



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

ADULT GUARDIANSHIP AND TRUSTEESHIP ACT

PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to February 1, 2024. 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 King'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).

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CHAPTER A-4.2

ADULT GUARDIANSHIP AND TRUSTEESHIP ACT

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. Sections 1 to 67 Not Proc.**68. Regulations**

The Lieutenant Governor in Council may make regulations

- (a) establishing standards for the conduct of qualified practitioners under this Act;
- (b) respecting the duties of the Public Guardian and Trustee under this Act, including prescribing additional duties of the Public Guardian and Trustee and specifying how they may or shall be carried out;
- (c) governing applications to the court under this Act, including, without limitation, regulations
 - (i) respecting the documents required to be filed with the application, and
 - (ii) respecting the persons required to be served with notice of the application, the documents required to be served, the manner of service and the time within which service may or shall be effected;
- (d) respecting the definitions of “financial matter” and “personal matter”, including, without limitation, regulations
 - (i) providing that specified matters are or are not financial matters or personal matters,
 - (ii) establishing a mechanism for determining whether a specified matter that has aspects of both a financial matter and a personal matter is to be treated as a financial matter or a personal matter for the purposes of this Act, and
 - (iii) establishing a mechanism for determining whether a legal proceeding relates primarily to the financial matters of a person;
- (e) respecting the application of this Act and the regulations to a person referred to in subsection 3(2);
- (f) respecting capacity assessments, including, without limitation, regulations
 - (i) governing the manner in which capacity assessments shall be conducted and prescribing a form for the purpose,
 - (ii) designating professions whose members are qualified practitioners for the purpose of conducting capacity assessments,

- (iii) establishing guidelines for capacity assessments, and
- (iv) respecting the circumstances in which the fee for a capacity assessment may be paid by Government and authorizing the payment of the fee in those circumstances;
- (g) respecting the persons required to be provided with a copy of a capacity assessment report for the purposes of clause 10(2)(e);
- (h) specifying documents and information to be kept in the Register;
- (i) respecting disclosure of information contained in the Register;
- (j) respecting persons who may have access to the information contained in the Register for the purpose of making an application under this Act and the process for obtaining that access;
- (k) specifying classes of persons for the purposes of subsections 14(3), 23(7), 30(3) and 39(8);
- (l) prescribing matters for the purposes of sections 16 and 32;
- (m) respecting notification to be provided to the Registrar;
- (n) respecting the circumstances in which a guardian or trustee is not required to inform a represented person of important decisions made for the represented person;
- (o) respecting circumstances in which a recent capacity assessment report shall be filed;
- (p) respecting the authority of trustees, including, without limitation, regulations
 - (i) specifying property to which a trusteeship order does not apply unless the trusteeship order specifically provides that it applies to the property,
 - (ii) specifying things that a trustee shall not do in relation to the financial matters of the represented person unless the trusteeship order specifically authorizes the trustee to do those things,
 - (iii) specifying circumstances in which a trustee may sell, transfer, encumber or purchase real property without specific authority in the trusteeship order, and
 - (iv) specifying limits on the authority of a trustee to make gifts;
- (q) prescribing a schedule for the compensation of trustees and prescribing the manner in which a trustee may elect to be compensated in accordance with the schedule;
- (r) prescribing a jurisdiction outside Canada for the purposes of subsection 55(2);
- (s) respecting the determination of an application for an order under subsection 62(1);
- (t) respecting payment of all or part of the costs of an application for the purposes of section 66;
- (u) adopting by reference, in whole or in part and with any changes the Lieutenant Governor in Council considers appropriate, a code, standard or rule
 - (i) enacted as or under the law of another jurisdiction, including a jurisdiction outside Canada, or
 - (ii) set by a provincial, national or international body or any other body that may make guidelines, standards or rules;
- (v) respecting the content of accounts to be maintained and submitted by guardians and trustees;
- (w) respecting the examination and approval of accounts submitted by guardians and trustees;
- (x) respecting procedural matters not provided for in the Rules of Civil Procedure;
- (y) defining, for the purposes of this Act, words and expressions used but not defined in this Act;

- (z) respecting any matter necessary and advisable to carry out effectively the intent and purposes of this Act. 2023, c.11, s.68.

PART 8 - GUARDIANSHIP APPOINTMENT BY COURT

69. Definitions

(1) In this section,

- (a) “**court**” means the Supreme Court;
- (b) “**interested person**” means
- (i) the public guardian, and
 - (ii) any adult who is concerned for the welfare of a person in respect of whom a guardianship order is sought or has been obtained;
- (c) “**personal matter**” means any matter, except a financial matter, relating to a person, including without limitation
- (i) the person’s health care,
 - (ii) the person’s basic needs, including nutrition, clothing and personal care,
 - (iii) where, with whom and under what conditions the person is to live, either permanently or temporarily,
 - (iv) with whom the person may associate,
 - (v) the person’s participation in social activities,
 - (vi) the person’s participation in any educational, vocational or other training,
 - (vii) the person’s employment, and
 - (viii) the carrying on of any legal proceeding that does not relate primarily to the person’s financial matters;
- (d) “**public guardian**” means the public official empowered with the duty of public guardianship or a person otherwise designated by the Minister.

Application for guardianship order

- (2) Any interested person may apply to the court for an order appointing a guardian for a person.

Documents to be filed

- (3) An application under subsection (2) shall be accompanied by two certificates of incapacity indicating that in the opinion of two medical practitioners the person named in the application is incapable of managing the person’s personal matters.

Form to be used

- (4) The form to be used for the purposes of an application under subsection (2) shall be
- (a) the form set out in the Schedule to this Act; or
 - (b) where a regulation has been made pursuant to subclause 68(f)(i) establishing a form for those purposes, the form set out in the regulations.

Notice

- (5) Notice of an application under subsection (2) shall be given by serving a copy of the application on
- (a) the person in respect of whom the application is made;
 - (b) if ascertainable, the nearest relative of the person;

- (c) the person proposed as guardian; and
- (d) if the person in respect of whom the application is made is a resident of a psychiatric facility, licensed nursing home, hospital, licensed community care facility or residential institution, the administrator of the facility, nursing home, hospital, community care facility or institution, as the case may be.

Appointment of guardian

- (6) Where the court is satisfied that the person named in an application under subsection (2) is
 - (a) in need of guardianship; and
 - (b) unable to make reasonable judgments in respect of matters relating to the person's personal matters,and that it is in the best interests of the person that a guardian be appointed, the court shall make an order appointing a guardian for the person.

Directions

- (7) An order under subsection (6) may include any directions the court considers appropriate, and may be limited to certain functions in accordance with the needs of the person, or limited in duration.

Powers of guardian

- (8) Subject to directions given or other limitations imposed under subsection (7), a guardian may exercise all the rights and powers relating to personal matters that the person could have exercised if the person had capacity.

Appointment of guardian

- (9) Where in the opinion of the public guardian, a person is suffering from mental disorder and in need of a guardian and no person is willing or able to make an application for or to be appointed as guardian, the public guardian may make an application under subsection (2) for an order appointing the public guardian or any other person as guardian.

Continuing review of guardian's activities

- (10) An order appointing a guardian may, on application, be reviewed by the court and the court shall exercise continuing powers of review of the activities of the guardian, and if the guardian dies, resigns or fails to comply with directions, the court may discharge the guardian and appoint another person in the place of the guardian originally appointed.

Alternate guardian

- (11) The court may appoint an alternate guardian to serve in the absence or incapacity of a guardian.

Protection from liability

- (12) No action lies against the Minister, the public guardian or a medical practitioner or any person acting under the authority of the Minister, the public guardian or a medical practitioner for anything done or omitted to be done in good faith in exercising powers or authority or carrying out duties, responsibilities or functions under this section.

Protection from liability - guardian

- (13) No guardian shall be liable for any loss or damage suffered by reason of anything done or omitted to be done by the guardian in the performance of a duty or the exercise of a power under this section if the guardian has acted diligently and in good faith.

Repeal

- (14) This section and the Schedule to this Act are repealed on the date on which Part 4 of this Act comes into force. *2023, c. 11, s. 69.*

Sections 70 to 73 Not Proc

74. Consent to Treatment and Health Care Directives Act

- (1) **The *Consent to Treatment and Health Care Directives Act* R.S.P.E.I. 1988, Cap. C-17.2, is amended as provided by this section.**
- (2) **Clause 1(f) of the Act is amended by the deletion of the words “*Mental Health Act* R.S.P.E.I. 1988, Cap. M-6.1” and the substitution of the words “*Adult Guardianship and Trusteeship Act* R.S.P.E.I. 1988, Cap. A-4.2.”.**
- (3) **Subsection 2(1) of the Act is amended by the addition of the words “, the *Adult Guardianship and Trusteeship Act*” after the words “*Mental Health Act*”.**

Sections 75 to 79 Not Proc

80. Mental Health Act

- (1) **The *Mental Health Act* R.S.P.E.I. 1988, Cap. M-6.1, is amended as provided by this section.**
- (2) **Section 40 of the Act is repealed.**

Sections 81 to 86 Not Proc

87. Repeal

The *Supported Decision Making and Adult Guardianship Act* S.P.E.I. 1997, c. 49, is repealed.

SCHEDULE

ADULT GUARDIANSHIP AND TRUSTEESHIP ACT
CERTIFICATE OF INCAPACITY TO MANAGE PERSONAL AFFAIRS

[Subsection 69(4) of the Act]

I, on of in
(name of medical practitioner) (day) (month) (year)

have personally completed an examination of

..... of
(patient's full name) (address)

I find that this person is, on a continual or habitual basis, not able to

- (a) understand information that is relevant to making decisions;
(b) make or effectively communicate reliable decisions which are necessary for the person's health care, nutrition, accommodation, clothing, hygiene, welfare or other matter essential for ordinary life; and
(c) appreciate the reasonably foreseeable consequences of such decision or lack of decision.

My opinion, therefore, is that this person is incapable of managing the person's personal affairs.

Personal affairs means such matters as residence, health care, legal proceedings, education or training, social contacts.

Note that estate matters (property and financial) are addressed under the Public Trustee Act.

Information/explanation/comment:

Date: Medical Practitioner's Signature:

- Two of these certificates of incapacity, each completed by a medical practitioner, must accompany an application for guardianship under section 69 of the Adult Guardianship and Trusteeship Act.

2023,c.11,Sch.