

1976 Bill 59

Second Session, 18th Legislature, 25 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 59

THE DEPENDENT ADULTS ACT

THE MINISTER OF SOCIAL SERVICES AND
COMMUNITY HEALTH

First Reading

Second Reading

Third Reading

THE DEPENDENT ADULTS ACT

TABLE OF CONTENTS

Section

Definitions

PART 1

GUARDIANSHIP

Division 1

Application for Guardianship Order

Application, report and consent
Service of application
Inquiry by Court and report
Interested persons may appear

Division 2

Guardianship Order and its Effect

Appointment of plenary or partial guardian
Persons who may be appointed guardian
Requirements for review of guardianship order
Effect of plenary guardianship order
Effect of partial guardianship order
Exercise of authority by guardian

Division 3

Public Guardian

Appointment of Public Guardian
Public Guardian's duties
May be appointed as plenary or partial guardian
by the Court

Division 4

Other Guardianship Provisions

Service of application for review
Order after review
Appointment of alternate guardian
Authority of alternate guardian
Application for discharge of guardian
Death of guardian

PART 2

TRUSTEESHIP

Division 1

Application for Trusteeship Order

Application, report and consent
Service of application
Inquiry by Court and report
Interested persons may appear

TABLE OF CONTENTS

	Section
Division 2	
Trusteeship Order and its Effect	
Appointment of trustee	25
Persons who may be appointed trustee	26
Trusteeship order and review requirements	27
Effect of trusteeship order	28
Extent of trustee's power	29 - 30
Division 3	
Duties of Trustee	
Duties upon appointment	31
Estate management and administration	32
Division 4	
Appointment of the Public Trustee	
Duties	33
Court appointment	34
Division 5	
Other Trusteeship Provisions	
Service of application for review	35
Court order after review	36
Alternate trustee	37
Authority of alternate trustee	38
Application for discharge	39
Passing accounts	40
Death of trustee	41
PART 3	
COMMON GUARDIANSHIP AND TRUSTEESHIP PROVISIONS	
Signature of guardian or trustee	42
Purchase of necessaries	43
Contracts binding	44
Direction of the Court	45
Effect of order on testamentary disposition	46
Foreign orders	47
Costs	48
PART 4	
TRUSTEESHIP WITHOUT COURT ORDER AND APPEAL PANELS	
Division 1	
Trusteeship Without Court Order	
Issue of certificate of incapacity	49
Notification of issue	50
Public Trustee becomes trustee	51
Review by appeal panel	52
Termination of certificate of incapacity	53
Notification of termination	54
Termination of trusteeship of Public Trustee	55
Period during which certificate effective	56

TABLE OF CONTENTS

Division 2

Rights of Persons in respect of whom a Certificate of Incapacity is issued

Written statement of certificate of incapacity	57
--	----

Division 3

Appeal Panels

Establishment	58
Quorum and decisions	59
Persons prohibited as members	60
Duties and powers	61

Division 4

Appeals from Certificate of Incapacity to Appeal Panels

Appeal for termination of certificate of incapacity and notification	62 - 63
Proceedings, hearing and decision	64 - 65

PART 5

APPEAL, REGULATIONS, TRANSITIONAL AND CONSEQUENTIAL AMENDMENTS, REPEAL AND COMMENCEMENT

Division 1

Appeal and Regulations

Appeal to the Supreme Court	66
Regulations	67

Division 2

Transitional Provisions

Transitional Provisions under The Mental Health Act, 1972	68 - 70
Transitional Provisions under The Mentally Incapacitated Persons Act	71 - 76

Division 3

Consequential Amendments

Amendments to Acts	77 - 84
--------------------	---------

Division 4

Repeal and Commencement

Mentally Incapacitated Persons Act repeal	85
Proclamation	86

BILL 59

1976

THE DEPENDENT ADULTS ACT

(Assented to _____, 1976)

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

1. In this Act,

- (a) "appeal panel" means an appeal panel established pursuant to section 58;
- (b) "certificate of incapacity" means a certificate of incapacity issued pursuant to section 49;
- (c) "Court" or "Surrogate Court" means The Surrogate Court of Alberta;
- (d) "dependent adult" means any person in respect of whom
 - (i) a guardianship order is in effect, or
 - (ii) a trusteeship order is in effect, or
 - (iii) both a guardianship order and a trusteeship order are in effect;
- (e) "facility" means a place designated in the regulations as a facility;
- (f) "guardian" means the person named as plenary or partial guardian in a guardianship order or a person who becomes a guardian by virtue of the operation of this Act;
- (g) "guardianship order" means an order of the Court appointing a person as a plenary guardian or partial guardian pursuant to section 6 or as an alternate guardian pursuant to section 17;
- (h) "health care" includes
 - (i) any examination, diagnosis, procedure or treatment undertaken to prevent any disease or ailment,
 - (ii) any procedure undertaken for the purpose of preventing pregnancy,
 - (iii) any procedure undertaken for the purpose of an examination or a diagnosis,
 - (iv) any medical, surgical, obstetrical or dental treatment, and
 - (v) any thing done that is ancillary to any procedure, treatment, examination or diagnosis;

Explanatory Notes

General: This Bill is divided into five Parts.

Part 1 of the Bill is intended to provide means by which help can be given to those persons who are 18 years old or older, who are unable to care for themselves and who are unable to make reasonable judgements, and who are in need of a guardian. (For the matters in respect of which a guardian can be appointed, see sections 9 and 10.)

Anyone who is interested in the welfare of such a person may apply to The Surrogate Court of Alberta for a guardianship order.

To ensure that appropriate applications for guardianship orders are made, the Bill requires that anyone applying for a guardianship order file a report by a physician, psychologist or therapist stating that the person in respect of whom the guardianship order is applied for is in need of a guardian.

The Bill recognizes that some people need help with some aspects of their personal affairs and not others. If a person is totally dependent then the Court can appoint a plenary guardian, but where a person only needs help in some areas of life a partial guardian can be appointed.

Part 2 of the Bill deals with the appointment of a trustee to look after all or that part of the estate of a person who is unable to manage it. Applications for a trusteeship order are also dependent upon a report of a physician, psychologist or therapist stating that a trustee is needed.

Part 3 of the Bill deals with matters that are common to both guardians and trustees and includes provisions empowering guardians to purchase necessary items for a dependent adult and permitting applications to be made to the Supreme Court or the Surrogate Court for directions as to the best decision to make when a difficult question arises.

Section 48 in Part 3 relating to costs empowers the Court to make an order requiring any one or more of the persons referred to in that section to bear the costs of reports and applications. In particular the Crown in right of Alberta can be ordered to bear the costs of any application or report.

Part 4 of the Bill deals with those cases where a person is residing in a facility and where (subject to strict controls) two physicians or one physician and one therapist may issue a certificate of incapacity. Upon the issue of a certificate of incapacity the Public Trustee automatically becomes trustee of the estate of the person named in the order, unless there is a trusteeship order already in existence relating to that person. Appeal panels will be established to hear and decide whether certificates of incapacity should remain in effect.

Part 5 deals with existing orders under other Acts, amends Acts, repeals The Mentally Incapacitated Persons Act and provides that the Bill comes into force on Proclamation.

Other major points of the Bill include

- (a) the establishment of the Office of Public Guardian. The Public Guardian has the responsibility of making applications for the appointment of a guardian for those persons in need of a guardian when no one else is willing or able to make the application. In addition the Court may, where no other person is willing to be appointed, appoint the Public Guardian as the plenary or partial guardian of a person;

- (i) "interested person" means
 - (i) the Public Trustee, or
 - (ii) the Public Guardian, or
 - (iii) any other person 18 years of age or older who is concerned for the welfare of the person in respect of whom a guardianship order or trusteeship order is sought or has been obtained;
- (j) "Minister" means the Minister of Social Services and Community Health;
- (k) "nearest relative" means with respect to any person, the relative of that person first listed in the following subclauses, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of two or more relatives described in any subclause being preferred to the other of those relatives regardless of sex:
 - (i) husband or wife,
 - (ii) son or daughter,
 - (iii) father or mother,
 - (iv) brother or sister,
 - (v) grandfather or grandmother,
 - (vi) grandson or granddaughter,
 - (vii) uncle or aunt,
 - (viii) nephew or niece;
- (l) "Public Guardian" means the person appointed as the Public Guardian pursuant to section 12;
- (m) "Public Trustee" means the person appointed as the Public Trustee under section 3 of *The Public Trustee Act*;
- (n) "physician" means a person registered as a medical practitioner under *The Medical Profession Act, 1975*;
- (o) "psychologist" means a person registered under Part 2 of *The Psychologists Act*;
- (p) "therapist" means a person registered as a therapist under *The Mental Health Act, 1972*;
- (q) "trustee" means the person named as trustee in a trusteeship order or a person who becomes a trustee by virtue of the operation of this Act;
- (r) "trusteeship order" means an order of the Court appointing a person as trustee of the estate of a person pursuant to section 25 or as an alternate trustee of the estate of a person pursuant to section 37.

- (b) a requirement that guardianship orders, trusteeship orders and certificates of incapacity be periodically reviewed at least once every two years. Nothing in the Bill prevents a review at any time but the longest gap between reviews will be two years;
- (c) a crucial need of both those providing health care treatment and those in need of it is answered in this Bill. It clearly indicates the power of a guardian to consent to the providing of health care to a dependent adult subject to such restrictions as a Court may impose when making an order of guardianship. Any health care provided to a dependent adult must be in the best interests of the person.

I. Definitions.

PART 1

GUARDIANSHIP

Division 1

Application for Guardianship Order

2. (1) Subject to this section and section 3, any interested person may apply to the Court for an order appointing

(a) a plenary guardian, or

(b) a partial guardian,

in respect of a person 18 years of age or older.

(2) No application shall be made to the Court under subsection (1) unless it is accompanied by a report of a physician, psychologist or therapist containing

(a) the name and address of the person making the report, and

(b) a statement to the following effect:

“In my opinion (*full name*)
is in need of a guardian and it would be in his/her best interests for a guardian to be appointed for him/her”,

and signed and dated by the physician, psychologist or therapist making the report.

(3) The interested person making an application under subsection (1) shall, at the same time the application is made, file with the Court the written consent of the person proposed as guardian to the effect that he is willing to act as the plenary or partial guardian, as the case may be, of the person in respect of whom the application is made.

3. (1) An application for an order appointing a guardian shall be made in the judicial district in which the person in respect of whom the application is made is ordinarily resident.

(2) The interested person making the application shall, at least 10 days before the date the application is to be heard, serve a copy of the application and the report referred to in section 2 on

(a) the person in respect of whom the application is made,

(b) the nearest relative of the person in respect of whom the application is made who is living in Canada if he is not the applicant,

(c) the person proposed as the guardian of the person in respect of whom the application is made if he

2. Application, report and consent of person proposed as guardian must accompany an application for an order appointing a plenary or partial guardian.

3. Persons on whom a copy of the application for a guardianship order is required to be served.

is not the applicant or the nearest relative served pursuant to clause (b),

- (d) if the person in respect of whom the application is made is a resident of a facility, the person in charge of the facility,
 - (e) the Public Guardian, if he is not the applicant or the person served pursuant to clause (c),
 - (f) any trustee of the person in respect of whom the application is made if he is not the applicant or a person served pursuant to this subsection, and
 - (g) such other person as the Court may direct.
- (3) The Court may, where it considers it appropriate to do so,
- (a) shorten the time for service on all or any of the persons referred to in subsection (2), or
 - (b) dispense with the requirements for service on all or any of the persons referred to in subsection (2), except the Public Guardian.

4. (1) Upon hearing an application for an order appointing a guardian the Court shall inquire as to whether

- (a) the person in respect of whom the application is made is in need of a plenary guardian, partial guardian or any guardian, and
- (b) it is in the best interests of the person in respect of whom the application is made for a guardian to be appointed for him.

(2) Where

- (a) the Court has any doubt as to whether a plenary guardian, partial guardian or any guardian should be appointed, or
- (b) a guardianship order is being reviewed by the Court,

the Court may appoint a person to prepare a report on the person named in the application with respect to any or all of his physical, mental, social, vocational, residential, educational or other needs both present and future and generally his ability to care for himself and to make reasonable judgments with respect to matters relating to his person.

5. At any hearing of an application for an order appointing a guardian or on a review of a guardianship order

- (a) any person served pursuant to section 3, subsection (2), and
 - (b) any other person who wishes to make representations and that the Court agrees to hear,
- may appear and make representations.

4. Inquiry by Court and report where necessary.

5. Persons who may appear and make representations.

Division 2

Guardianship Order and Its Effect

6. (1) Where the Court is satisfied that a person named in an application for an order appointing a guardian is

- (a) 18 years of age or older,
- (b) unable
 - (i) to care for himself, and
 - (ii) to make reasonable judgments in respect of all or any of the matters relating to his person,
- (c) in need of a guardian,

the Court may make an order appointing a plenary guardian or a partial guardian.

(2) The Court shall not make any order under subsection (1) unless it is satisfied that the order would be in the best interests of the person in respect of whom the application is made.

7. (1) The Court may appoint as a plenary guardian or partial guardian of a dependent adult, any person 18 years of age or older who consents to act as guardian and in respect of whom the Court is satisfied that

- (a) he will act in the best interests of the dependent adult,
- (b) he will not be in a position where his interests will conflict with the dependent adult's interests,
- (c) he is a suitable person to act as the guardian of the dependent adult, and
- (d) he is a resident of Alberta.

(2) The Court may require the person proposed as guardian to attend and answer questions to determine whether he meets the requirements of subsection (1).

8. Upon making a guardianship order the Court shall specify

- (a) the times at which the order must be reviewed by the Court which shall be at least once every two years,
- (b) the person required to apply to the Court for the review, and
- (c) any requirement to be complied with by the guardian or any other person with respect to a review of the circumstances of the dependent adult.

6. Appointment of plenary or partial guardian.

7. Persons who may be appointed as guardian.

8. Requirements for review of guardianship order.

9. (1) Subject to subsection (2), where the Court makes an order appointing a plenary guardian, the guardianship order confers on the person named as the plenary guardian the power and authority

- (a) to decide where the dependent adult is to live, whether permanently or temporarily;
- (b) to decide with whom the dependent adult is to live and with whom the dependent adult is to consort;
- (c) to decide whether the dependent adult should or should be permitted to engage in social activities and if so the nature and extent thereof and matters related thereto;
- (d) to decide whether the dependent adult should or should be permitted to work and, if so, the nature or type of work, for whom he is to work and matters related thereto;
- (e) to decide whether the dependent adult should or should be permitted to take or participate in any educational, vocational or other training and, if so, the nature and extent thereof and matters related thereto;
- (f) to decide whether the dependent adult should apply or should be permitted to apply for any licence, permit, approval or other consent or authorization required by law;
- (g) to commence, compromise or settle any legal action that does not relate to the estate of the dependent adult and to compromise or settle any action taken against the dependent adult that does not relate to his estate;
- (h) to consent to any health care that is in the best interests of the dependent adult;
- (i) to make normal day to day decisions on behalf of the dependent adult including the diet and dress of the dependent adult;
- (j) to make such other decisions as can be made by a father in respect of a child under 14 years of age and that are not specified or referred to in this subsection.

(2) In making an order appointing a plenary guardian the Court may make its order subject to such conditions or restrictions as it considers necessary.

(3) Any decision made, action taken, consent given or thing done by a plenary guardian shall be deemed for all purposes to have been decided, taken, given or done by the dependent adult as though he were an adult capable of giving consent.

9. Authority of plenary guardian.

10. (1) Where a Court makes an order appointing a partial guardian, the Court shall grant to the partial guardian only such power and authority as may be necessary for him to care for or assist in caring for the dependent adult and to make or assist in making reasonable judgments in respect of matters relating to his person.

(2) In making an order appointing a partial guardian, the Court shall specify whether all or any one or more of the following matters relating to the person of the dependent adult are to be subject to the power and authority of the partial guardian:

- (a) the right to decide where the dependent adult is to live, whether permanently or temporarily;
- (b) the right to decide with whom the dependent adult is to live and with whom the dependent adult is to consort;
- (c) the right to decide whether the dependent adult should or should be permitted to engage in social activities and if so the nature and extent thereof and matters related thereto;
- (d) the right to decide whether the dependent adult should or should be permitted to work and, if so, the nature or type of work, for whom he is to work and matters related thereto;
- (e) the right to decide whether the dependent adult should or should be permitted to take or participate in any educational, vocational or other training and, if so, the nature and extent thereof and matters related thereto;
- (f) the power and authority to decide whether the dependent adult should apply or should be permitted to apply for any licence, permit, approval or other consent or authorization required by law;
- (g) the right to commence any legal action that does not relate to the estate of the dependent adult;
- (h) the right to consent to any health care that is in the best interests of the dependent adult;
- (i) the right to make normal day to day decisions on behalf of the dependent adult including the diet and dress of the dependent adult.

(3) In making an order appointing a partial guardian the Court may

- (a) make its order subject to such conditions or restrictions as it considers necessary, or
- (b) restrict, modify, change or add to any of the matters referred to in subsection (2).

10. Order appointing a partial guardian and the affairs of life that the Court must take into consideration when making the order.

(4) Any decision made, action taken, consent given or thing done by a partial guardian with regard to any matter in respect of which he is appointed guardian shall be deemed for all purposes to have been decided, taken, given or done by the dependent adult as though he were an adult capable of giving consent.

11. A guardian shall exercise his power and authority

- (a) in the best interests of the dependent adult, and
- (b) in such a way as to encourage the dependent adult to become capable of caring for himself and of making reasonable judgments in respect of matters relating to his person.

Division 3

Public Guardian

12. (1) In accordance with *The Public Service Act* there may be appointed a Public Guardian and such other persons as may be required for the purposes of this Act and the regulations.

(2) Where the Public Guardian is given any power or duty under this Act or the regulations, he may authorize in writing one or more persons to exercise or perform that power or duty upon such conditions or in such circumstances as the Public Guardian prescribes and thereupon that power or duty may be exercised or performed by the person or persons so authorized in addition to the Public Guardian.

13. Where in the opinion of the Public Guardian a person is in need of a guardian and no person is willing, able or suitable either to make an application for an order appointing a guardian or to be appointed as the guardian of the person or both, the Public Guardian shall

- (a) make an application for an order appointing himself or any other person as guardian of that person, or
- (b) notify any person proposing to make an application for an order appointing a guardian as to whether or not the Public Guardian is willing to be appointed as plenary or partial guardian of the person in respect of whom the application is proposed to be made.

14. Where the Court is not satisfied that a person proposed as a guardian in an application under this Act meets the requirements of this Act, it may, after giving notice of its intention to the Public Guardian, appoint the Public Guardian as the plenary or partial guardian of the person in respect of whom the application is made.

11. Best interests of the dependent adult is paramount.

12. Appointment of Public Guardian and staff.

13. Public Guardian's duties.

14. Court may appoint Public Guardian where a person proposed as guardian is not satisfactory.

Division 4

Other Guardianship Provisions

15. (1) Nothing in this Act or an order of the Court made under this Act prevents a dependent adult or any interested person on his behalf from applying to the Court for a review of a guardianship order at any time.

(2) Where an application is made to the Court for a review of a guardianship order, the person making the application shall, at least 10 days before the application is to be heard, serve a copy of the application on

- (a) the dependent adult,
 - (b) the nearest relative of the dependent adult who is living in Canada if he is not the applicant,
 - (c) the guardian of the dependent adult if he is not the applicant or the nearest relative served pursuant to clause (b),
 - (d) if the dependent adult is a resident of a facility, the person in charge of the facility,
 - (e) the Public Guardian if he is not the applicant or the person served pursuant to clause (c),
 - (f) any trustee of the dependent adult if he is not the applicant or a person served pursuant to this subsection, and
 - (g) such other person as the Court may direct.
- (3) The Court may, where it considers it appropriate to do so,
- (a) shorten the time for service on all or any of the persons referred to in subsection (2), or
 - (b) dispense with the requirements for service on all or any of the persons referred to in subsection (2), except the Public Guardian.

16. Upon hearing an application for review of a guardianship order, the Court may amend, cancel, terminate, continue, vary or replace the order subject to any conditions or requirements it considers necessary.

17. (1) Upon making a guardianship order or upon a review of a guardianship order, the Court may appoint an alternate guardian if

- (a) the person proposed as alternate guardian has given his written consent to act as guardian of the dependent person in the event of the death of the original guardian, and

15. Service of application for review.

16. Court order after review of guardianship order.

17. Appointment of alternate guardian.

(b) it is satisfied that the persons upon whom the application for an order of guardianship or review thereof is served pursuant to section 15, subsection (2) have had sufficient notice of the willingness of the person proposed as alternate guardian to act as such.

(2) Section 7 applies to the person proposed as the alternate guardian.

18. (1) Where an alternate guardian is appointed, the alternate guardian shall take over the office of plenary guardian or partial guardian, as the case may be, without further proceedings immediately upon the death of the original guardian.

(2) The alternate guardian shall notify the Court in writing of the death of the original guardian and send the Court a certified copy of the death certificate of the original guardian.

(3) Upon the appointment of the alternate guardian becoming effective, the power and authority of the alternate guardian shall be the same as that of the guardian he replaces.

19. (1) The guardian or any interested person may apply to the Court for an order discharging the guardian from his office.

(2) An application pursuant to subsection (1) shall be made in the judicial district in which the dependent adult is ordinarily resident.

(3) The person making an application under subsection (1) shall, at least 10 days before the date the application is to be heard, serve a copy of the application on the persons referred to in section 15, subsection (2) and the provisions of section 15, subsection (3) apply.

(4) Where the Court considers that a dependent adult is no longer in need of a guardian or if the Court is satisfied that a guardian

- (a) is unable or unwilling to continue to act as guardian, or
- (b) refuses to act or to continue to act as guardian, or
- (c) fails to act as guardian or fails to act in accordance with a guardianship order, or
- (d) acts in an improper manner or in a manner which has or which may endanger the well-being of the dependent adult, or
- (e) is no longer a suitable person to act as guardian, or
- (f) is no longer a resident of Alberta,

18. Authority of alternate guardian.

19. Discharge of guardian.

the Court may make an order discharging the guardian from his office or make such other order as it considers appropriate in the circumstances.

(5) Before making an order under subsection (4) the Court shall satisfy itself that, where necessary,

- (a) suitable arrangements have been or will be made in respect of the dependent adult, or
- (b) an application for another guardianship order will be made.

20. (1) Upon the death of a guardian and in the absence of an alternate guardian, the Public Guardian, upon receiving notice of the death of the guardian, becomes the plenary or partial guardian of the dependent adult, as the case may be, with the same power and authority as the former guardian.

(2) Upon becoming the guardian of a person under subsection (1), the Public Guardian shall notify the Court in writing of that fact and send a copy of the death certificate of the former guardian to the Court.

(3) The Public Guardian continues to be the guardian of the dependent adult until

- (a) a new guardian is appointed by the Court, or
- (b) the Court makes an order discharging the Public Guardian as guardian of the dependent adult.

20. Automatic appointment of Public Guardian upon the death of a guardian where there is no alternate guardian.

PART 2
TRUSTEESHIP
Division 1

Application for Trusteeship Order

21. (1) Subject to this section and section 22, any interested person may apply to the Court for an order appointing a trustee in respect of the estate of a person 18 years of age or over.

(2) No application shall be made to the Court under subsection (1) unless it is accompanied by a report of a physician, psychologist or therapist containing

(a) the name and address of the person making the report, and

(b) a statement to the following effect:

“In my opinion the estate of (*full name*) is in need of a trustee and it would be in his/her best interests for a trustee to be appointed”,

and signed and dated by the physician, psychologist or therapist making the report.

(3) The interested person making an application under subsection (1) shall, at the same time the application is made, file with the Court the written consent of the person proposed as trustee to the effect that he is willing to act as the trustee of the estate of the person in respect of whom the application is made.

22. (1) An application for an order appointing a trustee shall be made in the judicial district in which the person in respect of whom the application is made is ordinarily resident.

(2) The interested person making the application shall, at least 10 days before the date the application is to be heard, serve a copy of the application and the report referred to in section 21 on

(a) the person in respect of whom the application is made,

(b) the nearest relative of the person in respect of whom the application is made who is living in Canada if he is not the applicant,

(c) the person proposed as the trustee of the person in respect of whom the application is made if he is not the applicant or the nearest relative served pursuant to clause (b),

21. Application, report and consent of person proposed as trustee must accompany an application for an order appointing a trustee.

22. Persons on whom a copy of the application for a trusteeship order is required to be served.

- (d) if the person in respect of whom the application is made is a resident of a facility, the person in charge of the facility,
 - (e) the Public Trustee, if he is not the applicant or the person served pursuant to clause (c),
 - (f) any guardian of the person in respect of whom the application is made if he is not the applicant or a person served pursuant to this subsection, and
 - (g) such other person as the Court may direct.
- (3) The Court may, where it considers it appropriate to do so,
- (a) shorten the time for service on all or any of the persons referred to in subsection (2), or
 - (b) dispense with the requirements for service on all or any of the persons referred to in subsection (2), except the Public Trustee.

23. (1) Upon hearing an application for an order appointing a trustee the Court shall inquire as to whether

- (a) the person in respect of whom the application is made is in need of a trustee, and
- (b) it is in the best interests of the person in respect of whom the application is made for a trustee to be appointed for him.

(2) Where

- (a) the Court has any doubt as to whether a trustee should be appointed, or
- (b) a trusteeship order is being reviewed by the Court, the Court may appoint a person to prepare a report on the person named in the application with respect to any or all of his physical, mental, social, vocational, residential, educational or other needs both present and future and generally his ability to make reasonable judgments with respect to matters relating to his estate.

24. At any hearing of an application for an order appointing a trustee or on a review of a trusteeship order

- (a) any person served pursuant to section 22, subsection (2), and
- (b) any other person who wishes to make representations and that the Court agrees to hear, may appear and make representations.

23. Inquiry by Court and report where necessary.

24. Persons who may appear and make representations.

Division 2

Trusteeship Order and Its Effect

25. (1) Where the Court is satisfied that a person named in an application for an order appointing a trustee is

- (a) 18 years of age or older,
- (b) unable to make reasonable judgments in respect of matters relating to all or any part of his estate, and
- (c) in need of a trustee,

the Court may make an order appointing a trustee.

(2) The Court shall not make any order under subsection (1) unless it is satisfied that the order would be in the best interests of the person in respect of whom the application is made.

26. (1) The Court may appoint as a trustee of the estate of a dependent adult any person 18 years of age or older who consents to act as trustee and in respect of whom the Court is satisfied that

- (a) he will act in the best interests of the dependent adult,
- (b) he will not be in a position where his interests will conflict with the dependent adult's interests,
- (c) he is a suitable person to act as the trustee of the estate of the dependent adult, and
- (d) he is a resident of Alberta.

(2) The Court may require the person proposed as trustee to attend and answer questions to determine whether he meets the requirements of subsection (1).

27. (1) In making a trusteeship order the Court may make its order subject to such conditions or restrictions as it considers necessary.

(2) Upon making a trusteeship order the Court shall specify

- (a) the times at which the order must be reviewed by the Court which shall be at least once every two years,
- (b) the person required to apply to the Court for the review, and
- (c) any requirement to be complied with by the trustee or any other person with respect to a review of the circumstances of the dependent adult.

25. Appointment of a trustee.

26. Persons who may be appointed as trustee.

27. Trusteeship order.

28. (1) Subject to this Act, where the Court makes a trusteeship order, the trustee, with respect to the estate or that part of the estate under his trusteeship,

- (a) has the right to and may take possession and control of all the real and personal property of the dependent adult, and
- (b) may manage, handle, administer, sell, dispose of or otherwise deal with the estate to the same extent as the dependent adult could have done if he were an adult able to make reasonable judgments in respect of his estate.

(2) Any decision made, action taken, consent given or thing done by a trustee shall be deemed for all purposes to have been decided, taken, given or done by the dependent adult as though he were an adult capable of giving consent.

29. Subject to any restriction or condition imposed by the Court, a trustee may, in respect of the estate of the dependent adult under his trusteeship and without obtaining the authority or direction of the Court, do all or any of the following:

- (a) grant or accept leases of real or personal property for a term not exceeding three years;
- (b) invest any money in investments in which trustees are authorized to invest trust money under *The Trustee Act*;
- (c) deposit any money in the manner in which trust money can be deposited under *The Trustee Act*;
- (d) transfer property held in trust by the dependent adult, either solely or jointly with another, to the person beneficially entitled thereto;
- (e) give a consent to the transfer or assignment of a lease where the consent is required;
- (f) perform a contract entered into by the dependent adult or by his guardian;
- (g) draw, accept and endorse bills of exchange and promissory notes, endorse bonds, debentures, coupons and other negotiable instruments and securities, and assign choses in action;
- (h) give or receive a notice on behalf of the dependent adult that relates to his estate.

30. The Court may on such terms and conditions as it considers appropriate, authorize a trustee to do all or any of the following in respect of the estate of a dependent adult under his trusteeship:

28. Effect of trusteeship order.

29. Effect of trusteeship order.

30. Additional authority that a Court may confer on a trustee.

- (a) purchase, sell, mortgage, grant or accept leases for more than three years or otherwise dispose of real or personal property;
- (b) exchange or partition property and give or receive money for equality of exchange or partition;
- (c) carry on the trade or business of the dependent adult;
- (d) surrender a lease, with or without accepting a new lease, or accept a surrender of a lease;
- (e) exercise a power or give a consent required for the exercise of a power vested in the dependent adult;
- (f) exercise a right or obligation to elect, belonging to or imposed upon the dependent adult;
- (g) compromise or settle a debt;
- (h) compromise or settle a court action;
- (i) notwithstanding *The Trustee Act*, invest funds in such securities and assets as the Court approves;
- (j) do any other thing approved by the Court.

Division 3

Duties of Trustee

31. (1) Where a trustee of the estate of a dependent adult is appointed or where an alternate trustee takes office, the following provisions apply unless the Court modifies, alters or dispenses with some or all of them:

- (a) the trustee, within six months of being appointed or taking office shall file in the office of the clerk of the Court a true inventory and account of the assets and liabilities of the estate of the dependent adult in respect of which he is appointed trustee;
 - (b) if any asset or liability of the estate of the dependent adult is discovered after the filing of the inventory and account, the trustee shall file a true inventory and account of the asset or liability upon its discovery;
 - (c) every inventory and account shall be verified by the oath of the trustee or of some person in a position to verify it.
- (2) Any interested person may apply to the Court for an order that the trustee
- (a) bring in and pass his accounts;
 - (b) file an inventory of the assets and liabilities of the estate of the dependent adult;
 - (c) do such other thing as the circumstances may require.

31. Filing of inventory and accounts.

(3) A trustee shall, at least once every two years, file his accounts with the clerk of the Court and apply to the Court, upon such notice as the Court may direct, for an order passing his accounts and for such further or other order or direction as circumstances require.

32. (1) A trustee shall, subject to this Act, exercise his authority for the maintenance, education, benefit and advancement of the dependent adult in respect of whose estate he is trustee.

(2) A trustee may, subject to this Act and with respect to the estate under his trusteeship, exercise his authority for the maintenance, education, benefit and advancement of

- (a) the spouse of the dependent adult, if any, or
- (b) any child under 18 years of age of the dependent adult, or
- (c) any child of the dependent adult who is 18 years of age or over and who by reason of physical or mental disability is unable to earn a living, or
- (d) with the consent of the Court, any other person, or all or any of them.

Division 4

Appointment of the Public Trustee

33. Where in the opinion of the Public Trustee the estate of a person is in need of a trustee and no person is willing, able or suitable to make an application for an order appointing a trustee or to be appointed as the trustee of a person's estate, or both, the Public Trustee shall

- (a) make an application for an order appointing himself or any other person as trustee of all or any part of that person's estate, or
- (b) notify any person proposing to make an application for an order appointing a trustee whether or not he is willing to be appointed as the trustee of the estate of the person in respect of whom the application is proposed to be made.

34. Where the Court is not satisfied that a person proposed as a trustee in an application under this Act meets the requirements of this Act, it may, after giving notice of its intention to the Public Trustee, appoint the Public Trustee as the trustee of all or part of the estate of the person in respect of whom the application is made.

32. Manner in which trustee is to exercise authority.

33. Public Trustee's duties.

34. Court may appoint Public Trustee where a person proposed as trustee is not satisfactory.

Division 5

Other Trusteeship Provisions

35. (1) Nothing in this Act or in any order of the Court made under this Act prevents a dependent adult or any interested person on his behalf from applying to the Court for a review of a trusteeship order at any time.

(2) Where an application is made to the Court for a review of a trusteeship order, the person making the application shall, at least 10 days before the application is to be heard, serve a copy of the application on

- (a) the dependent adult,
- (b) the nearest relative of the dependent adult who is living in Canada if he is not the applicant,
- (c) the trustee of the dependent adult if he is not the applicant or the nearest relative served pursuant to clause (b),
- (d) if the dependent adult is a resident of a facility, the person in charge of the facility,
- (e) the Public Trustee if he is not the applicant or the person served pursuant to clause (c),
- (f) any trustee of the dependent adult if he is not the applicant or a person served pursuant to this subsection, and
- (g) such other person as the Court may direct.

(3) The Court may, where it considers it appropriate to do so,

- (a) shorten the time for service on all or any of the persons referred to in subsection (2), or
- (b) dispense with the requirements for service on all or any of the persons referred to in subsection (2), except the Public Trustee.

36. Upon hearing an application for review of a trusteeship order the Court may amend, cancel, terminate, continue, vary or replace the order subject to any conditions or requirements it considers necessary.

37. (1) Upon making a trusteeship order or upon a review of a trusteeship order the Court may appoint an alternate trustee if

- (a) the person proposed as alternate trustee has given his written consent to act as trustee of the estate of the dependent adult in the event of the death of the original trustee, and

35. Service of application for review.

36. Court order after review of trusteeship order.

37. Appointment of alternate trustee.

- (b) it is satisfied that the persons upon whom the application for a trusteeship order or a review thereof is served pursuant to section 35, subsection (2) have had sufficient notice of the willingness of the person proposed as alternate trustee to act as such.

(2) Section 26 applies to the person proposed as alternate trustee.

38. (1) Where an alternate trustee is appointed, the alternate trustee shall take over the office of trustee without further proceedings immediately upon the death of the original trustee.

(2) The alternate trustee shall notify the Court in writing of the death of the original trustee and send the Court a copy of the death certificate of the original trustee.

(3) Upon the appointment of the alternate trustee becoming effective, the authority of the alternate trustee shall be the same as that of the trustee he replaces.

39. (1) The trustee or any interested person may apply to the Court for an order discharging the trustee from his office.

(2) An application pursuant to subsection (1) shall be made in the judicial district in which the dependent adult is ordinarily resident.

(3) The person making an application under subsection (1) shall, at least 10 days before the date the application is to be heard, serve a copy of the application on the persons referred to in section 22, subsection (2) and the provisions of section 22, subsection (3) apply.

(4) Where the Court considers that the estate of a dependent adult is no longer in need of a trustee or if the Court is satisfied that a trustee

- (a) is unable or unwilling to continue to act as trustee, or
- (b) refuses to act or to continue to act as trustee, or
- (c) fails to act as trustee or fails to act in accordance with a trusteeship order, or
- (d) acts in an improper manner or in a manner which has or which may endanger the estate of the dependent adult, or
- (e) has been guilty of a breach of trust, or
- (f) is no longer a suitable person to act as trustee, or
- (g) is no longer a resident of Alberta,

the Court may make an order discharging the trustee from his office or make such other order as it considers appropriate in the circumstances.

38. Authority of the alternate trustee.

39. Discharge of trustee.

(5) Before making an order under subsection (4) the Court shall satisfy itself that, where necessary,

- (a) suitable arrangements have been or will be made in respect of the estate of the dependent adult, or
- (b) an application for another trusteeship order will be made.

40. Where the Court terminates a trusteeship order or discharges a trustee from his office the Court may require the trustee to bring in and pass his accounts and file a true inventory of the assets and liabilities of the estate under his trusteeship within such time as may be specified in the order.

41. (1) Upon the death of a trustee and in the absence of an alternate trustee, the Public Trustee, upon receiving notice of the death of the trustee, becomes trustee of the estate of the dependent adult, with the same authority as the former trustee.

(2) The Public Trustee continues to be the trustee of the estate of the dependent adult until

- (a) a new trustee is appointed by the Court, or
- (b) the Court makes an order discharging the Public Trustee as trustee of the estate of the dependent adult.

40. Passing accounts.

41. Automatic appointment of Public Trustee upon the death of a trustee where no alternative trustee appointed.

PART 3

COMMON GUARDIANSHIP AND TRUSTESHIP PROVISIONS

42. A guardian or trustee may on behalf of a dependent adult sign and do all such things as are necessary to give effect to any power or authority vested in him.

43. (1) A guardian, subject to any provision contained in the guardianship order appointing him, may purchase necessaries for the dependent adult without the consent of the dependent adult or of the trustee of his estate, if any.

(2) Where a guardian purchases necessaries for the dependent adult

- (a) the dependent adult is liable to pay for them or reimburse the guardian for any money expended by him in the purchase of the necessaries, or
- (b) where there is a trustee of the estate of the dependent adult, the trustee shall, out of the estate, pay for the necessaries or reimburse the guardian for any money expended by him in the purchase of the necessaries.

44. Where a guardian or a trustee enters into a contract on behalf of a dependent adult, the contract is binding on the dependent adult after the guardianship order or trusteeship order is terminated, in the same manner and to the same extent as if the dependent adult had made the contract and he had been an adult capable of making the contract.

45. (1) Any guardian or trustee may apply by originating notice for the opinion, advice or direction of a judge of the Supreme Court or of the Surrogate Court on any question respecting a dependent adult or respecting the management or administration of his estate.

(2) The guardian or the trustee acting upon the opinion, advice or direction given by a judge of the Supreme Court or the Surrogate Court shall be deemed, so far as his own responsibility is concerned, to have discharged his duty as guardian or trustee, as the case may be, in respect of the subject matter of the opinion, advice or direction.

(3) Subsection (2) does not operate to indemnify a guardian or trustee in respect of any act done in accordance with the opinion, advice or direction if the guardian or trustee has been guilty of any fraud or wilful concealment or misrepresentation in obtaining the opinion, advice or direction.

42. Self-explanatory.

43. Purchase of necessities.

44. Contracts binding.

45. Direction of the Court.

46. A guardianship order or a trusteeship order is not of itself sufficient to establish that a dependent adult does not have legal capacity to make a testamentary disposition.

47. (1) In this section "foreign order" means any order of any court outside Alberta finding a person to be 18 years of age or older and unable to manage his affairs or estate or an order committing the estate of a person unable to manage it to a trustee.

(2) Where any foreign order is made in

(a) any province or territory of Canada, or

(b) any jurisdiction outside Canada, approved by the Lieutenant Governor in Council,

the foreign order may be resealed upon an order of the Surrogate Court and thereupon the foreign order

(c) is of the same force and effect in Alberta as if it were issued by the Surrogate Court,

(d) is, as regards an estate in Alberta, subject to any order of the Surrogate Court to which a trusteeship order is subject, and is, as regards a person in Alberta, subject to any order of the Surrogate Court to which a guardianship order is subject, and

(e) is, as regards an estate in Alberta, subject to appeal and reviews in the same manner as a trusteeship order and is, as regards a person in Alberta, subject to appeal and review in the same manner as a guardianship order.

(3) A duplicate of a foreign order sealed with the seal of the court that sealed it or a copy of a foreign order certified by or under the direction of the court that granted it, is as effective as the original.

(4) A foreign order shall not be resealed under this section until

(a) a certificate has been issued by the registrar, clerk or other officer of the court or other body that issued the foreign order that security has been given to that court in a sum sufficient to cover the whole of the estate of the person in respect of whom it was made, and

(b) security has been given to a court in Alberta to cover the part of the estate in Alberta of the person in respect of whom it was made, unless the Surrogate Court dispenses with security.

48. The Surrogate Court or the Supreme Court of Alberta may order that the costs of any application or report made to it pursuant to this Act be paid by

46. Testamentary disposition made by dependent adult.

47. Foreign orders.

48. Costs of reports and applications.

- (a) the person making the application, or
 - (b) the person in respect of whom the application is made, or
 - (c) the estate of a dependent adult, or
 - (d) the Crown in right of Alberta,
- or by all or any two of them.

PART 4

TRUSTEESHIP WITHOUT COURT ORDER AND APPEAL PANELS

Division 1

Trusteeship Without Court Order

49. (1) Where, after separate examinations of a person 18 years of age or older who is resident for any period of time in a facility at the time the examinations are made,

- (a) two physicians, or
- (b) a physician and a therapist,

are of the opinion that the person is unable to make reasonable judgments with respect to all or any matters pertaining to his estate, they may issue a certificate of incapacity in the form prescribed in the regulations.

(2) The certificate of incapacity shall show

- (a) the names of
 - (i) the two physicians, or
 - (ii) the physician and the therapist, issuing it,
- (b) the date that each examination was made,
- (c) the facts upon which the therapist, where appropriate, and each physician formed his opinion that the person was unable to make reasonable judgments with respect to all or any matters pertaining to his estate, distinguishing the facts observed by him from the facts communicated to him by others,
- (d) the date of issue, and
- (e) the signatures of the persons issuing the certificate.

50. Immediately after a certificate of incapacity is issued, one of the physicians who signs the certificate shall

- (a) notify or cause to be notified, the Public Trustee,
- (b) mail or cause to be mailed to
 - (i) the Public Trustee, the certificate of incapacity, and
 - (ii) the person's guardian or if he has no guardian his nearest relative living in Canada, a copy of the certificate of incapacity,and
- (c) mail or cause to be mailed to the Public Guardian, a copy of the certificate of incapacity if he is not served pursuant to clause (b).

49. Certificate of incapacity.

50. Notification of issue of certificate of incapacity.

51. (1) Subject to this section, upon the issue of a certificate of incapacity the Public Trustee becomes the trustee of the estate of the person named in the certificate.

(2) Where

(a) after a certificate of incapacity has been issued the Public Trustee learns that a trusteeship order is in effect with respect to the estate of the person named in the certificate, and

(b) the Public Trustee has not taken any action or done any thing with respect to the estate between the time the certificate was issued and the time he learns the trusteeship order is in effect,

the Public Trustee may apply to the Court for a review of the trusteeship order in accordance with section 35 and shall not take any action or do any thing with respect to the estate until the trusteeship order is reviewed.

(3) Where the Public Trustee does not make an application for review within 28 days of the date on which he learns a trusteeship order is in effect pursuant to subsection (2), the certificate of incapacity shall be deemed to be cancelled.

(4) Where

(a) after a certificate of incapacity has been issued the Public Trustee learns that a trusteeship order is in effect with respect to the estate of the person named in the certificate, and

(b) the Public Trustee has taken any action or done any thing with respect to the estate,

the Public Trustee shall apply to the Court for a review of the trusteeship order in accordance with section 35.

(5) In addition to any other powers the Court has, it may, in the circumstances of a review described in subsection (2) or (4),

(a) terminate the trusteeship order and direct that the certificate of incapacity shall have effect from a date specified by the Court, and

(b) make any order it considers necessary to resolve any matter resulting from the fact that both a trusteeship order and a certificate of incapacity were in effect with respect to a person's estate.

(6) Notwithstanding that a certificate of incapacity is of no effect, if a trusteeship order exists with respect to a person named in a certificate of incapacity, any action taken or thing done by the Public Trustee in the belief that no trusteeship order was in existence with respect to the estate of the person is as valid as if the action taken or thing done had been taken or done by the Public Trustee

51. Possible conflicts between certificate of incapacity and trusteeship order resolved.

pursuant to a certificate of incapacity and as if no trusteeship order had been in effect with respect to the estate of that person.

52. (1) The Public Trustee shall, at least once every two years, apply to an appeal panel to have each certificate of incapacity reviewed by the appeal panel.

(2) The Public Trustee shall, at least 10 days before the review is to be heard by an appeal panel, serve a copy of the application on

- (a) the person named in the certificate of incapacity to be reviewed,
- (b) the person's guardian or if he has no guardian his nearest relative living in Canada,
- (c) if the person is a resident of a facility, the person in charge of the facility, and
- (d) the Public Guardian if he is not served pursuant to clause (b).

(3) After hearing the application for review of a certificate of incapacity the appeal panel, where it is satisfied that the person in respect of whom the application is made is

- (a) unable to make reasonable judgments in respect of matters relating to all or any part of his estate, and
- (b) in need of a trustee,

may order that

- (c) the certificate of incapacity is to continue in effect with respect to all of the estate of the person named therein, or
- (d) the certificate of incapacity is only to apply to that part of the estate named in the order,

and shall specify the time within which the certificate of incapacity is to be reviewed again by the appeal panel which shall not be longer than two years from the date of review unless before that time the certificate of incapacity is terminated pursuant to this Act.

(4) Where the appeal panel is satisfied that a person who is the subject of a certificate of incapacity is able to make reasonable judgments with respect to matters pertaining to his estate it may issue an order terminating the certificate of incapacity.

(5) The persons served under subsection (2) shall be notified by the chairman of the appeal panel of the order made under this section.

52. Review of certificate of incapacity at least once every two years.

53. (1) Where, after separate examinations by each of them,

- (a) two physicians, or
- (b) a physician and a therapist,

are of the opinion that a person who is the subject of a certificate of incapacity is able to make reasonable judgments with respect to matters pertaining to his estate, they may issue an order terminating the certificate of incapacity.

(2) The order terminating the certificate of incapacity shall show

- (a) the names of
 - (i) the two physicians, or
 - (ii) the physician and the therapist, who issued it,
- (b) the date that each examination was made,
- (c) the facts on which the therapist, where appropriate, and each physician formed in his opinion that the person was able to make reasonable judgments with respect to his estate, distinguishing the facts observed by him from the facts communicated to him by others,
- (d) the date of issue, and
- (e) the signatures of the persons issuing it.

54. Immediately after an order terminating a certificate of incapacity is issued pursuant to section 53, the physician who signed the order shall

- (a) notify or cause to be notified, the Public Trustee,
- (b) mail or cause to be mailed to
 - (i) the Public Trustee, the order, and
 - (ii) the person's guardian or if he has no guardian the nearest relative of the person concerned who is living in Canada, a copy of the order and
- (c) mail or cause to be mailed to the Public Guardian a copy of the order if the Public Guardian is not served pursuant to clause (b).

55. Upon

- (a) notification of an order of the Supreme Court terminating a certificate of incapacity, or
- (b) notification of a trusteeship order, or
- (c) receipt of an order terminating, varying or amending a certificate of incapacity pursuant to section 52 or 53,

53. Termination of certificate of incapacity.

54. Persons to be notified of termination of certificate of incapacity.

55. Termination of trusteeship of Public Trustee.

the Public Trustee ceases to be the trustee of the estate or that part of the estate specified by an appeal panel of the person named in the certificate of incapacity and shall account to that person for the estate or that part of the estate formerly under his trusteeship.

- 56.** A certificate of incapacity remains in effect until
- (a) a trusteeship order is made by the Court, or
 - (b) it is terminated by an appeal panel, or
 - (c) it is terminated by an order of the Supreme Court,
or
 - (d) it is terminated pursuant to section 53.

Division 2

Rights of Persons in respect of whom a Certificate of Incapacity is issued

57. (1) Upon receipt by the Public Trustee of a certificate of incapacity, the Public Trustee shall give a written statement to

- (a) the person in respect of whom the certificate of incapacity is issued,
 - (b) the guardian of the person in respect of whom the certificate of incapacity is issued or if he has no guardian his nearest relative living in Canada, and
 - (c) the Public Guardian if he is not served under clause (b),
- containing the following information
- (d) a statement to the effect that a certificate of incapacity has been issued,
 - (e) an explanation of the effect of the certificate of incapacity, and
 - (f) a statement as to the right of the person in respect of whom the certificate is issued to appeal to an appeal panel for termination of the certificate of incapacity.

(2) Where the person in respect of whom the certificate of incapacity is issued, his guardian or nearest relative, as the case may be, is unable to understand the written statement, the Public Trustee shall, by whatever means are most appropriate, ensure that as far as possible the person and his guardian or nearest relative, as the case may be, understand the matters referred to in subsection (1), clauses (d) to (f).

56. Period of time that a certificate of incapacity remains in effect.

57. Persons to be notified of the effect of a certificate of incapacity.

Division 3

Appeal Panels

58. (1) The Minister shall establish one or more appeal panels for the purpose of hearing and considering applications from persons in respect of whom a certificate of incapacity has been issued.

(2) Each appeal panel shall be appointed by the Minister and composed of

- (a) two physicians or one physician and one therapist,
- (b) a solicitor who shall be chairman, and
- (c) a person representative of the general public.

(3) The Minister may designate a vice-chairman of the appeal panel and may appoint one or more alternate members in accordance with subsection (2) and where for any reason a member of an appeal panel cannot act he shall be replaced by an appropriate alternate member who shall act until the hearing is complete, and when so acting, an alternate member is a member for all purposes.

(4) The Minister may periodically review the appointment of the members and alternate members to appeal panels and make such changes as he considers advisable.

59. (1) A quorum for an appeal panel is three members or alternate members appointed pursuant to section 58.

(2) Each member of the appeal panel is entitled to one vote.

(3) A decision of a majority of the members is the decision of the appeal panel.

60. (1) No person who is actively serving as a member of the staff of a facility is eligible to sit as a member or alternate member of an appeal panel when the panel is considering an application from a person in respect of whom a certificate of incapacity has been issued and who is or was a resident of the facility with which he is connected.

(2) No person who is

- (a) related by blood or marriage to a person applying to an appeal panel, or
- (b) a person who is treating or who has treated a person applying to an appeal panel, or
- (c) a solicitor who is acting or who has acted for a person applying to an appeal panel,

is eligible to be appointed as or to sit as a member or alternate member of an appeal panel for an application by that person.

58. Establishment of appeal panels.

59. Quorum and decisions of appeal panels.

60. Persons who are not permitted to be appointed or sit as members of appeal panels.

61. (1) An appeal panel shall hear and consider appeals in accordance with this Act and the regulations and for that purpose the members of the appeal panel have all the powers of a commissioner appointed under *The Public Inquiries Act*.

(2) The Minister shall provide such secretarial, legal, consultative and other assistance to each appeal panel as may be required.

Division 4

Appeals from Certificate of Incapacity to Appeal Panel

62. (1) A person in respect of whom a certificate of incapacity is issued may appeal to an appeal panel for termination of the certificate of incapacity by sending notice of appeal to the chairman of the appropriate appeal panel in the form prescribed in the regulations.

(2) An appeal for the termination of a certificate of incapacity may be made by the person in respect of whom it is issued or an interested person on his behalf.

(3) After the first appeal to an appeal panel, the persons referred to in subsection (2) may not make any further appeal for termination of the certificate of incapacity until the expiration of six months following the decision of an appeal panel but the Public Trustee or the Public Guardian may appeal at any time.

(4) Where an appeal has been made to an appeal panel by a person no other appeal shall be made by that person until the appeal panel has disposed of the appeal.

63. (1) Upon receipt of an appeal under section 62, the chairman of an appeal panel shall give notice to

- (a) the applicant and any person acting on his behalf,
- (b) the guardian of the applicant or if there is no guardian, the nearest relative of the applicant living in Canada and any other person that the chairman considers may be affected by the application and should be notified,
- (c) the Public Trustee, and
- (d) the Public Guardian if he is not served pursuant to clause (b),

of the date, time and place of the hearing.

(2) As soon as it is able to do so, the appeal panel shall carry out whatever investigation and hearing it considers necessary and may invite the applicant and any other person to testify or produce evidence at the hearing.

61. Powers of appeal panels and clerical assistance.

62. Appeal for cancellation of certificate of incapacity.

63. Notice of appeal.

64. (1) All proceedings of an appeal panel shall be conducted in private and, subject to subsection (2), no person has a right to be present without the prior consent of the chairman.

(2) The applicant and his representative and those persons served pursuant to section 63 have the right to be personally present during the presentation of any evidence to the appeal panel, but if in the opinion of the appeal panel there may be an adverse effect on the applicant's health by his presence, the applicant may be excluded, but in that event the appeal panel shall appoint a person to act on his behalf if he does not already have a representative.

(3) The applicant or person acting on his behalf has the right of cross-examination.

(4) Except as permitted by the chairman and except where the report is published by the applicant or his representative, no person shall publish any report of a hearing, investigation or deliberation by an appeal panel or the names of any persons concerned therewith.

(5) The chairman of an appeal panel may adjourn a hearing for any period up to 21 days, and with the consent of the Minister for a longer period, for any purpose he considers necessary.

65. (1) Within 28 days of the receipt of an appeal by the chairman of an appeal panel under section 62 or such longer period as the Minister allows, the appeal panel shall hear and consider the appeal.

(2) An appeal panel may, in the same manner as it comes to a decision under section 52, make any of the orders specified in section 52.

(3) Where an appeal panel terminates a certificate of incapacity the chairman thereof shall immediately notify the Public Trustee.

(4) Within seven days of the date of its decision, the chairman of the appeal panel shall send a written report of the decision to the same persons who were served pursuant to section 63, subsection (1) and any other person that the chairman considers should be notified.

(5) Where the appeal panel refuses to cancel a certificate of incapacity, the written report shall contain a statement of the right of the applicant to appeal the decision to the Supreme Court under section 66.

(6) An appeal panel may order that the costs of any application or report made to it pursuant to this Act be paid by

(a) the person making the application, or

64. Proceedings of appeal panel.

65. Decision of appeal panel.

- (b) the person in respect of whom the application is made, or
 - (c) the estate of a dependent adult, or
 - (d) the Crown in right of Alberta,
- or by all or any two of them.

PART 5

**APPEAL, REGULATIONS, TRANSITIONAL AND
CONSEQUENTIAL AMENDMENTS, REPEAL AND
COMMENCEMENT**

Division 1

Appeal and Regulations

66. (1) Within 21 days, or such further time as the Supreme Court may permit, of

(a) the making of a guardianship order or a trusteeship order, or

(b) the making of an order by an appeal panel, the dependent adult, any person in respect of whom a certificate of incapacity is issued or any interested person on behalf of either of them, may appeal to the Supreme Court by way of originating notice.

(2) The originating notice shall be served upon

(a) any guardian and trustee,

(b) the Public Trustee and the Public Guardian if they are not served pursuant to clause (a),

(c) where the appellant is a resident of a facility, the person in charge of a facility, and

(d) such other persons as the Court may direct,

not less than 15 days before the motion is returnable and the practice and procedure of the Supreme Court pertaining to applications by originating notice applies, so far as it is applicable, to an application under this section, except as otherwise provided by this section.

(3) The notice of appeal shall be supported by an affidavit of the applicant setting forth fully all the facts in support of his appeal.

(4) In addition to the evidence adduced by the applicant, the Supreme Court may direct such further evidence to be given as it considers necessary.

(5) The Supreme Court may make whatever order as to the costs of the application it considers fit.

(6) The Supreme Court may reverse, confirm or vary the order of the Surrogate Court or the appeal panel or may make such other order as it considers just.

67. (1) The Lieutenant Governor in Council may make regulations

66. Appeal to the Supreme Court.

67. Regulations.

- (a) governing appeals to appeal panels and proceedings in connection therewith and with respect to hearings, consideration and investigations of appeal panels and matters incidental thereto and consequential thereon;
 - (b) governing the methods by which information relevant to an application may be obtained by or furnished to an appeal panel and concerning visits and interviews of applicants in private;
 - (c) for making available to any applicant copies of any documents obtained by or furnished to an appeal panel in connection with the application and a statement of the substance of any oral information so obtained or furnished except where the appeal panel considers it undesirable in the interests of the applicant, or for other special reasons, that this be done;
 - (d) prescribing a schedule of costs payable in respect of any application made to an appeal panel or report prepared for the purposes of the panel and for any other matter connected with the hearings and proceedings of appeal panels.
- (2) The Lieutenant Governor in Council may make regulations
- (a) prescribing such forms as are necessary for the purposes of this Act and the regulations;
 - (b) designating places as facilities for the purposes of this Act and the regulations;
 - (c) designating the person in charge of a facility for the purposes of this Act and the regulations;
 - (d) approving jurisdictions outside Canada for the purposes of section 47;
 - (e) prescribing the remuneration and travelling and living expenses payable to the chairman and other members of appeal panels.

Division 2

Transitional and Consequential

68. (1) A certificate of incapacity issued pursuant to section 35 of *The Mental Health Act, 1972* before the coming into force of this Act shall be deemed for all purposes to have been issued pursuant to this Act.

(2) Within two years of the date this Act comes into force the Public Trustee shall apply to an appeal panel for a review of certificates of incapacity referred to in subsection (1) in the same way he applies for a review under section 52.

68. Certificates of incapacity issued under The Mental Health Act, 1972.

69. (1) An application to a review panel for cancellation of a certificate of incapacity made pursuant to section 38 of *The Mental Health Act, 1972* or deemed to have been issued under section 63 of *The Mental Health Act, 1972* before the coming into force of this Act shall be continued to its conclusion as if this Act had not come into force and the provisions of *The Mental Health Act, 1972* amended or repealed by this Act had remained in force.

(2) The right of appeal under section 42 of *The Mental Health Act, 1972* continues with respect to any application referred to in subsection (1).

70. An appeal to the Supreme Court with respect to a decision of a review panel relating to a certificate of incapacity pursuant to section 46 of *The Mental Health Act, 1972* before the coming into force of this Act shall be continued to its conclusion as if this Act had not come into force and the provisions of *The Mental Health Act, 1972* amended or repealed by this Act had remained in force.

71. (1) Any order made by the Supreme Court of Alberta committing the custody of persons to a committee of one or more persons shall, upon the coming into force of this Act, continue to have effect as if this Act had not come into force and *The Mentally Incapacitated Persons Act* had remained in force.

(2) The committee referred to in subsection (1) shall apply for a review of the order in the same manner that a guardian applies for a review of a guardianship order under section 15 of this Act.

(3) Where the Public Guardian becomes aware of an order referred to in subsection (1) which has not been reviewed or for which an application for review has not been made, the Public Guardian shall apply for a review of the order in accordance with section 15 of this Act.

(4) Upon hearing an application for review of an order referred to in subsection (1), the Court shall

(a) terminate the order, and

(b) where it considers it appropriate to do so make an order appointing a plenary or partial guardian of the person named in the order in accordance with this Act.

72. (1) Any order made by the Supreme Court of Alberta committing the custody and management of the estate of a person to a committee of one or more persons shall, upon the coming into force of this Act, continue to have effect as if this Act had not come into force and *The Mentally Incapacitated Persons Act* had remained in force.

69. Applications for cancellation of certificate of incapacity continued to its conclusion under The Mental Health Act, 1972.

70. Appeals to the Supreme Court continued to their conclusion under The Mental Health Act, 1972.

71. Custody orders under The Mentally Incapacitated Persons Act.

72. Custody and management of estate orders under The Mentally Incapacitated Persons Act.

(2) The committee referred to in subsection (1) shall apply for a review of the order in the same manner that a trustee applies for a review of a trusteeship order under section 35 of this Act.

(3) Where the Public Trustee becomes aware of an order referred to in subsection (1) which has not been reviewed or for which an application for review has not been made, the Public Trustee shall apply for a review of the order in accordance with section 35 of this Act.

(4) Upon hearing an application for review of an order referred to in subsection (1), the Court shall

- (a) terminate the order, and
- (b) where it considers it appropriate to do so, make an order appointing a trustee of the whole or any part of the estate of the person named in the order in accordance with this Act.

73. (1) Any order made by the Supreme Court of Alberta committing

- (a) the custody of a person, and
- (b) the custody and management of the estate of the person,

to a committee of one or more persons shall, upon the coming into force of this Act, continue to have effect as if this Act had not come into force and *The Mentally Incapacitated Persons Act* had remained in force.

(2) The committee referred to in subsection (1) shall apply for a review of the order in the same manner that a trustee applies for a review under section 35 of this Act and shall, in addition, give notice of the application for review to any person who would have received notice of it if the review had been of a guardianship order under section 15 of this Act.

(3) Where the Public Trustee or the Public Guardian becomes aware of an order referred to in subsection (1) which has not been reviewed or for which an application for review has not been made

- (a) the Public Trustee shall apply for a review of the order in accordance with section 35 of this Act, and
- (b) the Public Guardian shall apply for a review of the order in accordance with section 15 of this Act.

(4) Upon hearing an application for review of an order referred to in subsection (1) the Court shall

- (a) terminate the order or terminate that part of the order being reviewed by him, and
- (b) where it considers it appropriate to do so, make an order appointing a trustee of all or any part of the

73. Custody and estate orders under The Mentally Incapacitated Persons Act.

estate of the person or appoint a plenary or partial guardian of the person named in the order, as the case may be, in accordance with this Act.

74. Any application made or trial commenced pursuant to section 7, 8 or 9 of *The Mentally Incapacitated Persons Act* before the coming into force of this Act shall be continued to its conclusion as if this Act had not come into force and *The Mentally Incapacitated Persons Act* had remained in force.

75. Any application made under section 11 of *The Mentally Incapacitated Persons Act* before the coming into force of this Act shall be continued to its conclusion as if this Act had not come into force and *The Mentally Incapacitated Persons Act* had remained in force.

76. (1) Notwithstanding that for the purposes of sections 71 to 73 of this Act *The Mentally Incapacitated Persons Act* remains in force, no application to amend, vary, terminate or do any other thing with respect to an order or a person named in an order or in respect of his estate shall be made under that Act.

(2) Where a need arises to apply to a court with respect to anything related to an order referred to in sections 71 to 73, that application shall be made under this Act and, where the court to whom the application is made is satisfied that an order needs to be made before it is reviewed in accordance with sections 71 to 73, the court may make the order as though the original order had been made under this Act.

(3) Where a court makes any order under this section it shall also direct the time within which and the persons who shall apply for a review in accordance with sections 71 to 73.

Division 3

Consequential Amendments

77. *The Emergency Medical Aid Act is amended by striking out section 4.*

78. *The Limitation of Actions Act is amended as to section 59, subsection (2) by striking out clause (b) and substituting the following clause:*

- (b) where the person under disability is a person in respect of whom
 - (i) a committee is appointed under *The Mentally Incapacitated Persons Act*, or

74. Application and trials continued.

75. Application continued.

76. Special circumstances requiring court order before a review by the Surrogate Court.

77. Amends chapter 122 of the Revised Statutes of Alberta 1970.
Section 4 presently reads:

4. Where an adult person
- (a) is, in the written opinion of two physicians, in need of an examination or medical, surgical or obstetrical treatment or is, in the written opinion of two dentists, in need of dental treatment,
 - (b) is incapable by reason of mental or physical disability of understanding and consenting to the examination or medical, surgical, obstetrical or dental treatment needed, and
 - (c) has not previously withheld consent to the examination or medical, surgical, obstetrical or dental treatment needed, to the knowledge of either of the physicians or the dentists referred to in clause (a),
- a physician or dentist may, without the consent of any person,
- (d) examine the person,
 - (e) prescribe treatment for the person, and
 - (f) provide the person with such medical, surgical or obstetrical treatment or with such dental treatment, as the case may be,
- in such a manner and to such an extent as is reasonably necessary and in the best interests of the person examined or treated, in the same way that the physician or dentist could have acted if the person had been an adult of full legal capacity and had consented to such examination or treatment.

78. Amends chapter 209 of the Revised Statutes of Alberta 1970.
Section 59 presently reads:

59. (1) Where a person entitled to bring an action to which this Part applies is under disability at the time the cause of action arises, he may commence the action at any time within two years from the date he ceased to be under disability.
- (2) Subsection (1) does not apply
- (a) where the person under disability is an infant in the actual custody of a parent or guardian, or
 - (b) where the person under disability is a mentally incapacitated person whose affairs are in the custody of a committee or of the Public Trustee.

- (ii) a guardianship order under *The Dependent Adults Act* is in effect and the guardianship order
 - (A) appoints a plenary guardian in respect of the person under disability, or
 - (B) appoints a partial guardian who has capacity to commence an action.

79. *The Marriage Act is amended as to section 27 by striking out subsection (1) and substituting the following subsection:*

27. (1) No person shall issue a marriage licence or solemnize a marriage where he knows or has reason to believe that there is in effect with respect to a party to the intended marriage

- (a) a committee under *The Mentally Incapacitated Persons Act*, or
- (b) a guardianship order or trusteeship order under *The Dependent Adults Act*, or
- (c) a certificate of incapacity under *The Dependent Adults Act*,

unless there is delivered to him a certificate under subsection (2) and, where there is a trustee or a guardian of a party to the intended marriage, proof that the trustee or guardian has been given 14 days' notice of the issuance of the licence or the solemnization of the marriage, as the case may be.

80. *The Administration of Estates Act is amended as to section 8, subsection (3) by striking out clause (b) and substituting the following clause:*

- (b) direct that the applicant or some other person apply to have a trustee of the child's estate appointed under *The Dependent Adults Act*.

81. *The Family Relief Act is amended*

(a) *as to section 14, subsection (2) by striking out clause (a) and substituting the following clause:*

- (a) by the trustee of the estate of a dependant 18 years of age or older on behalf of the dependant where the dependant is one for whose estate a trustee has been appointed by a court or designated by statute, and

(b) *as to section 14, by striking out subsection (3) and substituting the following subsection:*

79. Amends chapter 226 of the Revised Statutes of Alberta 1970.
Section 27, subsections (1) and (2) presently read:

27. (1) No person shall issue a marriage licence or solemnize a marriage where he knows or has reason to believe that there is in effect with respect to a party to the intended marriage

(a) a declaration under The Mentally Incapacitated Persons Act that the party is of unsound mind or is incapable of managing his affairs, or

(b) a certificate of incapacity under The Mental Health Act, 1972,

unless there is delivered to him a certificate under subsection (2) and, where there is a committee of the estate of a party to the intended marriage, proof that the committee has been given at least 14 days' prior notice of the issuance of the licence or the solemnization of the marriage, as the case may be.

(2) A duly qualified medical practitioner may certify in writing that in his opinion a party described in subsection (1), clause (a) or (b) has the capacity to understand the nature of the contract of marriage and the duties and responsibilities relating thereto.

80. Amends chapter 1 of the Revised Statutes of Alberta 1970.
Section 8, subsection (3) presently reads:

(3) Where the deceased is survived by a child who was 18 years of age or over at the time of the deceased's death, is unable by reason of mental disability to earn a livelihood but for whose estate there is no committee, the judge may, having regard to the value of the estate, the circumstances of the child and the likelihood of success of an application made on the child's behalf under The Family Relief Act,

(a) direct that a grant for probate or administration in the deceased's estate not be issued until a committee has been appointed of the child's estate, and

(b) direct that the applicant or some other person apply to have a committee of the child's estate appointed under The Mentally Incapacitated Persons Act.

81. Amends chapter 134 of the Revised Statutes of Alberta 1970.
Section 14, subsections (2) and (3) presently read:

(2) An application may be made

(a) by the committee of the estate of a dependant, on behalf of the dependant, where the dependant is one for whose estate a committee has been appointed by the court or designated by statute, and

(b) by a parent or by a guardian appointed by the court or by the Public Trustee, on behalf of an infant dependant.

(3) Where a dependant is an infant, or a person of unsound mind, or a person for whose estate the Public Trustee is committee, notice of any application in respect of an estate in which such dependant is interested shall be served upon the Public Trustee and the Public Trustee is entitled to appear and to be heard upon the application.

(3) Where the dependant is an infant or the subject of an order under *The Mentally Incapacitated Persons Act* or a guardianship order, trusteeship order or a certificate of incapacity under *The Dependent Adults Act*, or a person for whose estate the Public Trustee is trustee, notice of any application in respect of an estate in which the dependant is interested shall be served on the Public Trustee and any other trustee, and the Public Trustee or any other trustee is entitled to appear and to be heard upon the application.

82. *The Mental Health Act, 1972 is amended*

- (a) *as to section 1 by striking out clause (c),*
- (b) *as to section 19 by striking out subsection (1) and substituting the following subsection:*

19. (1) The Minister shall establish one or more review panels for the purpose of hearing and considering applications from formal patients concerning the cancellation of admission certificates or renewal certificates.

- (c) *by striking out section 35,*
- (d) *as to section 36*
 - (i) *by striking out subsection (2),*
 - (ii) *in subsection (3), by striking out the words "and where appropriate, in subsection (2),"*
 - (iii) *in subsection (4), by striking out the words ", renewal certificates or certificate of incapacity" and substituting the words "or renewal certificates",*
- (e) *by striking out section 37,*
- (f) *by striking out section 37.1,*
- (g) *as to section 38*
 - (i) *subsection (1), by striking out clause (c),*
 - (ii) *by striking out subsection (2),*
 - (iii) *by striking out subsection (5),*
- (h) *as to section 39, by striking out clause (c),*
- (i) *by striking out section 43,*
- (j) *as to section 46, subsection (8) by striking out the word "or" at the end of clause (a) and striking out clause (b),*
- (k) *as to section 47 by striking out the words "continues to exist with respect to the person" and substituting the words "certificate of incapacity issued under The Dependent Adults Act exists with respect to the person",*
- (l) *as to section 57 by striking out the words "certificate of incapacity,".*

§2. Amends chapter 118 of the Statutes of Alberta, 1972.

83. The Public Trustee Act is amended

- (a) as to section 2
 - (i) in clause (a), by striking out the words “The Mental Health Act, 1972” and substituting the words “The Dependent Adults Act”,
 - (ii) in clause (c), by striking out the words “The Mental Health Act, 1972” and substituting the words “The Dependent Adults Act”,
 - (iii) in clause (e), by adding after the words “The Mental Health Act, 1972” the words “or The Dependent Adults Act”,
 - (iv) by striking out clause (h);
- (b) as to section 5
 - (i) in clause (f), by striking out the word “guardian” and substituting the word “trustee”,
 - (ii) by striking out clause (i) and substituting the following clause:
 - (i) act as the trustee of the estate of a mentally incompetent person.
- (c) as to section 12,
 - (i) by striking out subsection (1),
 - (ii) in subsection (2), by striking out the word “committee” wherever it appears and in each case substituting the word “trustee”;
- (b) by striking out section 13 and substituting the following section:

13. The Public Trustee continues to be the trustee of the estate of a mentally incompetent person until

 - (a) the certificate of incapacity
 - (i) is cancelled by a review panel under *The Mental Health Act, 1972*,
 - (ii) is terminated by an appeal panel under *The Dependent Adults Act*, or
 - (iii) is replaced by a trusteeship order made pursuant to *The Dependent Adults Act*.
- (e) by striking out section 14;
- (f) by striking out section 16;
- (g) as to section 17, subsection (1) by striking out the word “committee” and substituting the word “trustee”;
- (h) as to section 21, subsection (1) by striking out the word “committee” and substituting the word “trustee”,
- (i) by striking out section 22;

83. Amends chapter 301 of the Revised Statutes of Alberta 1970.

- (j) *as to section 23, subsection (1) by striking out the words “, guardian or committee” and substituting the words “or guardian”;*
- (k) *by striking out section 33;*
- (l) *as to the Schedule, Form A*
 - (i) *by striking out the words “The Mental Health Act, 1972” and substituting the words “The Dependent Adults Act”,*
 - (ii) *by striking out the word “committee” and substituting the word “trustee”.*

84. *The Trustee Act is amended*

- (a) *as to section 16, subsection (2) by striking out clause (b) and substituting the following clause:*
- (b) *who is a formal patient under The Mental Health Act, 1972 or in respect of whom a guardian or trustee is appointed under The Dependent Adults Act, or in respect of whom a certificate of incapacity is issued under The Dependent Adults Act;*
- (b) *by adding the following section after section 34:*

34.1 Where any conflict arises between the provisions of section 32.1, 32.2 or 33.1 and *The Dependent Adults Act*, the provisions of *The Dependent Adults Act* prevail.

Division 4

Repeal and Commencement

85. *The Mentally Incapacitated Persons Act* is repealed.

86. This Act comes into force on a date or dates to be fixed by Proclamation.

84. Amends chapter 373 of the Revised Statutes of Alberta 1970.

85. Repeals chapter 232 of the Revised Statutes of Alberta 1970.