

1985 BILL 69

Third Session, 20th Legislature, 34 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 69

DEPENDENT ADULTS AMENDMENT ACT, 1985

MRS. KOPER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 69
Mrs. Koper

BILL 69

1985

DEPENDENT ADULTS AMENDMENT ACT, 1985

(Assented to _____, 1985)

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

- 1 *The Dependent Adults Act is amended by this Act.*
- 2 *Section 1 is amended*
 - (a) *in clause (f) by striking out “plenary or partial”;*
 - (b) *in clause (g) by striking out “plenary guardian or partial”;*
 - (c) *in clause (n) by adding “and, with respect to a physician who practises medicine outside Alberta, means a person who is licensed or otherwise authorized to practise medicine in the jurisdiction where he practises” after “Act”;*
 - (d) *in clause (o) by adding “and, with respect to a psychologist who practises psychology outside Alberta, means a person who is licensed or otherwise authorized to practise psychology in the jurisdiction where he practises” after “Act”.*
- 3 *Section 2 is amended*
 - (a) *by repealing subsection (1) and substituting the following:*

2(1) Subject to this section and section 3, any interested person may apply to the Court for an order appointing a guardian in respect of an adult person.
 - (b) *in subsection (3) by striking out “plenary or partial guardian, as the case may be,” and substituting “guardian”.*
- 4 *Section 2.1 is repealed.*

Explanatory Notes

1 This Bill will amend chapter D-32 of the Revised Statutes of Alberta 1980.

2 Section 1 presently reads in part:

1 In this Act,

(f) “guardian” means the person named as a 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;

(n) “physician” means a person registered as a medical practitioner under the Medical Profession Act;

(o) “psychologist” means a person registered under Part 2 of the Psychologists Act;

3 Section 2(1) and (3) presently read:

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 an adult person.

(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.

4 See sections 37 and 38 of this Bill. Section 2.1 presently reads:

2.1(1) A physician or psychologist who makes a report under section 2 shall not acquire any liability for making the report.

(2) No person shall disclose any information provided in a report referred to in section 2 except

5 *Section 3 is amended*

(a) *in subsection (1) by adding “by originating notice” after “be made”;*

(b) *by adding the following after subsection (2):*

(2.1) No order for service ex juris is necessary for service of a copy of an application on any of the persons referred to in subsection (2) in a province of Canada other than Alberta or in the United States of America, but service must be effected at least

(a) 30 days before the date the application is to be heard in the case of a person in a province other than Alberta, or

(b) 45 days before the date the application is to be heard in the case of a person in the United States of America.

(a) when the disclosure is made to an interested person to assist him in deciding whether or not an application should be made under this Act, or

(b) at a proceeding under this Act.

(3) A person who contravenes subsection (2) is guilty of an offence and liable to a fine of not more than \$1000.

5 Section 3 presently reads:

3(1) An application for an order appointing a guardian shall be made

(a) in the judicial district in which the person in respect of whom the application is made is ordinarily resident, or

(b) if the Court considers it appropriate in the circumstances of the case, in any other judicial district.

(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 person living in Canada who is

(i) the nearest relative of the person in respect of whom the application is made, or

(ii) if the nearest relative referred to in subclause (i) is the applicant, the next nearest relative of the person in respect of whom the application is made,

(c) the person proposed as the guardian 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),

(d) if the person in respect of whom the application is made is a resident of an institution, the person in charge of the institution,

(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) any other person that the Court may direct.

(3) The Court may, if 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),

(b) dispense with the requirement for service on all or any of the persons referred to in subsection (2), except the Public Guardian and, subject to clause (c), the person in respect of whom the application is made, or

(c) dispense with the requirements for service on the person in respect of whom the application is made if

(i) the Public Guardian consents, and

(ii) the Court is satisfied that it is in the best interests of that person to do so.

6 *Section 4 is amended*

(a) *in subsection (1)(a) by striking out “is in need of a plenary guardian, partial guardian or any” and substituting “would substantially benefit by the appointment of a”;*

(b) *in subsection (2)(a) by striking out “plenary guardian, partial guardian or any”.*

7 *Section 6(1), (2) and (3) are repealed and the following is substituted:*

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

(a) an adult, and

(b) repeatedly or continuously unable

(i) to care for himself, and

(ii) to make reasonable judgments in respect of matters relating to his person

the Court may make an order appointing a guardian.

(2) The Court shall not make an order under subsection (1) unless it is satisfied that the order would

(a) be in the best interests of, and

(b) result in substantial benefit to

the person in respect of whom the application is made.

8 *Section 7(1) is amended*

(a) *by striking out “plenary guardian or partial”;*

(b) *in clause (c) by adding “and is able” after “person”.*

9 *Section 8 is amended*

(a) *by adding “or reviewing” after “making”;*

(b) *in clause (a) by striking out “3 years after the date of the order” and substituting “6 years after the date of the order or the date of the review of the order, as the case may be.”*

10 *Section 9 is repealed.*

6 Section 4(1)(a) and (2)(a) presently read:

4(1) On 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

(2) When

(a) the Court has any doubt as to whether a plenary guardian, partial guardian or any guardian should be appointed, or

7 Section 6 presently reads in part:

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

(a) an adult,

(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,

and

(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 an 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.

(3) The Court shall not make an order appointing a plenary guardian unless it is satisfied that a partial guardianship order would be insufficient to meet the needs of the person in respect of whom the application is made.

8 Section 7(1) presently reads in part:

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

(c) he is a suitable person to act as the guardian of the dependent adult, and

(d) he is a resident of Alberta.

9 Section 8 presently reads in part:

8 On making a guardianship order the Court shall specify

(a) the time within which the order must be reviewed by the Court which shall not be later than 3 years after the date of the order,

10 Section 9 presently reads:

9(1) Subject to subsection (2), when 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;

11 *Section 10(1) and (2) are repealed and the following is substituted:*

10(1) When the Court makes an order appointing a guardian, the Court shall grant to the guardian only the powers and authority referred to in subsection (2) that are necessary for him to make or assist in making reasonable judgments in respect of matters relating to the person of the dependent adult.

(2) In making an order appointing a 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 guardian:

- (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 engage in social activities and, if so, the nature and extent thereof and related matters;

(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 proceeding that does not relate to the estate of the dependent adult and to compromise or settle any proceeding 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 any other decisions that 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 any conditions or restrictions 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.

11 Section 10(1) and (2) presently read:

10(1) When the Court makes an order appointing a partial guardian, the Court shall grant to the partial guardian only the power and authority that 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) to decide whether the dependent adult should work and, if so, the nature or type of work, for whom he is to work and related matters;
- (e) to decide whether the dependent adult should participate in any educational, vocational or other training and, if so, the nature and extent thereof and related matters;
- (f) to decide whether the dependent adult should apply for any licence, permit, approval or other consent or authorization required by law;
- (g) to commence, compromise or settle any legal proceeding that does not relate to the estate of the dependent adult and to compromise or settle any proceeding 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) any other matters specified by the Court and required by the guardian to protect the best interests of the dependent adult.

12 Section 12(2) is amended by striking out “or the Court of Queen’s Bench”.

13 Section 13 is amended by striking out “or suitable” and substituting “and suitable”.

14 Section 14 is amended by striking out “plenary or partial”.

(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, compromise or settle any legal proceeding that does not relate to the estate of the dependent adult and to compromise or settle any proceeding taken against the dependent adult that does not relate to his estate;

(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.

12 Section 12(2) presently reads:

(2) Where the Public Guardian is given any power or duty under this Act or the regulations or by an order of the Court or the Court of Queen's Bench, he may authorize in writing one or more persons to exercise or perform that power or duty on 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 Section 13 presently reads:

13 When 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 Section 14 presently reads:

14 If 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.

15 *Section 15 is amended*

(a) *in subsection (1) by adding “by notice of motion” after “to the Court”;*

(b) *by adding the following after subsection (2):*

(2.1) No order for service ex juris is necessary for service on any of the persons referred to in subsection (2) in a province of Canada other than Alberta or in the United States of America, but service must be effected at least

(a) 30 days before the date the application is to be heard in the case of a person in a province other than Alberta, or

(b) 45 days before the date the application is to be heard in the case of a person in the United States of America.

16 *Section 16(1)(a) is amended by adding “whether the conditions referred to in section 6(1) and (2) are still applicable and” before “whether”.*

17 *Section 17(1)(a) is amended by striking out “of the original” and substituting “or temporary absence of the”.*

18 *Section 18 is amended*

(a) *by repealing subsection (1) and substituting the following:*

18(1) If an alternate guardian is appointed, the alternate guardian shall take over the office of guardian without further proceedings

15 Section 15 presently reads:

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) When 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 person living in Canada who is

(i) the nearest relative of the dependent adult, or

(ii) if the nearest relative referred to in subclause (i) is the applicant, the next nearest relative of the dependent adult,

(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 an institution, the person in charge of the institution,

(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) any other person the Court may direct.

(3) The Court may, when 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 requirement for service on all or any of the persons referred to in subsection (2), except the Public Guardian.

16 Section 16(1)(a) presently reads:

16(1) On hearing an application for review of a guardianship order, the Court

(a) shall consider whether the guardian has exercised his power and authority in accordance with the guardianship order and section 11, and

17 Section 17(1) presently reads:

17(1) On making a guardianship order or on 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

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

18 Section 18(1) and (2) presently read:

18(1) If 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 on the death of the original guardian.

- (a) in the event of the death of the guardian, or
- (b) if authorized in writing by the guardian, during the temporary absence of the guardian.

(1.1) An authorization under subsection (1)(b) shall indicate the period during which the alternate guardian may act as guardian and terminates

- (a) at the end of the period indicated on the authorization, or
- (b) when revoked in writing by the previous guardian, whichever is earliest.

(b) in subsection (2)

- (i) by adding “Clerk of the” before “Court” wherever it occurs;*
- (ii) by striking out “original” wherever it occurs and substituting “previous”.*

19 Section 19 is amended

(a) by repealing subsection (2) and substituting the following:

(2) An application under subsection (1) shall be made by notice of motion

- (a) in the judicial district in which the dependent adult is ordinarily resident, or
- (b) if the Court considers it appropriate in the circumstances of the case, in any other judicial district.

(b) by adding the following after subsection (5):

(6) If the Court makes an order under subsection (4), the applicant shall serve a copy of the order on the persons who are required to be served with a copy of an application under section 15.

20 Section 20(1) is amended by striking out “plenary or partial guardian of the dependent adult, as the case may be,” and substituting “guardian”.

21 Section 21.1 is repealed.

(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.

19 Section 19 presently reads in part:

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(2) and the provisions of section 15(3) apply.

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

(f) is no longer a resident of Alberta,

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

20 Section 20(1) presently reads:

20(1) On the death of a guardian and in the absence of an alternate guardian, the Public Guardian, on 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.

21 See sections 37 and 38 of this Bill. Section 21.1 presently reads:

21.1(1) A physician or psychologist who makes a report under section 21 shall not acquire any liability for making the report.

(2) No person shall disclose any information provided in a report under section 21 except

(a) where the disclosure is made to an interested person to assist him in deciding whether or not an application should be made under this Act, or

(b) at a proceeding under this Act.

22 *Section 22 is amended*

(a) *in subsection (1) by adding “by originating notice” after “be made”;*

(b) *by adding the following after subsection (2):*

(2.1) No order for service ex juris is necessary for service on any of the persons referred to in subsection (2) in a province of Canada other than Alberta or in the United States of America, but service must be effected at least

(a) 30 days before the date the application is to be heard in the case of a person in a province other than Alberta, or

(b) 45 days before the date the application is to be heard in the case of a person in the United States of America.

23 *Section 26(1.2) is amended by striking out “bring in and pass his accounts” and substituting “submit a statement of his accounts verified under oath to the Court for approval”.*

24 *Section 27 is amended*

(a) *in subsection (1) by adding “or reviewing” after “making”;*

(b) *in subsection (2)*

(i) *by adding “or reviewing” after “making”;*

(ii) *in clause (a) by striking out “3 years after the date of the order” and substituting “6 years after the date of the order or the date of the review of the order, as the case may be.”*

25 *Section 29 is amended by adding the following after clause (h):*

(i) sell or otherwise dispose of personal property having a fair market value that is not greater than the amount prescribed by the regulations;

(j) commence, compromise or settle a claim or court action that relates to the estate.

(3) A person who contravenes subsection (2) is guilty of an offence and liable to a fine of not more than \$1000.

22 Section 22 presently reads:

22(1) An application for an order appointing a trustee shall be made

(a) in the judicial district in which the person in respect of whom the application is made is ordinarily resident, or

(b) if the Court considers it appropriate in the circumstances of the case, in any other judicial district.

(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

(e) the Public Trustee, if he is not the applicant or the person served pursuant to clause (c),

(3) The Court may, when 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 requirement for service on all or any of the persons referred to in subsection (2), except the Public Trustee.

23 Section 26(1.2) presently reads:

(1.2) If the Court appoints the Public Trustee as the trustee under subsection (1) it shall include in the order appointing the trustee a direction as to the times at which the Public Trustee shall bring in and pass his accounts for the purposes of section 31.

24 Section 27 presently reads:

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

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

(a) the time within which the order must be reviewed by the Court which shall not be later than 3 years after the date of the order,

(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 Section 29 presently reads:

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 3 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 to it;

26 *Section 30 is amended*

(a) *in clause (a) by striking out “real or personal property” and substituting “real property or personal property having a fair market value that is greater than the amount prescribed by the regulations referred to in section 29(i)”;*

(b) *by repealing clause (h).*

27 *Section 31 is amended*

(a) *in subsection (1)(a) by adding “at the time of the application under section 21 or” before “within”;*

(b) *by adding the following after subsection (3):*

(3.1) Notwithstanding subsection (3), if

(a) a trustee submits a statement of his accounts verified under oath to the Court for approval, and

(b) the Court approves the statement so submitted,

the Court may dispense with the requirement for passing the accounts of the trustee.

(c) *by repealing subsection (4) and substituting the following:*

(4) If the Public Trustee is the trustee, he shall

(a) at the time that the Court directs under section 26(1.2) submit the statement of his accounts referred to in that section to the Court for approval, and

(b) bring in and pass his accounts at the time the Court directs under subsection (2) if the Court makes an order under that subsection.

(d) *in subsection (5) by striking out “22(2)” and substituting “22”.*

28 *Section 33 is amended by striking out “or suitable” and substituting “and suitable”.*

29 *Section 35 is amended*

(a) *in subsection (1) by adding “by notice of motion” after “to the Court”;*

(e) give a consent to the transfer or assignment of a lease if 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.

26 Consequential to section 25 of this Bill. Section 30(a) and (h) presently read:

30 The Court may on any terms and conditions 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:

(a) purchase, sell, mortgage, grant or accept leases for more than 3 years or otherwise dispose of real or personal property;

(h) compromise or settle a court action;

27 Section 31 presently reads in part:

31(1) When a trustee of the estate of a dependent adult is appointed or when 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 6 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;

(3) A trustee, other than the Public Trustee, shall, at least once every 2 years, file his accounts with the clerk of the Court and apply to the Court, on such notice as the Court may direct, for an order passing his accounts and for any further or other order or direction that circumstances require.

(4) If the Public Trustee is the trustee, he shall bring in and pass his accounts at the times that the Court directs under section 26(1.2) and under subsection (2) if the Court makes an order under that subsection.

(5) If the Court makes an order under this section the applicant shall serve a copy of the order on the persons who are required to be served with an application under section 22(2).

28 Section 33 presently reads in part:

33 When 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

29 Section 35 presently reads:

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.

(b) in subsection (2)(f) by striking out “trustee” and substituting “guardian”;

(c) by adding the following after subsection (2):

(2.1) No order for service ex juris is necessary for service on any of the persons referred to in subsection (2) in a province of Canada other than Alberta or in the United States of America, but service must be effected at least

(a) 30 days before the date the application is to be heard in the case of a person in a province other than Alberta, or

(b) 45 days before the date the application is to be heard in the case of a person in the United States of America.

30 Section 37(1)(a) is amended by striking out “of the original” and substituting “or temporary absence of the”.

31 Section 38 is amended

(a) by repealing subsection (1) and substituting the following:

38(1) If an alternate trustee is appointed, the alternate trustee shall take over the office of trustee without further proceedings

(a) in the event of the death of the trustee, or

(b) if authorized in writing by the trustee, during the temporary absence of the trustee.

(1.1) An authorization under subsection (1)(b) shall indicate the period during which the alternate trustee may act as trustee and terminates

(a) at the end of the period indicated on the authorization, or

(2) *When 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 an institution, the person in charge of the institution,*

(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) *any other person the Court may direct.*

(3) *The Court may, when 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 requirement for service on all or any of the persons referred to in subsection (2), except the Public Trustee.*

30 Section 37(1) presently reads:

37(1) On making a trusteeship order or on 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*

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

31 Section 38 presently reads:

38(1) If an alternate trustee is appointed, the alternate trustee shall take over the office of trustee without further proceedings immediately on 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 certified copy of the death certificate of the original trustee.*

(3) *On the appointment of the alternate trustee becoming effective, the authority of the alternate trustee is the same as that of the trustee he replaces.*

(b) when revoked in writing by the previous trustee,
whichever is earlier.

(b) in subsection (2)

(i) by adding “Clerk of the” before “Court” wherever it occurs;

(ii) by striking out “original” wherever it occurs and substituting “previous”;

(c) by adding the following after subsection (3):

(4) When the alternate trustee takes over the office of trustee because of the death of the previous trustee, he may require the legal representative of the previous trustee to provide an accounting with respect to the estate of the dependent adult.

(5) If the legal representative of the previous trustee does not provide an accounting under subsection (4) to the satisfaction of the alternate trustee, the alternate trustee may apply by notice of motion to the Court for an order requiring the legal representative to bring in and pass the accounts of the previous trustee with respect to the estate of the dependent adult.

32 Section 39(2) is repealed and the following is substituted:

(2) An application under subsection (1) shall be made by notice of motion

(a) in the judicial district in which the dependent adult is ordinarily resident, or

(b) if the Court considers it appropriate in the circumstances of the case, in any other judicial district.

33 The following is added after section 41:

41.1(1) When the Public Trustee takes over the office of trustee, he may require the legal representative of the previous trustee to provide an accounting with respect to the estate of the dependent adult.

(2) If the legal representative of the previous trustee does not provide an accounting under subsection (1) to the satisfaction of the Public Trustee, the Public Trustee may apply by notice of motion to the Court for an order requiring the legal representative to bring in and pass the accounts of the previous trustee with respect to the estate of the dependent adult.

34 Section 45 is amended

(a) in subsection (1) by striking out “originating notice for the opinion, advice or direction of the Court of Queen’s Bench or of” and substituting “notice of motion for the opinion, advice or direction of”;

(b) in subsection (2) by striking out “Court of Queen’s Bench or the”.

32 Section 39(2) presently reads:

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

33 Accounting by legal representative of deceased trustee.

34 Section 45(1) and (2) presently read:

45(1) A guardian or trustee may apply by originating notice for the opinion, advice or direction of the Court of Queen's Bench 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 on the opinion, advice or direction given by the Court of Queen's Bench 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.

35 *Section 47 is amended*

(a) *by repealing subsection (1) and substituting the following:*

47(1) In this section, “foreign order” means an order made by a court outside Alberta that appoints a person having duties comparable to those of a guardian or trustee with respect to a person who is 18 years or older or with respect to the estate of such a person.

(b) *by adding the following after subsection (2):*

(2.1) When the Court makes an order under subsection (2) it shall set a date for the review of the resealed order and the date for review shall be

(a) the date provided for review by the terms of the resealed order, or

(b) the date for review required by this Act,

whichever date is sooner.

(c) *in subsection (4) by renumbering clause (a) as clause (a.1) and adding the following before clause (a.1):*

(a) a certificate has been issued by the registrar, clerk or other officer of the court that issued the foreign order to the effect that the order is wholly unrevoked and of full effect,

(d) *by adding the following after subsection (4):*

(5) An application to reseal a foreign order and a copy of the resealed order shall be served on the persons referred to in section 3 or 22, whichever is appropriate.

36 *Section 48 is repealed and the following is substituted:*

48 The Surrogate Court or the Court of Appeal may order that the costs of any application or report made to it under this Act

(a) be paid by all or any of the following:

(i) the Crown in right of Alberta;

(ii) the person making the application, where it is satisfied that it would not be a hardship to do so;

(iii) the person in respect of whom the application is made, where it is satisfied that it would not be a hardship to do so;

(iv) the estate of the dependent adult, where it is satisfied that it would not be a hardship to do so;

or

(b) be paid by the person making the application, where it is satisfied that the application is frivolous or vexatious.

35 Section 47 presently reads:

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) If a 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 on 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.

36 Section 48 presently reads:

48 The Surrogate Court, the Court of Queen’s Bench or the Court of Appeal may order that the costs of any application or report made to it pursuant to this Act be paid

(a) by the Crown in right of Alberta,

(b) where it is satisfied that it would not be a hardship to do so, by any or all of the following:

(i) the person making the application;

(ii) the person in respect of whom the application is made;

(iii) the estate of the dependent adult,

or

(c) by the person making the application, where the Court is satisfied that the application is frivolous or vexatious.

37 *Section 49 is amended*

(a) *in subsection (4) by striking out “this section” and substituting “subsections (1) to (3)”;*

(b) *by adding the following after subsection (4):*

(4.1) No person shall disclose any information provided in a report under section 2 or 21 except

(a) where the disclosure is made to an interested person to assist him in deciding whether or not an application should be made under this Act, or

(b) at a proceeding under this Act.

(c) *in subsection (5) by striking out “\$500” and substituting “\$1000”.*

38 *The following is added after section 49:*

49.1 A person who makes a report or gives information for the purpose of an application under this Act or to assist in deciding whether an application should be made under this Act shall not acquire any liability for making the report or giving the information if he makes the report or gives the information in good faith and has reasonable and probable grounds for believing the report or information is true.

39 *Section 51 is repealed and the following is substituted:*

51 Immediately after a certificate of incapacity is issued, the physicians who signed the certificate shall ensure that

(a) the Public Trustee is notified,

(b) the certificate of incapacity is mailed to the Public Trustee, and

37 Section 49 presently reads:

49(1) No person shall disclose any file, document or information obtained by the Public Guardian or the Public Trustee pursuant to this Act that deals with the personal history or records of a dependent adult except

- (a) at a proceeding under this Act,*
- (b) with the written consent of the Minister, or*
- (c) where in the opinion of the Public Guardian or the Public Trustee, as the case may be, it is in the best interests of the dependent adult to disclose the file, document or information.*

(2) Subsection (1) does not apply to a disclosure specifically authorized to be made by or under this Act or the Marriage Act, or to a disclosure

- (a) to any employee of the Department of Social Services and Community Health or of any other department or agency of the Government,*
- (b) to any official of the Government of Canada, of any province or territory of Canada or of an agency thereof, or*
- (c) to any person assisting or acting as an agent of the Department of Social Services and Community Health,*

or to a solicitor acting on behalf of any of them, if the disclosure is made to enable the giving of assistance and information required for the proper administration of this Act.

(3) The Public Guardian and the Public Trustee shall not publish in any form or by any means

- (a) the name of a dependent adult or any nearest relative concerned in any proceeding under this Act, or*
- (b) an account of the circumstances brought out at such a proceeding.*

(4) Nothing in this section prohibits the Public Guardian or the Public Trustee from publishing notices of hearings or other notices that may be necessary in the interests of justice or for the proper administration of this Act.

(5) A person who contravenes this section is guilty of an offence and liable to a fine of not more than \$500.

38 Protection of person who makes reports or gives information.

39 Section 51 presently reads:

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

- (a) notify the Public Trustee,*
- (b) mail*
 - (i) the certificate of incapacity to the Public Trustee, and*

(c) a copy of the certificate of incapacity is mailed to the person's guardian or, if he has no guardian, his nearest relative living in Canada.

40 Section 52(2) to (5) are repealed.

41 Section 53(2) is amended by adding the following after clause (b):
(b.1) the Public Trustee,

(ii) a copy of the certificate of incapacity to the person's guardian or if he has no guardian his nearest relative living in Canada,

and

(c) mail to the Public Guardian a copy of the certificate of incapacity if he is not served pursuant to clause (b).

40 Section 52 presently reads:

52(1) Subject to this section, on the issue of a certificate of incapacity the Public Trustee becomes the trustee of the estate of the person named in the certificate.

(2) When

(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) If 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) When

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

41 Section 53(2) presently reads:

(2) The chairman of the appeal panel shall, at least 10 days before the review is to be heard by the appeal panel, give notice of the date, time, place and purpose of the hearing to

42 *Section 55 is repealed and the following is substituted:*

55 Immediately after an order terminating a certificate of incapacity is issued pursuant to section 54, the physicians who signed the certificate shall ensure that

- (a) the Public Trustee is notified,
- (b) the certificate of incapacity is mailed to the Public Trustee, and
- (c) a copy of the certificate of incapacity is mailed to the person's guardian or, if he has no guardian, his nearest relative living in Canada.

43 *Section 56 is amended*

(a) *in clause (a) by striking out "of Queen's Bench";*

(b) *by renumbering it as section 56(1) and adding the following after subsection (1):*

(2) If the Public Trustee does not provide an accounting under subsection (1) to the satisfaction of the person named in the certificate of incapacity, that person may apply by notice of motion to the Court for an order requiring the Public Trustee to bring in and pass the accounts relating to the estate or that part of the estate formerly under his trusteeship.

44 *Section 57(c) is amended by striking out "of Queen's Bench".*

45 *Section 58(1)(c) and (2) are repealed.*

- (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 an institution, the person in charge of the institution, and*
- (d) *the Public Guardian if he is not served pursuant to clause (b).*

42 Section 55 presently reads:

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

- (a) *notify the Public Trustee,*
- (b) *mail*
 - (i) *the order to the Public Trustee, and*
 - (ii) *a copy of the order to the person's guardian or if he has no guardian the nearest relative of the person concerned who is living in Canada,*

and

- (c) *mail to the Public Guardian a copy of the order if the Public Guardian is not served pursuant to clause (b).*

43 Section 56 presently reads:

56 On

- (a) *notification of an order of the Court of Queen's Bench terminating a certificate of incapacity,*
- (b) *notification of a trusteeship order, or*
- (c) *receipt of an order terminating, varying or amending a certificate of incapacity pursuant to section 53 or 54,*

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.

44 Section 57 presently reads:

57 A certificate of incapacity remains in effect until

- (a) *a trusteeship order is made by the Court,*
- (b) *it is terminated by an appeal panel,*
- (c) *it is terminated by an order of the Court of Queen's Bench, or*
- (d) *it is terminated pursuant to section 54.*

45 Section 58(1)(c) and (2) presently read:

58(1) On receipt by the Public Trustee of a certificate of incapacity, the Public Trustee shall give a written statement to

- (c) *the Public Guardian if he is not served under clause (b),*

(2) If 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).

46 *Section 66 is amended*

(a) *in subsection (5) by striking out “of Queen’s Bench”;*

(b) *by repealing subsection (6) and substituting the following:*

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

(a) the Crown in right of Alberta;

(b) the person making the application, where it is satisfied that it would not be a hardship to do so;

(c) the person in respect of whom the application is made, where it is satisfied that it would not be a hardship to do so;

(d) the estate of the dependent adult, where it is satisfied that it would not be a hardship to do so.

47 *Section 67 is amended by striking out “of Queen’s Bench” wherever it occurs.*

48 *Section 69(2) is amended by adding the following after clause (c):*

(c.1) prescribing the fair market value of personal property for the purpose of section 29(i);

46 Section 66(5) and (6) presently read:

(5) When 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 Court of Queen's Bench under section 67.

(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,*
- (b) the person in respect of whom the application is made,*
- (c) the estate of a dependent adult, or*
- (d) the Crown in right of Alberta,*

or by all or any 2 of them.

47 Section 67 presently reads:

67(1) Within 21 days from the making of an order by an appeal panel, or any further time the Court of Queen's Bench may permit, any person in respect of whom a certificate of incapacity is issued or any interested person on his behalf may appeal to the Court of Queen's Bench by way of originating notice.

(2) The originating notice shall be served on

- (a) any guardian and trustee,*
- (b) the Public Trustee and Public Guardian if they are not served pursuant to clause (a),*
- (c) if the person in respect of whom the order is made is a resident of an institution, the person in charge of the institution, and*
- (d) any other persons a judge of the Court of Queen's Bench may direct,*

not less than 15 days before the motion is returnable and the practice and procedure of the Court of Queen's Bench pertaining to applications by originating notice apply, so far as 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 Court of Queen's Bench may direct any further evidence to be given that it considers necessary.

(5) The Court of Queen's Bench may reverse, confirm or vary the order of the appeal panel or make any other order it considers just.

48 Section 69(2)(c) presently reads:

(2) The Lieutenant Governor in Council may make regulations

- (c) designating the person in charge of a facility for the purposes of this Act and the regulations;*

49 *The Family Relief Act is amended in section 13(3)*

(a) *by striking out “guardianship order,”;*

(b) *by striking out “Public Trustee and any other trustee, and the Public Trustee or any other” and substituting “trustee, and the”.*

50 *The Public Trustee Act is amended in section 17*

(a) *in subsection (1) by striking out “administrator” and substituting “trustee”;*

(b) *in subsection (5) by striking out “committee” and substituting “trustee”.*

*In accordance with section 4(1) of the Interpretation Act,
this Bill comes into force on the date it receives Royal
Assent.*

49 Consequential amendment to chapter F-2 of the Revised Statutes of Alberta 1980. Section 13(3) of that Act presently reads:

(3) When the dependant is a minor 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 on the application.

50 Consequential amendment to chapter P-36 of the Revised Statutes of Alberta 1980. Section 17(1) and (5) of that Act presently read:

17(1) When a mentally incompetent person who is detained in an asylum, mental hospital or other public institution in another province has estate in Alberta, the Attorney General, by order, 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 Alberta.

(5) Courts, court officials and registrars of registration divisions and district registrars of land titles offices are bound by the order appointing the official referred to in subsection (1) in the same manner and to the same extent as they are bound by an order appointing the Public Trustee to be committee of an estate under this Act.