1992 BILL 16

Fourth Session, 22nd Legislature, 41 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 16

PUBLIC TRUSTEE AMENDMENT ACT, 1992

MR. SCHUMACHER

First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

Bill 16
Mr. Schumacher

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1992

PUBLIC TRUSTEE AMENDMENT ACT, 1992

(Assented to , 1992)

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

1 The Public Trustee Act is amended by this Act.

2 Section 7 is amended

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

Advances out of estates of intestates to minor beneficiaries

7(1) When a minor is entitled to share in the estate of an intestate and the share has been paid to the Public Trustee as guardian of the estate of the minor or for the benefit of the minor, or when property is held by the Public Trustee as trustee for a minor and the property is not subject to the terms of a will, trust deed or other instrument governing the trust,

(a) if the share or property of the minor exceeds $75 000 in value, the Public Trustee may

(i) apply the income from the share or property for or towards the maintenance or education of the minor, and

(ii) from time to time apply to the Court of Queen's Bench on summary application for an order authorizing the Public Trustee to expend, or to advance to a person having lawful custody of the

Explanatory Notes

1 This Bill will amend chapter P-36 of the Revised Statutes of Alberta 1980.

2 Section 7 presently reads:

7(1) When a minor is entitled to share in the estate of an intestate and the share has been paid to the Public Trustee as guardian of the estate of the minor or for the benefit of the minor, or when property is held by the Public Trustee as trustee for a minor and the property is not subject to the terms of a will, trust deed or other instrument governing the trust, the Public Trustee may,

(a) if the share or property of the minor does not exceed in value the sum of $75 000,

(i) from time to time expend, or advance to a person who has the lawful custody of the minor, any sum the Public Trustee considers necessary for or towards the maintenance and education of the minor, and

(ii) for the purpose of subclause (i) resort to capital and sell or convert any of the real or personal property held on behalf of the minor,

or

(b) if the share or property of the minor exceeds in value the sum of $75 000,

(i) apply the income from the share or property for the maintenance or education of the

minor, so much of the share or property for or towards the maintenance or education of the minor as the Court considers proper;

(b) if the share or property of the minor does not exceed $75 000 in value but is greater than $2000 in value, the Public Trustee may

(i) from time to time expend, or advance to a person who has lawful custody of the minor, any sum the Public Trustee considers necessary for or towards the maintenance or education of the minor, and

(ii) for the purpose of subclause (i), resort to capital and sell or convert any of the real or personal property held on behalf of the minor;

(c) if the share or property of the minor does not exceed $2000 in value, the Public Trustee may,

(i) in the absolute discretion of the Public Trustee, from time to time

(A) expend all or any sum derived from the share or property, or

(B) advance to a person who in the opinion of the Public Trustee is a responsible adult all or any portion of the share or property or all or any sum derived from that share or property,

for or towards the maintenance, education, benefit or advancement of the minor, and

minor, and

(ii) from time to time apply to the Court of Queen's Bench on summary application for an order authorizing him to expend, or to advance to a person having the lawful custody of the minor, so much of the share or property for the maintenance and education of the minor as the Court considers proper.

(2) On the making of an order under subsection (1)(b)(ii) the Court, for the purpose of making the payments or advances authorized by the order, may authorize the sale or conversion of any of the real or personal property held by the Public Trustee on behalf of the minor.

(ii) for the purposes of subclause (i), resort to capital and sell or convert any of the real or personal property held on behalf of the minor.

(b) *in subsection (2) by striking out* "subsection (1)(b)(ii)" *and substituting* "subsection (1)(a)(ii)".

3 Section 15(8) is amended

(a) *by striking out* "admitted to a hospital";

(b) *by striking out* "not exceeding $1000 in value" *and substituting* "that does not exceed in value an amount prescribed by regulation".

4 Section 23 is amended

(a) *in subsection (1) by striking out* "$3000" *and substituting* "an amount prescribed by regulation";

(b) *in subsection (5) by striking out* "$4000" *and substituting* "an amount prescribed by regulation".

3 Section 15(8) presently reads:

(8) If a mentally incompetent person admitted to a hospital dies possessed of personal property not exceeding $1000 in value and if no probate of his will or letters of administration of his estate have been granted in Alberta, the Public Trustee, without obtaining any order or authority from a court or from the Attorney General or otherwise, may

(a) out of the personal property give or distribute, in his discretion, wearing apparel and articles of personal use or ornaments to or among one or more of the family and relatives of the deceased,

(b) sell personal property not dealt with under clause (a) and apply the proceeds towards payment of sums due and debts incurred

(i) for the burial of the deceased, and

(ii) for the maintenance of the deceased in hospital, and

(c) do all things necessary to complete the administration of the estate.

4 Section 23(1) and (5) presently read:

23(1) When a person dies intestate, in or out of Alberta, leaving property in Alberta, the gross value of which as estimated by the Public Trustee does not at the time of the election mentioned in this section exceed $3000, and no person has taken out letters of administration, the Public Trustee instead of obtaining letters of administration may make an election in writing electing to administer the estate.

(5) If after filing the election the gross value of the property to be administered is found to exceed $4000, the Public Trustee as soon as practicable after filing the election shall file in the office of the clerk of the court a memorandum stating that fact, and may proceed in the ordinary manner to obtain letters of administration.

5 *Section 26(1) is amended by striking out* "Lieutenant Governor in Council may" *and substituting* "Public Trustee may by regulation".

6 *Section 35 is amended by adding the following after clause (b):*

(b.1) make regulations prescribing amounts for the purposes of sections 15(8) and 23(1) and (5);

5 Section 26(1) presently reads:

26(1) The interest payable in respect of the estates the money of which forms the common fund shall be payable and credited to the estates at the rate, in the manner and at the times that the Lieutenant Governor in Council may prescribe.

6 Section 35(b) presently reads:

35 The Lieutenant Governor in Council may

(b) authorize the promulgation of rules of court governing that practice and procedure and the costs of proceedings;