

BILL 19

2004

PUBLIC TRUSTEE ACT

(Assented to , 2004)

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

Definitions

1 In this Act,

- (a) “client” means a person, trust or estate
 - (i) for whom the Public Trustee holds property, or
 - (ii) to whom or for whose benefit the Public Trustee provides any service or performs any task or function under this or any other Act;
- (b) “Court” means the Court of Queen’s Bench;
- (c) “former Act” means the *Public Trustee Act*, RSA 2000 cP-44;
- (d) “grant of administration” includes a grant of administration with will annexed;
- (e) “guaranteed account” means a guaranteed account under section 33;

- (f) “incapacitated person” means a person in respect of whom a certificate of incapacity has been issued or is deemed to have been issued under the *Dependent Adults Act*;
- (g) “Minister” means the Minister of Justice and Attorney General;
- (h) “missing person” means a person declared to be missing under section 7;
- (i) “property” includes money.

Part 1

Office of the Public Trustee

Appointment of Public Trustee

2(1) The Lieutenant Governor in Council shall appoint a person to be Public Trustee.

(2) In accordance with the *Public Service Act*, there may be appointed any other persons as employees in the office of the Public Trustee as are necessary.

(3) The Minister may designate a person to act temporarily as Public Trustee if

- (a) the person appointed under subsection (1) is unable to carry out the duties of the Public Trustee, or
- (b) there is a vacancy in the position of Public Trustee.

(4) A designation under subsection (3) remains in effect until

- (a) it is terminated by the Minister, or
- (b) a person is appointed under subsection (1).

Corporation sole

3 The Public Trustee is a corporation sole under the name Public Trustee.

Delegation

4 The Public Trustee may in writing delegate to an employee or class of employee in the office of the Public Trustee any of the Public Trustee's powers, duties or functions.

Public Trustee functions

5 The Public Trustee may act

- (a) as personal representative of a deceased person,
- (b) as trustee of any trust or to hold or administer property in any other fiduciary capacity,
- (c) to protect the property or estate of minors and unborn persons, and
- (d) in any capacity in which the Public Trustee is authorized to act
 - (i) by an order of the Court, or
 - (ii) under this or any other Act.

Public Trustee not required to act

6(1) The Public Trustee is under no duty to act in a capacity, perform a task or function or accept an appointment by reason only of being empowered or authorized to do so.

(2) Subject to subsection (3), a court may appoint the Public Trustee to act in a capacity or to perform a task or function only if the Public Trustee consents to the appointment and to the terms of the appointment.

(3) If an Act expressly authorizes a court to direct the Public Trustee to act in a particular capacity or to perform a particular function, the court may appoint the Public Trustee to act in the capacity or to perform the task or function only if the Public Trustee has been given a reasonable opportunity to make representations regarding the proposed appointment.

(4) The Public Trustee may apply to have the court rescind or vary the terms of an appointment made contrary to subsection (2) or (3), and on the application the court may either rescind the appointment or vary its terms in a manner to which the Public Trustee consents.

Part 2
Particular Functions of
the Public Trustee

Division 1
Missing Persons and
Unclaimed Property

Court may declare persons to be missing

7(1) If satisfied that after reasonable inquiry a person cannot be located, the Court, on application, may by order

- (a) declare the person to be a missing person, and
- (b) appoint the Public Trustee trustee of
 - (i) particular property of the missing person, or
 - (ii) the missing person's property generally.

(2) On being appointed trustee under subsection (1), the Public Trustee may

- (a) administer, sell, dispose of or otherwise deal with the property or any portion of it, and
- (b) pay out of the capital or income of the property
 - (i) money that the missing person might otherwise have been liable to pay, and
 - (ii) money for the benefit of any one or more of the following:
 - (A) a spouse or adult interdependent partner of the missing person;
 - (B) a minor child of the missing person;
 - (C) an adult child of the missing person who by reason of a physical or mental disability is unable to earn a livelihood;
 - (D) with the consent of the Court, any other person.

(3) The Registrar of Land Titles,

- (a) on production of a copy or a certified copy of the order referred to in subsection (1), and
- (b) on production of an instrument effecting a disposition of real property under subsection (2)(a),

shall deal with the instrument in the same manner as if the instrument were executed by the missing person.

(4) The Public Trustee may, by a further order of the Court, with respect to the property of a missing person,

- (a) if the missing person is located, return the property to the person,
- (b) if it is determined that the missing person is deceased, transfer the property to the personal representative of the person's estate, or
- (c) transfer the property to any other person that the Court may direct.

Protection of property without declaration

8(1) The Public Trustee may take possession of a person's property for safekeeping if the Public Trustee is satisfied that

- (a) after reasonable inquiry the person cannot be located,
- (b) it is appropriate to take possession of the property, and
- (c) it is impracticable or uneconomic to obtain an order under section 7.

(2) If a person is entitled to property held by the Public Trustee and cannot be located at the time the Public Trustee would otherwise deliver the property to that person, the Public Trustee shall continue to hold the property.

(3) If in the Public Trustee's opinion it is in the best interest of a person for whom property is held under this section to do so, the Public Trustee may by sale or otherwise convert the property into money.

(4) If a person for whom the Public Trustee is holding property under this section is located, the Public Trustee may return the property to the person.

(5) If the Public Trustee is satisfied that a person for whom property is held under this section is deceased, the Public Trustee may transfer the property to the person's personal representative or to any person whom the Public Trustee considers to be entitled to the property.

Notice of applications regarding property of missing person

9(1) The Public Trustee must be given notice of any application to a court regarding property to which an order under section 7 applies or property that is in the Public Trustee's possession under section 8.

(2) Subsection (1) does not apply to applications governed by the *Administration of Estates Act*.

Expenditure to locate missing person

10 The Public Trustee may expend any portion of property held by the Public Trustee under section 7 or 8 for the purpose of attempting to locate the person who is entitled to the property.

Unclaimed property

11(1) This section applies

- (a) where the Public Trustee is holding property under section 7 or 8, or
- (b) where the Public Trustee is holding property otherwise than under section 7 or 8 and, after making reasonable inquiry, cannot determine whether any person is entitled to the property,

but does not apply to property held by the Public Trustee under section 270 of the *Companies Act*.

(2) Subject to sections 7(2) and (4) and 8(3), (4) and (5), the Public Trustee must hold the property for at least 10 years

- (a) after the date of the order declaring the person to be a missing person if the Public Trustee is holding the property under section 7, or
- (b) in any other case, after the date that the Public Trustee publishes a notice in the prescribed form in The Alberta Gazette that the Public Trustee is holding the property.

(3) At the expiration of the period referred to in subsection (2),

- (a) if the property held by the Public Trustee is money, the Public Trustee may transfer the money to the General Revenue Fund, or
- (b) if the property held by the Public Trustee is not money, the Public Trustee may by sale or otherwise convert the property into money and transfer the money to the General Revenue Fund.

(4) When the Public Trustee transfers money to the General Revenue Fund under subsection (3), the Public Trustee must publish a notice in the prescribed form in The Alberta Gazette.

(5) If at any time after money is transferred to the General Revenue Fund under subsection (3) a person makes a claim to the money and

- (a) in the case of a person declared missing under section 7, the Court determines that the claimant is entitled to the money, or
- (b) in any other case, the Minister is satisfied that the claimant is entitled to the money,

the Minister may pay the money out of the General Revenue Fund to the Public Trustee.

(6) Where the money is paid to the Public Trustee under subsection (5), the Public Trustee shall pay the money to the person who is entitled to the money, but no interest is payable on the money in respect of the period after it was transferred to the General Revenue Fund under subsection (3).

(7) If there is a conflict between this section and the *Ultimate Heir Act*, this section prevails.

Division 2 Estates of Deceased Persons

Interim administration

12(1) If a deceased person's personal representative or next of kin has not taken possession of the deceased person's property, the Public Trustee may take possession of the property.

(2) After taking possession of property under subsection (1), the Public Trustee has the powers of an administrator until a person is granted probate or administration.

(3) Subsection (2) does not authorize the Public Trustee

- (a) to dispose of any property unless in the Public Trustee's opinion the estate might otherwise suffer a loss, or
- (b) to distribute any property of the estate.

(4) The cost to the Public Trustee of anything done under this section is recoverable from the estate and is a first charge against the property of the estate.

Summary disposition of small estates

13(1) If a person dies and the person's estate consists only of personal property that does not exceed in value the prescribed amount and no person has been granted probate or administration in Alberta, the Public Trustee, without obtaining a grant of administration, may

- (a) take possession of the deceased person's property,
- (b) dispose of articles of personal use in any manner the Public Trustee considers appropriate,
- (c) sell property not disposed of under clause (b) and apply the proceeds toward payment of amounts due and debts incurred for the burial of the deceased, and
- (d) do all things necessary to complete the administration of the estate.

(2) A document in the prescribed form advising that the Public Trustee is administering the estate of a deceased person pursuant to

this section is conclusive proof that the Public Trustee is the administrator of the estate.

Public Trustee's priority to grant in certain cases

14(1) In this section, "person under legal disability" means

- (a) a minor, or
- (b) a person for whom the Public Trustee is acting as trustee under the *Dependent Adults Act*.

(2) Notwithstanding any other enactment, where a person dies anywhere leaving property in Alberta and a person under legal disability has an interest in the estate,

- (a) the Public Trustee has the same priority to a grant of administration of the estate that the person would have if he or she were an adult of full legal capacity, and
- (b) notwithstanding clause (a), the Public Trustee has priority to a grant of administration over any person who is not a resident of Alberta if
 - (i) the deceased did not leave a will,
 - (ii) the deceased's will does not appoint an executor, or
 - (iii) any executors appointed by the deceased's will have renounced their right to apply for a grant of probate, have died or cannot be located.

Administration where no one has applied for grant

15(1) This section applies notwithstanding any other enactment.

(2) Where a person dies anywhere leaving property in Alberta and no grant of probate or administration has been issued in Alberta, the Public Trustee may apply for and obtain a grant of administration.

(3) The Public Trustee may not apply for a grant under this section until at least

- (a) 30 days after the death of a person who did not leave a will, or

- (b) 120 days after the death of a person who left a will

unless otherwise permitted by the Court.

(4) The Public Trustee

- (a) may give notice of an application for a grant under this section to the persons and in the manner the Public Trustee considers appropriate, and
- (b) is not required to obtain a renunciation from any person who would be entitled to a grant in priority to the Public Trustee.

(5) The Court may, on application made on not less than 10 days' notice to the Public Trustee, revoke a grant to the Public Trustee under this section and grant probate or administration to another person if the Court is satisfied that

- (a) the other person is eligible to receive the grant, and
- (b) it would be appropriate in all the circumstances to revoke the Public Trustee's appointment and grant probate or administration to the other person.

Election to administer estate in certain cases

16(1) The Public Trustee may elect to administer the estate of a deceased person without applying for a grant of administration if

- (a) the person has died anywhere, whether testate or intestate, leaving property in Alberta,
- (b) the gross value of the deceased person's estate, as estimated by the Public Trustee, does not exceed the prescribed amount, and
- (c) no grant of probate or administration has been issued in Alberta.

(2) If the Public Trustee elects to administer a deceased person's estate under this section, the Public Trustee must

- (a) file an election in writing with the Court, and

(b) comply with any other requirements that may be prescribed.

(3) The Public Trustee becomes administrator of the deceased person's estate on filing an election under subsection (2), and the filing of the election is conclusive proof of the Public Trustee's right to administer the estate.

(4) No fee is payable by the Public Trustee to file an election under this section.

(5) A copy of an election certified by the clerk of the Court is equivalent to a certified copy of a grant of administration for all purposes.

(6) If the Public Trustee discovers after filing an election that the gross value of the property to be administered exceeds by more than 20% the amount prescribed for the purposes of subsection (1)(b), the Public Trustee must as soon as practicable file with the clerk of the Court a memorandum stating that fact, and may proceed in the ordinary manner to obtain a grant of administration.

(7) An election already filed by the Public Trustee ceases to be in effect if the Public Trustee files with the Court a certificate describing facts that, in the opinion of the Public Trustee, make it inappropriate for the election to remain in effect.

(8) If the Public Trustee files a memorandum under subsection (6) or a certificate under subsection (7), section 12 applies to any property of the deceased then remaining in the hands of the Public Trustee as if the Public Trustee had taken possession of the property under section 12.

(9) When the administration of the estate has been completed, the Public Trustee shall file with the clerk of the Court an account of the administration.

(10) The Court may, on application made on not less than 10 days' notice to the Public Trustee, revoke an election under this section and grant probate or administration to another person if the Court is satisfied that

(a) the other person is eligible to receive the grant, and

- (b) it would be appropriate in all the circumstances to revoke the Public Trustee's election and grant probate or administration to the other person.

Division 3 Minors

Definitions

17 In this Division,

- (a) "minor" includes an unborn beneficiary of a trust or estate;
- (b) "trust instrument" means an instrument that creates a trust of which at least one beneficiary is a minor.

Expenditure of funds for minor's benefit

18(1) If in the Public Trustee's opinion it would be in the best interest of a minor for whom the Public Trustee holds property, the Public Trustee may

- (a) expend all or any portion of the property for the benefit of the minor, or
- (b) if the value of the property held for the minor does not exceed the prescribed amount, transfer the property to a guardian who has the power and responsibility to make day to day decisions affecting the minor.

(2) The Public Trustee may convert all or any portion of the property into money, by sale or otherwise, for the purpose of expending or transferring the proceeds in accordance with subsection (1).

(3) The Public Trustee must obtain an acknowledgment of responsibility in the prescribed form from the guardian to whom any property is transferred under subsection (1)(b).

(4) A transfer of property to the minor's guardian in accordance with this section discharges the Public Trustee's obligation to the minor regarding the property.

(5) A guardian to whom property is transferred under subsection (1)(b) holds the property as trustee for the minor and may expend the property only for the benefit of the minor.

(6) If the Public Trustee declines to exercise a power conferred by subsection (1), the Court, on application, may direct the Public Trustee to take any action referred to in subsection (1) that in the Court's opinion is in the minor's best interest.

(7) This section

- (a) is subject to the terms of a will or other instrument under which the Public Trustee holds the property, and
- (b) does not restrict any power or discretion that the Public Trustee would have other than under this section.

Transfer of property to Public Trustee's equivalent in other jurisdiction

19(1) In this section, "equivalent entity" means a person, office or body in another jurisdiction

- (a) designated by the regulations as an equivalent entity for the purposes of this section, or
- (b) who the Court is satisfied has, under the law of another jurisdiction, functions relating to the protection of minors' property similar to those of the Public Trustee under the law of Alberta.

(2) If the Court, on application, is satisfied that an equivalent entity is willing to accept property that is held in trust by the Public Trustee for a minor and is of the opinion that it would be in the minor's best interest to do so, the Court may

- (a) direct the Public Trustee to transfer the trust property to the equivalent entity,
- (b) approve the Public Trustee's accounts and discharge the Public Trustee from duties under the trust, and
- (c) impose any condition or give any direction that the Court considers appropriate.

Monitoring trustee of trust for minors

20 The Public Trustee has no duty to monitor any trustee unless appointed to do so by a trust instrument under section 21 or by the Court under section 22.

Monitoring trustee for minors

21(1) A trust instrument may expressly appoint the Public Trustee to monitor the trustee on behalf of minor beneficiaries, including minor beneficiaries who have a contingent interest in the trust property.

(2) The duties of the Public Trustee when appointed by a trust instrument to monitor a trustee on behalf of minor beneficiaries are as follows:

- (a) as soon as practicable after receiving notice that the trust has come into effect, to obtain and review
 - (i) a copy of the trust instrument,
 - (ii) an inventory of the trust's assets as of the date the trust came into effect, and
 - (iii) any other document or information that may be prescribed;
- (b) at prescribed intervals, to obtain from the trustee the prescribed statements or information regarding the trust and to review them;
- (c) if so provided by the trust instrument, to obtain from the trustee audited financial statements for the trust at intervals stipulated by the trust instrument, and to review them;
- (d) to take any action referred to in subsection (5) that the Public Trustee determines to be necessary to protect the interests of the minor beneficiaries;
- (e) to perform such additional duties as may be prescribed.

(3) If a trust instrument has appointed the Public Trustee to monitor a trustee, the trustee must provide the Public Trustee with the documents and information referred to in subsection (2) or requested by the Public Trustee under subsection (5)(a).

(4) The purpose of a review under subsection (2) is for the Public Trustee to determine, based on information provided by the trustee, whether the trustee appears to be

- (a) keeping adequate records of the trustee's administration of the trust,
- (b) avoiding dealings with trust property in which the trustee's self-interest conflicts with the trustee's fiduciary duties, and
- (c) dealing with trust property in accordance with the trust instrument.

(5) If the Public Trustee is unable to make a determination described in subsection (4) or determines that the trustee appears not to be carrying out one or more of the duties referred to in subsection (4), the Public Trustee may do any one or more of the following:

- (a) request the trustee to provide any documents or information that the Public Trustee may require to make the determination;
- (b) request the trustee to take any action that the Public Trustee considers necessary for the trustee to carry out a duty referred to in subsection (4);
- (c) apply to the Court for an order appropriate to protect the interests of the minor beneficiaries.

(6) If the Public Trustee is appointed by a trust instrument to monitor a trustee, the Public Trustee

- (a) has no duty to question or interfere with a decision or action of the trustee that appears to be in accordance with the trust instrument,
- (b) has no duty to question information provided to the Public Trustee by the trustee unless there is an obvious omission, error or inconsistency in the information provided, and
- (c) owes no duty to any beneficiary of the trust other than a minor.

(7) The Public Trustee's duty to monitor the trustee terminates when there are no longer any minor beneficiaries of the trust.

(8) The duties of the Public Trustee under this section arise only when the Public Trustee has received evidence satisfactory to the Public Trustee that the trust has come into effect.

(9) The Court, on application, may terminate the Public Trustee's duty to monitor a trustee under this section if in the Court's opinion it is not in the best interest of the minor beneficiaries for the Public Trustee to monitor the trustee.

(10) The Public Trustee may provide to a person who was formerly a minor beneficiary of a trust monitored by the Public Trustee a copy of any statement or information provided to the Public Trustee under this section by the trustee.

(11) If the Public Trustee is appointed by a trust instrument to monitor a trustee on behalf of minor beneficiaries, the Public Trustee is entitled to be paid, and the trustee is authorized to pay, the prescribed fee out of the trust property.

(12) If the Public Trustee is monitoring a trustee at the time this subsection comes into force, subsections (2) to (10) apply as if the Public Trustee had been appointed under this section.

Court directives to monitor trustee for minors

22(1) The Court, on application, may by order direct the Public Trustee to monitor on behalf of minor beneficiaries a trustee appointed by

- (a) a trust instrument, or
- (b) an order of the Court.

(2) Unless otherwise provided by an order directing the Public Trustee to monitor a trustee, the duties of the Public Trustee under the order are the same as if the Public Trustee had been appointed to monitor the trustee by a trust instrument under section 21.

(3) An order directing the Public Trustee to monitor a trustee must not impose duties beyond what the Public Trustee would have had if appointed to monitor by a trust instrument under section 21 unless the Public Trustee has consented to the terms of the direction.

(4) The fee payable to the Public Trustee for monitoring a trustee when directed by the Court to do so is the same as would have been

payable if the Public Trustee had been appointed to monitor by a trust instrument under section 21, unless an order imposing duties beyond what the Public Trustee would have had if appointed to monitor by a trust instrument specifies a higher fee.

Notice to proceed under Limitations Act

23(1) If a notice to proceed is delivered to the Public Trustee under section 5.1(3) of the *Limitations Act*,

- (a) the Public Trustee must not act as next friend of the minor except in accordance with section 5.1(6)(b) of the *Limitations Act* or in accordance with an order of a judge under section 5.1(7)(b) or (8)(b) of the *Limitations Act*,
- (b) where the Public Trustee acts as next friend of a minor,
 - (i) the Public Trustee is entitled to be compensated for doing so out of money, if any, recovered for the minor, and
 - (ii) the amount of the Public Trustee's compensation is to be determined in accordance with the regulations,

and

- (c) neither the Crown nor the Public Trustee nor any person acting on behalf of the Public Trustee is liable to a minor for anything done or omitted to be done by the Public Trustee or by that person while attempting in good faith to carry out a duty imposed on the Public Trustee by the *Limitations Act* or by an order of a judge under the *Limitations Act*.

(2) Compensation to the Public Trustee referred to in subsection (1)(b)(i) is a charge against the money recovered for the minor.

Division 4 Incapacitated Persons and Dependent Adults

Trustee of estate of incapacitated person

24(1) The property of an incapacitated person in respect of which the Public Trustee is acting as trustee vests in the Public Trustee on

the commencement of the Public Trustee's duties as the trustee of the incapacitated person.

(2) A certificate issued by the Public Trustee in the prescribed form is conclusive proof of the appointment of the Public Trustee as trustee of the incapacitated person.

(3) If an incapacitated person owns real property in Alberta, the Public Trustee may file the certificate issued under subsection (2) in the land titles office, and the Registrar of Land Titles

- (a) shall make a memorandum of the certificate on the certificate of title to the land to which the certificate issued under subsection (2) relates, and
- (b) shall not after making the memorandum accept for registration, unless authorized by the Public Trustee, any instrument that
 - (i) is executed by the incapacitated person, and
 - (ii) affects the land that is included in the certificate of title on which the memorandum was made.

Power of Public Trustee as trustee

25(1) Notwithstanding the *Dependent Adults Act*, the Public Trustee, while acting as trustee of the property of an incapacitated person or as trustee of the property of a dependent adult, may administer, sell, dispose of or otherwise deal with the property to the same extent as could be done by the person if the person were able to make reasonable judgments in respect of the person's property.

(2) Without limiting the generality of subsection (1), the Public Trustee may, if it is reasonable to do so having regard to the value of the property, make gifts from the property to charities and to relatives and friends of the incapacitated person or the dependent adult if, in the opinion of the Public Trustee,

- (a) the person had made similar gifts before becoming an incapacitated person or a dependent adult,
- (b) there is reason to believe the person would make such gifts, based on the apparent intentions of the person

expressed before the person became an incapacitated person or a dependent adult, or

- (c) such a gift is appropriate having regard to the person's relationship with the recipient, the nature of the occasion and any other circumstances considered reasonable by the Public Trustee.

Contracts binding on incapacitated person

26(1) When the Public Trustee enters into a contract on behalf of an incapacitated person, the contract is binding on the incapacitated person both during the period of the certificate of incapacity and after the certificate is cancelled in the same manner and to the same extent as if the incapacitated person had made the contract with full capacity.

(2) When a person who was an incapacitated person fails to carry out the person's obligations under a contract referred to in subsection (1) after the certificate of incapacity is cancelled, the Public Trustee may perform the obligations in the same manner as the Public Trustee could have done if the person had remained an incapacitated person.

(3) When a sale of land has been made by the Public Trustee on behalf of an incapacitated person, the Public Trustee may convey the title notwithstanding that the certificate of incapacity is cancelled before a conveyance or transfer of the land has been executed or registered.

Account of administration

27(1) Sections 42(2) and 44 of the *Dependent Adults Act* apply to the Public Trustee when the Public Trustee is acting as trustee for an incapacitated person.

(2) Subsection (1) does not restrict the application of section 76 of the *Dependent Adults Act* to the Public Trustee.

Administration after death of incapacitated person

28(1) If an incapacitated person dies while the Public Trustee is administering the person's estate, the Public Trustee

- (a) shall retain possession of the deceased's property, and

- (b) has the powers regarding the deceased's estate that the Public Trustee had while the deceased was alive

until a person with authority to administer the deceased's estate takes possession of the property.

(2) The Minister may, by order, when the Minister considers it expedient to do so, appoint the Public Trustee to administer the estate of a deceased incapacitated person, and the Public Trustee when appointed has with respect to the estate the powers and duties of an administrator appointed by the Court.

(3) The Public Trustee on receipt of an order containing the appointment referred to in subsection (2) shall forthwith file a certified copy of the order with the Court.

(4) No grant of probate or administration shall be issued by the Court in respect of the property of the deceased person after a copy of an order is filed in accordance with subsection (3) unless the appointment of the Public Trustee has been rescinded by the Minister.

Estate of non-resident incapacitated person

29(1) When a person with respect to whom a document that is equivalent to a certificate of incapacity has been issued resides in another province or territory but has property in Alberta, the Minister may appoint an official, individual, corporation or entity of the other province or territory who is charged with the duty of administering the estate of the incapacitated person in the other province or territory to be trustee of that person's estate in Alberta.

(2) The person appointed under subsection (1)

- (a) has, in respect of that estate, the same rights, powers, privileges and immunities that are conferred by this Act on the Public Trustee, and
- (b) is subject to the same obligations and shall perform the same functions in respect of that estate as the Public Trustee would if the Public Trustee were trustee of that estate.

(3) This Division applies to a person appointed under subsection (1) in the same manner as it applies to the Public Trustee.

(4) Courts, court officials and the Registrar of Titles 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 trustee of an estate of an incapacitated person under this Act.

Proceedings against incapacitated person

30(1) Notwithstanding any other Act, on the Public Trustee becoming trustee of the estate of an incapacitated person,

- (a) an action or other proceedings in a court, or
- (b) a seizure by a civil enforcement agency or extrajudicial proceedings,

against the incapacitated person or that person's estate may be commenced or continued only with leave of the Court or with the consent in writing of the Public Trustee.

(2) Leave of the Court may be granted on application of which notice has been given to the Public Trustee subject to any terms as to security for costs or otherwise that to the Court appear just or expedient.

Part 3 Investment

Common fund

31(1) The common fund and special reserve fund established under the former Act are combined and continued as a single fund called the common fund.

(2) Except as otherwise provided by this Act or the regulations, any money received by the Public Trustee for a client must be paid into the common fund.

(3) Money paid into the common fund, investments purchased with money from the common fund, income from common fund investments and money realized from the liquidation of common fund investments are assets of the common fund.

(4) Except as provided by section 33, no client or other person has any claim to or against

- (a) the assets of the common fund, or
- (b) the Public Trustee in respect of any act or omission of the Public Trustee relating to management or investment of the common fund.

(5) If the Public Trustee enters into a contract for banking services with respect to the common fund, any financial benefits and credits earned pursuant to the contract may be applied toward the costs of banking and related financial services with respect to the operation of the common fund.

Transfers from common fund

32(1) Assets may be transferred out of the common fund only as expressly required or permitted under this Act.

(2) The Public Trustee may transfer an amount from the common fund for the purpose of

- (a) paying money to or on behalf of a client,
- (b) paying an expense or liability of a client, including fees or expenses imposed by the Public Trustee under section 40,
- (c) investing money for a client under section 37 or 38, and
- (d) making a disposition of a client's property that the Public Trustee is authorized to make by the enactment, instrument, order or other authority under which the Public Trustee holds the property.

(3) The Public Trustee may transfer an amount from the common fund to pay any expense incurred in the operation of the common fund, other than salaries or benefits of persons appointed under section 2(2) as employees in the office of the Public Trustee.

(4) The Public Trustee, in accordance with the regulations, may transfer amounts from the common fund to the General Revenue Fund to be applied to the cost of administering this Act.

(5) An amount transferred from the common fund under subsection (3) or (4) shall not be charged to a client or deducted from a client's guaranteed account.

Client's guaranteed accounts

33(1) The Public Trustee shall open a guaranteed account for a client if an amount is to be credited to the client's account under subsection (2) or (3).

(2) If at the time this Act comes into force a client is entitled to a share or interest in the common fund established under the former Act, the value of the client's share or interest in that fund shall be credited to the client's guaranteed account.

(3) Money paid into the common fund under section 31(2) must be credited to the client's guaranteed account.

(4) An amount transferred from the common fund under section 32(2) shall be deducted from the client's guaranteed account.

(5) The amount outstanding on a client's guaranteed account at any time is $A + B + C - D$ where

A is the amount credited to the account pursuant to subsection (2);

B is the aggregate of all amounts credited to the account pursuant to subsection (3);

C is the aggregate of all interest credited to the account in accordance with section 34;

D is the aggregate of all amounts deducted from the account in accordance with subsection (4).

(6) The amount outstanding on a client's guaranteed account is a charge against the assets of the common fund and is unconditionally guaranteed by the Crown.

(7) A liability of the Crown under subsection (6) shall be paid out of the General Revenue Fund.

Interest on guaranteed accounts

34(1) Unless different categories of guaranteed account are established by regulation, all guaranteed accounts constitute a single category for the purposes of this section.

(2) The Public Trustee shall set the interest rate for each category of guaranteed account in accordance with the regulations.

(3) Interest must be credited to guaranteed accounts in accordance with this section and the regulations.

Payment to person suffering loss

35(1) The Minister may authorize an amount to be transferred from the common fund to a person who has suffered a loss as a result of an act or omission of the Public Trustee if the Public Trustee certifies that it is just and equitable to make the payment.

(2) The amount paid in respect of a claim under subsection (1) may not exceed the amount by which the value of the assets of the common fund, as determined in accordance with the regulations, exceeds the total amount outstanding on guaranteed accounts immediately before the payment.

(3) Any money recovered from a third party in respect of money paid out of the common fund under subsection (1) shall be paid into the common fund.

Investment standards

36(1) Subject to the regulations, the Public Trustee shall invest the common fund in accordance with investment policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments to avoid undue risk of loss and obtain a reasonable return.

(2) The Public Trustee, when acting in accordance with subsection (1), may invest property of the common fund in pooled funds that are not managed by the Public Trustee.

Separate investments for particular clients

37(1) The Public Trustee shall make separate investments for a client if required to do so by a trust instrument, court order or other authority under which the Public Trustee holds property for the client.

(2) If required to make separate investments for a client, the Public Trustee may place the client's money temporarily in the common fund until the separate investments can be made.

(3) If not required to make separate investments for a client in accordance with subsection (1), the Public Trustee may make

separate investments for the client only in accordance with the regulations.

(4) Notwithstanding subsection (3), the Public Trustee may retain an investment in the form in which it comes into the Public Trustee's hands if the Public Trustee considers it reasonable to do so.

(5) The Public Trustee is governed by sections 2 to 8 of the *Trustee Act* when making or retaining separate investments for a client.

(6) Money invested separately for a client in accordance with this section is not guaranteed by the Public Trustee or the Crown.

Pooled investment funds

38(1) In this section, "pooled investment fund" means a fund that has the following characteristics:

- (a) money belonging to different clients is pooled in the fund for the purposes of investment;
- (b) income, expenses, gains and losses on the fund's investments are apportioned directly among the clients whose money is invested in the fund;
- (c) money invested in the fund is not guaranteed by the Public Trustee or the Crown.

(2) The Public Trustee may, in accordance with the regulations, establish one or more pooled investment funds in which a client's money may be invested.

(3) If the Public Trustee establishes a pooled investment fund, the Public Trustee must have a written policy as to when the Public Trustee will consider investing a client's money in the fund.

(4) The Public Trustee may invest a client's money in a pooled investment fund only if the investment is in accordance with the policy established under subsection (3).

Part 4 General

Application to Court

39 An application under this Act may be made by any person the Court considers appropriate to make the application.

Public Trustee fees and expenses

40(1) The Public Trustee

- (a) may charge a client a fee that the Public Trustee considers to be reasonable for any service, including legal services, that the Public Trustee provides to the client or for a task or function performed by the Public Trustee for the benefit of the client, and
- (b) is entitled to recover from a client any expense reasonably incurred by the Public Trustee on the client's behalf.

(2) The Public Trustee may charge and recover fees and expenses

- (a) before or after providing a service or incurring an expense, or
- (b) periodically while providing services under an ongoing relationship with a client.

(3) The Public Trustee may recover a fee or expense that is chargeable to a client by deducting it from the client's guaranteed account or as otherwise permitted by law.

(4) The Court may review any fee charged to a client by the Public Trustee under this section.

Legal costs

41 Unless otherwise provided by an enactment, where the Public Trustee is a party to or participates in any matter before a court,

- (a) the costs payable to the Public Trustee, and the client, party or other person by whom the costs are to be paid, are in the discretion of the court, and
- (b) the court may order that costs payable to the Public Trustee are to be paid out of and are a charge on an estate.

Crown liability for judgment

42(1) No action lies against the Crown for any claim arising out of an act or omission of the Public Trustee, but if a judgment is obtained against the Public Trustee in respect of any act or omission of the Public Trustee, the judgment, to the extent that it is not paid by a transfer from the common fund under section 35(1), is deemed to be a judgment against the Crown in right of Alberta and the amount of the judgment shall be paid out of the General Revenue Fund.

(2) Any money recovered from a third party in respect of money paid out of the General Revenue Fund under subsection (1) shall be paid into the General Revenue Fund.

Loan to Public Trustee

43 The Lieutenant Governor in Council on the recommendation of the Minister of Finance may authorize the Minister of Finance to advance from time to time to the Public Trustee by way of loan from the General Revenue Fund any sums of money that are considered necessary for the administration of estates being administered by the Public Trustee under this Act.

Access to and use of information regarding clients

44(1) In this section, “potential client” means a person in respect of whom the Public Trustee is conducting inquiries that are likely to lead to that person becoming a client of the Public Trustee.

(2) Subject to subsection (3), if the Public Trustee requires any personal, financial or health-related information or record regarding a client or potential client to effectively carry out a task, duty or function relating directly to the client or potential client, the Public Trustee may compel a person, including a public body as defined in the *Freedom of Information and Protection of Privacy Act*, who has possession of the information or record to provide it to the Public Trustee.

(3) Subsection (2) does not apply if a person has possession of the information or record because of a personal relationship between that person and the client or potential client.

(4) On the Public Trustee

- (a) delivering to a person referred to in subsection (2) a requisition in the prescribed form, and
- (b) paying any reasonable fee charged by the person to cover the cost of providing the information or record,

the person must provide to the Public Trustee the information or record identified in the requisition.

(5) The Public Trustee may use or disclose any information or record obtained under this section only for the purpose of carrying out a duty or function relating directly to the client or potential client.

(6) This section does not restrict any authority the Public Trustee would otherwise have to obtain any information or record.

Security not required

45 Notwithstanding any enactment, the Public Trustee is not required to give security for the due performance of the Public Trustee's duty as an administrator or a trustee, or in any other office to which the Public Trustee is appointed by order of a court under this or any other enactment.

Regulations

46 The Lieutenant Governor in Council may make regulations

- (a) prescribing an amount for the purpose of section 13(1);
- (b) prescribing an amount for the purpose of section 16(1)(b);
- (c) prescribing requirements that must be complied with for the purpose of section 16(2)(b);
- (d) prescribing an amount for the purpose of section 18(1)(b);
- (e) designating a person, office or body as an equivalent entity for the purpose of section 19;
- (f) respecting documents or information to be obtained and reviewed by the Public Trustee for the purpose of section 21(2)(a)(iii);

- (g) respecting the statements and information required and the intervals for obtaining the statements and information for the purpose of section 21(2)(b);
- (h) prescribing additional duties for the purpose of section 21(2)(e);
- (i) prescribing the Public Trustee's fee for monitoring a trustee on behalf of minor beneficiaries for the purpose of section 21(11);
- (j) determining the amount or the method of determining the amount of the compensation to which the Public Trustee is entitled under section 23(1);
- (k) respecting circumstances in which money received by the Public Trustee for a client is not required to be paid into the common fund;
- (l) respecting the transfer of amounts from the common fund to the General Revenue Fund under section 32(4);
- (m) for the purposes of section 34, respecting
 - (i) the categories of guaranteed accounts;
 - (ii) matters to be considered by the Public Trustee in setting the interest rate on a category of guaranteed account;
 - (iii) the manner of crediting interest on guaranteed accounts;
 - (iv) the manner in which the Public Trustee may give notice of changes in the interest rate on a category of guaranteed account;
- (n) respecting the method of determining the value of assets for the purpose of section 35(2);
- (o) respecting the investment of the common fund for the purpose of section 36(1);
- (p) respecting the circumstances under which separate investments may be made for clients for the purpose of section 37(3);

- (q) respecting pooled investment funds for the purpose of section 38;
- (r) prescribing forms for the purposes of this Act.

Part 5
Transitional Provisions,
Consequential Amendments,
Repeal and Coming into Force

Transitional

47(1) Any property that immediately before this Act comes into force was vested in the Public Trustee appointed under the former Act is vested in the Public Trustee referred to in section 2.

(2) The person occupying the office of Public Trustee immediately before this Act comes into force is deemed to have been appointed under section 2 of this Act.

(3) Authorizations made under section 34 of the former Act are deemed to be delegations made under section 4 of this Act.

Amends RSA 2000 cA-2

48 The *Administration of Estates Act* is amended by repealing section 6(3), (4) and (5).

Amends SA 2003 c16

49 The *Child Welfare Amendment Act, 2003* is amended in section 117(1) by striking out “*Public Trustee Act*, section 4(f);”.

Amends SA 2003 cF-4.5

50 The *Family Law Act* is amended by repealing section 123.

Amends RSA 2000 cF-12

51 The *Financial Administration Act* is amended in section 82(11) by adding the following after clause (j):

- (k) the Public Trustee.

Amends RSA 2000 cT-8

52 The *Trustee Act* is amended by repealing section 42(5)(c) and substituting the following:

- (c) any person who after reasonable inquiry cannot be located, or

Repeal

53 The *Public Trustee Act*, RSA 2000 cP-44, is repealed.

Coming into force

54 This Act comes into force on Proclamation.

Explanatory Notes

48 Amends chapter A-2 of the Revised Statutes of Alberta 2000. Section 6(3), (4) and (5) presently read:

(3) Notwithstanding subsection (2), if the will creates a trust for the benefit of a minor and appoints an executor or another person to hold the trust for the benefit of a minor, the Public Trustee may advise the court that the Public Trustee does not intend to monitor the trust or otherwise represent the interests of the minor beneficiary in the trust.

(4) On receipt of the Public Trustee's advice under subsection (3) the court may, on giving the Public Trustee the opportunity to make representations with respect to the terms and conditions of the appointment, including the payment of the Public Trustee's compensation, fees and disbursements, direct the Public Trustee to monitor the trust and specify terms and conditions and provide for the payment of the Public Trustee's compensation, fees and disbursements either

(a) as directed by the court, or

(b) as provided under the Public Trustee Act.

(5) On filing the intention under subsection (3), the Public Trustee is under no obligation to monitor the trust or otherwise protect the

interest of the minor in that trust unless the court directs otherwise under subsection (4).

49 Amends chapter 16 of the Statutes of Alberta, 2003 by deleting consequential amendment to the repealed Public Trustee Act.

50 Amends chapter F-4.5 of the Statutes of Alberta, 2003. Section 123 makes a consequential amendment to the repealed Public Trustee Act.

51 Amends chapter F-12 of the Revised Statutes of Alberta 2000. Section 82 presently reads in part:

(II) This section does not apply to the following:

- (b) the Alberta Social Housing Corporation under the Alberta Housing Act;*
- (c) the Teachers' Pension Plans Board of Trustees under the Teachers' Pension Plans Act;*
- (d) the Special Areas Board under the Special Areas Act;*
- (e) the Public Utilities Board;*
- (f) the Energy Resources Conservation Board;*
- (g) the Alberta Energy and Utilities Board;*
- (h) the Surface Rights Board;*
- (i) Alberta Treasury Branches or any subsidiary of Alberta Treasury Branches or any corporation controlled by Alberta Treasury Branches directly or indirectly through one or more intermediary corporations;*
- (j) the Judicial Council established under Part 6 of the Judicature Act.*

52 Amends chapter T-8 of the Revised Statutes of Alberta 2000.
Section 42(5)(c) presently reads:

(5) In approving any proposed arrangement, the Court may consent to the arrangement on behalf of

(c) any person who is a missing person as defined in the Public Trustee Act or who is unborn, or

53 Repeals chapter P-44 of the Revised Statutes of Alberta 2000.

54 Coming into force.