustee shall file in the clerk's office an account thereof verified on oath.

27.—(1) When any person has died intestate, in or out of the Province, leaving property in the Province, the gross value of which as estimated by the Public Trustee exceeds one thousand dollars, and no application for letters of administration has been made, the Public Trustee may apply for letters of administration of the estate.

(2) If the Public Trustee knows of some other person or persons domiciled in the Province who would be entitled to letters of administration prior to the exercise of the powers conferred on the Public Trustee by this section, he shall notify such other person or persons by registered mail of his intention to apply for letters of administration.

(3) In such case the Public Trustee shall not apply for letters of administration until the expiration of one month from the mailing of the said notice, and if within that time an application for letters of administration has been made by any other person entitled to letters of administration prior to the Public Trustee, then the Public Trustee shall not apply unless the application of such other person has been refused.

28.—(1) Where any grant has been made to the Public Trustee under section 27, the same may be revoked upon such terms as to the payment of costs and charges of the Public Trustee as the court may deem fair and proper and a new grant may be made upon application of any person otherwise entitled to letters of administration upon proof,—

- (a) that he has not renounced or refused administration;
- (b) that the omission to apply sooner for administration was due to absence from the Province, illness, incapacity or other circumstances sufficient to excuse the omission; and
- (c) that fourteen days' notice in writing of his intention to so apply has been given to the Public Trustee.

(2) On any such application no costs shall be awarded against the Public Trustee.

COMMON FUND

29.—(1) Any moneys for the time being in the hands of the Public Trustee not being money subject to any express trust or direction for the investment thereof may be invested in a common fund or in any one of several common funds kept and controlled by the Public Trustee, and the investments so made shall not be made on account of or belong to any particular estate, and the interest of any person entitled to any share or interest in a common fund shall be in common with all other persons so entitled.

(2) The Lieutenant Governor in Council may from time to time make rules and regulations for the management of any common fund and may prescribe the fees which may be charged against the fund and the persons entitled thereto for the management thereof.

30.—(1) The interest payable in respect of the estates, the moneys of which form the common fund, shall be at the rate of three per cent per annum or at such other rate as may hereafter be prescribed in lieu thereof by the Lieutenant Governor in Council.

(2) Interest shall be credited to the respective estates at the prescribed rate half-yearly, namely on the thirtieth day of April and the thirty-first day of October in each year and shall be calculated upon the minimum monthly balances of the moneys which form the common fund.

(3) The common fund shall be invested in any of the investments authorized by *The Trustee Act* and not otherwise.

(4) For the purpose of distribution all the investments in the common fund shall be deemed at all times to be of the same aggregate value as the aggregate amount of all moneys invested therein and no regard shall be had to any fluctuation in value or price of the investments of the common fund.

(5) In case the amount of interest earned by the investments of the common fund exceeds in any half year the amount of interest payable in respect of the estates invested therein, the amounts of such excess shall be paid into a special reserve fund.

(6) In case the investments in the common fund when realized produce in the aggregate a greater sum than the aggregate of all the moneys invested therein, the surplus shall be paid into the special reserve fund.

(7) The special reserve fund shall be available for the purpose of making up,—

- (a) any deficiency between the amount of the earnings of the investments of the common fund during any half year and the amount required to pay the interest payable in respect of all the estates therein;
- (b) any deficiency between the aggregate amount of all sums invested in the common fund and the realizable value of all the investments of the common fund.

(8) The special reserve fund shall be held by the Public Trustee jointly with the Deputy Provincial Treasurer, and any moneys in such fund may be invested in any of the securities authorized by this Act for the investment of trust funds.

(9) The Province hereby guarantees that the common fund together with the special reserve fund shall at all

times be sufficient for the purpose of paying all lawful claims which are payable out of the common fund pursuant to this Act, and the Provincial Treasurer is hereby authorized to pay out of the General Revenue Fund from time to time such sums as may be necessary to implement the said guarantee.

(10) Interest earned in respect of the securities held in the special reserve fund shall be paid into and form part of of the said fund; provided that the Public Trustee, and the Deputy Provincial Treasurer, out of the interest earned on the said fund and received by them, may pay to the Provincial Treasurer to form part of the general revenue of the Province, such annual sum as may be determined by them, but not exceeding the annual interest earned in respect of the securities held in the special reserve fund, to be applied toward the cost of administration of the common fund and of the special reserve fund.

GENERAL

31. Any person may apply to the court for an order appointing the Public Trustee as judicial trustee under *The Trustee Act*, and the court may by order appoint the Public Trustee as judicial trustee where in the opinion of the court or judge thereof, it is expedient so to do.

32. Upon the application of a relative or creditor of any person who is, on account of any physical or mental disability, incapacitated from attending to and transacting his own business affairs, the court may, upon being satisfied that such person is suffering from any incapacity as aforesaid, and is on account thereof unable to attend to or transact his own affairs or business, and by reason thereof his estate is in jeopardy, by order appoint the Public Trustee as administrator of that person's estate, and thereupon the Public Trustee shall have with respect to such estate all the powers that he has under this Act with respect to the estate of a mentally incompetent person.

33.—(1) The Public Trustee may upon the order of a judge, or upon order of the Lieutenant Governor in Council investigate or audit the accounts of any trust, and when making the investigation or audit he shall have the right of access for himself and for any other person acting under his instructions to the books, accounts and vouchers of the trustees and to any securities and documents of title held by them on account of the trust and may require from them such information and explanation as may be necessary for the performance of his duties.

(2) Upon the completion of the investigation and audit he shall make a report thereon to the court or to the Lieutenant Governor in Council, as the case may be.

34. The Public Trustee may at the expiration of two years from the date upon which probate or letters of administration were issued, or at any other time or times when he may deem it advisable, apply to a judge to compel any administrator or executor acting in the affairs of an estate in which the Public Trustee is interested to pass his accounts, and upon such application the judge may order that the executor or administrator do pass his accounts within the time to be fixed by the judge and the order may be enforced by attachment proceedings as if it were an order of the Supreme Court.

35. Notwithstanding any rule or practice or the provisions of any Act requiring security, it shall not be necessary for the Public Trustee to give security for the due performance of his duty as committee, administrator or trustee, or in any other office to which he is appointed by order of a court or under the provisions of any Act.

36.—(1) Notwithstanding any of the provisions of *The Ultimate Heir Act* if any money or other property in the hands of the Public Trustee which forms part of the estate of any person who has died either testate or intestate, has remained in the hands of the Public Trustee for six years, and if at the expiration of that period the Public Trustee has no notice of any claim thereto by any person as legatee, heir or next-of-kin, the Public Trustee shall pay the money and the proceeds of the other property to the Provincial Treasurer and thereupon it shall form part of the General Revenue Fund of the Province.

(2) Any money or other property in the hands of the Public Trustee which forms part of the estate of a person who has not been heard of by the Public Trustee for a period of seven years and who after reasonable inquiry cannot be located, shall in the case of money, be paid to the Provincial Treasurer, and in the case of other property, be sold and converted into money and the proceeds paid to the Provincial Treasurer and such money and proceeds of other property shall thereupon form part of the General Revenue Fund of the Province.

(3) The Provincial Treasurer, upon a person claiming to be entitled to money or proceeds so paid over, and upon being satisfied as to the claimant's right, shall, if authorized by the Lieutenant Governor in Council, pay the money to the claimant, with such interest thereon as may be specified in the Order in Council.

37.—(1) The Public Trustee may authorize any officer in writing to execute or sign any document or instrument requiring the signature of the Public Trustee, or to do any other act or thing required to be done by the Public Trustee.

(2) Such officer shall sign his personal name, adding the words "Acting under the authority of the Public Trustee pursuant to *The Public Trustee Act*".

(3) Such authority may either be general or apply to a particular case.

(4) Any such document or instrument executed as aforesaid shall have the same effect as if the same were duly executed by the Public Trustee.

(5) Any document or instrument purporting to be signed by an officer authorized as aforesaid shall be accepted or admitted without further proof as to its authenticity.

38. The Lieutenant Governor in Council may from time to time make rules governing the practice and procedure in the office of the Public Trustee and prescribe a tariff of costs, or may authorize the promulgation of Rules of Court governing such practice and procedure or the costs of proceedings and in every case such rules may be altered, annulled or varied from time to time as may be deemed advisable.

39. The Lieutenant Governor in Council may, upon the recommendation of the Provincial Treasurer, authorize the Provincial Treasurer to advance to the Public Trustee from time to time by way of temporary loan from the General Revenue Fund of the Province such sums of money for such period and upon such terms and conditions as may be deemed requisite for the advantageous administration of any estate being administered by the Public Trustee pursuant to this Act.

40. The Provincial Auditor shall make an annual audit of the books, accounts and vouchers of the Public Trustee.

41.—(1) The Public Trustee shall be entitled to the same costs as are payable to counsel and solicitors, and the same shall be liable to taxation and shall be in the discretion of the court.

(2) The court or judge may order that the costs be paid out of the estate and form a charge thereon, or may order any other party to the proceeding or application or any other person not a party to pay the costs thereof.

42. All costs received by the Public Trustee shall form part of the General Revenue Fund of the Province.

43.—(1) The Public Trustee shall be the successor in office of the Official Guardian, the Administrator of Estates of the Mentally Incompetent and of the Public Administrators appointed pursuant to *The Judicature Act*.

(2) All property now vested in the Official Guardian, the Administrator of Estates of the Mentally Incompetent

or any of the said Public Administrators is hereby vested in the Public Trustee, and all appointments and duties of the Official Guardian, the Administrator of Estates of the Mentally Incompetent or any of the said Public Administrators whether as committee, administrator, executor, trustee, custodian or otherwise, and all contracts entered into and all proceedings taken shall be exercised, continued and carried out by the Public Trustee under the provisions of this Act.

44. *The Official Guardian Act*, being chapter 27 of the Revised Statutes of Alberta, 1942, is hereby repealed.

45. This Act shall come into force on the first day of July, 1949.

SCHEDULE

FORM A.

(Section 12.)

I hereby certify that....., of the
....., of
in the Province of Alberta, is a mentally incompetent person
and is now detained in.....
(Name of institution)
(or was so detained but has been discharged and removed
therefrom) pursuant to the provisions of *The Mental Dis-*
eases Act, or *The Mental Defectives Act*.

And I further certify that The Public Trustee under the
provisions of *The Public Trustee Act* is the administrator
of the estate of the said.....

Dated at the City of Edmonton, }
in the Province of Alberta, }
this day of 19..... }

.....
Public Trustee

No. 22

FIRST SESSION
ELEVENTH LEGISLATURE
13 GEORGE VI
1949

BILL

An Act to provide a Public Trustee
to Administer the Estates of Infants,
Deceased Persons and Others.

Received and read the

First time

Second time

Third time

HON. MR. MAYNARD.
