

BILL 20

2004

MINORS' PROPERTY 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) “Court” means the Court of Queen’s Bench;
- (b) “deliver property” includes pay money;
- (c) “property” includes money;
- (d) “person obligated to a minor” means a person, including the Crown, who is under an obligation to deliver property to a minor or who would be under an obligation to deliver property to a minor if the minor were an adult;
- (e) “Public Trustee” means the Public Trustee under the *Public Trustee Act*;
- (f) “trust instrument” means a will, deed, declaration or other instrument in writing by which a person creates a trust.

**Court-authorized Dispositions,
Contracts and Settlements**

Disposition of minor’s property

2(1) The Court, on application, may by order authorize or direct a sale, lease or other disposition of or action respecting property of a minor if in the Court’s opinion it is in the minor’s best interest to do so, except that the Court shall not authorize a disposition or action prohibited by an instrument that created the minor’s interest in the property.

(2) An order under subsection (1) may give any direction as to the method of carrying out a sale, lease, disposition or action

authorized by the order and may impose any restriction or condition that the Court considers appropriate.

(3) The proceeds of any disposition authorized or directed under this section must be delivered

- (a) to a trustee appointed by the Court under section 10, if the trustee is authorized by the appointment or the order under this section to receive the proceeds,
- (b) to the Public Trustee, or
- (c) as the Court directs, if the total amount of the proceeds does not exceed the amount prescribed by the regulations.

Court confirmation of minor's contracts

3(1) The Court may, on application, if in the Court's opinion it is in a minor's best interest to do so, confirm any contract

- (a) the minor has entered into or proposes to enter into, or
- (b) the minor's guardian has entered into or proposes to enter into on behalf of the minor.

(2) If the Court confirms a contract, the Court may

- (a) determine the person to whom a person obligated to a minor under the contract may deliver the relevant property to discharge the obligation, and
- (b) give any other direction relating to the contract that the Court considers to be in the minor's best interest.

(3) A person obligated to a minor under a contract that has been confirmed by the Court may discharge the obligation only by delivering the relevant property

- (a) to the person determined under subsection (2)(a), or
- (b) if no person has been determined under subsection (2)(a), to
 - (i) a trustee appointed by the Court under section 10 who is authorized by the appointment to receive the property, or

(ii) the Public Trustee.

(4) Subject to subsections (2) and (3), a contract confirmed by the Court under this section has the same effect that it would have if the minor had entered into the contract as an adult.

(5) This section does not

- (a) apply to a settlement to which section 4 applies, or
- (b) diminish the effect that any contract made by or on behalf of a minor has apart from this section.

Settlement of minor's claim

4(1) In this section,

- (a) “claim” means a claim that, if proved in a court of competent jurisdiction, would result in a money judgment as defined in the *Civil Enforcement Act*;
- (b) “indemnity” means an agreement by a minor’s representative, given in connection with a settlement of the minor’s claim, to compensate a person for liability or costs incurred by that person in the event that a claim is subsequently made by or on behalf of the minor regarding a matter covered by the settlement;
- (c) “representative” means the guardian or next friend of a minor who has a claim.

(2) If a representative has agreed to a settlement of a minor’s claim, the Court may, on application, confirm the settlement if in the Court’s opinion it is in the minor’s best interest to do so.

(3) A settlement of a minor’s claim is binding on the minor only if the settlement is confirmed under subsection (2).

(4) Any money payable to a minor under a settlement that is confirmed under subsection (2) must be paid

- (a) to a trustee appointed by the Court under section 10 who is authorized by the appointment or by the order confirming the settlement to receive the money,
- (b) to the Public Trustee, or

(c) as the Court directs, if the total amount payable to the minor under the settlement does not exceed the amount prescribed by the regulations.

(5) An indemnity given by a minor's representative is void.

Discharge of Obligations to a Minor

Discharge by person obligated to a minor

5 Notwithstanding any other Act, a person obligated to a minor may discharge the obligation only as provided in sections 3(3), 4(4) and 6 to 9.

Discharge of obligation under contract with minor

6(1) Subject to the regulations, where a minor has entered into a contract, including a contract for salary and wages, under which a person is obligated to the minor, the person may discharge the obligation by delivering the relevant property to the minor.

(2) If a contract is not otherwise binding on a minor, nothing done in accordance with subsection (1) makes the contract binding on the minor or prevents the minor from obtaining any relief otherwise available to the minor.

(3) This section does not apply to a contract confirmed by the Court under section 3.

Discharge by delivery to trustee

7 A person obligated to a minor may discharge the obligation by delivering the relevant property to a trustee who is authorized by a trust instrument or court order to receive the property.

Small obligations

8(1) This section does not apply to any obligation that

- (a) exceeds the prescribed amount,
- (b) arises out of a contract entered into by a minor,
- (c) may be discharged in accordance with section 7, or
- (d) is of a class prescribed by the regulations.

- (2) A person obligated to a minor may discharge the obligation by
- (a) delivering the relevant property to
 - (i) the minor, if the minor has a legal duty to support another person, or
 - (ii) a guardian who has the power and responsibility to make day to day decisions affecting the minor,
- and
- (b) obtaining an acknowledgment in the form prescribed by the regulations from the person to whom the property is delivered.
- (3) A person obligated to a minor is entitled to rely on a representation in the acknowledgment.
- (4) A guardian who receives property under subsection (2) holds the property as trustee for the minor.
- (5) Nothing in this section affects the duty of a trustee to deal with trust property in accordance with the terms of the trust.

Discharge by delivery to Public Trustee

- 9(1)** A person obligated to a minor who cannot discharge the obligation in accordance with section 6, 7 or 8 may discharge the obligation by delivering the relevant property to the Public Trustee.
- (2) Notwithstanding that a person obligated to a minor could discharge the obligation in accordance with section 6, 7 or 8, the person may discharge the obligation by delivering the relevant property to the Public Trustee if the Public Trustee is willing to accept the property.
- (3) Nothing in this section affects the duty of a trustee to deal with trust property in accordance with the terms of the trust.

Court Appointment of Trustee of Minor's Property

Application to appoint trustee

10(1) The Court may, on application in accordance with the *Surrogate Rules*, appoint one or more persons as trustee of

- (a) particular property to which a minor is entitled or is likely to become entitled and for which no trustee has been appointed by a trust instrument, or
- (b) the minor's property generally.

(2) The Court may appoint a trustee under subsection (1)(a) only if in the Court's opinion it is in the minor's best interest to do so, having regard at least to the following:

- (a) the apparent ability of the proposed trustee to administer the property;
- (b) the merits of the proposed trustee's plan for administering the property;
- (c) the potential benefits and risks of appointing the proposed trustee to administer the property compared to other available options for administering the property.

(3) The Court may appoint a trustee under subsection (1)(b) only if the Court is of the opinion that it would be in the minor's best interest to do so, having regard at least to

- (a) the matters referred to in subsection (2), and
- (b) whether the interest of the minor is likely to be better served by an order under subsection (1)(b) than by an order under subsection (1)(a).

(4) An order under subsection (1)(a) applies to the particular property identified in the order and to any property derived from the investment or disposition of that property.

(5) Subject to any limitation in the order, an order under subsection (1)(b) applies to all property

- (a) to which a minor is entitled at the time the order is made, and

- (b) to which the minor becomes entitled while the order is in effect,

excluding property for which a trustee has been appointed by a trust instrument.

(6) An order appointing a trustee under subsection (1) may include any provision, condition, limitation or direction that the Court considers to be in the minor's best interest, and, without limitation, may

- (a) require the trustee to submit the trustee's accounts at specified intervals for the examination and approval of the Court,
- (b) limit the duration of the trusteeship,
- (c) specify or limit the types of investment in which the trustee may invest the trust property, or
- (d) provide for compensation of the trustee.

(7) Except as otherwise provided by an order appointing a trustee under subsection (1),

- (a) the trustee has the same powers and duties regarding the property to which the order applies as would a trustee appointed by a trust instrument, and
- (b) the *Trustee Act* applies to the trustee and the trust.

Security

11(1) Subject to subsections (3) and (4), a person may be appointed trustee under section 10 only after providing a sufficient bond or other security for the performance of the person's duties as trustee.

(2) The bond or other security must be of a nature and value and subject to terms approved by the Court.

(3) A bond or other security is not required if the trustee, or one of the trustees, is a trust corporation.

(4) The Court may dispense with the requirement of a bond or other security if the Court is of the opinion that it would be in the

minor's best interests to do so, having regard to other safeguards that are or will be in place.

Subsequent applications regarding order

12 Where a trustee has been appointed by an order under section 10, the Court, on a subsequent application, may, if in the Court's opinion it is in the minor's best interest to do so,

- (a) vary the terms of the order,
- (b) remove or discharge the trustee,
- (c) order the trustee to reimburse the minor for any loss caused by any act or omission of the trustee,
- (d) substitute or add a trustee,
- (e) terminate the appointment and require any property held by the trustee to be transferred to the Public Trustee, or
- (f) make any other order or give any other directions that the Court considers appropriate.

General

Court directing delivery of minor's property to Public Trustee

13 The Court, on application, may, if in the Court's opinion it is in a minor's best interest to do so, direct a person who is in possession of property of the minor to deliver the property to the Public Trustee.

Procedure on application

14(1) The practice and procedure on applications to the Court under this Act are governed by the *Alberta Rules of Court* or the *Surrogate Rules*, as the case may be.

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

(3) An application under this Act relating to a minor who is 14 years of age or older may be made only with the minor's consent, unless the Court otherwise allows.

(4) The powers conferred under this Act on the Court may be exercised by a judge of the Court in chambers.

Notice to Public Trustee

15(1) The Public Trustee must be given at least 10 days' notice of any application

- (a) under this Act, or
- (b) in which the existence, extent, nature or disposition of a minor's or unborn person's interest in property is in issue.

(2) An application referred to in subsection (1) may be dealt with only if the Public Trustee is represented on the application or has expressly declined to be represented.

(3) The Public Trustee may make representations on any application referred to in subsection (1) but, unless otherwise expressly provided by an enactment, is under no duty to do so.

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

(5) Where the Public Trustee is not given notice in accordance with subsection (1), the Public Trustee may apply to the Court to rescind or vary any order made on the application.

Public Trustee as minor's guardian ad litem

16(1) In any proceeding relating to property in which a minor is or may be interested, the Court may, on application,

- (a) with the consent of the Public Trustee, appoint the Public Trustee to be the minor's guardian ad litem, and
- (b) specify the terms and conditions of the appointment.

(2) The Public Trustee is a minor's guardian ad litem in a proceeding only if appointed under subsection (1).

Regulations

17 The Lieutenant Governor in Council may make regulations

- (a) respecting the maximum amounts for the purposes of sections 2(3)(c), 4(4)(c) and 8(1)(a);
- (b) respecting contracts to which section 6 does not apply;
- (c) respecting the class of obligations to which section 8 does not apply;
- (d) respecting forms for the purposes of this Act.

Consequential Amendments, Repeal and Coming into Force

Amends RSA 2000 cA-2

18 The *Administration of Estates Act* is amended

(a) by repealing section 1(e)(iv) and substituting the following:

- (iv) a grant of trusteeship of the estate of a minor or an order under the *Minors' Property Act* appointing a trustee of a minor's property;

(b) by repealing section 1(g) and substituting the following:

- (g) "legal representative" means an executor, an administrator, a judicial trustee of the estate of a deceased person, a guardian of a minor, a trustee of a minor's estate or a trustee of a minor's property appointed by an order under the *Minors' Property Act*;

(c) in section 5(1) by adding "of probate or administration" after "grant";

(d) in section 6(1) by adding "of probate or administration" after "grant".

Amends RSA 2000 cC-22

19 The *Condominium Property Act* is amended by repealing section 27(1)(a) and substituting the following:

- (a) in the case of an owner who is a minor, by the guardian or trustee of the minor's estate or a trustee of the minor's property appointed by an order under the *Minors'*

Property Act or, if no guardian or trustee has been appointed, by the Public Trustee, or

Amends RSA 2000 cD-14

20 The *Domestic Relations Act* is amended

- (a) in section 49 by adding “and” at the end of clause (b) and repealing clause (c);
- (b) in the following provisions by striking out “and estate, or either,”:

section 51(1);
section 52;
section 53(1);

- (c) by repealing section 54.

Amends SA 2003 cF-4.5

21 The *Family Law Act* is amended

- (a) by repealing section 16(d);
- (b) by repealing section 17(1)(d);
- (c) by repealing sections 27 to 29;
- (d) by repealing section 31(2);
- (e) in section 108(12) by striking out “and” at the end of clause (a) and repealing clause (b);
- (f) by repealing section 111.

Amends RSA 2000 cT-8

- 22 The *Trustee Act* is amended in section 1(a) by striking out “guardian” and substituting “trustee”.**

Repeal

- 23 The *Minors’ Property Act*, RSA 2000 cM-18, is repealed.**

Coming into force

24 This Act comes into force on Proclamation.

Explanatory Notes

18 Amends chapter A-2 of the Revised Statutes of Alberta 2000. Sections 1, 5 and 6 presently read in part:

1 In this Act,

(e) “grant” means

(iv) a grant of letters of guardianship of the person or estate, or both, of a minor,

issued by a district court before July 12, 1967 or by the Surrogate Court or Court of Queen’s Bench;

(g) “legal representative” means an executor, an administrator, a judicial trustee of the estate of a deceased person or a guardian of the person or estate, or both, of a minor;

5(1) Except where otherwise provided by this or any other Act or by the Rules, no grant shall issue unless the applicant has given a bond in accordance with the Rules with at least 2 sureties in double the aggregate value of the estate.

6(1) When an application is made for a grant, the applicant shall send a copy of the application to

(a) the Public Trustee, if a minor, a person who was a minor at the date of death or a missing person is interested in the estate to which the application pertains or if the Public Trustee is the committee of the estate of a person who is interested in the estate to which the application pertains, and

(b) the committee of the estate of a person who is interested in the estate to which the application pertains, where the committee is a person other than the Public Trustee.

19 Amends chapter C-22 of the Revised Statutes of Alberta 2000. Section 27(1)(a) presently reads:

27(1) Any powers of voting conferred by this Act or the bylaws may be exercised

(a) in the case of an owner who is a minor, by the guardian of the minor's estate or, if no guardian has been appointed, by the Public Trustee, or

20 Amends chapter D-14 of the Revised Statutes of Alberta 2000. Sections 49(c), 51(1), 52, 53(1) and 54 presently read:

49 Except where the authority of a guardian appointed or constituted by virtue of this Act is otherwise limited, each guardian during the continuance of the guardian's guardianship

(c) after furnishing any security the Court requires under section 54, has the care and management of the estate of the minor, whether real or personal, and may receive any money due and payable to the minor and give a release in respect of it, and

51(1) A parent of a minor may by deed or will appoint a person to be guardian of the person and estate, or either, of the minor after the death of that parent.

52 The Court may from time to time appoint a guardian of the person and estate, or either, of a minor to act jointly with the father or mother of the minor or with the guardian appointed by the deceased father or mother of the minor.

53(1) If on the application of a minor, or of anyone on behalf of the minor, it appears

(a) that the minor has no parent or lawful guardian, or

(b) that the parent or lawful guardian is not a fit and proper person to have the guardianship of the minor,

the Court may appoint a guardian or guardians of the person and estate, or either, of the minor.

54 Unless otherwise ordered by the Court, each guardian of the estate of a minor except when the guardian is the Public Trustee shall furnish the security, if any, ordered by the Court.

21 Amends chapter F-4.5 of the Statutes of Alberta, 2003.
Sections 16, 17, 27, 28, 29, 31, 108 and 111 presently read in part:

16 In this Part,

(d) “trusteeship order” means an order made under section 27.

17(1) Unless the court directs otherwise, the following persons must, in accordance with the regulations, be served with notice of an application under this Part:

(d) in the case of an application for a trusteeship order, the Public Trustee;

27(1) The court may appoint a trustee of a minor’s estate in accordance with the Administration of Estates Act and the Surrogate Rules.

(2) A trustee of the estate of a child has the care and management of the estate of the child, whether real or personal, and may receive any money due and payable to the child and give a release in respect of it.

28(1) A trusteeship order shall not be made without the consent of

(a) each guardian of the child,

(b) the child, if the child is 12 years of age or older, and

(c) the person proposed to be appointed as trustee under section 27.

(2) Despite subsection (1), the court may make an order dispensing with the consent of one or more persons referred to in subsection (1)(a) or (b) if the court is satisfied that there are good and sufficient reasons for doing so.

29 The court may, on application by

(a) a guardian of the child,

- (b) *the child, if the child is 12 years of age or older,*
- (c) *the Public Trustee, or*
- (d) *the trustee of the estate of the child appointed under section 27,*

make an order terminating the trusteeship order on any grounds for which trustees are removable or if the court is satisfied that it is in the best interests of the child to do so.

31(2) A trustee appointed by the court under section 27 may apply to the court for directions concerning a question affecting the child's estate, and the court may make any order in that regard that the court considers appropriate.

108(12) A person

- (a) *who is a guardian under the Domestic Relations Act immediately before the coming into force of this section is deemed to be a guardian under Part 2 of this Act, and*
- (b) *who is appointed as the trustee or guardian of a minor's estate under the Domestic Relations Act before the coming into force of this section is deemed to have been appointed trustee of the minor's estate under section 27.*

111 The Administration of Estates Act is amended in section 1(e)(iv) by striking out "person or estate, or both," and substituting "estate".

22 Amends chapter T-8 of the Revised Statutes of Alberta 2000. Section 1(a) presently reads:

1 In this Act, "trustee" includes

- (a) *an executor, an administrator or a guardian of the estate of a person,*

23 Repeal.

24 Coming into force.