

Bill No. 51 of 1937.

A BILL RESPECTING MENTALLY INCOMPETENT
PERSONS AND THEIR ESTATES.

NOTE.

Part I of this Bill reproduces the substance of the present rules of Court relating to the estates of persons of incompetent mind, and in addition empowers the Court to make an order committing the custody of a person of incompetent mind to some person or persons as his committee.

Part II empowers the Court to make orders of a similar nature to those provided for by Part I in the case of persons incapable of managing their own affairs by reason of disease, age, habitual drunkenness, the use of drugs or other causes, without making any declaration as to unsoundness of mind, and to provide for the management of his estate.

Part III amends and consolidates the existing provisions of *The Estates of the Mentally Incompetent Act*. The only new provision of importance is to be found in section 34 which makes provision for the disposition of money in the hands of the Administrator which forms part of the estate of a mentally incompetent person who has died either testate or intestate in case the Administrator has no notice of any claim by a legatee, heir, or next of kin.

R. ANDREW SMITH,
Legislative Counsel.

(This note does not form any part of the Bill and is offered merely as a partial explanation of some of its provisions.)

BILL

No. 51 of 1937.

An Act respecting Mentally Incompetent Persons and
their Estates.

(Assented to _____, 1937.)

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

PRELIMINARY.

1. This Act may be cited as "*The Estates of the Mentally Incompetent Act.*"

PART I.

CUSTODY OF PERSONS OF UNSOUND MIND AND THEIR ESTATES.

INTERPRETATION.

2. In this part, unless the context otherwise requires, the expression,—

- (a) "Court" means the Supreme Court of Alberta; and "judge" means a judge of that Court;
- (b) "Lease" means lease whether with or without option to lessee of purchasing;
- (c) "Person of unsound mind" means a lunatic or a mental defective; and "unsoundness of mind" has a corresponding meaning;
- (d) "Transfer" means the execution and delivery by a person of every necessary or suitable assurance for conveying, assigning, transferring, releasing or disposing of to another, property or an interest therein, together with the performance of all formalities required by law for the validity of the transfer, and includes the transfer of negotiable instruments by endorsation;
- (e) "Trust" includes trusts implied and constructive, trusts where the trustee has some beneficial interest, and the powers and duties incident to the office of personal representative of a deceased person; and "trustee" has a corresponding meaning.

3. The court may, subject to the provisions of Part III hereof, make orders for committing the custody of persons of unsound mind and the custody and management of their estates, and every such order shall take effect immediately, excepting that as to the custody of the estate, if security be required, the order shall take effect upon the completion of the security.

4. The court may, for good cause shown, make an order appointing a new committee, either in substitution for or in addition to any existing committee or although there is no existing committee.

5. The powers of this Act conferred upon the court may be exercised by a judge in chambers.

6. The court may order the costs, charges and expenses of and incidental to proceedings under this part, whether in or out of court, to be paid by any party to the proceeding, or out of the estate of the person of unsound mind or alleged to be so, or partly in one way and partly in another.

DECLARATION OF UNSOUNDNESS OF MIND.

7. The court, upon the application of any person, supported by evidence, may, by order, declare a person to be of unsound mind, if satisfied that the evidence establishes beyond reasonable doubt that he is so.

8.—(1) Where in the opinion of the court the evidence does not establish beyond a reasonable doubt the alleged unsoundness of mind, or where for any other reason the court deems it expedient to do so, the court, instead of making an order under the last preceding section, may direct an issue to try the alleged unsoundness of mind.

(2) Subject to the provisions of the next succeeding section, the issue shall be tried, with or without a jury, as the court directing it or the judge presiding at the trial orders, and the trial shall take place at such time and place as the court directs.

(3) On the trial of the issue, the person alleged to be of unsound mind, if within the jurisdiction of the court shall be produced, and shall be examined at such time and in such manner, either in open court or privately, and, where the trial is with a jury, before the jury retire to consider their verdict, as the court directs, unless the order directing the issue, or a subsequent order, or the judge presiding at the trial dispense with his production or with his examination.

(4) On the trial of the issue, the inquiry shall be confined to the question whether or not the person who is the subject of the inquiry, is at the time of the inquiry, of unsound mind and incapable of managing himself or his affairs, and the court shall make an order in accordance with the result of the inquiry.

9.—(1) The person alleged to be of unsound mind shall be entitled to demand, by notice in writing given to the person applying for the declaration, and filed at least ten days before the trial, that an issue directed to determine the question of his unsoundness of mind be tried with a jury, and, unless he withdraw the demand before the trial, or the

court be satisfied by examination of him that he is not mentally competent to form and express a wish for a trial with jury and so declare by order, the issue shall be tried with a jury.

(2) For the purpose of the examination, or where it is deemed proper for any other purpose, the court may require the person alleged to be of unsound mind to attend at such convenient time and place as the court appoints.

10. The court may, by order, require a person alleged to be of unsound mind to attend and submit to examination by a physician or physicians at such time and place as the order directs.

SUPERSEDING DECLARATION OF UNSOUNDNESS OF MIND.

11.—(1) Upon application at any time after the expiration of one year from the date of the order by which a person has been declared of unsound mind, or sooner by leave, the court, if satisfied that such person has become of sound mind and capable of managing his own affairs, may make an order so declaring, or, if not so satisfied, may direct an issue to try the question of such person's restoration to sanity, and in either case may make such order as the court deems proper.

(2) An issue so directed shall be subject to the provisions of the two last preceding sections.

COMMITTEES OF ESTATES OF PERSONS OF UNSOUND MIND.

12.—(1) The committee of the estate shall have the right to and shall take into his custody or under his control all property to which the person of unsound mind is entitled or of which he is possessed, and call in, collect and receive debts owing to him.

(2) To facilitate the administration, the court may, in its discretion, by order, vest any of the property of a person of unsound mind in the committee or appoint some person to transfer it to the committee, or as the court directs.

13.—(1) Where a committee of the estate of a person of unsound mind has been appointed, unless the court by order modify, alter or dispense with the same or some part thereof, or this or some other Act otherwise provide, the following provisions shall in every case be observed:

- (a) the committee shall, within six months after being appointed, file in the office of such officer as is appointed for that purpose, a true inventory of the whole estate of the person of unsound mind, stating the income and profits thereof, and setting forth his debts, credits and effects, so far as the same have come to the knowledge of the committee;
- (b) if any property belonging to the estate be discovered after the filing of an inventory, the committee shall file a true account of it, as it is discovered;

- (c) every inventory and account shall be verified by the oath of the committee or of some person in a position to verify them;
 - (d) the committee shall give security, with two or more sureties, in double the amount of the personal estate and of the annual rents and profits of the real estate, for duly accounting for the same at such intervals as the court directs, for filing the inventory and for the payment into court of the balances in his hands upon such accounting, forthwith after it has been ascertained, or otherwise as the court directs; and
 - (e) the security shall be taken by bond in the name of the clerk of the court and his successors in office or assigns, and shall be filed with the court.
- (2) A creditor or a relative of a person of unsound mind may, from time to time, but not oftener than once in each year, apply to the court by motion in chambers for an order that the committee bring in and pass his accounts, file the inventory, and for the payment into court of the balances in his hands or otherwise as the court directs.

MANAGEMENT AND ADMINISTRATION.

14. The powers conferred by this Act as to the management and administration of the estate of a person of unsound mind shall be exercisable, in the discretion of the court, for his maintenance or benefit and that of persons dependent upon him or any of them, or, where it appears to be expedient, in the due course of management of the estate.

15.—(1) The court may, subject to the rights of secured creditors, order that any property of a person of unsound mind be dealt with as is deemed most expedient for the purpose of raising, securing or repaying, with or without interest, money which is to be or has been applied to,—

- (a) payment of his debts or engagements;
- (b) discharge of an encumbrance on his property;
- (c) payment of a debt or expenditure incurred for his maintenance and that of persons dependent upon him or any of them or otherwise for his or their benefit;
- (d) payment of, or provision for the expenses of his future maintenance and that of persons dependent upon him or any of them; or
- (e) the improvement, security or advantage of his property.

(2) In the case of a charge or mortgage for the expenses of future maintenance, the court may direct the same to be payable, either contingently, if the interest charged be contingent or future, or upon the happening of the event if the interest be dependent on an event which must happen, and either in a gross sum or in annual or other periodical sums,

and at such times and in such manner as is deemed expedient.

16. The court may, by order, on such terms and conditions as it deems just, authorize and direct the committee of the estate of a person of unsound mind to do all or any of the following things:

- (a) sell any of his property and accept mortgages for purchase money;
- (b) make, exchange or partition of any of his property, and give or receive money for equality of exchange or partition;
- (c) carry on his trade or business;
- (d) grant leases of any of his property;
- (e) surrender a lease, with or without accepting new lease, or accept a surrender of a lease;
- (f) with or without consideration, surrender, transfer or otherwise dispose of onerous property belonging to him;
- (g) exercise a power or give a consent required for the exercise of a power vested in him;
- (h) exercise a right or obligation to elect, belonging to or imposed upon him;
- (i) compromise and settle a debt owing to or by him.

17. The committee of the estate of a person of unsound mind may, without obtaining the authority or direction of the court,—

- (a) make valid and binding leases of his real property for any term not exceeding three years;
- (b) invest any of his money in securities in which trustees are authorized to invest trust money under *The Trustee Act*;
- (c) transfer property held in trust by him, either solely or jointly with another, to the person beneficially entitled thereto;
- (d) give a consent to the transfer or assignment of a lease where his consent to the transfer or assignment is requisite;
- (e) perform a contract entered into by him before his unsoundness of mind;
- (f) 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;
- (g) on his behalf give or receive a notice.

18. The committee, or such person as the court approves, may, in the name and on behalf of the person of unsound mind, execute and do all such assurances and things as are necessary for giving effect to any order made under, or to any authority given by this part.

19. When any portion of an estate which is under administration by a committee is in the possession of another person, the committee's acknowledgment of receipt thereof or of the documents or other evidence of title thereto, shall be a sufficient discharge and release to such other person, without proof that or inquiry whether, the person whose estate is being dealt with is or has been found or declared of unsound mind.

PROVISIONS FOR TEMPORARY UNSOUNDNESS OF MIND.

20.—(1) Where it appears to the court that the unsoundness of mind of a person is in its nature temporary, and that it is expedient to make temporary provision for his maintenance and that of persons dependent upon him or any of them, and that money is readily available, the court may, instead of appointing a committee, allow out of the available money such amount as it deems proper for the maintenance and direct payment thereof, to such person as it appoints, to be applied to the purpose.

(2) The recipient of money by virtue of an order under this section shall account for it when and as the court directs.

FOREIGN PERSONS OF UNSOUND MIND.

21. Where property stands in the name of, or is vested in a person residing out of the province, the court, upon proof that he has been declared or found of unsound mind and that his property has been committed to a person appointed to manage it, may order some person to make such transfer of the property or of a part thereof to the person so appointed, as the court directs.

22. Where there is money in court to the credit of a person who has been found, or declared, or who is alleged to be of unsound mind and he is resident in Great Britain or Northern Ireland, or in any part of Canada outside the province, the court may, upon production of the order of a court exercising jurisdiction where the person is resident authorizing another person to receive it, make an order for payment of the money to the person so authorized.

PART II.

CUSTODY OF PERSONS MENTALLY INFIRM AND
THEIR ESTATES.

APPLICATION OF ACT TO PERSONS INCAPACITATED BY
MENTAL INFIRMITY.

23.—(1) If it be proved to the satisfaction of the court that a person is, through mental infirmity arising from disease, age, habitual drunkenness, the use of drugs or other cause, incapable of managing his affairs, the court may so

declare without making a declaration of unsoundness of mind.

(2) Such of the powers of Part I as are made exercisable by the committee of an estate under order of the court shall be exercisable in a case under this section by such person, in such manner, and with or without security, as the court directs, and the order may confer upon the person therein named authority to do any specified act or exercise any specified power, or may confer a general authority to exercise on behalf of the person to whom the order relates, until further order, all or any such powers without further application to the court.

24.—(1) Where it appears to the court that a person is, through mental infirmity arising from disease, age, habitual drunkenness, the use of drugs or other cause, incapable of managing his affairs, and that the value of his personal estate or money payable to him under or by virtue of a contract of insurance does not exceed the sum of two thousand dollars, the court exercising jurisdiction may, although there has been no declaration of unsoundness of mind, authorize and direct a person in possession or control of the estate or money to dispose thereof in such manner and to such extent as the court deems proper and shall have and may exercise all the rights and powers with regard thereto that the person incapable of handling his affairs would have or could exercise if of full age and of sound and disposing mind.

(2) The court exercising jurisdiction may order costs of and incidental to an application under this section to be paid by the applicant or out of the estate or money so dealt with.

PART III.

ADMINISTRATION OF ESTATES OF THE MENTALLY INCOMPETENT.

INTERPRETATION.

25. In this part, unless the context otherwise requires, the expression,—

- (a) "Court" means the Supreme Court of Alberta;
- (b) "Hospital" means a public hospital or institution for the confinement, maintenance, care or treatment of persons mentally incompetent;
- (c) "Mentally incompetent" includes every person who is or who is deemed to be mentally diseased or a mental defective, or a drug addict; and
 - (i) who is detained or under treatment for a mental disease or infirmity in a hospital; or
 - (ii) who is on probation from a hospital; or

- (iii) who is under the care or in the custody of or placed under supervision by the Provincial Psychiatrist or the Minister of Health;
- (d) "Minister" means the Attorney General or the member of the Executive Council entrusted with the administration of this part.

APPOINTMENT OF ADMINISTRATOR.

26.—(1) There shall be an Administrator of Estates of the Mentally Incompetent appointed by the Lieutenant Governor in Council, whose duties shall include the administration and care of the property which is entrusted to him under this or any other Act.

(2) The Lieutenant Governor in Council may appoint a person to act as the deputy or acting administrator, in the case of the illness or absence of the administrator or of a vacancy in the office, and the person so appointed shall have all the powers, rights and duties of the administrator.

27.—(1) The administrator shall be the committee of the estate of every mentally incompetent person who has no other committee.

(2) All the estate of whatsoever kind, nature or tenure, of any mentally incompetent person, in respect of which the administrator is acting as guardian, shall forthwith upon the commencement of such guardianship vest in the administrator, who shall have full power and authority to sell or otherwise dispose of the real or personal estate, or any part thereof, as he may think fit.

(3) Upon the admission of a mentally incompetent person to a hospital, the Minister may issue a certificate in Form "A" which shall be conclusive evidence of the appointment of the administrator and of his power and authority to sell, dispose of or otherwise deal with the real or personal property of the mentally incompetent person.

(4) The administrator may file the certificate or a true copy thereof in the Land Titles Office for the Registration District in which any of the real property of the mentally incompetent person is situated and upon receipt of such certificate the Registrar of Land Titles shall register the same and until he receives notice from the administrator of the withdrawal of the said certificate he shall not accept for registration any instrument affecting the mentally incompetent person's lands except an order of court, a certified copy of a writ of execution, a caveat, or any document subsequent to the said notice properly registerable in the course of proceedings for foreclosure or sale, unless such instrument is duly executed by the administrator or the registration is authorized by him.

28.—(1) The authority of the administrator shall continue with respect to the estate of a mentally incompetent

person who has escaped from a hospital or from supervision or custodianship after his escape and until he is completely discharged.

(2) Upon the removal of a mentally incompetent person on trial from a hospital by his friends, or his release or discharge pursuant to the provisions of *The Mental Diseases Act* or *The Mental Defectives Act* or his escape therefrom, the administrator may retain the control and administration of the estate so long as is in his discretion necessary or desirable in the interests of such person or his estate.

(3) The administrator shall not be replaced by another person in his office as committee of the estate of a mentally incompetent person without the order of the Lieutenant Governor in Council.

29. Notwithstanding any rule or practice, or the provision of any Act requiring security, it shall not be necessary for the administrator to give security for the due performance of his duty as committee, administrator or trustee, or in any other office to which he is appointed by order of a court or under the provisions of any Act.

POWERS AND DUTIES OF ADMINISTRATOR.

30. The administrator, while acting as committee of the estate of a mentally incompetent person, shall have all the powers of such a committee or guardian appointed by the court, and may exercise them without applying to the court for a declaration of unsoundness of mind or for an order or direction of the court.

31.—(1) In the event of the administrator entering into a contract on behalf of a mentally incompetent person while the latter is detained in a hospital, or on probation therefrom, the contract shall be binding on that person after his complete discharge from the hospital, in the same manner and to the same extent as if he himself had made it; and, if the person fail to carry out his obligations thereunder after his discharge, the administrator may do so in the same manner as he might have done if the person had remained in detention.

(2) Where a sale of land has been made by the administrator while the owner was so detained, or on probation, the administrator shall have power to convey title, notwithstanding that the owner is discharged before a conveyance or transfer or the land so sold has been executed or registered.

32. A recital in a lease, mortgage, conveyance or other document that a mentally incompetent person is confined to a hospital and that the administrator is his committee, shall be evidence of the facts recited.

33.—(1) The administrator shall be liable to render an account of his administration of an estate in the same manner as a committee appointed by the court.

(2) Upon the termination of his administration of a mentally incompetent person's estate and from time to time during the course of his administration the administrator may retain out of the estate of such person such amounts as may be necessary to pay any amounts due to the Government in respect of such person.

(3) The Lieutenant Governor in Council may, upon the recommendation of the Provincial Treasurer, authorize the Provincial Treasurer to advance to the administrator from time to time, by way of temporary loan from the General Revenue Fund of the Province, such sums of money for such period and upon such terms and conditions as may be deemed requisite for the advantageous administration of any estate in his hands.

34.—(1) Notwithstanding any of the provisions of *The Ultimate Heir Act*, any money in the hands of the administrator which forms part of the estate of a mentally incompetent person who has died either testate or intestate, shall if the same has remained in the hands of the administrator for six years, and if at the expiration of that period the administrator has no notice of any claim thereto by any person as legatee, heir or next of kin, the administrator shall pay such money to the Provincial Treasurer and thereupon the same shall form part of the General Revenue Fund of the Province.

(2) The Provincial Treasurer, upon a person claiming to be entitled to money so paid over, and upon being satisfied as to the claimant's right, shall, if authorized by the Lieutenant Governor in Council, pay the money to the claimant, with such interest thereon as may be specified in the order in council.

35.—(1) The Lieutenant Governor in Council may make regulations,—

- (a) for determining the fees which shall be charged for the administration of the estates of mentally incompetent persons;
- (b) generally for all or any matters connected with the duties of the administrator.

(2) All fees received by the administrator, not laid out in expenses in connection with an estate, shall form part of the General Revenue Fund.

ADMINISTRATION AFTER DEATH.

36.—(1) When a mentally incompetent person, whose estate the administrator is administering, dies, the administrator shall retain possession of the estate of the deceased.

(2) The Lieutenant Governor in Council may thereupon appoint the administrator to be administrator of the estate

of the deceased, and the administrator upon appointment shall have all the powers and duties with respect to the estate of an administrator appointed by the court.

(3) The administrator shall forthwith, upon receipt of an order in council containing such appointment file in the District Court with the Clerk of the District Court for the judicial district in which the mentally incompetent person had his place of residence as well as in every judicial district where any property of the mentally incompetent person, real or personal, is situated, a duly certified copy thereof, and the Clerk shall file such copy among his records without fee.

37. Where a mentally incompetent person admitted to a hospital dies possessed of personal property not exceeding five hundred dollars in value and where no probate of his will or letters of administration of his estate has been granted in the province, the administrator, without obtaining any order or authority from a court or from the Lieutenant Governor in Council or otherwise, may, out of the personal property give or distribute, in his discretion, wearing apparel and articles of personal use or ornaments to or among one or more of the family and relatives of the deceased, and may sell personal property not so dealt with and apply the proceeds towards payment of sums due or debts incurred for the maintenance or burial of the deceased, and may do all things necessary to complete the administration of the estate.

NON-RESIDENT MENTALLY INCOMPETENT PERSONS.

38.—(1) Where a mentally incompetent person who is detained in an asylum, mental hospital or other public institution in another province has estate in this province, the Lieutenant Governor in Council may appoint an official of the other province, who is charged with the duty of managing, handling, administering or caring for the estate of the mentally incompetent person therein, to be administrator of his estate in this province, and the order in council making the appointment shall be conclusive proof that all the conditions precedent to the appointment have been fulfilled.

(2) The appointee under an order in council issued under subsection (1) shall possess the same rights, powers, privileges and immunities as are conferred by this Act upon the administrator, and he shall be subject to the same obligations and shall perform the same duties; and the provisions of this Act shall apply to him with the necessary modifications in the same manner as to the administrator.

(3) All courts, court officials and registrars of registration divisions and district registrars of land titles offices shall be bound by the order in council appointing the official in the same manner and to the same extent as they are

bound by an order in council appointing the administrator to be committee of an estate under this Act.

GENERAL.

39. Upon the commencement of such guardianship no action or other proceeding in any court, by or against such mentally incompetent person, or his estate, shall be commenced or continued without leave of a judge of the Supreme Court, which leave may be granted only upon motion of which notice shall have been given to the administrator; and subject to such terms as to security for costs or otherwise as to the judge may appear just or expedient.

40. The time during which a mentally incompetent person is confined in a hospital for mental diseases shall not, as against him, be computed for the purposes of *The Limitations Act* or any other Act or law limiting a time within which an action is required to be commenced or proceeding taken; but the administrator may take action or proceed notwithstanding that the period limited for commencing action or proceeding would, but for this section, have elapsed subsequently to the date of the committal of the mentally incompetent person to the hospital.

41.—(1) The Provincial Auditor shall make an annual audit of the books, accounts and vouchers of the administrator and of the books, accounts and voucher relating to the estates of mentally incompetent persons, guardianship of which has been delegated to trust companies, or other persons.

(2) The Provincial Treasurer shall lay before the Legislature within fifteen days of the opening of the session in each year the report of the Auditor upon the Administrator's accounts.

42. The provisions of this Act shall prevail notwithstanding anything contained in any other Act, or any order in council or rule of any court in the province.

43. *The Estates of the Mentally Incompetent Act*, being chapter 225 of the Revised Statutes of Alberta, 1922, is hereby repealed.

44. This Act shall come into force on the day upon which it is assented to.

SCHEDULE.

FORM A.

(Section 27.)

I hereby certify that....., of the
....., of.....
in the Province of Alberta, is a mentally incompetent person
and is now detained in
(name of institution), (or was so detained but has been
discharged and removed therefrom) pursuant to the pro-
visions of *The Mental Diseases Act*, or *The Mental Defec-*
tives Act.

And I further certify that.....
under the provisions of *The Estates of the Mentally In-*
competent Act is the administrator of the estate of the
said

Dated at the City of Edmonton,
Province of Alberta, this.....
day of....., 19.....

.....
Attorney General.

No. 51.

THIRD SESSION
EIGHTH LEGISLATURE
1 GEORGE VI
1937

BILL

An Act respecting Mentally Incompetent Persons and their Estates.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. HUGILL.

EDMONTON:
A. Shnitka, King's Printer
1937