



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **PUBLIC TRUSTEE ACT**

## PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to December 2, 2015. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

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## PUBLIC TRUSTEE ACT

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**PUBLIC TRUSTEE ACT**  
**CHAPTER P-32.2**

**PART I — DEFINITIONS**

**1. Definitions**

In this Act

- (a) repealed by 2013,c.47,s.1;
- (b) “**committee**” means a person appointed or authorized under this Act to be the committee of the estate of an incompetent person;
- (c) “**Committee Register**” means the Register compiled pursuant to section 33;
- (d) “**communication**” means any form of contact, and includes oral, written or electronic communication;
- (e) “**community care facility**” has the same meaning as set out in clause 1(d) of the *Community Care Facilities and Nursing Homes Act* R.S.P.E.I. 1988, Cap. C-13;
- (f) repealed by 2008,c.20,s.72;
- (g) repealed by 2013,c.47,s.1;
- (h) “**guardian**” means a person authorized or appointed to exercise powers for a person who is mentally incompetent or is incapable of managing his or her personal affairs;
- (i) repealed by 2013,c.47,s.1;
- (j) repealed by 2013,c.47,s.1;
- (k) repealed by 2013,c.47,s.1;
- (l) “**incompetent person**” means a person who, in the opinion of two physicians, is incapable of managing and understanding that person’s financial affairs;
- (m) repealed by 2013,c.47,s.1;
- (n) repealed by 2013,c.47,s.1;
- (o) “**Minister**” means the Minister of Justice and Public Safety and Attorney General;
- (p) “**nursing home**” has the same meaning as set out in clause 1(i) of the *Community Care Facilities and Nursing Homes Act*;
- (q) repealed by 2013,c.47,s.1;
- (r) “**personal representative**” has the same meaning as set out in clause 1(m) of the *Probate Act* R.S.P.E.I. 1988, Cap. P-21;
- (r.1) “**physician**” means a medical practitioner who is licensed to practise medicine in this province and includes a physician who
  - (i) is authorized to practise medicine in another province, or in a jurisdiction of the United States, and

- (ii) on an emergency basis, conducts an examination in that jurisdiction of a person who is a resident of this province for the purposes of determining the person's state of mind and capability of managing the person's financial affairs;
- (s) “**Public Trustee**” means the person appointed as Public Trustee under section 2;
- (t) repealed by 2013,c.47,s.1. 1994,c.52,s.1; 1997,c.20,s.3; 2000,c.5,s.3; 2008,c.20,s.72(78); 2010,c.14,s.3; 2012,c.17,s.2; 2013,c.47,s.1; 2015,c.28,s.3.

## PART II — OFFICE OF THE PUBLIC TRUSTEE

### *Functions*

#### **2. Appointment**

- (1) There shall be appointed pursuant to the *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8, an officer to be known as the Public Trustee.

##### **Corporation sole**

- (2) The Public Trustee is a corporation sole.

##### **Rights, etc.**

- (3) The Public Trustee has the rights, powers, duties and obligations imposed on the Public Trustee by an enactment, by the Lieutenant Governor in Council or by direction of the court.

##### **Disclosure of information**

- (4) The Public Trustee may share information respecting any incompetent person, whether or not the Public Trustee is committee for that person.

##### **Guardianship**

- (5) Repealed by 2002,c.38,s.1.

##### **Security by Public Trustee**

- (6) Before entering upon his or her official duties as Public Trustee the person appointed to that office shall furnish security upon the terms and conditions prescribed in the regulations for the due and faithful performance of the functions of the office.

##### **Security required by other provision of law**

- (7) Notwithstanding any rule or practice or any enactment requiring security, it is not necessary for the Public Trustee to give any security for the due performance of the duties of an administrator, trustee, committee or other capacity in which the Public Trustee may be appointed by order of any court or under any enactment. 1994,c.52,s.2.

#### **3. Administration, appointment as trustee**

- (1) The Public Trustee may apply for letters of administration and, with the Public Trustee's written consent, the Public Trustee may be appointed trustee of any settlement or other instrument creating a trust or duty in the same manner as if the Public Trustee were a private trustee.



**Sole trustee**

- (2) The Public Trustee may be appointed sole trustee although the trust instrument contemplates two or more trustees, and any person who is a trustee with the Public Trustee may retire from the trust upon the passing of that trustee's accounts and the paying over of the balance of the trust.

**Public trust**

- (3) The Public Trustee may accept and administer any charitable or public trust. *1994, c.52, s.3.*

**4. Administrator of unclaimed intangible property**

- (1) Repealed by *2013, c.47, s.2.*

**Authority of Public Trustee**

- (2) Repealed by *2013, c.47, s.2. 1994, c.52, s.4; 2013, c.47, s.2.*

**5. Staff**

There shall be appointed, pursuant to the *Civil Service Act*, such officers, clerks and employees as may be required for the proper conduct of the business of the Public Trustee. *1994, c.52, s.5.*

**6. Transfer of property**

- (1) Where the Public Trustee acting in any capacity holds property not exceeding \$5,000 in value of a person who has died and to which the personal representative of the person is entitled, the production to the Public Trustee of
- (a) where the deceased died in Canada, a copy of the will of the deceased, proved by affidavit of a witness to the will or other proof satisfactory to the Public Trustee showing the entitlement of the heirs of the deceased to the proceeds of administration of the estate;
  - (b) if the deceased died elsewhere than in Canada, any authenticated copy of the probate of the will, or of the letters of administration or other document of like import, granted by a court or authority having the requisite powers in such matters,

is sufficient justification and authority for the delivering of the property in pursuance of and in conformity with the probate, letters of administration or other document.

**True copy filed**

- (2) Where the authenticated copy or other document of like import is produced to the Public Trustee under subsection (1) there shall be deposited with the Public Trustee a true copy thereof. *1994, c.52, s.6.*

***Fees, Charges and Expenses***

**7. Charges for services**

- (1) Subject to subsection (2), the Public Trustee shall make the charges prescribed by the regulations for services rendered in respect of any estate.

**Waiver**

- (2) The Public Trustee may waive all or part of any fees, charges or expenses which would otherwise be chargeable against an estate or trust under this section. *1994,c.52,s.7.*

**8. Fees, etc. to be paid to separate account**

- (1) Subject to subsection (5), all fees, charges, remuneration and refunds of all expenses and income of the office of every description shall be paid by the Public Trustee into a separate account as prescribed by the regulations.

**Assurance fund**

- (2) From any surplus in the account, there may be established an assurance fund as provided by the regulations.

**Other moneys in hands of Public Trustee**

- (3) Notwithstanding the *Provincial Administrator of Estates Act* R.S.P.E.I. 1988, Cap. P-23, the Lieutenant Governor in Council may direct that moneys coming into the possession of the Public Trustee under that Act shall be placed to the credit of the account.

**Payment into Operating Fund**

- (4) The Lieutenant Governor in Council may direct the payment into the Operating Fund of any amount to the credit of the account in such manner and upon such conditions as may be directed by order in council.

**Application**

- (5) Repealed by *2013,c.47,s.3. 1994,c.52,s.8; 1997,c.20,s.3; 2013,c.47,s.3.*

***Administrative Matters***

**9. Payment of liabilities**

All sums required to discharge any liability for a loss that the Public Trustee, if a private trustee, would be personally liable to discharge, shall be made good out of the assurance fund or out of the Operating Fund, but neither the Public Trustee nor the officers or employees of the Public Trustee's office are liable for any loss that would not have imposed a liability upon a private trustee. *1994,c.52,s.9; 1997,c.20,s.3.*

**10. Investment of funds**

Any money held by the Public Trustee that is available for investment may be invested by the Public Trustee in securities in which trustees are authorized to invest under the *Trustee Act* R.S.P.E.I. 1988, Cap. T-8. *1994,c.52,s.10.*

**11. Advisory Committee**

- (1) There shall be an advisory committee to the Office of the Public Trustee appointed by the Lieutenant Governor in Council.

**Status**

- (2) The members of the advisory committee are visitors of the Office of the Public Trustee.





**Recommendations**

- (3) The advisory committee may make such recommendations with regard to the general policy respecting the management and conduct of the Office of the Public Trustee as it considers advisable.

**Consultation**

- (4) The Public Trustee may consult with the advisory committee respecting methods of administration, staff and other matters relating to the Office of the Public Trustee.

**Report**

- (5) The advisory committee shall make an annual report to the Lieutenant Governor in Council respecting the performance of its duties and the exercise of its powers under this section. *1994, c.52, s.11.*

**12. Audit**

The Auditor General shall examine and report upon the accounts and financial transactions of the Public Trustee. *1994, c.52, s.12.*

**13. Regulations**

The Lieutenant Governor in Council may make regulations

- (a) respecting the office of Public Trustee, imposing duties on the Public Trustee in addition to those imposed by this Act, and prescribing the trusts or duties he is authorized to accept or undertake under this Act, and the security to be given by the Public Trustee and officers working in the office of the Public Trustee;
- (b) for fixing the fees and charges in the office of the Public Trustee and the application, collection and disposal of the same;
- (c) respecting the transfer to and from the Public Trustee of any property;
- (d) respecting the accounts to be kept;
- (e) for the establishment of an assurance fund for the purpose of meeting any losses for which the office of Public Trustee may be liable;
- (f) fixing the rate of interest to be allowed upon money in the hands of the Public Trustee and fixing the amount of interest to be charged upon advances made on behalf of any estate and the custody and control of securities held by the Public Trustee for investments;
- (g) for constituting an advisory committee for the supervision of the investments or other dealings with the property by the Public Trustee, and for providing for the remuneration by fees, or otherwise of the members of the committee;
- (g.1) respecting the security required under subsection 19.3(2), including prescribing the amount and form of such security;
- (h) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. *1994, c.52, s.14; 2013, c.47, s.4.*

## PART III — COMMITTEES FOR THE INCOMPETENT

### *Certificates of Incompetence*

#### **14. Certificates of incompetence, issuance**

- (1) Certificates of incompetence declaring the person named therein to be incompetent may be issued separately by two physicians, one of whom is the person's attending physician, after each physician has
- (a) examined the person to ascertain the person's state of mind and capability of managing the person's financial affairs; and
  - (b) determined
    - (i) that the person is incapable of handling the person's financial affairs, and
    - (ii) that it would be for the benefit of the person to appoint a committee to manage the person's financial affairs.

#### **Form and signature**

- (2) A certificate of incompetence issued under subsection (1) shall
- (a) contain the information required, and be in a form approved, by the Minister; and
  - (b) be signed by the physician who issues the certificate.

#### **Delivery to Public Trustee**

- (3) Certificates of incompetence issued under this section shall forthwith be transmitted to the Public Trustee by the attending physician or by the administrator of the residential facility in which the incompetent person resides.

#### **Assumption of functions by Public Trustee**

- (4) Subject to subsection (4.1), the Public Trustee becomes the committee of the estate of a person under this section
- (a) upon receipt of the certificates; or
  - (b) upon notification by the administrator that certificates have been issued, whichever is sooner.

#### **Exception**

- (4.1) Subsection (4) does not apply where
- (a) a committee has already been appointed under this Act; or
  - (b) an attorney has been appointed under a power of attorney which states that the power of attorney may be exercised during any subsequent legal incapacity of the donor.

#### **Cancellation of certificate**

- (5) The attending physician of an incompetent person may, after examining the person for that purpose, cancel the person's certificates of incompetence, and notice of such cancellation shall be forwarded to the Public Trustee in the form approved by the Minister.

#### **Termination of functions as committee**

- (6) The Public Trustee ceases to be the committee of the estate of the incompetent person and shall relinquish management thereof upon receipt of the notice of cancellation of the certificates of incompetence under subsection (5). *1994,c.52,s.14; 2002,c.38,s.2; 2013,c.47,s.6.*



### *Notice to Relatives of the Incompetent Person*

#### **15. Notice**

The Public Trustee shall within twenty days of assuming the function of committee, give notice to the nearest known adult relative who has full legal capacity, that the Public Trustee acts as committee of the estate of that person and is responsible for the management of that person's financial affairs. *1994,c.52,s.15.*

### *Powers of the Public Trustee as Committee*

#### **16. Applicable provisions**

- (1) The Public Trustee may become the committee of an incompetent person pursuant to section 14, 25 or 29.

#### **Powers of Public Trustee as committee**

- (2) The Public Trustee as committee of the estate of a person has and may exercise all the rights and powers with regard to the person's estate that the person would have if of full age and competent and it shall not be necessary for the Public Trustee to apply to the court with respect to the exercise of any such power. *1994,c.52,s.16.*

#### **17. Effect on power of attorney**

- (1) Repealed by *2002,c.38,s.3.*

#### **Payment out of moneys in court**

- (2) Where the incompetent person is entitled to money in any court in Prince Edward Island, it shall be paid to the Public Trustee upon the Public Trustee's written notice to the court, and it shall not be necessary to obtain a court order for the purpose of such payment out of court. *1994,c.52,s.17.*

#### **18. Certain gifts deemed to be fraudulent**

- (1) Every gift, conveyance or transfer of property made by a person who is or becomes incompetent shall be deemed to be void and fraudulent as against the Public Trustee if the same was not made for full and valuable consideration actually paid or sufficiently secured to such person or if the purchaser or transferee had notice of the mental condition of the person.

#### **Recitals in documents**

- (2) A recital in a lease, mortgage, conveyance or other document that the Public Trustee acts as committee for a person's estate, is admissible in evidence as proof of the facts recited. *1994,c.52,s.18.*

#### **19. Actions**

- (1) Where the Public Trustee is committee of a person under this Act, no person shall bring or defend an action on behalf of that person without the consent of the Public Trustee.

#### **Proceedings by Public Trustee**

- (2) The Public Trustee, as committee, may determine whether or not to institute or defend any proceedings respecting the incompetent person or to intervene in respect of the estate of that

person or to take charge of any property, provided that at all times the property and estate of the person shall be preserved.

**Death**

- (3) Subject to subsection 6(1), upon the death of an incompetent person and until an executor or administrator is appointed, the Public Trustee shall continue to conserve the estate of the person. *1994,c.52,s.19.*

**19.1 Unclaimed property belongs to Crown**

- (1) All property held by the Public Trustee as committee of the estate of a deceased incompetent person that is not claimed, within five years of the date of the death of the deceased person, by any person entitled to that property, is the property of Her Majesty in right of the Province, and shall be converted by the Public Trustee into cash and paid to the Minister of Finance.

**Application to property of person who dies before section comes into force**

- (2) For greater certainty, subsection (1) applies in respect of the property that the Public Trustee holds as committee of the estate of a deceased incompetent person who died before this section comes into force. *2013,c.47,s.7; 2015,c.28,s.3.*

**19.2 Payment into the Operating Fund**

- (1) The Minister of Finance shall pay any payments received under section 19.1 into the Operating Fund.

**Claims against money paid to Minister**

- (2) Any person claiming to be entitled to any money paid to the Minister of Finance under section 19.1 may make application to the Supreme Court or a judge thereof for a judgment or order determining his or her rights in respect of such money if
- (a) the application is made within 10 years after the money has been paid to the Minister of Finance; or
  - (b) where the person claiming to be entitled to such money is, on the expiry of the 10-year period referred to in clause (a), under the age of nineteen years or incompetent or out of the Province, the application is made within
    - (i) 10 years after the person attains the age of 19 years, regains his or her competence or returns to the Province, as the case may be, or
    - (ii) 30 years after the money was paid to the Minister of Finance under section 19.1,whichever period expires first.

**Inquiries**

- (3) The Supreme Court or a judge thereof may, on receipt of an application made under subsection (2), direct such inquiries as may be necessary to determine the entitlement of the applicant or other persons to the money claimed.

**Order for payment**

- (4) Where, after hearing the application, the Supreme Court or a judge thereof determines that the applicant is entitled to any money paid to the Minister of Finance under section 19.1, the Supreme Court or the judge may order the Minister of Finance to pay the applicant the money to which the applicant is entitled. *2013,c.47,s.7; 2015,c.28,s.3.*

**19.3 Order to distribute money from estate to other persons**

- (1) Where, on hearing the application under section 19.2, the Supreme Court or a judge thereof is satisfied that
- (a) a person who, if living, would be entitled to any money paid to the Minister of Finance under section 19.1, is absent from the Province and has not been heard of or from by the applicant, or to the knowledge of the applicant by any other person, since a day named;
  - (b) the applicant has no reason to believe the absent person is living; and
  - (c) reasonable grounds exist for believing the absent person is dead,

the Supreme Court or the judge thereof may order the Minister to distribute the money to which that absent person would be entitled, if living, among such other persons who would be entitled to the money if the death of the absent person had taken place immediately before the time at which the application was made in accordance with section 19.2.

**Security for improper distribution**

- (2) Before the Minister of Finance distributes money to any person pursuant to an order made under subsection (1), the person shall give the Minister of Finance security, in such amount and in such form as is prescribed, for the payment or *re-delivery* of the money to
- (a) the absent person if the absent person returns; or
  - (b) in case of the death of the absent person being proved to have taken place at a time other than that immediately before the application under subsection 19.2(2), to any other persons entitled to the same by reason of the death having taken place at such other time.

**Remedies for recovery of distributed money**

- (3) Subject to section 19.4, nothing in this Act limits or abridges the remedies to which
- (a) the absent person referred to in subsection (1), if he or she returns; or
  - (b) any other person,

may resort to for recovering any money from the persons among whom it was distributed by the Minister of Finance pursuant to an order of the Supreme Court.

**Copy of order to be provided to Public Trustee**

- (4) The Minister of Finance shall cause a copy of any order received by the Minister under subsection (1) to be provided to the Public Trustee, who may then provide a further copy of the order to any person subsequently claiming an interest in any money distributed pursuant to the order. *2013, c.47, s.7; 2015, c.28, s.3.*

**19.4 No claims allowed for interest**

- (1) No person has the right to claim or commence an action against the Crown, The Public Trustee, the Minister of Finance or other person acting on behalf of any such persons, for any appreciation in the value of
- (a) any property of the estate of an incompetent person while it is held by the Public Trustee before, on or after the death of that person; or
  - (b) any money from the estate of an incompetent deceased person after it is paid to the Minister of Finance under section 19.1.

**No further claims allowed for money paid pursuant to a court order**

- (2) No person has the right to claim or commence an action against the Crown, The Public Trustee, the Minister of Finance or other person acting on behalf of any such persons, for any money that the Minister of Finance was ordered, under section 19.2 or 19.3, by the Supreme Court or a judge thereof to pay to another person. *2013,c.47,s.7; 2015,c.28,s.3.*

***Public Trustee Accounts***

**20. Accounts**

The Public Trustee, as committee, is liable to render an account of the administration of an estate in the same manner and subject to the same responsibility as any trustee, guardian or committee duly appointed for a similar purpose may be called upon to account, and is entitled to bring in and pass the accounts of the estate and assess costs in like manner as a trustee, but is personally liable only for wilful misconduct or negligence in the carrying out of his or her duties. *1994,c.52,s.20.*

***Public Trustee's Continued Management***

**21. Order for management by Public Trustee to continue**

- (1) Where the Public Trustee ceases to be committee of an estate, and the person has refused or neglected to take possession of any or all property which had been administered by the Public Trustee, the Public Trustee may apply to the court for directions as to the disposal of such property and the court may make such order as it considers just and may order that the Public Trustee continue to manage the estate of that person with all of the rights and powers that the Public Trustee would have had if the committee had not been terminated.

**Relinquishment of management**

- (2) Where the Public Trustee continues to manage an estate under subsection (1), the court may, on application, make such further order as it considers just and it may order that the management of the estate by the Public Trustee be relinquished. *1994,c.52,s.21.*

***Costs of the Public Trustee***

**22. Lien for costs**

- (1) The costs, charges and expenses of the Public Trustee, including the costs, charges and expenses of or arising from or out of the passing of the accounts of the Public Trustee, whether before or after the termination of the committee'ship or the death of the person of whose estate the Public Trustee is committee under this Act, or by an order made under this Act, and any moneys advanced or liability incurred by the Public Trustee for or on behalf of such person or for the maintenance of such person's family are a lien upon the real and personal property of that person.

**Registration of lien**

- (2) In the case of real property, the Public Trustee may register in the appropriate office of the Registrar of Deeds, a certificate under the hand and seal of the Public Trustee giving notice of the lien claimed and the real property against which it is claimed.



**Withholding funds to secure costs**

- (3) Where the Public Trustee is having the accounts passed after the termination of the committeehip or the death of the incompetent person, the Public Trustee may withhold sufficient funds from the person's estate to adequately secure the costs of or arising from the passing of the accounts. *1994, c.52, s.22.*

***Court Appointed Committees, Order for Examination***

**23. Examination by order of the court**

- (1) Subject to subsection (2), where a person is believed to be incompetent, the court may, on application, order that the person be examined by two physicians to ascertain the person's state of mind and capability of managing the person's financial affairs and the physicians shall provide their medical opinion in accordance with the order and in the form approved by the Minister.

**Content of application**

- (2) An application under this section shall contain
- (a) the name, age and residence of the person believed to be incompetent;
  - (b) an inventory of the real and personal estate of the person believed to be incompetent so far as the information may be obtained by the applicant, and verified by the applicant or other credible person; and
  - (c) such other information as may be required by the regulations or ordered by the court. *1994, c.52, s.23.*

***Service of Application for an Order for Examination***

**24. Service**

- (1) Subject to subsection (2), any person who is the subject of an application made under section 23 shall, at least ten days before the date of the hearing of the application, be served with a copy of the application.

**Exception**

- (2) Service of the application shall not be made on the person believed to be incompetent where the person's physician informs the applicant that service of the application could reasonably harm the person's mental condition. *1994, c.52, s.24.*

***Application for Order Appointing Committee***

**25. Appointment of committee by court**

- (1) Subject to subsections (2) and (3), the court may, on application, order the appointment of a committee for a person examined under section 23, where the court is satisfied that the person is incompetent and incapable of managing the person's affairs and that it is in the best interests of the incompetent person that the management of that person's estate should be committed to some other person.

***Idem***

- (2) The Public Trustee may make application under subsection (1).

**Notice**

- (3) No order shall be made for the appointment of a committee under this section unless the Public Trustee was served with notice not less than ten clear days before the application was made.

**Intervention by Public Trustee**

- (4) The Public Trustee may intervene and be made a party to any application under this section.

**Appointment, terms of order**

- (5) If the court is satisfied by the medical opinions and other evidence presented on the application, the court may make an order appointing a fit and proper person to be the committee of the incompetent person, but
- (a) the Public Trustee shall not be the committee, without the Public Trustee's consent;
  - (b) except where the Public Trustee is the committee, the court shall order that the committee give security by bond or recognizance with such sureties and in such form as the Court may order for the faithful performance of the committee's duties;
  - (c) the court may direct such allowance to be made out of the estate for the maintenance and medical treatment of the incompetent person as it considers proper;
  - (d) the court may order that dependents of the incompetent person may be provided for out of the estate; and
  - (e) the court may place such conditions on the order as the court may consider just or necessary.

**Service**

- (6) Unless otherwise ordered, an order made pursuant to subsection (4) shall be served on
- (a) the person found to be incompetent; and
  - (b) the most immediately available adult member of the person's family, or in the absence of such, the nearest known adult relative of the person. *1994, c.52, s.25.*

***Powers and Duties of Court Appointed Committees***

**26. Powers**

- (1) The committee of the estate of an incompetent person shall take into its custody or under its control all property to which the incompetent person is entitled or of which the person is possessed and collect in and receive debts owing to the person.

***Idem, assurances***

- (2) The committee may, in the name and on behalf of a incompetent person, execute and make all such assurances and do such things as are necessary for giving effect to any order made under, or to any authority given under this Part.

**Order of court**

- (3) The court may order on such terms as it considers just, that a committee do all or any of the following:
- (a) take such action as is considered necessary to preserve the person's estate;
  - (b) bring any action, suit or other proceeding to recover real or personal property of the incompetent person, and the committee shall, for the purposes of such action, suit or





proceeding, have and exercise all of the rights and powers that the person would have if competent;

- (c) grant leases of any property owned by the person;
- (d) surrender a lease, with or without accepting a new lease or accept a surrender of a lease;
- (e) with or without consideration, surrender, transfer or otherwise dispose of the person's property; and
- (f) bring an action on behalf of the person, and the court may make such other orders as it considers just or necessary.

**General powers**

- (4) Unless the Court otherwise orders, a committee may
  - (a) make valid and binding leases of real property in the person's estate for any term not exceeding three years;
  - (b) pay periodically, as may be required, a reasonable amount for the maintenance of the incompetent person;
  - (c) invest any money in the estate in securities authorized for trustees pursuant to the *Trustee Act*;
  - (d) pending the investment of any money in the estate, deposit it, during such time as may be reasonable in the circumstances,
    - (i) in any bank, trust company or credit union, or
    - (ii) in any corporation empowered under the law of the province to accept moneys for deposit and that has been approved for that purpose by the Lieutenant Governor in Council;
  - (e) transfer property held in trust by the incompetent person, either solely or jointly with another person, to the person beneficially entitled thereto;(f) give a consent to the transfer or assignment of a lease where the consent of the incompetent person is required;
  - (g) perform a contract entered into by the incompetent person before the person became incompetent;
  - (h) 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;
  - (i) on behalf of the incompetent person give or receive a notice. *1994, c.52, s.26.*

**27. Filing of inventory**

- (1) Unless a court otherwise orders, where a committee of the estate of an incompetent person has been appointed, the following provisions shall in every case be observed:
  - (a) the committee shall, within three months of its appointment, file with the Prothonotary a true inventory of the whole real and personal estate of the incompetent person, stating the income and profits thereof, and setting forth the person's debts, credits and effects, so far as they have come to the knowledge of the committee;
  - (b) where any property belonging to the estate is discovered after the filing of an inventory, the committee shall file a true account of it within twenty days of its discovery;

- (c) every inventory and account shall be verified by the oath or affirmation of the committee or of some person in a position to verify them.

**Accounting**

- (2) The committee shall file annually with the Prothonotary in the month of its appointment, a full accounting of the moneys received and disbursed, with a short statement and account of the present state of the financial affairs of the incompetent person.

**Physician's certificate**

- (3) The court may order that a committee file a physician's certificate with its annual report, setting out the state of mind of the incompetent person. *1994, c.52, s.1.27.*

**28. Order for sale of assets**

The court may order the sale or disposition of any assets of an incompetent person for the purpose of raising, securing or repaying, with or without interest, money which is to be or has been applied to

- (a) payment of debts or other obligations;
- (b) discharge of an encumbrance on the person's property;
- (c) payment of a debt or expenditure incurred for the person's maintenance and that of any person dependent upon the person or otherwise for the dependent's benefit;
- (d) payment of, or provision for, the expenses of the person's future maintenance and that of the person's dependents; or
- (e) the improvement, security or advantage of the person's property. *1994, c.52, s.28.*

*Substitution of Committees*

**29. Substitution of committee**

- (1) The court may on application, make an order appointing a committee in substitution for an existing committee.

**Effect of order**

- (2) An order under subsection (1) appointing a new committee does not invalidate the acts of any previously appointed committee.

**Replacement of committee**

- (3) Where a person acting as committee

- (a) dies or resigns; or
- (b) fails to render an account within such time as the court considers reasonable,

the court, on application of any interested person willing to act as committee, may appoint that person as committee and make such orders as it considers just to enable that person to act.

**Notice of application**

- (4) No application under subsection (1) or (3) shall be heard by a court unless the Public Trustee is served with a copy of the notice of application at least ten clear days prior to the hearing of the application, and the Public Trustee may intervene and be made a party to the application. *1994, c.52, s.29.*



### *Administration Expenses*

#### **30. Expenses**

The Court may direct to be paid out of the estate of the incompetent person

- (a) any reasonable expenses incurred by the committee in the course of administering the person's estate; and
- (b) an allowance for the committee's work of administering the person's estate, together with reasonable costs and expenses incurred in the management of the person's estate. *1994, c.52, s.30.*

### *Service of Documents on Incompetent Persons*

#### **31. Service**

- (1) When a proceeding is taken against an incompetent person who does not have a committee, and the proceeding is with respect to the estate of that person, any documents requiring personal service upon the incompetent person shall be served upon the Public Trustee endorsed with a written statement of the whereabouts of the incompetent person.

#### **Copies**

- (2) The Public Trustee shall ensure that the incompetent person is provided with copies of the proceedings unless otherwise advised by the attending physician of the person that copies or notification would be detrimental to the mental health of the person.

#### **No obligation to defend**

- (3) Nothing in this section shall be construed to place an obligation on the Public Trustee to defend the proceeding. *1994, c.52, s.31.*

### *Termination of Committees*

#### **32. Restoration of reason**

- (1) Where the capacity to make decisions of a person found to be incompetent under this Act is restored, the person or the committee of that person may apply to the court for an order terminating the committee.

#### **Application**

- (2) Subsection (1) applies to any committee created under this Act.

#### **Termination of committee and transfer of property**

- (3) Where the court determines that a person is competent, the person's committee shall be terminated and the court may order any of the person's real or personal property in the hands of the committee or of any other person to be transferred or paid to the person declared to be competent.

#### **Accounts**

- (4) On termination under subsection (2), the committee shall render a true account of the person's estate and shall transfer custody of the person's real and personal property to the person, after deducting all just and necessary costs, charges and expenses which the

committee may have incurred or be liable to pay in the course of administering the person's estate.

#### **Death**

- (5) Where an incompetent person dies before the committee is terminated, the committee shall render an account of its administration of the person's estate unto the personal representative of the deceased and the committee shall transfer all real and personal property of the deceased to the personal representative. *1994, c.52, s.32.*

### ***Committee Register***

#### **33. Register**

- (1) There shall be a Committee Register maintained by the Prothonotary in which all committees for incompetent persons shall be registered and the following entries made:
- (a) an order appointing a committee under section 25 shall be entered in the register upon the filing of the order in the court file;
  - (b) where the Public Trustee becomes committee pursuant to section 14, the Public Trustee shall file a notice, in the form approved by the Minister, which shall be entered in the register upon receipt by the Prothonotary;
  - (c) an order substituting a committee under subsection 29(1) or appointing a committee under subsection 29(3) shall be entered in the register upon the filing of the order in the court file;
  - (d) an order terminating a committee under section 32 shall be entered in the register upon the filing of the order in the court file.

#### **Search**

- (2) No order appointing a committee shall be granted pursuant to section 25 unless the applicant has searched the register and determined that there is no other committee responsible for that incompetent person. *1994, c.52, s.33.*

### ***Non-Resident Incompetent Persons***

#### **34. Appointment of official of other jurisdiction**

- (1) Where a person who has been declared incompetent in another province or territory of Canada has an estate in Prince Edward Island, the Lieutenant Governor in Council may appoint the official who is charged with the duty of administering the estate of the person in the other province or territory, to be the committee of the estate of that person in Prince Edward Island.

#### **Evidence**

- (2) An order in council of the other province or territory appointing the official and any other certificates or orders purporting to appoint the official as committee shall be sufficient proof of the appointment.

#### **Powers, etc.**

- (3) The person appointed pursuant to subsection (1) shall have the same rights, powers, privileges and immunities as a committee as the Public Trustee under this Part and the official



shall perform the same duties and is subject to the same obligations as the Public Trustee.  
*1994,c.52,s.34.*

**PART IV - SECTIONS 35 TO 78 REPEALED BY** *2013,C.47,S.8. 1994,C.52,S.35-78; 2013,C.47,S.8.*

**PART V — GENERAL**

**79. Consequential amendments**

Consequential amendments. *1994,c.52,s.79*

**80. Repeal**

Repealed by *1994,c.52,s.80*

**81. Repeal**

The *Estates of Incompetent Persons Act* R.S.P.E.I. 1988, Cap. M-6 is repealed. *1994,c.52,s.81.*