

1996 BILL 28

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Fourth Session, 23rd Legislature, 45 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 28

DEPENDENT ADULTS AMENDMENT ACT, 1996

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MR. BRASSARD

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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## BILL 28

1996

### DEPENDENT ADULTS AMENDMENT ACT, 1996

(Assented to \_\_\_\_\_, 1996)

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

Amends RSA  
1980 cD-32

1 *The Dependent Adults Act is amended by this Act.*

2 *Section 3 is amended*

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

Persons  
entitled to  
copy of  
application

**3(1)** An application for an order appointing a guardian may be made in the form prescribed in the regulations and must be made in the judicial district in which the person in respect of whom the application is made is ordinarily resident unless the Court considers it appropriate in the circumstances of the case for the application to be made in any other judicial district.

(b) *by repealing subsection (2) and substituting the following:*

**(2)** The interested person making the application must serve a copy of the application, the report referred to in section 2 and either a notice of motion, at least 10 days before the date the application is to be heard, or a notice of objection in the prescribed form, 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

## Explanatory Notes

1 Amends chapter D-32 of the Revised Statutes of Alberta 1980.

2 Section 3 presently reads:

*3(1) An application for an order appointing a guardian shall be made by originating notice*

*(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),*

- (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 attorney under an enduring power of attorney given by the person in respect of whom the application is made if he is not the applicant or a person served pursuant to this subsection,
- (g) 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
- (h) any other person that the Court may direct.

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

**(2.01)** A person who is served with a notice of objection form under subsection (2) may, within 10 days of being served, file a notice of objection with the clerk of the Court.

**(2.02)** Any person, other than a person served under subsection (2), may file a notice of objection within 10 days of any person's being served under subsection (2).

**(2.03)** If no notice of objection is filed within 10 days of service on all the persons required to be served under subsection (2), the Court may consider the application in the absence of the applicant and all the persons referred to in subsection (2).

**(2.04)** If a notice of objection is filed or if the Court considers that a hearing is necessary, the applicant must, at least 10 days before the date the application is to be heard, serve a notice of motion on the persons described in subsection (2) and any person who filed a notice of objection under this section.

(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),*

(e.1) *any attorney under an enduring power of attorney given by the person in respect of whom the application is made if he is not the applicant or a person served pursuant to this subsection,*

(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.*

(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.*

(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),*

(a.1) *direct the manner of service, or approve the manner of service that has been effected, 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.*

3 *The following is added after section 3:*

Application  
without report

**3.1** Notwithstanding sections 2(2) and 3(2) and (2.01), if the Court is satisfied that

- (a) there is immediate danger of death or serious harm to the physical or mental health of the adult person and it is necessary for someone to make decisions to prevent that danger,
- (b) it is impracticable or not possible to obtain a report referred to in section 2 before the danger referred to in clause (a) is likely to occur, and
- (c) it is impracticable or not possible for a person to obtain authorization under another enactment to make the decisions described in clause (a),

the Court may dispense with the requirement for the report referred to in section 2.

4 *Section 4(1) is amended by striking out “On hearing” and substituting “When considering”.*

5 *Section 5 is amended*

- (a) *by striking out “At a hearing” and substituting “If a hearing is held in respect”;*
- (b) *in clause (a) by striking out “section 3(2)” and substituting “section 3(2) or (2.04)”.*

6 *Section 8 is amended*

**3** Application without report.

**4** Section 4(1) presently reads:

*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 would substantially benefit by the appointment of a 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.*

**5** Section 5 presently reads:

*5 At a 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(2), and*

*(b) any other person who wishes to make representations and whom the Court agrees to hear,*

*may appear and make representations.*

**6** Section 8 presently reads:

- (a) *by renumbering it as section 8(1);*
- (b) *in subsection (1) by adding “granted pursuant to an application under section 3,” after “guardianship order”;*
- (c) *by adding the following after subsection (1):*
  - (2) On granting an order pursuant to an application considered under section 3.1, the Court shall specify the time, not later than 90 days after the date of the order, within which the order must be reviewed by the Court.
  - (3) On a review of an order granted pursuant to an application considered under section 3.1, the Court may
    - (a) cancel the order,
    - (b) extend the order once for up to a further 30 days after which time the order lapses, or
    - (c) consider it as an application under section 3 if the requirements of section 3 have been met.

7 *Section 15 is amended*

- (a) *in subsection (1) by striking out “by notice of motion” and substituting “in the form prescribed in the regulations”;*
- (b) *by repealing subsection (2) and substituting the following:*
  - (2) A person making an application for review of a guardianship order must serve a copy of the application and either a notice of motion, at least 10 days before the date the application is to be heard, or a notice of objection in the prescribed form, on
    - (a) the dependent adult,
    - (b) the person living in Canada who is
      - (i) the nearest relative of the dependent adult 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 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),



8 *On making or reviewing 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 6 years after the date of the order or the date of the review of the order, as the case may be,*
- (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.*

7 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 by notice of motion 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,*

- (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 attorney under an enduring power of attorney given by the person in respect of whom the application for review is made if the attorney is not the applicant or a person served pursuant to this subsection,
- (g) any trustee of the dependent adult if the trustee is not the applicant or a person served pursuant to this subsection, and
- (h) any other person that the Court may direct.

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

**(2.01)** A person who is served with a notice of objection form under subsection (2) may, within 10 days of being served, file a notice of objection with the clerk of the Court.

**(2.02)** Any person, other than a person served under subsection (2), may file a notice of objection within 10 days of any person's being served under subsection (2).

**(2.03)** If no notice of objection is filed within 10 days of service on all the persons required to be served under subsection (2), the Court may consider the application in the absence of the applicant and all the persons referred to in subsection (2).

**(2.04)** If a notice of objection is filed or if the Court considers that a hearing is necessary, the applicant must, at least 10 days before the date the application is to be heard, serve a notice of motion on the persons described in subsection (2) and any person who filed a notice of objection under this section.

8 *Section 16(1) is amended by striking out "On hearing" and substituting "When considering".*

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

(e.1) *any attorney under an enduring power of attorney given by the person in respect of whom the application for review is made if he is not the applicant or a person served pursuant to this subsection,*

(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.*

(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.*

(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),*

(a.1) *direct the manner of service, or approve the manner of service that has been effected, 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.*

**8** Section 16(1) presently reads:

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

(a) *shall consider whether the conditions referred to in section 6(1) and (2) are still applicable and whether the guardian has exercised his power and authority in*

9 Section 20(2) is amended by striking out “a copy of the death certificate” and substituting “evidence of death”.

10 Section 22 is amended

(a) by repealing subsections (1) and (2) and substituting the following:

Application for  
order  
appointing  
trustee

**22(1)** An application for an order appointing a trustee may be made in the form prescribed in the regulations and must be made in the judicial district in which the person in respect of whom the application is made is ordinarily resident unless the Court considers it appropriate in the circumstances of the case for the application to be made in any other judicial district.

**(2)** The interested person making the application must serve a copy of the application, the report referred to in section 21 and either a notice of motion, at least 10 days before the date of the hearing, or a notice of objection in the prescribed form, 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 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),
- (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,

*accordance with the guardianship order and section 11, and*

*(b) may amend, cancel, terminate, continue, vary or replace the order subject to any conditions or requirements it considers necessary.*

**9** Section 20(2) presently reads:

*(2) On 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.*

**10** Section 22 presently reads:

*22(1) An application for an order appointing a trustee shall be made by originating notice*

*(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*

*(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 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),*

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

*(e.1) any attorney under an enduring power of attorney given by the person in respect of whom the application is made if he is not the applicant or a person served pursuant to this subsection,*

- (e) the Public Trustee, if he is not the applicant or the person served pursuant to clause (c),
- (f) any attorney under an enduring power of attorney given by the person in respect of whom the application is made if he is not the applicant or a person served pursuant to this subsection,
- (g) 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
- (h) any other person that the Court may direct.

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

**(2.01)** A person who is served with a notice of objection form under subsection (2) may, within 10 days of being served, file a notice of objection with the clerk of the Court.

**(2.02)** Any person, other than a person served under subsection (2), may file a notice of objection within 10 days of any person's being served under subsection (2).

**(2.03)** If no notice of objection is filed within 10 days of service on all the persons required to be served under subsection (2), the Court may consider the application in the absence of the applicant and all the persons referred to in subsection (2).

**(2.04)** If a notice of objection is filed or if the Court considers that a hearing is necessary, the applicant must, at least 10 days before the date the application is to be heard, serve a notice of motion on the persons described in subsection (2) and any person who filed a notice of objection under this section.

*11 The following is added after section 22:*

Application  
without report

**22.1(1)** Notwithstanding sections 21(2) and 22(2) and (2.01), if the Court is satisfied that

- (a) some or all of the property or estate of the adult person in respect of whom the application is made is in immediate danger of serious loss, and it is necessary for someone to make decisions to prevent that loss, and

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

*(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.*

*(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),*

*(a.1) direct the manner of service, or approve the manner of service that has been effected, 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.*

## **11 Application without report.**

- (b) it is impracticable or not possible to obtain a report referred to in section 21 before the loss is likely to occur,

the Court may dispense with the requirement for the report referred to in section 21 and may appoint a trustee to take possession of the property or estate and safely keep, manage, preserve and protect the property or interests of the estate on the terms and conditions that the Court directs.

(2) On granting an order under this section, the Court shall specify the time, not later than 90 days after the date of the order, within which the order must be reviewed by the Court.

(3) On a review of an order granted under this section, the Court may

- (a) cancel the order,
- (b) extend the order once for up to 6 months after which time the order lapses, or
- (c) consider it as an application under section 22 if the requirements of section 22 have been met.

*12 Section 23(1) is amended by striking out “On hearing” and substituting “When considering”.*

*13 Section 24 is amended*

- (a) *by striking out “At any hearing” and substituting “If a hearing is held in respect”;*
- (b) *in clause (a) by striking out “section 22(2)” and substituting “section 22(2) or (2.04)”.*



**12** Section 23(1) presently reads:

*23(1) On 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.*

**13** Section 24 presently reads:

*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(2), and*
- (b) any other person who wishes to make representations and that the Court agrees to hear,*

*may appear and make representations.*

14 Section 27(2) is amended by striking out “On making” and substituting “Subject to section 22.1, on making”.

15 Section 28 is amended

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

(b) may

- (i) in the case of an order under section 22.1, safely keep, manage, preserve and protect the property or interests of the estate, and
- (ii) in any other case, manage, handle, administer, sell, dispose of or otherwise deal with the estate in accordance with section 29 and an authorization under section 30 or an order under section 30.1.

(b) by repealing subsection (2).

16 Section 29 is amended by adding the following after clause (j):

- (k) if land in which the dependent adult has a beneficial interest is held by the personal representative of the estate of a deceased person, consent to the sale of that land by the personal representative of the deceased’s estate.

**14** Section 27(2) presently reads:

*(2) On making or reviewing 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 6 years after the date of the order or the date of the review of the order, as the case may be,*
- (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.*

**15** Section 28 presently reads:

*28(1) Subject to this Act, when 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.*

**16** 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;*

17 *Section 30 is amended by adding the following after clause (a):*

- (a.1) consent to the disposition of the homestead, as defined in the *Dower Act*, of the dependent adult's spouse;

- (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;*
- (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;*
- (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.*

**17** Section 30 presently reads:

*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 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) *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 on the dependent adult;*
- (g) *compromise or settle a debt;*

18 *The following is added after section 30:*

Ademption not applicable

**30.1(1)** A trustee may make an ex parte application, unless directed otherwise by the Court, for an order authorizing the trustee to sell property belonging to the dependent adult and directing the trustee to place the proceeds of the sale into an identifiable trust account, to be administered as the Court directs having regard to the present and future needs of the dependent adult.

(2) If a trustee complies with an order under subsection (1) and if any property sold pursuant to the order is the subject of a devise or bequest in the last will of the dependent adult, that devise or bequest of the property does not fail under the doctrine of ademption.

19 *Section 31 is amended*

(a) *in subsection (3.1)(b) by striking out “in accordance with the Surrogate Rules,”;*

(b) *by adding the following after subsection (3.1):*

**(3.2)** Notwithstanding subsection (3), having regard to the size of the estate, the amount of income generated or the nature of the assets, the Court may

(a) dispense with the requirement for the passing of accounts for a period not exceeding 12 years from the date of the order if the trustee maintains accounts and files a summary accounting statement in the prescribed form with the clerk of the Court at least once every 6 years or on review of the trusteeship order, and

(b) order the trustee to do any other thing that the circumstances may require.

(c) *by adding the following after subsection (5):*

**(6)** Notwithstanding subsection (5), the Court may, if it considers it appropriate, dispense with the requirement for service on all or any of the persons who are required to be served with an application under section 22, except the dependent adult and the nearest relative of the dependent adult who is living in Canada if that relative is not the trustee.

*(i) notwithstanding the Trustee Act, invest funds in any securities and assets that the Court approves;*

*(j) do any other thing approved by the Court.*

**18** Ademption is not applicable.

**19** Section 31 presently reads:

*31(1) When a trustee of the estate of a dependent adult is appointed or when an alternate trustee takes office by reason of the death of the previous trustee, the following provisions apply unless the Court modifies, alters or dispenses with some or all of them:*

*(a) the trustee, at the time of the application under section 21 or 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;*

*(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 on 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 some other thing that the circumstances may require.*

*(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*

20 Section 31.1(a) and (c) are amended by striking out “in accordance with the Surrogate Rules”.

21 The following is added after section 31.2:

**31.3** All accounting required under sections 31, 31.1 and 31.2 must be done in accordance with the Surrogate Rules.

22 Section 35 is amended

(a) in subsection (1) by striking out “by notice of motion” and substituting “in the form prescribed in the regulations”;

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



*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.*

*(3.1) Notwithstanding subsection (3), the Court may dispense with the requirement for passing the accounts of the trustee and*

*(a) permit the trustee to file his accounts with the clerk of the Court and where the Court is satisfied that it is in the best interests of the estate and the dependent adult approve his accounts in the form in which they are filed, or*

*(b) in accordance with the Surrogate Rules, dispense with accounting for a period not exceeding 4 years from the date of the order.*

*(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.*

*(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.*

**20** Section 31.1(a) and (c) presently read:

*31.1 When the Court terminates a trusteeship order or discharges a trustee from his office, the Court shall*

*(a) direct the trustee to pass his accounts in accordance with the Surrogate Rules,*

*(c) direct that accounting be dispensed with in accordance with the Surrogate Rules.*

**21** Accounting.

**22** 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 by notice of motion for a review of a trusteeship order at any time.*

(2) A person making an application for a review of a trusteeship order must serve a copy of the application and either a notice of motion, at least 10 days before the date the application is to be heard, or a notice of objection, on

- (a) the dependent adult,
- (b) the person living in Canada who is
  - (i) the nearest relative of the dependent adult 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 of the dependent adult,
- (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 guardian of the dependent adult if the guardian is not the applicant or a person served pursuant to this subsection, and
- (g) any other person that the Court may direct.

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

**(2.01)** A person who is served with a notice of objection form under subsection (2) may, within 10 days of being served, file a notice of objection with the clerk of the Court.

**(2.02)** Any person, other than a person served under subsection (2), may file a notice of objection within 10 days of any person's being served under subsection (2).

**(2.03)** If no notice of objection is filed within 10 days of service on all the persons required to be served under subsection (2), the Court may consider the application in the absence of the applicant and all the persons referred to in subsection (2).

**(2.04)** If a notice of objection is filed or if the Court considers that a hearing is necessary, the applicant must, at

*(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 guardian 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.*

*(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.*

*(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),*
- (a.1) direct the manner of service, or approve the manner of service that has been effected, 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.*

least 10 days before the date the application is to be heard, serve a notice of motion on the persons described in subsection (2) and any person who filed a notice of objection under this section.

23 *The following is added after section 39:*

Estate  
reimbursed

**39.1(1)** The Court, on passing the accounts of a trustee, of a trusteeship order or during an application to remove a trustee, may

- (a) inquire into and adjudicate on a complaint or claim by an interested person of misconduct, neglect or default on the part of the trustee, and
- (b) order that the trustee reimburse the estate to the extent of the loss suffered.

(2) The Court may order the trial of an issue of a complaint or claim under subsection (1)(a) and may make all necessary directions with respect to it.

24 *The following is added after section 41.1:*

Possession of  
last will

**41.2(1)** A trustee may call in or receive an original will made by a person who is a dependent adult from any person, including a lawyer, who has possession of it, and that person must surrender the will to the trustee.

(2) A person who had possession of the will before surrendering it under subsection (1) may retain a copy.

25 *The following is added after section 42:*

No payment to  
guardians

**42.1** A guardian is not entitled to any remuneration, compensation, fees or allowance for effort made or for time expended on behalf of the dependent adult.

Trustee's  
compensation

**42.2(1)** A trustee is entitled to be compensated from the estate of the dependent adult for the trustee's efforts, care, responsibility and trouble and for the time expended as trustee on behalf of the dependent adult, as authorized by the Court, or in the case of the Public Trustee, as authorized by the *Public Trustee Act*.

(2) At a hearing to pass interim or final accounts or on an application for compensation made under the *Surrogate*

**23** Estate reimbursed.

**24** Possession of last will.

**25** No payment to guardian; trustee's compensation; trustee's expenses.

Trustee's  
expenses

*Rules*, the Court may set the compensation for the trustee and give directions with respect to it.

**42.3** A trustee is entitled to be reimbursed for the direct expenses incurred and disbursements made on behalf of the dependent adult.

26 *Section 48 is amended*

(a) *in clause (a)(i) by adding “subject to the regulations,” before “the Crown”;*

(b) *by striking out “or” at the end of clause (a) and adding the following after clause (a):*

(a.1) *be paid by a trustee if the trustee has been ordered to reimburse the estate under section 39.1;*

27 *Section 53 is amended*

(a) *in subsection (2)(a) by striking out “reviewed,” and substituting “reviewed unless, in the opinion of the chairman, the person cannot, after reasonable attempts, be located.”;*

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

(4) *If the appeal panel is satisfied that*

(a) *the person who is the subject of a certificate of incapacity is able to make reasonable judgments with respect to matters pertaining to his estate, or*

(b) *the certificate of incapacity does not result in substantial benefit to the person who is the subject*

**26** Section 48 presently reads:

*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 or a person opposing the application, where it is satisfied that the application or the opposition to the application, as the case may be, is frivolous or vexatious.*

**27** Section 53 presently reads in part:

*(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*

*(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,*

*(b.1) the Public Trustee,*

*(c) if the person is a resident of an institution, the person in charge of the institution, and*

of the certificate and termination of the certificate of incapacity would not prejudice the interest of the person who is the subject of the certificate,

the appeal panel may issue an order terminating the certificate of incapacity.

28 *Section 69(2) is amended by adding the following after clause (g):*

- (h) governing procedures respecting applications under this Act;
- (i) respecting the awarding of costs against the Crown in right of Alberta;
- (j) respecting the manner of service of documents.

29 *The Devolution of Real Property Act is amended in section 10*

- (a) *in subsection (1) by adding “, or that person’s trustee pursuant to the *Dependent Adults Act*,” before “concur”;*
- (b) *in subsection (2)*

- (i) *in clause (a) by striking out “dependent adult” and substituting “person of unsound mind for whom a trustee has not been authorized by the Court under the *Dependent Adults Act* to consent to a sale of real property or the Public Trustee has not become trustee of the estate under section 52(1) of the *Dependent Adults Act*”;*

- (ii) *by striking out “the dependent adult” and substituting “the person of unsound mind described in clause (a)”;*

- (c) *in subsection (3) by adding “or that person’s trustee pursuant to the *Dependent Adults Act*” after “beneficiary”.*

30 *The Dower Act is amended in section 10*

- (a) *in subsection (1)(f) by adding “for whom the Court has not authorized a trustee under the *Dependent Adults Act* to make a disposition of the homestead and the Public Trustee has not become trustee of the estate under section 52(1) of the *Dependent Adults Act*” after “mind”;*



*(d) the Public Guardian if he is not served pursuant to clause (b).*

*(4) When 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.*

**28** Lieutenant Governor in Council regulations.

**29** Consequential.

**30** Consequential.

(b) *in subsection (3) by adding “for whom a trustee has not been appointed under section 25 of the *Dependent Adults Act* or the Public Trustee has not become trustee of the estate under section 52(1) of the *Dependent Adults Act*” after “mind”.*

31 *This Act comes into force on Proclamation.*

**31** Coming into force.