

DEPENDENT ADULTS ACT

Chapter D-11

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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) “agent” means an agent as defined in the *Personal Directives Act*;

- (b) “appeal panel” means an appeal panel established pursuant to section 79;
- (c) “certificate of incapacity” means a certificate of incapacity issued pursuant to section 70;
- (d) “Court” or “Surrogate Court” means The Surrogate Court of Alberta;
- (e) “dependent adult” means a person in respect of whom
 - (i) a guardianship order is in effect,
 - (ii) a trusteeship order is in effect, or
 - (iii) both a guardianship order and a trusteeship order are in effect;
- (f) “enduring power of attorney” means an enduring power of attorney as defined in the *Powers of Attorney Act*;
- (g) “facility” means a place designated in the regulations as a facility;
- (h) “guardian” means the person named as a guardian in a guardianship order or a person who becomes a guardian by virtue of the operation of this Act;
- (i) “guardianship order” means an order of the Court appointing a person as a guardian pursuant to section 7 or as an alternate guardian pursuant to section 25;
- (j) “health care” includes
 - (i) any examination, diagnosis, procedure or treatment undertaken to prevent any disease or ailment,
 - (ii) any procedure undertaken for the purpose of preventing pregnancy,
 - (iii) any procedure undertaken for the purpose of an examination or a diagnosis,
 - (iv) any medical, surgical, obstetrical or dental treatment, and
 - (v) anything done that is ancillary to any procedure, treatment, examination or diagnosis;
- (k) “institution” means
 - (i) a facility,

- (ii) a nursing home,
 - (iii) an approved hospital under the *Hospitals Act*,
 - (iv) lodge accommodation as defined in the *Alberta Housing Act*,
 - (v) a place of care, licensed under the *Social Care Facilities Licensing Act*, for persons who are aged or infirm or who require special care,
 - (vi) a hostel or other establishment, licensed under the *Social Care Facilities Licensing Act*, operated to provide accommodation and maintenance for unemployed or indigent persons,
 - (vii) a jail or penitentiary or correctional institution as defined in the *Corrections Act*, or
 - (viii) any other establishment or class of establishment designated in the regulations as an institution;
- (l) “interested person” means
- (i) the Public Trustee,
 - (ii) the Public Guardian, or
 - (iii) any other adult person who is concerned for the welfare of the person in respect of whom a guardianship order or trusteeship order is sought or has been obtained;
- (m) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (n) “nearest relative” means with respect to any person, the relative of that person first listed in the following subclauses, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of 2 or more relatives described in any subclause being preferred to the other of those relatives regardless of sex:
- (i) husband or wife;
 - (ii) son or daughter;
 - (iii) father or mother;
 - (iv) brother or sister;

- (v) grandfather or grandmother;
- (vi) grandson or granddaughter;
- (vii) uncle or aunt;
- (viii) nephew or niece;
- (o) “personal directive” means a personal directive as defined in the *Personal Directives Act*;
- (p) “physician” means a person registered as a medical practitioner under the *Medical Profession Act* and, with respect to a physician who practises medicine outside Alberta, means a person who is licensed or otherwise authorized to practise medicine in the jurisdiction where that person practises;
- (q) “place of care” means a place designated in the regulations as a place of care;
- (r) “psychologist” means a person registered under the *Psychology Profession Act* and, with respect to a psychologist who practises psychology outside Alberta, means a person who is licensed or otherwise authorized to practise psychology in the jurisdiction where that person practises;
- (s) “Public Guardian” means the person appointed as the Public Guardian pursuant to section 20;
- (t) “Public Trustee” means the person appointed as the Public Trustee under the *Public Trustee Act*;
- (u) “Surrogate Rules” means the *Surrogate Rules* under the *Surrogate Court Act*;
- (v) “trustee” means the person named as trustee in a trusteeship order or a person who becomes a trustee by virtue of the operation of this Act;
- (w) “trusteeship order” means an order of the Court appointing a person as trustee of the estate of a person pursuant to section 35 or as an alternate trustee of the estate of a person pursuant to section 51.

RSA 1980 cD-32 s1;RSA 1980 c6(Supp) s2;1985 cP-25.01 s70;
1985 c21 s2;1986 cD-27.1 s13;1989 c10 s7;1991 cP-13.5 s17;
1994 cA-30.1 s39(3);1996 cP-4.03 s35

Part 1 Guardianship

Division 1 Application for Guardianship Order

Application for guardianship order

2(1) Subject to this section and section 3, any interested person may apply to the Court for an order appointing a guardian in respect of an adult person.

(2) No application shall be made to the Court under subsection (1) unless it is accompanied with a report of a physician or a psychologist in the prescribed form.

(3) The interested person making an application under subsection (1) shall, at the same time the application is made, file with the Court the written consent of the person proposed as guardian to the effect that the person is willing to act as the guardian of the person in respect of whom the application is made.

RSA 1980 cD-32 s2;RSA 1980 c6(Supp) s3;1985 c21 s3

Persons entitled to copy of application

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

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

- (a) the person in respect of whom the application is made,
- (b) the person living in Canada who is
 - (i) the nearest relative of the person in respect of whom the application is made, or
 - (ii) if the nearest relative referred to in subclause (i) is the applicant, the next nearest relative of the person in respect of whom the application is made,
- (c) the person proposed as the guardian of the person in respect of whom the application is made if the person is not the applicant or the nearest relative served pursuant to clause (b),

- (d) if the person in respect of whom the application is made is a resident of an institution, the person in charge of the institution,
- (e) the Public Guardian, if the Public Guardian is not the applicant or the person served pursuant to clause (c),
- (f) if the person in respect of whom the application is made has made a personal directive, the agent, if any, designated in the personal directive if the agent is not the applicant or a person otherwise served pursuant to this subsection,
- (g) any attorney under an enduring power of attorney given by the person in respect of whom the application is made if the attorney is not the applicant or a person served pursuant to this subsection,
- (h) any trustee of the person in respect of whom the application is made if the trustee is not the applicant or a person served pursuant to this subsection, and
- (i) any other person that the Court may direct.

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

(4) Any person, other than a person served under subsection (2), may file a notice of objection within 10 days after service on any person under subsection (2).

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

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

(7) No order for service ex juris is necessary for service of a copy of an application on any of the persons referred to in subsection (2) in a province or territory of Canada other than Alberta or in the United States of America, but service must be effected at least

- (a) 30 days before the date the application is to be heard in the case of a person in a province or territory other than Alberta, or

- (b) 45 days before the date the application is to be heard in the case of a person in the United States of America.

(8) The Court may, if it considers it appropriate to do so,

- (a) shorten the time for service on all or any of the persons referred to in subsection (2),
- (b) direct the manner of service, or approve the manner of service that has been effected, on all or any of the persons referred to in subsection (2),
- (c) dispense with the requirement for service on all or any of the persons referred to in subsection (2), except the Public Guardian and, subject to clause (d), the person in respect of whom the application is made, or
- (d) dispense with the requirement for service on the person in respect of whom the application is made if
 - (i) the Public Guardian consents, and
 - (ii) the Court is satisfied that it is in the best interests of that person to do so.

RSA 1980 cD-32 s3;RSA 1980 c6(Supp) ss5,30;
1985 c21 s5;1991 cP-13.5 s17;1996 cP-4.03 s35;
1996 c13 s2

Application without report

4 Notwithstanding sections 2(2) and 3(2) and (3), if the Court is satisfied that

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

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

1996 c13 s3

Inquiry by Court and report

5(1) When considering an application for an order appointing a guardian, the Court shall inquire as to whether

- (a) the person in respect of whom the application is made has made a personal directive,
- (b) the person in respect of whom the application is made would substantially benefit by the appointment of a guardian, and
- (c) it is in the best interests of the person in respect of whom the application is made for a guardian to be appointed for the person.

(2) If

- (a) the Court has any doubt as to whether a guardian should be appointed, or
- (b) a guardianship order is being reviewed by the Court,

the Court may appoint a person to prepare a report on the person named in the application with respect to any or all of that person's physical, mental, social, vocational, residential, educational or other needs both present and future and generally that person's ability to care for himself or herself and to make reasonable judgments with respect to matters relating to his or her person.

RSA 1980 cD-32 s4;1985 c21 s6;1996 cP-4.03 s35;1996 c13 s4

Persons at hearing

6 If a hearing is held in respect of an application for an order appointing a guardian or on a review of a guardianship order

- (a) any person served pursuant to section 3(2) or (6), and
- (b) any other person who wishes to make representations and whom the Court agrees to hear,

may appear and make representations.

RSA 1980 cD-32 s5;1996 c13 s5

Division 2

Guardianship Order and Its Effect

Appointment of guardian

7(1) When the Court is satisfied that a person named in an application for an order appointing a guardian is

- (a) an adult, and
- (b) repeatedly or continuously unable
 - (i) to care for himself or herself, and
 - (ii) to make reasonable judgments in respect of matters relating to his or her person

the Court may make an order appointing a guardian.

(2) The Court shall not make an order under subsection (1) unless it is satisfied that the order would

- (a) be in the best interests of, and
- (b) result in substantial benefit to

the person in respect of whom the application is made.

(3) If the Court makes an order under this section, the applicant shall serve a copy of the order on the persons who are required to be served with an application under section 3(2).

RSA 1980 cD-32 s6;RSA 1980 c6(Supp) s6;1985 c21 s7

Persons eligible as guardian

8(1) The Court may appoint as a guardian of a dependent adult, any adult person who consents to act as guardian and in respect of whom the Court is satisfied that

- (a) the person will act in the best interests of the dependent adult,
- (b) the person will not be in a position where the person's interests will conflict with the dependent adult's interests, and
- (c) the person is a suitable person and is able to act as the guardian of the dependent adult.

(2) Notwithstanding subsection (1)(b), a person shall not be considered to be in a position where the person's interests will conflict with the dependent adult's interests by reason only of the fact that the person is a potential beneficiary or a relative of the dependent adult.

(3) The Court may require the person proposed as guardian to attend and answer questions to determine whether the person meets the requirements of subsection (1).

RSA 1980 cD-32 s7;RSA 1980 c6(Supp) s7;1985 c21 s8;
1999 c32 s4

Review of guardianship order

9(1) On making or reviewing a guardianship order granted pursuant to an application under section 3, the Court shall specify

- (a) the time within which the order must be reviewed by the Court, which shall not be later than 6 years after the date of the order or the date of the review of the order, as the case may be,
- (b) the person required to apply to the Court for the review, and
- (c) any requirement to be complied with by the guardian or any other person with respect to a review of the circumstances of the dependent adult.

(2) On granting an order pursuant to an application considered under section 4, the Court shall specify the time, not later than 90 days after the date of the order, within which the order must be reviewed by the Court.

(3) On a review of an order granted pursuant to an application considered under section 4, the Court may

- (a) cancel the order,
- (b) extend the order once for up to a further 30 days after which time the order lapses, or
- (c) consider it as an application under section 3 if the requirements of section 3 have been met.

RSA 1980 cD-32 s8;RSA 1980 c6(Supp) s8;
1985 c21 s9;1996 c13 s6

Order appointing guardian

10(1) When the Court makes an order appointing a guardian, the Court shall grant to the guardian only the powers and authority referred to in subsection (3) that are necessary for the guardian to make or assist in making reasonable judgments in respect of matters relating to the person of the dependent adult.

(2) Notwithstanding subsection (1), if the Court is aware that the person has a personal directive, the Court may not grant to a guardian any powers and authorities to be exercised by an agent under the personal directive unless the Court terminates the agent's authority relative to those powers and authorities.

(3) In making an order appointing a guardian, the Court shall specify whether all or any one or more of the following matters

relating to the person of the dependent adult are to be subject to the power and authority of the guardian:

- (a) to decide where the dependent adult is to live, whether permanently or temporarily;
 - (b) to decide with whom the dependent adult is to live and with whom the dependent adult is to consort;
 - (c) to decide whether the dependent adult should engage in social activities and, if so, the nature and extent of them and related matters;
 - (d) to decide whether the dependent adult should work and, if so, the nature or type of work, for whom the dependent adult is to work and related matters;
 - (e) to decide whether the dependent adult should participate in any educational, vocational or other training and, if so, the nature and extent of it and related matters;
 - (f) to decide whether the dependent adult should apply for any licence, permit, approval or other consent or authorization required by law;
 - (g) to commence, compromise or settle any legal proceeding that does not relate to the estate of the dependent adult and to compromise or settle any proceeding taken against the dependent adult that does not relate to the dependent adult's estate;
 - (h) to consent to any health care that is in the best interests of the dependent adult;
 - (i) to make normal day to day decisions on behalf of the dependent adult including the diet and dress of the dependent adult;
 - (j) any other matters specified by the Court and required by the guardian to protect the best interests of the dependent adult.
- (4) In making an order appointing a guardian, the Court may
- (a) make its order subject to any conditions or restrictions it considers necessary, or
 - (b) restrict, modify, change or add to any of the matters referred to in subsection (2).
- (5) Any decision made, action taken, consent given or thing done by a guardian with regard to any matter in respect of which the

guardian is appointed guardian is deemed for all purposes to have been decided, taken, given or done by the dependent adult as though the dependent adult were an adult capable of giving consent.

RSA 1980 cD-32 s10;RSA 1980 c6(Supp) s9;1985 c21 s11;
1996 cP-4.03 s35

Compulsory care order

11(1) Where an order has been made under section 7, the Court may, on application of any interested person and subject to subsection (2), make a compulsory care order in accordance with this section.

(2) An application for a compulsory care order shall be served on the persons who are required to be served with an application under section 3(2), except that service of the application on the dependent adult and on the Public Guardian may not be dispensed with.

(3) A court shall only make a compulsory care order if

- (a) it has considered a medical, psychological and social assessment that shows the extent to which the dependent adult presents a danger to himself or herself or others,
- (b) it is satisfied that it is in the best interests of the dependent adult that the dependent adult be confined in a place of care,
- (c) it is satisfied that the dependent adult is in a condition that presents a danger to the dependent adult or others, and
- (d) it is satisfied that a compulsory care order is a proper means of ensuring the protection and treatment of the dependent adult.

RSA 1980 c6(Supp) s10

Copies of order

12 Where the Court makes a compulsory care order under section 11(1), the applicant shall provide to the persons who were served with the application under section 11(2) a copy of the order and a written statement in the prescribed form setting out

- (a) that the compulsory care order may be reviewed by the Court pursuant to section 14,
- (b) that the dependent adult may be represented by legal counsel at any hearing, and

- (c) the address and telephone number of the office of the Legal Aid Society of Alberta that is nearest to the Court.

RSA 1980 c6(Supp) s10

Authority of order

13(1) A compulsory care order made under section 11(1) is sufficient authority for any person to

- (a) confine the dependent adult in a place of care for the period stated in the order, which shall not exceed a period of 3 years,
- (b) apprehend and convey the dependent adult to a place of care and to detain the dependent adult while the dependent adult is being conveyed until the dependent adult arrives at the place of care, and
- (c) transfer the dependent adult to another place of care and to detain the dependent adult while the dependent adult is being transferred.

(2) A compulsory care order remains in effect until it expires or is terminated or cancelled or until the dependent adult dies, whichever first occurs.

(3) During the term of a compulsory care order, the person in charge of the place of care may, if the person is satisfied that the security of the dependent adult will be assured, grant the dependent adult a leave of absence from the place of care for medical, rehabilitative or humanitarian reasons for a time, and on any terms and conditions, that the person in charge of the place of care may prescribe.

(4) If a dependent adult who is the subject of a compulsory care order

- (a) leaves a place of care and a leave of absence has not been granted, or
- (b) leaves a place of care pursuant to a leave of absence but fails to return within the prescribed time,

the person in charge of the place of care may order any peace officer to return the dependent adult to the place of care.

(5) On receipt of an order made under subsection (4), a peace officer may apprehend the dependent adult without a warrant and return the dependent adult directly to the place of care.

RSA 1980 c6(Supp) s10

Application for review of order

14(1) Where, in the opinion of the dependent adult, the guardian or any other interested person, it is no longer in the best interests of the dependent adult who is the subject of a compulsory care order that the dependent adult be confined in a place of care, the dependent adult, the guardian or other interested person may apply to the Court for a review of the compulsory care order, in which case sections 23 and 24 apply to the review of the order, with all necessary modifications.

(2) Where an appeal panel that reviews a compulsory care order under section 82 directs the Public Guardian to apply to the Court for a review of the compulsory care order, the Public Guardian shall make an application to the Court in accordance with subsection (1).

(3) Notwithstanding subsection (1), no person other than the guardian or the Public Guardian may apply to the Court for a review of the compulsory care order more than once every 6 months.

RSA 1980 c6(Supp) s10

Issue of compulsory care certificate

15(1) Where a dependent adult who is residing in a place of care is not the subject of an order under section 11, the person in charge of the place of care may issue a compulsory care certificate in the prescribed form if

- (a) the person is satisfied that the dependent adult is in a condition that presents a danger to himself or herself or others,
- (b) the person is satisfied that it is in the best interests of the dependent adult that the dependent adult be confined in a place of care, and
- (c) the person has considered a written report of a physician or psychologist that shows the extent to which the dependent adult presents a danger to himself or herself or others.

(2) A compulsory care certificate under this section is sufficient authority to confine the dependent adult named in the certificate in a place of care for a period not exceeding 72 hours from the time it was issued.

RSA 1980 c6(Supp) s10

Copy of certificate

16 Where a compulsory care certificate is issued with respect to a dependent adult, the person issuing the certificate shall, not later than 36 hours after issuing the certificate, give the dependent adult and the dependent adult's guardian a copy of the certificate and a written statement in the prescribed form setting out

- (a) that the person issuing the certificate must apply to the Court for a review in accordance with section 17,
- (b) that the dependent adult may be represented by legal counsel at any hearing, and
- (c) the address and telephone number of the office of the Legal Aid Society of Alberta nearest to the place of care where the dependent adult is confined.

RSA 1980 c6(Supp) s10

Application for review of certificate

17(1) Where a compulsory care certificate is issued under section 15, the person issuing the certificate shall, not later than 96 hours after issuing the certificate, apply to the Court for a review of the certificate and any subsequent certificates that may be issued with respect to the same dependent adult before the review takes place.

(2) The person issuing the certificate shall serve a copy of an application for a review under subsection (1) on the persons who are required to be served with an application under section 3(2) at least 5 days before the date fixed for the review of the certificate.

(3) The hearing respecting a review of a certificate shall be held within 28 days after the application for a review or within any further period that the Court may direct.

(4) On hearing an application for a review of a compulsory care certificate, the Court shall inquire as to whether

- (a) the compulsory care certificate and any subsequent compulsory care certificates issued with respect to the same dependent adult were issued in the best interests of the dependent adult, and
- (b) the dependent adult was in a condition that presented a danger to himself or herself or others and whether the dependent adult continued to be in such a condition after the certificate was issued.

(5) If the Court is not satisfied that a compulsory care certificate should have been issued, the Court may order the person issuing the certificate to refrain from issuing any further compulsory care

certificates respecting that dependent adult without leave of the Court.

(6) If the Court is satisfied that the compulsory care certificate was properly issued, the Court shall

- (a) issue a compulsory care order under section 11, if the conditions referred to in subsection (3) of that section are fulfilled, or
- (b) refuse to issue a compulsory care order, if it is satisfied that no further period of confinement of the dependent adult is necessary.

RSA 1980 c6(Supp) s10

Diagnostic and treatment services

18(1) The person in charge of a place of care shall ensure that every dependent adult confined in a place of care pursuant to a compulsory care order or a compulsory care certificate is provided with

- (a) any diagnostic and treatment service that the dependent adult is in need of and that is reasonably required and that the staff of the place of care is able to provide, and
- (b) the level of security that is reasonably required for the confinement of the dependent adult in view of all the circumstances.

(2) If a diagnostic and treatment service that relates to a condition referred to in section 11(3)(c) is provided under subsection (1) to a dependent adult who is the subject of a compulsory care order, the person in charge of the place of care

- (a) at least once every 3 months shall reassess the diagnostic and treatment service, and
- (b) on the termination of the diagnostic and treatment services shall apply to an appeal panel for a review of the compulsory care order in accordance with section 82.

RSA 1980 c6(Supp) s10

Exercise of authority

19(1) A guardian shall exercise the guardian's power and authority

- (a) in the best interests of the dependent adult,
- (b) in such a way as to encourage the dependent adult to become capable of caring for himself or herself and of

making reasonable judgments in respect of matters relating to his or her person, and

(c) in the least restrictive manner possible.

(2) Notwithstanding subsection (1), where a guardian has been granted power and authority with respect to a matter that is contained in a personal directive, the guardian must exercise any power and authority in accordance with any clear and relevant instructions in the personal directive.

RSA 1980 cD-32 s11;RSA 1980 c6(Supp) s11;1996 cP-4.03 s35

Division 3 Public Guardian

Appointment of Public Guardian

20(1) In accordance with the *Public Service Act*, there may be appointed a Public Guardian and any other persons required for the purposes of this Act and the regulations.

(2) Where the Public Guardian is given any power or duty under this or any other Act or a regulation under any of those Acts or by an order of the Court, the Public Guardian may authorize in writing one or more persons to exercise or perform that power or duty on any conditions or in any circumstances that the Public Guardian prescribes and afterwards that power or duty may be exercised or performed by the person or persons so authorized in addition to the Public Guardian.

RSA 1980 cD-32 s12;RSA 1980 c6(Supp) s12;1985 c21 s12;
1998 c23 s6

Duties of Public Guardian

21 When in the opinion of the Public Guardian a person is in need of a guardian and no person is willing, able and suitable either to make an application for an order appointing a guardian or to be appointed as the guardian of the person, or both, the Public Guardian shall

- (a) make an application for an order appointing the Public Guardian or any other person as guardian of that person, or
- (b) notify any person proposing to make an application for an order appointing a guardian as to whether the Public Guardian is willing to be appointed as guardian of the person in respect of whom the application is proposed to be made.

RSA 1980 cD-32 s13;1985 c21 s13

Public Guardian as guardian

22 If the Court is not satisfied that a person proposed as a guardian in an application under this Act meets the requirements of this Act, it may, after giving notice of its intention to the Public Guardian, appoint the Public Guardian as the guardian of the person in respect of whom the application is made.

RSA 1980 cD-32 s14;1985 c21 s14

**Division 4
Other Guardianship Provisions****Service of application for review**

23(1) Nothing in this Act or in any order of the Court made under this Act prevents a dependent adult or any interested person on the dependent adult's behalf from applying to the Court in the form prescribed in the regulations for a review of a guardianship order at any time.

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

- (a) the dependent adult,
- (b) the person living in Canada who is
 - (i) the nearest relative of the dependent adult in respect of whom the application is made, or
 - (ii) if the nearest relative referred to in subclause (i) is the applicant, the next nearest relative of the person of the dependent adult,
- (c) the guardian of the dependent adult if the guardian is not the applicant or the nearest relative served pursuant to clause (b),
- (d) if the dependent adult is a resident of an institution, the person in charge of the institution,
- (e) the Public Guardian, if the Public Guardian is not the applicant or the person served pursuant to clause (c),
- (f) if the person has made a personal directive, the agent, if any, designated in the personal directive if the agent is not the applicant or a person otherwise served pursuant to this subsection,

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

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

(4) Any person, other than a person served under subsection (2), may file a notice of objection within 10 days after service on any person under subsection (2).

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

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

(7) No order for service ex juris is necessary for service on any of the persons referred to in subsection (2) in a province or territory of Canada other than Alberta or in the United States of America, but service must be effected at least

- (a) 30 days before the date the application is to be heard in the case of a person in a province or territory other than Alberta, or
- (b) 45 days before the date the application is to be heard in the case of a person in the United States of America.

(8) The Court may, if it considers it appropriate to do so,

- (a) shorten the time for service on all or any of the persons referred to in subsection (2),
- (b) direct the manner of service, or approve the manner of service that has been effected, on all or any of the persons referred to in subsection (2), or

- (c) dispense with the requirement for service on all or any of the persons referred to in subsection (2), except the Public Guardian.

RSA 1980 cD-32 s15;RSA 1980 c6(Supp) ss13,30;
1985 c21 s15;1991 cP-13.5 s17;1996 cP-4.03 s35;1996 c13 s7

Court order after review

24(1) When considering an application for review of a guardianship order, the Court

- (a) shall consider whether the conditions referred to in section 7(1) and (2) are still applicable and whether the guardian has exercised the guardian's power and authority in accordance with the guardianship order and section 19, and
- (b) may amend, cancel, terminate, continue, vary or replace the order subject to any conditions or requirements it considers necessary.

(2) If the Court amends, varies or replaces an order under subsection (1), the applicant shall serve a copy of the order as amended or varied or of the replacement order, as the case may be, on the persons who are required to be served with an application under section 23(2).

(3) If the Court cancels, terminates or continues an order under subsection (1), the applicant shall serve on the persons referred to in subsection (2) a notice indicating that the cancellation, termination or continuation has taken place.

RSA 1980 cD-32 s16;RSA 1980 c6(Supp) s16;1985 c21 s16;
1996 c13 s8

Appointment of alternate guardian

25(1) On making a guardianship order or on a review of a guardianship order, the Court may appoint an alternate guardian if

- (a) the person proposed as alternate guardian has given the person's written consent to act as guardian of the dependent person in the event of the death or temporary absence of the guardian, and
- (b) it is satisfied that the persons on whom the application for a guardianship order or a review of a guardianship order is served pursuant to section 23(2) have had sufficient notice of the willingness of the person proposed as alternate guardian to act as an alternate guardian.

(2) Section 8 applies to the person proposed as the alternate guardian.

(3) If the Court appoints an alternate guardian under subsection (1), the applicant shall serve a copy of the order appointing the alternate guardian on the persons who are required to be served with an application under section 3(2).

RSA 1980 cD-32 s17;RSA 1980 c6(Supp) s15;1985 c21 s17

Authority of alternate guardian

26(1) If an alternate guardian is appointed, the alternate guardian shall take over the office of guardian without further proceedings

- (a) in the event of the death of the guardian, or
- (b) if authorized in writing by the guardian, during the temporary absence of the guardian.

(2) An authorization under subsection (1)(b) shall indicate the period during which the alternate guardian may act as guardian and terminates

- (a) at the end of the period indicated on the authorization, or
- (b) when revoked in writing by the previous guardian,

whichever is earlier.

(3) The alternate guardian shall notify the clerk of the Court in writing of the death of the previous guardian and send the clerk of the Court a certified copy of the death certificate of the previous guardian.

(4) On the appointment of the alternate guardian becoming effective, the power and authority of the alternate guardian is the same as that of the guardian replaced by the alternate guardian.

RSA 1980 cD-32 s18;1985 c21 s18

Discharge of guardian

27(1) The guardian or any interested person may apply to the Court for an order discharging the guardian from the guardian's office.

(2) An application pursuant to subsection (1) shall be made by notice of motion in the judicial district in which the application for the order appointing the guardian was made.

(3) The person making an application under subsection (1) shall, at least 10 days before the date the application is to be heard, serve a copy of the application on the persons referred to in section 23(2) and section 23(8) applies.

(4) When the Court considers that a dependent adult is no longer in need of a guardian or if the Court is satisfied that a guardian

- (a) is unable or unwilling to continue to act as guardian,
- (b) refuses to act or to continue to act as guardian,
- (c) fails to act as guardian or fails to act in accordance with a guardianship order,
- (d) acts in an improper manner or in a manner that has endangered or that may endanger the well-being of the dependent adult,
- (e) is no longer a suitable person to act as guardian, or
- (f) is no longer a resident of Alberta,

the Court may make an order discharging the guardian from the guardian's office or make any other order it considers appropriate in the circumstances.

(5) Before making an order under subsection (4), the Court shall satisfy itself that, if necessary,

- (a) suitable arrangements have been or will be made in respect of the dependent adult, or
- (b) an application for another guardianship order will be made.

(6) If the Court makes an order under subsection (4), the applicant shall serve a copy of the order on the persons who are required to be served with a copy of an application under section 23.

RSA 1980 cD-32 s19;1985 c21 s19

Death of guardian

28(1) On the death of a guardian and in the absence of an alternate guardian, the Public Guardian, on receiving notice of the death of the guardian, becomes the guardian with the same power and authority as the former guardian.

(2) On becoming the guardian of a person under subsection (1), the Public Guardian shall notify the Court in writing of that fact and send evidence of death of the former guardian to the Court.

(3) The Public Guardian continues to be the guardian of the dependent adult until

- (a) a new guardian is appointed by the Court, or

- (b) the Court makes an order discharging the Public Guardian as guardian of the dependent adult.

RSA 1980 cD-32 s20;1985 c21 s20;1996 c13 s9

Treatment of incapacitated adults

29(1) Where an adult person

- (a) is, in the written opinion of 2 physicians, in need of an examination or medical, surgical or obstetrical treatment or is, in the written opinion of 2 dentists, in need of dental treatment,
- (b) is incapable by reason of mental or physical disability of understanding and consenting to the examination or medical, surgical, obstetrical or dental treatment needed, and
- (c) has not previously withheld consent to the examination or medical, surgical, obstetrical or dental treatment needed, to the knowledge of either of the physicians or the dentists referred to in clause (a),

a physician or dentist may, without the consent of any person, examine the person, prescribe treatment for the person and provide the person with the medical, surgical or obstetrical treatment or with the dental treatment, as the case may be, in the manner and to the extent that is reasonably necessary and in the best interests of the person examined or treated, in the same way that the physician or dentist could have acted if the person had been an adult of full legal capacity who consented to the examination or treatment.

(2) Subsection (1) does not apply to a dependent adult who is the subject of an order under section 7 appointing a guardian with the power and authority to consent to health care for that dependent adult.

(3) Subsection (1) does not apply to a person who has made a personal directive relating to a matter referred to in subsection (1) unless

- (a) the personal directive does not designate an agent to give the consent, and
- (b) the personal directive does not contain any clear and relevant instructions.

RSA 1980 c6(Supp) s16;1996 cP-4.03 s35

Part 2 Trusteeship

Division 1 Application For Trusteeship Order

Application for trusteeship order

30(1) Subject to this section and section 31, any interested person may apply to the Court for an order appointing a trustee in respect of the estate of an adult person.

(2) No application shall be made to the Court under subsection (1) unless it is accompanied with a report of a physician or a psychologist in the prescribed form.

(3) The interested person making an application under subsection (1) shall, at the same time the application is made, file with the Court the written consent of the person proposed as trustee to the effect that the person is willing to act as the trustee of the estate of the person in respect of whom the application is made.

RSA 1980 cD-32 s21;RSA 1980 c6(Supp) s17

Application for order appointing trustee

31(1) An application for an order appointing a trustee may be made in the form prescribed in the regulations and must be made in the judicial district in which the person in respect of whom the application is made is ordinarily resident unless the Court considers it appropriate in the circumstances of the case for the application to be made in any other judicial district.

(2) The interested person making the application must serve a copy of the application, the report referred to in section 30 and either a notice of motion, at least 10 days before the date the application is to be heard, or a notice of objection in the prescribed form, on

- (a) the person in respect of whom the application is made,
- (b) the person living in Canada who is
 - (i) the nearest relative of the person in respect of whom the application is made, or
 - (ii) if the nearest relative referred to in subclause (i) is the applicant, the next nearest relative of the person in respect of whom the application is made,
- (c) the person proposed as the trustee of the person in respect of whom the application is made if the person is not the applicant or the nearest relative served pursuant to clause (b),

- (d) if the person in respect of whom the application is made is a resident of an institution, the person in charge of the institution,
- (e) the Public Trustee, if the Public Trustee is not the applicant or the person served pursuant to clause (c),
- (f) if the person in respect of whom the application is made has made a personal directive, the agent, if any, designated in the personal directive if the agent is not the applicant or a person otherwise served pursuant to this subsection,
- (g) any attorney under an enduring power of attorney given by the person in respect of whom the application is made if the attorney is not the applicant or a person served pursuant to this subsection,
- (h) any guardian of the person in respect of whom the application is made if the guardian is not the applicant or a person served pursuant to this subsection, and
- (i) any other person that the Court may direct.

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

(4) Any person, other than a person served under subsection (2), may file a notice of objection within 10 days after service on any person under subsection (2).

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

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

(7) No order for service ex juris is necessary for service on any of the persons referred to in subsection (2) in a province or territory of Canada other than Alberta or in the United States of America, but service must be effected at least

- (a) 30 days before the date the application is to be heard in the case of a person in a province or territory other than Alberta, or

- (b) 45 days before the date the application is to be heard in the case of a person in the United States of America.

(8) The Court may, if it considers it appropriate to do so,

- (a) shorten the time for service on all or any of the persons referred to in subsection (2),
- (b) direct the manner of service, or approve the manner of service that has been effected, on all or any of the persons referred to in subsection (2), or
- (c) dispense with the requirement for service on all or any of the persons referred to in subsection (2), except the Public Trustee.

RSA 1980 cD-32 s22;RSA 1980 c6(Supp) ss19,30;
1985 c21 s22;1991 cP-13.5 s17;1996 cP-4.03 s35;1996 c13 s10

Application without report

32(1) Notwithstanding sections 30(2) and 31(2) and (3), if the Court is satisfied that

- (a) some or all of the property or estate of the adult person in respect of whom the application is made is in immediate danger of serious loss, and it is necessary for someone to make decisions to prevent that loss, and
- (b) it is impracticable or not possible to obtain a report referred to in section 30 before the loss is likely to occur,

the Court may dispense with the requirement for the report referred to in section 30 and may appoint a trustee to take possession of the property or estate and safely keep, manage, preserve and protect the property or interests of the estate on the terms and conditions that the Court directs.

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

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

- (a) cancel the order,
- (b) extend the order once for up to 6 months after which time the order lapses, or
- (c) consider it as an application under section 31 if the requirements of section 31 have been met.

1996 c13 s11

Inquiry by Court and report

33(1) When considering an application for an order appointing a trustee, the Court shall inquire as to whether

- (a) the person in respect of whom the application is made is in need of a trustee, and
- (b) it is in the best interests of the person in respect of whom the application is made for a trustee to be appointed for the person.

(2) If

- (a) the Court has any doubt as to whether a trustee should be appointed, or
- (b) a trusteeship order is being reviewed by the Court,

the Court may appoint a person to prepare a report on the person named in the application with respect to any or all of that person's physical, mental, social, vocational, residential, educational or other needs both present and future and generally that person's ability to make reasonable judgments with respect to matters relating to that person's estate.

RSA 1980 cD-32 s23;1996 c13 s12

Persons at hearing

34 If a hearing is held in respect of an application for an order appointing a trustee or on a review of a trusteeship order

- (a) any person served pursuant to section 31(2) or (6), and
- (b) any other person who wishes to make representations and whom the Court agrees to hear,

may appear and make representations.

RSA 1980 cD-32 s24;1996 c13 s13

Division 2 Trusteeship Order and Its Effect

Appointment of trustee

35(1) When the Court is satisfied that a person named in an application for an order appointing a trustee is

- (a) an adult,
- (b) unable to make reasonable judgments in respect of matters relating to all or any part of the person's estate, and

(c) in need of a trustee,

the Court may make an order appointing a trustee.

(2) The Court shall not make an order under subsection (1) unless it is satisfied that the order would be in the best interests of the person in respect of whom the application is made.

(3) In considering the matters referred to in subsections (1)(c) and (2), the Court shall have regard to the existence of any enduring power of attorney given by the person in respect of whom the application is made.

(4) If the Court makes an order under this section, the applicant shall serve a copy of the order on the persons who are required to be served with an application under section 31(2).

(5) If

(a) the Court makes an order under this section in respect of an attorney under an enduring power of attorney, and

(b) the Court has reason to believe that the donor of that power may be unable to make reasonable judgments in respect of matters relating to all or part of the donor's estate,

the Court may direct the applicant to make an application for a trusteeship order in respect of the donor's estate.

RSA 1980 cD-32 s25;RSA 1980 c6(Supp) s20;1991 cP-13.5 s17

Persons eligible as trustee

36(1) The Court may appoint as a trustee of the estate of a dependent adult

(a) any adult individual who consents to act as trustee and in respect of whom the Court is satisfied that

(i) the individual will act in the best interests of the dependent adult,

(ii) the individual will not be in a position where the individual's interests will conflict with the dependent adult's interests,

(iii) the individual is a suitable person to act as the trustee of the estate of the dependent adult, and

(iv) the individual is a resident of Alberta,

(b) a trust corporation, or

(c) the Public Trustee.

(2) Notwithstanding subsection (1)(a)(ii), an individual shall not be considered to be in a position where the individual's interests will conflict with the dependent adult's interests by reason only of the fact that the individual is a potential beneficiary or a relative of the dependent adult.

(3) If the Court appoints the Public Trustee as the trustee under subsection (1), it shall include in the order appointing the trustee a direction as to the times at which the Public Trustee shall submit a statement of the Public Trustee's accounts verified under oath to the Court for approval for the purposes of section 42.

(4) The Court may require an individual proposed as trustee or, in the case of a trust corporation proposed as trustee, an individual representing the trust corporation, to attend and answer questions that will enable the Court to determine whether the proposed trustee will be able, in the opinion of the Court,

(a) to carry out the duties of the trustee, and

(b) in the case of an individual proposed as trustee, to meet the requirements of subsection (1)(a).

RSA 1980 cD-32 s26;RSA 1980 c6(Supp) s21;1985 c21 s23;
1991 cL-26.5 s335(16)

Review of trusteeship order

37(1) In making or reviewing a trusteeship order, the Court may make its order subject to any conditions or restrictions it considers necessary.

(2) Subject to section 32, on making or reviewing a trusteeship order the Court shall specify

(a) the time within which the order must be reviewed by the Court, which shall not be later than 6 years after the date of the order or the date of the review of the order, as the case may be,

(b) the person required to apply to the Court for the review, and

(c) any requirement to be complied with by the trustee or any other person with respect to a review of the circumstances of the dependent adult.

RSA 1980 cD-32 s27;RSA 1980 c6(Supp) s22;1985 c21 s24;
1996 c13 s14

Authority of trustee

38 Subject to this Act, when the Court makes a trusteeship order, the trustee, with respect to the estate or that part of the estate under the trustee's trusteeship,

- (a) has the right to and may take possession and control of all the real and personal property of the dependent adult, and
- (b) may
 - (i) in the case of an order under section 32, safely keep, manage, preserve and protect the property or interests of the estate, and
 - (ii) in any other case, manage, handle, administer, sell, dispose of or otherwise deal with the estate in accordance with section 39 and an authorization under section 40 or an order under section 41.

RSA 1980 cD-32 s28;1996 c13 s15

Authority of trustee

39 Subject to any restriction or condition imposed by the Court, a trustee may, in respect of the estate of the dependent adult under the trustee's trusteeship and without obtaining the authority or direction of the Court, do all or any of the following:

- (a) grant or accept leases of real or personal property for a term not exceeding 3 years;
- (b) invest any money in investments in which trustees are authorized to invest trust money under the *Trustee Act*;
- (c) deposit any money in the manner in which trust money can be deposited under the *Trustee Act*;
- (d) transfer property held in trust by the dependent adult, either solely or jointly with another, to the person beneficially entitled to it;
- (e) give a consent to the transfer or assignment of a lease if the consent is required;
- (f) perform a contract entered into by the dependent adult or by the dependent adult's guardian;
- (g) draw, accept and endorse bills of exchange and promissory notes, endorse bonds, debentures, coupons and other negotiable instruments and securities, and assign choses in action;

- (h) give or receive a notice on behalf of the dependent adult that relates to the dependent adult's estate;
- (i) sell or otherwise dispose of personal property having a fair market value that is not greater than the amount prescribed by the regulations;
- (j) commence, compromise or settle a claim or court action that relates to the estate;
- (k) if land in which the dependent adult has a beneficial interest is held by the personal representative of the estate of a deceased person, consent to the sale of that land by the personal representative of the deceased's estate.

RSA 1980 cD-32 s29;1985 c21 s25;1996 c13 s16

Authority conferred on trustee by Court

40 The Court may on any terms and conditions it considers appropriate, authorize a trustee to do all or any of the following in respect of the estate of a dependent adult under the trustee's trusteeship:

- (a) purchase, sell, mortgage, grant or accept leases for more than 3 years or otherwise dispose of real property or personal property having a fair market value that is greater than the amount prescribed by the regulations referred to in section 39(i);
- (b) consent to the disposition of the homestead, as defined in the *Dower Act*, of the dependent adult's spouse;
- (c) exchange or partition property and give or receive money for equality of exchange or partition;
- (d) carry on the trade or business of the dependent adult;
- (e) surrender a lease, with or without accepting a new lease, or accept a surrender of a lease;
- (f) exercise a power or give a consent required for the exercise of a power vested in the dependent adult;
- (g) exercise a right or obligation to elect, belonging to or imposed on the dependent adult;
- (h) compromise or settle a debt;
- (i) notwithstanding the *Trustee Act*, invest funds in any securities and assets that the Court approves;

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

RSA 1980 cD-32 s30;1985 c21 s26;1996 c13 s17

Ademption not applicable

41(1) A trustee may make an ex parte application, unless directed otherwise by the Court, for an order authorizing the trustee to sell property belonging to the dependent adult and directing the trustee to place the proceeds of the sale into an identifiable trust account, to be administered as the Court directs having regard to the present and future needs of the dependent adult.

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

1996 c13 s18

Division 3 Duties of Trustee

Filing of inventory and accounts

42(1) When a trustee of the estate of a dependent adult is appointed or when an alternate trustee takes office by reason of the death of the previous trustee, the following provisions apply unless the Court modifies, alters or dispenses with some or all of them:

- (a) the trustee, at the time of the application under section 30 or within 6 months of being appointed or taking office, shall file in the office of the clerk of the Court a true inventory and account of the assets and liabilities of the estate of the dependent adult in respect of which the trustee is appointed trustee;
- (b) if any asset or liability of the estate of the dependent adult is discovered after the filing of the inventory and account, the trustee shall file a true inventory and account of the asset or liability on its discovery;
- (c) every inventory and account shall be verified by the oath of the trustee or of some person in a position to verify it.

(2) Any interested person may apply to the Court for an order that the trustee

- (a) bring in and pass the trustee's accounts;
- (b) file an inventory of the assets and liabilities of the estate of the dependent adult;

(c) do some other thing that the circumstances may require.

(3) A trustee, other than the Public Trustee, shall, at least once every 2 years, file the trustee's accounts with the clerk of the Court and apply to the Court, on any notice that the Court may direct, for an order passing the trustee's accounts and for any further or other order or direction that circumstances require.

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

- (a) permit the trustee to file the trustee's accounts with the clerk of the Court and where the Court is satisfied that it is in the best interests of the estate and the dependent adult, approve the trustee's accounts in the form in which they are filed, or
- (b) dispense with accounting for a period not exceeding 4 years from the date of the order.

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

- (a) dispense with the requirement for the passing of accounts for a period not exceeding 12 years from the date of the order if the trustee maintains accounts and files a summary accounting statement in the prescribed form with the clerk of the Court at least once every 6 years or on review of the trusteeship order, and
- (b) order the trustee to do any other thing that the circumstances may require.

(6) If the Public Trustee is the trustee, the Public Trustee shall

- (a) at the time that the Court directs under section 36(3) submit the statement of the Public Trustee's accounts referred to in that section to the Court for approval, and
- (b) bring in and pass the Public Trustee's accounts at the time that the Court directs under subsection (2) if the Court makes an order under that subsection.

(7) If the Court makes an order under this section, the applicant shall serve a copy of the order on the persons who are required to be served with an application under section 31.

(8) Notwithstanding subsection (7), the Court may, if it considers it appropriate, dispense with the requirement for service on all or any of the persons who are required to be served with an

application under section 31, except the dependent adult and the nearest relative of the dependent adult who is living in Canada if that relative is not the trustee.

RSA 1980 cD-32 s31;RSA 1980 c6(Supp) s23;1985 c21 s27;
1996 c13 s19

Accounting on discharge of trustee

43 When the Court terminates a trusteeship order or discharges a trustee from the trustee's office, the Court shall

- (a) direct the trustee to pass the trustee's accounts,
- (b) where it is satisfied that it is in the best interests of the estate and the dependent adult, direct the trustee to file the trustee's accounts with the clerk of the Court and approve the trustee's accounts in the form in which they are filed, or
- (c) direct that accounting be dispensed with.

1985 c21 s28;1996 c13 s20

Accounting on death of dependent adult

44(1) On the death of a dependent adult, the trustee shall account to the legal representative of the estate of the dependent adult.

(2) If the trustee does not provide an accounting under subsection (1) to the satisfaction of the legal representative, the legal representative may apply by notice of motion to the Court for an order requiring the trustee to bring in and pass the trustee's accounts relating to the estate or that part of the estate formerly under the trustee's trusteeship.

1985 c21 s28

Accounting method

45 All accounting required under sections 42, 43 and 44 must be done in accordance with the *Surrogate Rules*.

1996 c13 s21

Exercise of authority by trustee

46(1) A trustee shall, subject to this Act, exercise the trustee's authority for the maintenance, education, benefit and advancement of the dependent adult in respect of whose estate the trustee is trustee.

(2) A trustee may, subject to this Act and with respect to the estate under the trustee's trusteeship, exercise the trustee's authority for the maintenance, education, benefit and advancement of

- (a) the spouse of the dependent adult, if any,
 - (b) any minor child of the dependent adult,
 - (c) any adult child of the dependent adult who by reason of physical or mental disability is unable to earn a living, or
 - (d) with the consent of the Court, any other person,
- or all or any of them.

RSA 1980 cD-32 s32

Division 4

Appointment of the Public Trustee

Duties of Public Trustee

47 When in the opinion of the Public Trustee the estate of a person is in need of a trustee and no person is willing, able and suitable either to make an application for an order appointing a trustee or to be appointed as the trustee of the person's estate, or both, the Public Trustee shall

- (a) make an application for an order appointing the Public Trustee or any other person as trustee of all or any part of that person's estate, or
- (b) notify any person proposing to make an application for an order appointing a trustee whether the Public Trustee is willing to be appointed as the trustee of the estate of the person in respect of whom the application is proposed to be made.

RSA 1980 cD-32 s33;1985 c21 s29

Appointment of Public Trustee

48 If the Court is not satisfied that a person proposed as a trustee in an application under this Act meets the requirements of this Act, it may, after giving notice of its intention to the Public Trustee, appoint the Public Trustee as the trustee of all or part of the estate of the person in respect of whom the application is made.

RSA 1980 cD-32 s34

Division 5

Other Trusteeship Provisions

Service of application for review

49(1) Nothing in this Act or in any order of the Court made under this Act prevents a dependent adult or any interested person on the dependent adult's behalf from applying to the Court in the form

prescribed in the regulations for a review of a trusteeship order at any time.

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

- (a) the dependent adult,
- (b) the person living in Canada who is
 - (i) the nearest relative of the dependent adult in respect of whom the application is made, or
 - (ii) if the nearest relative referred to in subclause (i) is the applicant, the next nearest relative of the person of the dependent adult,
- (c) the trustee of the dependent adult if the trustee is not the applicant or the nearest relative served pursuant to clause (b),
- (d) if the dependent adult is a resident of an institution, the person in charge of the institution,
- (e) the Public Trustee, if the Public Trustee is not the applicant or the person served pursuant to clause (c),
- (f) any guardian of the dependent adult if the guardian is not the applicant or a person served pursuant to this subsection, and
- (g) any other person that the Court may direct.

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

(4) Any person, other than a person served under subsection (2), may file a notice of objection within 10 days after service on any person under subsection (2).

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

(6) If a notice of objection is filed or if the Court considers that a hearing is necessary, the applicant must, at least 10 days before the date the application is to be heard, serve a notice of motion on the

persons described in subsection (2) and any person who filed a notice of objection under this section.

(7) No order for service ex juris is necessary for service on any of the persons referred to in subsection (2) in a province or territory of Canada other than Alberta or in the United States of America, but service must be effected at least

- (a) 30 days before the date the application is to be heard in the case of a person in a province or territory other than Alberta, or
- (b) 45 days before the date the application is to be heard in the case of a person in the United States of America.

(8) The Court may, if it considers it appropriate to do so,

- (a) shorten the time for service on all or any of the persons referred to in subsection (2),
- (b) direct the manner of service, or approve the manner of service that has been effected, on all or any of the persons referred to in subsection (2), or
- (c) dispense with the requirement for service on all or any of the persons referred to in subsection (2), except the Public Trustee.

RSA 1980 cD-32 s35;RSA 1980 c6(Supp) s30;1985 c21 s30;
1996 c13 s22

Court order after review

50 On hearing an application for review of a trusteeship order, the Court may amend, cancel, terminate, continue, vary or replace the order subject to any conditions or requirements it considers necessary.

RSA 1980 cD-32 s36

Appointment of alternate trustee

51(1) On making a trusteeship order or on a review of a trusteeship order, the Court may appoint an alternate trustee if

- (a) the person proposed as alternate trustee has given the person's written consent to act as trustee of the estate of the dependent adult in the event of the death or temporary absence of the trustee, and
- (b) it is satisfied that the persons on whom the application for a trusteeship order or a review of a trusteeship order is served pursuant to section 49(2) have had sufficient notice

of the willingness of the person proposed as alternate trustee to act as an alternate trustee.

(2) Section 36 applies to the person proposed as alternate trustee.

RSA 1980 cD-32 s37;1985 c21 s31

Authority of alternate trustee

52(1) If an alternate trustee is appointed, the alternate trustee shall take over the office of trustee without further proceedings

- (a) in the event of the death of the trustee, or
- (b) if authorized in writing by the trustee, during the temporary absence of the trustee.

(2) An authorization under subsection (1)(b) shall indicate the period during which the alternate trustee may act as trustee and terminates

- (a) at the end of the period indicated on the authorization, or
- (b) when revoked in writing by the previous trustee,

whichever is earlier.

(3) The alternate trustee shall notify the clerk of the Court in writing of the death of the previous trustee and send the clerk of the Court a certified copy of the death certificate of the previous trustee.

(4) On the appointment of the alternate trustee becoming effective, the authority of the alternate trustee is the same as that of the trustee replaced by the alternate trustee.

(5) When the alternate trustee takes over the office of trustee because of the death of the previous trustee, the alternate trustee may require the legal representative of the previous trustee to provide an accounting with respect to the estate of the dependent adult.

(6) If the legal representative of the previous trustee does not provide an accounting under subsection (5) to the satisfaction of the alternate trustee, the alternate trustee may apply by notice of motion to the Court for an order requiring the legal representative to bring in and pass the accounts of the previous trustee with respect to the estate of the dependent adult.

RSA 1980 cD-32 s38;1985 c21 s32

Discharge of trustee

53(1) The trustee or any interested person may apply to the Court for an order discharging the trustee from the trustee's office.

(2) An application pursuant to subsection (1) shall be made by notice of motion in the judicial district in which the application for the order appointing the trustee was made.

(3) The person making an application under subsection (1) shall, at least 10 days before the date the application is to be heard, serve a copy of the application on the persons referred to in section 31(2) and section 31(8) applies.

(4) When the Court considers that the estate of a dependent adult is no longer in need of a trustee or if the Court is satisfied that a trustee

- (a) is unable or unwilling to continue to act as trustee,
- (b) refuses to act or to continue to act as trustee,
- (c) fails to act as trustee or fails to act in accordance with a trusteeship order,
- (d) acts in an improper manner or in a manner that has endangered or that may endanger the estate of the dependent adult,
- (e) has been guilty of a breach of trust,
- (f) is no longer a suitable person to act as trustee, or
- (g) is no longer a resident of Alberta,

the Court may make an order discharging the trustee from the trustee's office or make any other order it considers appropriate in the circumstances.

(5) Before making an order under subsection (4), the Court shall satisfy itself that, if necessary,

- (a) suitable arrangements have been or will be made in respect of the estate of the dependent adult, or
- (b) an application for another trusteeship order will be made.

RSA 1980 cD-32 s39;1985 c21 s33

Estate reimbursed

54(1) The Court, on passing the accounts of a trustee, on review of a trusteeship order or during an application to remove a trustee, may

- (a) inquire into and adjudicate on a complaint or claim by an interested person of misconduct, neglect or default on the part of the trustee, and
 - (b) order that the trustee reimburse the estate to the extent of the loss suffered.
- (2) The Court may order the trial of an issue of a complaint or claim under subsection (1)(a) and may make all necessary directions with respect to it.

1996 c13 s23

Death of trustee

55(1) On the death of a trustee and in the absence of an alternate trustee, the Public Trustee, on receiving notice of the death of the trustee, becomes trustee of the estate of the dependent adult, with the same authority as the former trustee.

(2) The Public Trustee continues to be the trustee of the estate of the dependent adult until

- (a) a new trustee is appointed by the Court, or
- (b) the Court makes an order discharging the Public Trustee as trustee of the estate of the dependent adult.

RSA 1980 cD-32 s41

Accounting by legal representative of previous trustee

56(1) When the Public Trustee takes over the office of trustee, the Public Trustee may require the legal representative of the previous trustee to provide an accounting with respect to the estate of the dependent adult.

(2) If the legal representative of the previous trustee does not provide an accounting under subsection (1) to the satisfaction of the Public Trustee, the Public Trustee may apply by notice of motion to the Court for an order requiring the legal representative to bring in and pass the accounts of the previous trustee with respect to the estate of the dependent adult.

1985 c21 s35

Possession of last will

57(1) A trustee may call in or receive an original will made by a person who is a dependent adult from any person, including a lawyer, who has possession of it, and that person must surrender the will to the trustee.

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

1996 c13 s24

Part 3 Common Guardianship and Trusteeship Provisions

Signing by guardian or trustee

58 A guardian or trustee may on behalf of a dependent adult sign and do all things necessary to give effect to any power or authority vested in the guardian or trustee.

RSA 1980 cD-32 s42

No payment to guardians

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

1996 c13 s25

Trustee's compensation

60(1) A trustee is entitled to be compensated from the estate of the dependent adult for the trustee's efforts, care, responsibility and trouble and for the time expended as trustee on behalf of the dependent adult, as authorized by the Court, or in the case of the Public Trustee, as authorized by the Public Trustee Act.

(2) At a hearing to pass interim or final accounts or on an application for compensation made under the Surrogate Rules, the Court may set the compensation for the trustee and give directions with respect to it.

1996 c13 s25

Trustee's expenses

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

1996 c13 s25

Purchase of necessities

62(1) A guardian, subject to any provision contained in the guardianship order appointing the guardian, may purchase necessities for the dependent adult without the consent of the dependent adult, the trustee of the dependent adult's estate, if any, or any attorney under an enduring power of attorney, if any.

(2) When a guardian purchases necessities for the dependent adult

- (a) the dependent adult is liable to pay for them or reimburse the guardian for any money expended by the guardian in the purchase of the necessaries, or
- (b) if there is a trustee of the estate of the dependent adult or an attorney under an enduring power of attorney, the trustee or the attorney, as the case may be, shall, out of the estate, pay for the necessaries or reimburse the guardian for any money expended by the guardian in the purchase of the necessaries.

RSA 1980 cD-32 s43;1991 cP-13.5 s17

Contracts binding

63 When a guardian or a trustee enters into a contract on behalf of a dependent adult, the contract is binding on the dependent adult after the guardianship order or trusteeship order is terminated in the same manner and to the same extent as if the dependent adult had made the contract and the dependent adult had been an adult capable of making the contract.

RSA 1980 cD-32 s44

Application for direction of Court

64(1) A guardian or trustee may apply by notice of motion for the opinion, advice or direction of the Surrogate Court on any question respecting a dependent adult or respecting the management or administration of the dependent adult's estate.

(2) The guardian or the trustee acting on the opinion, advice or direction given by the Surrogate Court is deemed, so far as the guardian's or trustee's own responsibility is concerned, to have discharged the guardian's or trustee's duty as guardian or trustee, as the case may be, in respect of the subject-matter of the opinion, advice or direction.

(3) Subsection (2) does not operate to indemnify a guardian or trustee in respect of any act done in accordance with the opinion, advice or direction if the guardian or trustee has been guilty of any fraud or wilful concealment or misrepresentation in obtaining the opinion, advice or direction.

RSA 1980 cD-32 s45;1985 c21 s36

Testamentary disposition

65 A guardianship order or a trusteeship order is not of itself sufficient to establish that a dependent adult does not have legal capacity to make a testamentary disposition.

RSA 1980 cD-32 s46

Foreign orders

66(1) In this section, “foreign order” means an order made by a court outside Alberta that appoints a person having duties comparable to those of a guardian or trustee with respect to a person who is 18 years or older or with respect to the estate of such a person.

(2) If a foreign order is made in any jurisdiction outside Canada approved by the Lieutenant Governor in Council or in any province or territory of Canada, the foreign order may be resealed on an order of the Surrogate Court and, on resealing, the foreign order

- (a) is of the same force and effect in Alberta as if it were issued by the Surrogate Court,
- (b) is, as regards an estate in Alberta, subject to any order of the Surrogate Court to which a trusteeship order is subject, and is, as regards a person in Alberta, subject to any order of the Surrogate Court to which a guardianship order is subject, and
- (c) is, as regards an estate in Alberta, subject to appeal and review in the same manner as a trusteeship order and is, as regards a person in Alberta, subject to appeal and review in the same manner as a guardianship order.

(3) When the Court makes an order under subsection (2), it shall set a date for the review of the resealed order and the date for review shall be

- (a) the date provided for review by the terms of the resealed order, or
- (b) the date for review required by this Act,

whichever date is sooner.

(4) A duplicate of a foreign order sealed with the seal of the court that sealed it or a copy of a foreign order certified by or under the direction of the court that granted it is as effective as the original.

(5) A foreign order shall not be resealed under this section until

- (a) a certificate has been issued by the registrar, clerk or other officer of the court that issued the foreign order to the effect that the order is wholly unrevoked and of full effect, and
- (b) security has been given to a court in Alberta to cover the part of the estate in Alberta of the person in respect of

whom it was made, unless the Surrogate Court dispenses with security.

(6) An application to reseal a foreign order and a copy of the resealed order shall be served on the persons referred to in section 3 or 31, whichever is appropriate.

RSA 1980 cD-32 s47;1985 c21 s37

Order re costs

67 The Surrogate Court or the Court of Appeal may order that the costs of any application or report made to it under this Act

- (a) be paid by all or any of the following:
 - (i) subject to the regulations, the Crown in right of Alberta;
 - (ii) the person making the application, where it is satisfied that it would not be a hardship to do so;
 - (iii) the person in respect of whom the application is made, where it is satisfied that it would not be a hardship to do so;
 - (iv) the estate of the dependent adult, where it is satisfied that it would not be a hardship to do so;
- (b) be paid by a trustee if the trustee has been ordered to reimburse the estate under section 54;
- (c) be paid by the person making the application or a person opposing the application, where it is satisfied that the application or the opposition to the application, as the case may be, is frivolous or vexatious.

RSA 1980 cD-32 s48;RSA 1980 c6(Supp) s24;1985 c21 s38;
1996 c13 s26

Confidentiality of information

68(1) No person shall disclose any file, document or information obtained by the Public Guardian or the Public Trustee pursuant to this Act that deals with the personal history or records of a dependent adult except

- (a) at a proceeding under this Act,
- (b) with the written consent of the Minister, or
- (c) where in the opinion of the Public Guardian or the Public Trustee, as the case may be, it is in the best interests of the

dependent adult to disclose the file, document or information.

(2) Subsection (1) does not apply to a disclosure specifically authorized to be made by or under this Act or the *Marriage Act*, or to a disclosure

- (a) to any employee of the Department administered by the Minister or of any other department or agency of the Government,
- (b) to any official of the Government of Canada, of any province or territory of Canada or of an agency of any of those Governments, or
- (c) to any person assisting or acting as an agent of the Department administered by the Minister,

or to a solicitor acting on behalf of any of them, if the disclosure is made to enable the giving of assistance and information required for the proper administration of this Act.

(3) The Public Guardian and the Public Trustee shall not publish in any form or by any means

- (a) the name of a dependent adult or any nearest relative concerned in any proceeding under this Act, or
- (b) an account of the circumstances brought out at any proceeding under this Act.

(4) Nothing in subsections (1) to (3) prohibits the Public Guardian or the Public Trustee from publishing notices of hearings or other notices that may be necessary in the interests of justice or for the proper administration of this Act.

(5) No person shall disclose any information provided in a report under section 2 or 30 except

- (a) where the disclosure is made to an interested person to assist the interested person in deciding whether an application should be made under this Act, or
- (b) at a proceeding under this Act.

(6) A person who contravenes this section is guilty of an offence and liable to a fine of not more than \$1000.

RSA 1980 cD-32 s49;RSA 1980 c6(Supp) s25;1985 c21 s39;
1986 cD-27.1 s13;1989 c10 s7

Protection re reports or information

69 A person who makes a report or gives information for the purpose of an application under this Act or to assist in deciding whether an application should be made under this Act shall not acquire any liability for making the report or giving the information if the person makes the report or gives the information in good faith and has reasonable and probable grounds for believing the report or information is true.

1985 c21 s40

**Part 4
Trusteeship Without Court Order
and Appeal Panels****Division 1
Trusteeship Without Court Order****Certificate of incapacity**

70(1) When, after separate examinations of an adult person who is resident for any period of time in a facility at the time the examinations are made, 2 physicians are of the opinion that the person is unable to make reasonable judgments with respect to all or any matters pertaining to the person's estate, they may issue a certificate of incapacity in the form prescribed in the regulations.

(2) The certificate of incapacity shall show

- (a) the names of the 2 physicians issuing it,
- (b) the date that each examination was made,
- (c) the facts on which each physician formed the physician's opinion that the person was unable to make reasonable judgments with respect to all or any matters pertaining to the person's estate, distinguishing the facts observed by the physician from the facts communicated to the physician by others,
- (d) the date of issue, and
- (e) the signatures of the persons issuing the certificate.

RSA 1980 cD-32 s50

Notification of issue of certificate of incapacity

71 Immediately after a certificate of incapacity is issued, the physicians who signed the certificate shall ensure that

- (a) the Public Trustee is notified,

- (b) the certificate of incapacity is mailed to the Public Trustee, and
- (c) a copy of the certificate of incapacity is mailed to
 - (i) the person who is the subject of the certificate, unless the physicians are of the opinion that to do so would be harmful to the physical or emotional health of the person, and
 - (ii) the person's guardian or, if the person has no guardian, the person's nearest relative living in Canada.

RSA 1980 cD-32 s51;1985 c21 s41

Resolution of conflicts

72(1) Subject to this section, on the issue of a certificate of incapacity the Public Trustee becomes the trustee of the estate of the person named in the certificate.

(2) A certificate of incapacity is of no effect, and the Public Trustee does not become trustee of the estate of the person named in the certificate, if at the time the certificate is issued there exists an enduring power of attorney given by the person named in the certificate.

(3) Notwithstanding that a certificate of incapacity is of no effect, if a trusteeship order or enduring power of attorney exists with respect to a person named in a certificate of incapacity, any action taken or thing done by the Public Trustee in the belief that no trusteeship order or enduring power of attorney was in existence with respect to the estate of the person is as valid as if the action taken or thing done had been taken or done by the Public Trustee pursuant to a certificate of incapacity and as if no trusteeship order or enduring power of attorney had been in effect with respect to the estate of that person.

RSA 1980 cD-32 s52;1985 c21 s42;1991 cP-13.5 s17

Review of certificate of incapacity

73(1) The Public Trustee shall, at least once every 2 years, apply to an appeal panel to have each certificate of incapacity reviewed by the appeal panel.

(2) The chair of the appeal panel shall, at least 10 days before the review is to be heard by the appeal panel, give notice of the date, time, place and purpose of the hearing to

- (a) the person named in the certificate of incapacity to be reviewed unless, in the opinion of the chair, the person cannot, after reasonable attempts, be located,
- (b) the person's guardian or, if the person has no guardian, the person's nearest relative living in Canada,
- (c) the Public Trustee,
- (d) if the person is a resident of an institution, the person in charge of the institution, and
- (e) the Public Guardian if the Public Guardian is not served pursuant to clause (b).

(3) After hearing the application for review of a certificate of incapacity, an appeal panel, if it is satisfied that the person in respect of whom the application is made is unable to make reasonable judgments with respect to matters relating to all or any part of the person's estate and is in need of a trustee, may order that

- (a) the certificate of incapacity is to continue in effect with respect to all of the estate of the person named in it, or
- (b) the certificate of incapacity is only to apply to the part of the estate named in the order subject to any conditions or requirements an appeal panel considers appropriate,

and shall specify the time within which the certificate of incapacity is to be reviewed again by an appeal panel, which must not be longer than 2 years from the date of review, unless before that time the certificate of incapacity is terminated pursuant to this Act.

(4) If the appeal panel is satisfied that

- (a) the person who is the subject of a certificate of incapacity is able to make reasonable judgments with respect to matters pertaining to the person's estate, or
- (b) the certificate of incapacity does not result in substantial benefit to the person who is the subject of the certificate and termination of the certificate of incapacity would not prejudice the interest of the person who is the subject of the certificate,

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

(5) The persons served under subsection (2) shall be notified by the chair of the appeal panel of the order made under this section.

RSA 1980 cD-32 s53;RSA 1980 c6(Supp) ss26,30;1985 c21 s43;
1996 c13 s27

Termination of certificate of incapacity

74(1) When, after separate examinations by each of them, 2 physicians are of the opinion that a person who is the subject of a certificate of incapacity is able to make reasonable judgments with respect to matters pertaining to the person's estate, they may issue an order terminating the certificate of incapacity.

(2) The order terminating the certificate of incapacity shall show

- (a) the names of the 2 physicians issuing it,
- (b) the date that each examination was made,
- (c) the facts on which each physician formed the physician's opinion that the person was able to make reasonable judgments with respect to the person's estate, distinguishing the facts observed by the physician from the facts communicated to the physician by others,
- (d) the date of issue, and
- (e) the signatures of the persons issuing the order.

RSA 1980 cD-32 s54

Notice of termination of certificate of incapacity

75 Immediately after an order terminating a certificate of incapacity is issued pursuant to section 74, the physicians who signed the order shall ensure that

- (a) the Public Trustee is notified,
- (b) the order is mailed to the Public Trustee, and
- (c) a copy of the order is mailed to the person and the person's guardian or, if the person has no guardian, the person's nearest relative living in Canada.

RSA 1980 cD-32 s55;1985 c21 s44

Termination of trusteeship of Public Trustee

76(1) On

- (a) notification of an order of the Court terminating a certificate of incapacity,
- (b) notification of a trusteeship order, or
- (c) receipt of an order terminating, varying or amending a certificate of incapacity pursuant to section 73 or 74,

the Public Trustee ceases to be the trustee of the estate or that part of the estate specified by an appeal panel of the person named in the certificate of incapacity and shall account to that person for the estate or that part of the estate formerly under the Public Trustee's trusteeship.

(2) If the Public Trustee does not provide an accounting under subsection (1) to the satisfaction of the person named in the certificate of incapacity, that person may apply by notice of motion to the Court for an order requiring the Public Trustee to bring in and pass the accounts relating to the estate or that part of the estate formerly under the Public Trustee's trusteeship.

RSA 1980 cD-32 s56;1985 c21 s45

Duration of certificate of incapacity

77 A certificate of incapacity remains in effect until

- (a) a trusteeship order is made by the Court,
- (b) it is terminated by an appeal panel,
- (c) it is terminated by an order of the Court, or
- (d) it is terminated pursuant to section 74.

RSA 1980 cD-32 s57;1985 c21 s46

Division 2 Rights of Persons in Respect of Whom a Certificate of Incapacity is Issued

Written statement of certificate of incapacity

78(1) On receipt by the Public Trustee of a certificate of incapacity, the Public Trustee shall give a written statement to

- (a) the person in respect of whom the certificate of incapacity is issued, and
- (b) the guardian of the person in respect of whom the certificate of incapacity is issued or, if the person has no guardian, the person's nearest relative living in Canada,

containing the information specified in subsection (2).

(2) The written statement referred to in subsection (1) shall contain the following information:

- (a) a statement to the effect that a certificate of incapacity has been issued;

- (b) an explanation of the effect of the certificate of incapacity;
- (c) a statement explaining that the certificate of incapacity has no effect if there exists an enduring power of attorney given by the person named in the certificate prior to the issuing of the certificate, but that the Public Trustee may manage the estate until notified of the enduring power of attorney;
- (d) a statement as to the right of the person in respect of whom the certificate is issued to appeal to an appeal panel for termination of the certificate of incapacity.

RSA 1980 cD-32 s58;1985 c21 s47;1991 cP-13.5 s17

Division 3 Appeal Panels

Appeal panels

79(1) The Minister shall establish one or more appeal panels for the purpose of hearing and considering applications from persons in respect of whom a certificate of incapacity has been issued.

(2) Each appeal panel shall be appointed by the Minister and composed of

- (a) 2 physicians,
- (b) a solicitor who shall be chair, and
- (c) a person representative of the general public.

(3) The Minister may designate a vice-chair of the appeal panel and may appoint one or more alternate members in accordance with subsection (2) and when for any reason a member of an appeal panel cannot act the member shall be replaced by an appropriate alternate member who shall act until the hearing is complete, and when so acting, an alternate member is a member for all purposes.

(4) The Minister may periodically review the appointment of the members and alternate members to appeal panels and make any changes the Minister considers advisable.

RSA 1980 cD-32 s59

Quorum and decisions of appeal panels

80(1) A quorum for an appeal panel is 3 members or alternate members appointed pursuant to section 79.

(2) Each member of the appeal panel is entitled to one vote.

(3) A decision of a majority of the members is the decision of the appeal panel.

RSA 1980 cD-32 s60

Persons ineligible for appeal panel

81(1) No person who is actively serving as a member of the staff of a facility is eligible to sit as a member or alternate member of an appeal panel when the panel is considering an application from a person in respect of whom a certificate of incapacity has been issued and who is or was a resident of the facility with which that member of the staff of a facility is connected.

(2) No person who is

- (a) related by blood or marriage to a person applying to an appeal panel,
- (b) a person who is treating or who has treated a person applying to an appeal panel, or
- (c) a solicitor who is acting or who has acted for a person applying to an appeal panel,

is eligible to be appointed as or to sit as a member or alternate member of an appeal panel for an application by that person.

(3) No person who issues a certificate of incapacity is eligible to be appointed as or to sit as a member or alternate member of an appeal panel for an application by the person who is the subject of the certificate of incapacity.

RSA 1980 cD-32 s61

Duties of appeal panel

82(1) An appeal panel shall

- (a) hear and consider appeals in accordance with this Act and the regulations, and
- (b) review compulsory care orders issued under section 11
 - (i) on the application under section 18(2)(b) of the person in charge of a place of care, and
 - (ii) at intervals of 12 months after the issue of the orders until the orders expire or are cancelled or terminated

and for those purposes the members of the appeal panel have all the powers of a commissioner appointed under the *Public Inquiries Act*.

(2) If an appeal panel that reviews a compulsory care order under subsection (1)(b) is of the opinion that it is no longer in the best interests of the dependent adult who is the subject of the order that the dependent adult be confined in a place of care, the appeal panel shall direct the Public Guardian to apply to the Court for a review of the compulsory care order in accordance with section 14.

(3) The Minister shall provide secretarial, legal, consultative and other assistance to each appeal panel as may be required.

RSA 1980 cD-32 s62;RSA 1980 c6(Supp) s27

Division 4

Appeals from Certificate of Incapacity to Appeal Panel

Appeal for cancellation of certificate of incapacity

83(1) A person in respect of whom a certificate of incapacity is issued may appeal to an appeal panel for termination of the certificate of incapacity by sending notice of appeal to the chair of the appropriate appeal panel in the form prescribed in the regulations.

(2) An appeal for the termination of a certificate of incapacity may be made by the person in respect of whom it is issued or an interested person on the person's behalf.

(3) After the first appeal to an appeal panel, the persons referred to in subsection (2) may not make any further appeal for termination of the certificate of incapacity until the expiration of 6 months following the decision of an appeal panel but the Public Trustee or the Public Guardian may appeal at any time.

(4) When an appeal has been made to an appeal panel by a person, no other appeal shall be made by that person until the appeal panel has disposed of the appeal.

RSA 1980 cD-32 s63

Notice of appeal

84(1) On receipt of an appeal under section 83, the chair of an appeal panel shall give notice to

- (a) the applicant and any person acting on the applicant's behalf,
- (b) the guardian of the applicant or if there is no guardian, the nearest relative of the applicant living in Canada and any other person that the chair considers may be affected by the application and should be notified,

- (c) the Public Trustee, and
- (d) the Public Guardian if the Public Guardian is not served pursuant to clause (b),

of the date, time and place of the hearing.

(2) As soon as it is able to do so, the appeal panel shall carry out whatever investigation and hearing it considers necessary and may invite the applicant and any other person to testify or produce evidence at the hearing.

RSA 1980 cD-32 s64

Proceedings of appeal panel

85(1) All proceedings of an appeal panel shall be conducted in private and, subject to subsection (2), no person has a right to be present without the prior consent of the chair.

(2) The applicant and the applicant's representative and those persons served pursuant to section 84 have the right to be personally present during the presentation of any evidence to the appeal panel, but if in the opinion of the appeal panel there may be an adverse effect on the applicant's health by the applicant's presence, the applicant may be excluded, but in that event the appeal panel shall appoint a person to act on the applicant's behalf if the applicant does not already have a representative.

(3) The applicant or person acting on the applicant's behalf has the right of cross-examination.

(4) Except as permitted by the chair and except where the report is published by the applicant or the applicant's representative, no person shall publish any report of a hearing, investigation or deliberation by an appeal panel or the names of any persons concerned with those proceedings.

(5) The chair of an appeal panel may adjourn a hearing for any period up to 21 days, and with the consent of the Minister for a longer period, for any purpose the chair considers necessary.

RSA 1980 cD-32 s65

Decision of appeal panel

86(1) Within 28 days after receipt of an appeal by the chair of an appeal panel under section 83 or any longer period that the Minister allows, the appeal panel shall hear and consider the appeal.

(2) An appeal panel may, in the same manner as it comes to a decision under section 73, make any of the orders specified in section 73.

- (3) If an appeal panel terminates a certificate of incapacity, the chair of the appeal panel shall immediately notify the Public Trustee.
- (4) Within 7 days after the date of its decision, the chair of the appeal panel shall send a written report of the decision to the same persons who were served pursuant to section 84(1) and any other person that the chair considers should be notified.
- (5) When the appeal panel refuses to cancel a certificate of incapacity, the written report shall contain a statement of the right of the applicant to appeal the decision to the Court under section 87.
- (6) An appeal panel may order that the costs of any application or report made to it under this Act be paid by all or any of the following:
- (a) the Crown in right of Alberta;
 - (b) the person making the application, where it is satisfied that it would not be a hardship to do so;
 - (c) the person in respect of whom the application is made, where it is satisfied that it would not be a hardship to do so;
 - (d) the estate of the dependent adult, where it is satisfied that it would not be a hardship to do so.

RSA 1980 cD-32 s66;1985 c21 s48

Part 5

Appeal, Regulations

Appeal to Court

87(1) Within 21 days from the making of an order by an appeal panel, or any further time the Court may permit, any person in respect of whom a certificate of incapacity is issued or any interested person on that person's behalf may appeal to the Court by way of originating notice.

- (2) The originating notice shall be served on
- (a) any guardian and trustee,
 - (b) the Public Trustee and the Public Guardian if they are not served pursuant to clause (a),

- (c) if the person in respect of whom the order is made is a resident of an institution, the person in charge of the institution, and
- (d) any other persons a judge of the Court may direct,

not less than 15 days before the motion is returnable and the practice and procedure of the Court pertaining to applications by originating notice apply, so far as applicable, to an application under this section, except as otherwise provided by this section.

(3) The notice of appeal shall be supported by an affidavit of the applicant setting out fully all the facts in support of the applicant's appeal.

(4) In addition to the evidence adduced by the applicant, the Court may direct any further evidence to be given that it considers necessary.

(5) The Court may reverse, confirm or vary the order of the appeal panel or make any other order it considers just.

RSA 1980 cD-32 s67;RSA 1980 c6(Supp) s30;1985 c21 s49

Appeal to Court of Appeal

88(1) Subject to subsection (2), an appeal on a question of law by a dependent adult or any interested person on the dependent adult's behalf lies to the Court of Appeal in respect of any compulsory care order, guardianship order or trusteeship order by the Court.

(2) The notice of appeal shall be served on

- (a) any guardian and trustee,
- (b) any attorney under an enduring power of attorney given by the person in respect of whom the order is made,
- (c) if the person has made a personal directive, the agent, if any, designated in the personal directive if the agent is not the guardian of the dependent adult or a person otherwise served pursuant to this subsection,
- (d) the Public Trustee and the Public Guardian if they are not served pursuant to clause (a),
- (e) if the person in respect of whom the order is made is a resident of an institution, the person in charge of the institution, and
- (f) any other persons a judge of the Court of Appeal may direct,

within the time prescribed by the *Alberta Rules of Court* for service of a notice of appeal in an appeal to the Court of Appeal, and the *Alberta Rules of Court* regarding appeals to the Court of Appeal govern appeals under this section.

RSA 1980 cD-32 s68;RSA 1980 c6(Supp) ss28,30;1991 cP-13.5 s17;
1996 cP-4.03 s35

Regulations

89(1) The Lieutenant Governor in Council may make regulations

- (a) governing appeals to appeal panels and the review of compulsory care orders by appeal panels and proceedings in connection with them and with respect to hearings, consideration and investigations of appeal panels and the review of compulsory care orders by appeal panels and matters incidental to them and consequential on them;
- (b) governing the methods by which information relevant to an application may be obtained by or furnished to an appeal panel and concerning visits and interviews of applicants in private;
- (c) for making available to any applicant copies of any documents obtained by or furnished to an appeal panel in connection with the application and a statement of the substance of any oral information so obtained or furnished except when the appeal panel considers it undesirable in the interests of the applicant, or for other special reasons, that this be done;
- (d) prescribing a schedule of costs payable in respect of any application made to an appeal panel or report prepared for the purposes of the panel and for any other matter connected with the hearings and proceedings of appeal panels.

(2) The Lieutenant Governor in Council may make regulations

- (a) prescribing forms necessary for the purposes of this Act and the regulations;
- (b) designating places as facilities for the purposes of this Act and the regulations;
- (c) designating establishments or classes of establishments as institutions for the purposes of this Act and the regulations;
- (d) designating the person in charge of a facility for the purposes of this Act and the regulations;

- (e) prescribing the fair market value of personal property for the purpose of section 39(i);
- (f) approving jurisdictions outside Canada for the purposes of section 66;
- (g) prescribing the remuneration and travelling and living expenses payable to the chair and other members of appeal panels;
- (h) designating the places of care in which dependent adults may be confined pursuant to a compulsory care order or a compulsory care certificate;
- (i) governing the procedure and criteria to be used in determining in which place of care a dependent adult is to be confined pursuant to a compulsory care order;
- (j) governing procedures respecting applications under this Act;
- (k) respecting the awarding of costs against the Crown in right of Alberta;
- (l) respecting the manner of service of documents.

RSA 1980 cD-32 s69;RSA 1980 c6(Supp) s29;1985 c21 s50;
1996 c13 s28