



Province of Alberta

# **ADULT GUARDIANSHIP AND TRUSTEESHIP ACT**

Statutes of Alberta, 2008  
Chapter A-4.2

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### Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

### Regulations

The following is a list of the regulations made under the *Adult Guardianship and Trusteeship Act* that are filed as Alberta Regulations under the Regulations Act

	<b>Alta. Reg.</b>	<i>Amendments</i>
<b>Adult Guardianship and Trusteeship Act</b>		
Adult Guardianship and Trusteeship .....	219/2009 .....	37/2010, 96/2010, 164/2010, 178/2011, 170/2012, 62/2013
Adult Guardianship and Trusteeship (Ministerial) .....	224/2009 .....	47/2010, 77/2012
Transitional (Applications Made in Conformity with the Dependent Adults Act; Certificates of Incapacity).....	218/2009 .....	37/2010

# **ADULT GUARDIANSHIP AND TRUSTEESHIP ACT**

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

## **Part 1**

### **Interpretation**

#### **Definitions**

**1** In this Act,

- (a) “agent” means an agent as defined in the *Personal Directives Act*;
- (b) “assisted adult” means a person in respect of whom a co-decision-making order is in effect;
- (c) “assisted person” means
  - (i) an assisted adult, and
  - (ii) a person who is the subject of a co-decision-making order that has not taken effect under section 11(2)(b);
- (d) “capacity” means, in respect of the making of a decision about a matter, the ability to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of
  - (i) a decision, and
  - (ii) a failure to make a decision;
- (e) “capacity assessment” means an assessment conducted under Part 4 of an adult’s capacity to make decisions respecting personal matters or financial matters;

- (f) “capacity assessment report” means a report completed under section 102;
- (g) “capacity assessor” means a member of a health profession designated in the regulations as being qualified to conduct capacity assessments who is designated as a capacity assessor under the regulations;
- (h) “co-decision-maker” means a person named as a co-decision-maker in a co-decision-making order;
- (i) “co-decision-making order” means an order of the Court appointing a co-decision-maker for an adult under this Act;
- (j) “complaints officer” means a person designated as a complaints officer under section 82;
- (k) “Court” means the Court of Queen’s Bench;
- (l) “custodian” means a custodian as defined in the *Health Information Act*;
- (m) “enduring power of attorney” means an enduring power of attorney as defined in the *Powers of Attorney Act*;
- (n) “financial information” means information about the property or financial matters of an identifiable individual;
- (o) “financial matter” means
  - (i) subject to the regulations, any matter relating to the acquisition, disposition, management or protection of property, and
  - (ii) any matter prescribed by the regulations;
- (p) “guardian” means a person named as a guardian in a guardianship order or a person who becomes a guardian by virtue of the operation of this Act;
- (q) “guardianship order” means an order of the Court made or continued under this Act appointing a guardian;
- (r) “health care” includes



- (i) any examination, diagnosis, procedure or treatment undertaken to prevent or manage any disease, illness, ailment or health condition,
- (ii) any procedure undertaken for the purpose of an examination or a diagnosis,
- (iii) any medical, surgical, obstetrical or dental treatment,
- (iv) anything done that is ancillary to any examination, diagnosis, procedure or treatment,
- (v) any procedure undertaken for the purpose of preventing pregnancy, except sterilization that is not medically necessary to protect health,
- (vi) palliative care, and
- (vii) a treatment plan;
- (s) “health care provider” means a member of a health profession designated in the regulations who provides health care to an adult;
- (t) “health information” means health information about an identifiable individual within the meaning of the *Health Information Act*;
- (u) “interested person” means
  - (i) the Public Guardian,
  - (ii) the Public Trustee, and
  - (iii) any person who is 18 years of age or older and who is concerned for the welfare of a person in respect of whom a co-decision-making order, guardianship order or trusteeship order is sought or has been obtained;
- (v) “investigator” means a person designated as an investigator under section 83;
- (w) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;

- (x) “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) spouse or adult interdependent partner;
  - (ii) adult son or daughter;
  - (iii) father or mother;
  - (iv) adult brother or sister;
  - (v) grandfather or grandmother;
  - (vi) adult grandson or granddaughter;
  - (vii) adult uncle or aunt;
  - (viii) adult nephew or niece;
- (y) “organization” means an organization as defined in the *Personal Information Protection Act*;
- (z) “personal directive” means a personal directive as defined in the *Personal Directives Act*;
- (aa) “personal information” means information, including health information and financial information, about an identifiable individual;
- (bb) “personal matter” means, subject to the regulations, any matter, except a financial matter, relating to the person of an adult, including, without limitation,
  - (i) the adult’s health care,
  - (ii) where, with whom and under what conditions the adult is to live, either permanently or temporarily,
  - (iii) with whom the adult may associate,
  - (iv) the adult’s participation in social activities,

- (v) the adult's participation in any educational, vocational or other training,
  - (vi) the adult's employment,
  - (vii) the carrying on of any legal proceeding that does not relate primarily to the financial matters of the adult, and
  - (viii) any matters prescribed by the regulations;
- (cc) "property" includes, without limitation,
- (i) things and rights or interests in things,
  - (ii) anything regarded in law or equity as property or an interest in property,
  - (iii) any right or interest that may be transferred for value from one person to another,
  - (iv) any right, including a contingent or future right, to be paid money or to receive any other kind of property, and
  - (v) any cause of action, to the extent that it relates to property or could result in a judgment requiring a person to pay money;
- (dd) "public body" has the meaning given to it by the *Freedom of Information and Protection of Privacy Act*;
- (ee) "Public Guardian" means a person appointed as a Public Guardian pursuant to section 107;
- (ff) "Public Trustee" means the Public Trustee under the *Public Trustee Act*;
- (gg) "registry" means the registry established under section 106;
- (hh) "represented adult" means an adult 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;
- (ii) "represented person" means

- (i) a represented adult, and
- (ii) a person who is the subject of a guardianship order or trusteeship order that has not taken effect under section 24(2)(b) or 43(3)(b);
- (jj) “residential facility” has the meaning given to it by the regulations;
- (kk) “review officer” means a person designated as a review officer under section 81;
- (ll) “significantly impaired” has the meaning given to it by the regulations;
- (mm) “specific decision maker” means a person who is selected as a specific decision maker under section 87;
- (nn) “supported adult” means an adult who has appointed a supporter in a supported decision-making authorization;
- (oo) “supported decision-making authorization” means an authorization made pursuant to section 4;
- (pp) “supporter” means a person named as a supporter in a supported decision-making authorization;
- (qq) “treatment plan” means a plan that is developed by a health care provider for the provision of health care to or the withholding or withdrawal of health care from an adult with respect to a disease, illness, ailment or health condition that the adult has or may have in the future;
- (rr) “trustee” means a person named as a trustee in a trusteeship order or a person who becomes a trustee by virtue of the operation of this Act;
- (ss) “trusteeship order” means an order of the Court made or continued under this Act appointing a trustee.

### Principles

**2** This Act is to be interpreted and administered in accordance with the following principles:

- (a) an adult is presumed to have the capacity to make decisions until the contrary is determined;
- (b) an adult is entitled to communicate by any means that enables the adult to be understood, and the means by which an adult communicates is not relevant to a determination of whether the adult has the capacity to make a decision;
- (c) where an adult requires assistance to make a decision or does not have the capacity to make a decision, the adult's autonomy must be preserved by ensuring that the least restrictive and least intrusive form of assisted or substitute decision-making that is likely to be effective is provided;
- (d) in determining whether a decision is in an adult's best interests, consideration must be given to
  - (i) any wishes known to have been expressed by the adult while the adult had capacity, and
  - (ii) any values and beliefs known to have been held by the adult while the adult had capacity.

## **Part 2 Decision-making, Guardianship and Trusteeship**

### **Division 1 Supported Decision-making**

#### **Application of Division**

**3** This Division applies only in respect of personal matters.

#### **Supported decision-making authorization**

**4(1)** An adult who understands the nature and effect of a supported decision-making authorization may make a supported decision-making authorization appointing one to 3 persons who have attained the age of 18 years and who meet the prescribed eligibility requirements as supporters.

**(2)** An adult may, in a supported decision-making authorization, authorize a supporter to exercise some or all of the following

powers in respect of a decision to be made by the adult referred to in the authorization:

- (a) to access, collect or obtain or assist the adult in accessing, collecting or obtaining from any person any information that is relevant to the decision and to assist the adult in understanding the information;
- (b) to assist the adult in making the decision;
- (c) to communicate or assist the adult in communicating the decision to other persons.

**(3)** A supported decision-making authorization must be in the prescribed form and meet the requirements of the regulations.

**(4)** A supporter may exercise the authority granted to the supporter in a supported decision-making authorization.

**(5)** A person who is appointed as a supporter may refuse to act as a supporter.

**Public Guardian and Public Trustee may not be supporter**

**5** A person may not appoint the Public Guardian or the Public Trustee as a supporter.

**Recognition of decision**

**6(1)** A decision made with the assistance of a supporter or communicated by or with the assistance of a supporter is the decision of the supported adult for all purposes.

**(2)** Notwithstanding subsection (1), a person may refuse to recognize a decision made or communicated by or with the assistance of a supporter as the decision of the supported adult if the person has reasonable grounds to believe that

- (a) the supporter exercised undue influence on the supported adult in assisting the supported adult to make the decision, or
- (b) there may be fraud or misrepresentation on the part of the supporter in respect of the decision.

**Termination of supported decision-making authorization**

**7(1)** A supported adult may terminate a supported decision-making authorization.

**(2)** A termination must be in the prescribed form and meet the requirements of the regulations.

**Effect of Court order**

**8** A supported decision-making authorization terminates on

- (a) the supported adult becoming an assisted adult or represented adult under this Act, or
- (b) a personal directive of the supported adult taking effect under the *Personal Directives Act*.

**Access to personal information**

**9(1)** A supporter who is authorized to access, collect or obtain or assist the supported adult in accessing, collecting or obtaining information that is relevant to a decision referred to in a supported decision-making authorization is entitled to access, collect or obtain from a public body, custodian or organization personal information about the supported adult, except financial information, that is relevant to the decision.

**(2)** A public body, a custodian and an organization may disclose personal information about a supported adult, except financial information, to a supporter who is authorized to access, collect or obtain or assist the supported adult in accessing, collecting or obtaining the information.

**(3)** Where a supporter accesses, collects or obtains personal information about a supported adult under this section, the supporter

- (a) may use and disclose the information only for the purpose of exercising the authority granted to the supporter in the supported decision-making authorization, and
- (b) shall take reasonable care to ensure the information is kept secure from unauthorized access, use or disclosure.

(4) A supporter shall not attempt to access, collect or obtain personal information about the supported adult under this section from a public body, custodian or organization other than the personal information that the supporter is entitled to access, collect or obtain under subsection (1).

#### **Liability**

**10(1)** No action lies against a supporter for anything done or omitted to be done in good faith while exercising the authority or carrying out the duties of the supporter in accordance with this Act.

(2) No action lies against a supporter or any other person for anything done or omitted to be done in good faith in reliance on a supported decision-making authorization

- (a) while the supported decision-making authorization is in effect, or
- (b) if the supported adult has terminated the supported decision-making authorization without the knowledge of the supporter or person, as the case may be.

## **Division 2 Co-decision-making**

#### **Interpretation**

**11(1)** An application for the appointment of a co-decision-maker under section 13(1) may be made in respect of a person who has not attained the age of majority if the person will attain the age of majority within 12 months.

(2) Where an application is made in respect of a person referred to in subsection (1),

- (a) subject to the regulations, this Act and the regulations apply in respect of the application, and if a co-decision-making order is made, in respect of the co-decision-making order, as if the person were an adult;
- (b) a co-decision-making order may be made in respect of the person but does not take effect until the person attains the age of majority.



**Application of Division**

**12** This Division applies only in respect of personal matters.

**Co-decision-making order**

**13(1)** An adult on the adult's own behalf or an interested person may apply to the Court, in accordance with the regulations, for an order appointing a co-decision-maker for an adult.

**(2)** The following documents must be filed in support of an application for a co-decision-making order under this section:

- (a) subject to section 105, a capacity assessment report respecting the adult who is the subject of the application, and
- (b) any other documents prescribed by the regulations.

**(3)** If an application under subsection (1) is made by an interested person, a notice of the application in the prescribed form must be personally served, in accordance with the regulations, on the adult who is the subject of the application.

**(4)** The Court may, on an application under this section, make an order appointing a co-decision-maker for an adult if

- (a) the Court is satisfied that
  - (i) the adult's capacity to make decisions about the personal matters that are to be referred to in the order is significantly impaired,
  - (ii) the adult would have the capacity to make decisions about the personal matters that are to be referred to in the order if the adult were provided with appropriate guidance and support,
  - (iii) less intrusive and less restrictive alternative measures than the appointment of a co-decision-maker for providing assistance to the adult in making decisions about the personal matters that are to be referred to in the order, including the making of a supported decision-making authorization, have been considered or implemented and would not likely be or have not been effective to meet the needs of the adult, and

- (iv) it is in the adult's best interests to make the order,
  - (b) any individual who is proposed to be appointed as a co-decision-maker consents to the appointment, and
  - (c) the adult consents
    - (i) to the appointment of any individual who is proposed to be appointed as a co-decision-maker, and
    - (ii) to the order.
- (5)** In determining whether it is in the adult's best interests to appoint a co-decision-maker, the Court shall consider
- (a) subject to section 105, the capacity assessment report respecting the adult and any other relevant information respecting the adult's capacity,
  - (b) the report of the review officer,
  - (c) any personal directive made by the adult,
  - (d) any supported decision-making authorization made by the adult,
  - (e) whether the significant impairment of the adult's capacity to make decisions about the matters that are to be referred to in the order is likely to expose the adult to harm,
  - (f) the personal matters with respect to which the adult's capacity to make decisions has been assessed as significantly impaired and with respect to which the adult needs or will likely need to make decisions,
  - (g) whether the appointment of a co-decision-maker would be likely to produce benefits for the adult that would outweigh any adverse consequences for the adult, and
  - (h) any other matter the Court considers relevant.

**Persons eligible to be co-decision-maker**

**14(1)** The Court may appoint as a co-decision-maker for an adult an individual who is 18 years of age or older, who consents to act as co-decision-maker and who the Court is satisfied

- (a) will act in the adult's best interests, and
- (b) is suitable to be appointed as co-decision-maker having regard to
  - (i) the views and wishes of the adult,
  - (ii) the relationship between the adult and the proposed co-decision-maker, insofar as it appears relevant to the ability of the proposed co-decision-maker to discharge the responsibilities of co-decision-maker,
  - (iii) the apparent ability of the proposed co-decision-maker to assist the adult to make the decisions about the personal matters to be referred to in the order,
  - (iv) any matter prescribed by the regulations, and
  - (v) any other matter the Court considers relevant.

**(2)** In assessing whether a proposed co-decision-maker will act in the best interests of an adult, the Court may consider evidence of any matter, including a potential conflict of interest, that might create a substantial risk that the proposed co-decision-maker would not act in the adult's best interests.

**(3)** For the purposes of subsection (2), a proposed co-decision-maker shall not be considered to have a potential conflict of interest by reason only that the proposed co-decision-maker

- (a) is a relative of the adult, or
- (b) is a potential beneficiary of the adult.

**Public Guardian and Public Trustee may not be co-decision-maker**

**15** The Court may not appoint the Public Guardian or the Public Trustee as a co-decision-maker.

**Appointment of multiple co-decision-makers**

**16(1)** The Court may appoint one or more co-decision-makers for an adult.

(2) If the Court makes an order appointing more than one co-decision-maker, the Court shall specify whether the co-decision-makers are to act jointly, successively or separately in respect of specified personal matters.

**Terms of co-decision-making order**

**17(1)** The Court shall specify in a co-decision-making order the personal matters in respect of which the adult is required to make decisions with a co-decision-maker.

(2) The following personal matters may be specified for the purposes of subsection (1):

- (a) the adult's health care;
- (b) where, with whom and under what conditions the adult is to live, either permanently or temporarily;
- (c) the persons with whom the adult may associate;
- (d) the adult's participation in social activities;
- (e) the adult's participation in any educational, vocational or other training;
- (f) the adult's employment;
- (g) the carrying on of any legal proceeding that does not relate primarily to the financial matters of the adult;
- (h) any other personal matter the Court considers necessary.

(3) If the Court is aware that an adult who is the subject of an application for a co-decision-making order has made a personal directive that is in effect, the Court may not make a co-decision-making order requiring the adult to make decisions with a co-decision-maker relating to a personal matter with respect to which an agent has authority under the personal directive.

(4) If a guardianship order is in effect in respect of an adult who is the subject of an application for a co-decision-making order, the Court shall, if it makes a co-decision-making order in respect of the adult, terminate the guardianship order in the co-decision-making order.

(5) The Court may specify in a co-decision-making order that a contract respecting a personal matter is voidable if it is not in writing and signed by the assisted adult and the co-decision-maker.

(6) The Court may make a co-decision-making order subject to any conditions, limits or requirements that it considers necessary.

(7) On making a co-decision-making order, the Court

- (a) shall specify a date in the order by which an application for a review of the order must be made, if the capacity assessment report indicates that the assisted adult's capacity is likely to improve, or
- (b) may specify a date in the order by which an application for a review of the order must be made, in any other case.

(8) It is a condition of every co-decision-making order that the assisted person may terminate the order by filing a withdrawal of consent in the prescribed form with the clerk of the Court.

(9) A co-decision-making order terminates on the filing of a withdrawal of consent.

(10) An assisted person who files a withdrawal of consent shall serve a filed copy of the withdrawal of consent on each co-decision-maker named in the co-decision-making order in accordance with the regulations.

(11) The clerk of the Court shall send a filed copy of a withdrawal of consent to the Public Guardian without delay.

(12) On receipt of a withdrawal of consent, the Public Guardian shall, subject to the regulations, take the actions that the Public Guardian considers appropriate for the purpose of determining whether any necessary arrangements have been or will be made in respect of the assisted person.

**Authority and duties of co-decision-maker**

**18(1)** A co-decision-maker shall exercise the co-decision-maker's authority

- (a) in the assisted adult's best interests,
- (b) diligently, and

(c) in good faith.

**(2)** Subject to any conditions, limits or requirements set out in the co-decision-making order, a co-decision-maker shall

- (a) assist the assisted adult to access, collect or obtain from any person the information that is relevant to the personal matters with respect to which the assisted adult is required to make decisions with the co-decision-maker, and
- (b) discuss the relevant information with the assisted adult and assist the assisted adult in making those decisions.

**(3)** A co-decision-maker shall comply with any conditions, limits or requirements set out in the co-decision-making order.

**(4)** A co-decision-maker may do all things necessary to give effect to decisions of the assisted adult made with the co-decision-maker.

**(5)** A co-decision-maker shall not refuse to sign a document respecting a matter referred to in section 17(5) if a reasonable person could have made the decision and the decision is not likely to result in harm to the assisted adult.

#### **Payment to co-decision-makers**

**19(1)** A co-decision-maker is entitled to be reimbursed for direct expenses incurred by the co-decision-maker in exercising the authority and carrying out the duties and responsibilities of a co-decision-maker.

**(2)** A co-decision-maker is not entitled to any remuneration, compensation, fees or allowance for effort made or time expended on behalf of the assisted adult in exercising the authority and carrying out the duties and responsibilities of a co-decision-maker.

#### **Application to Court for opinion, advice or direction**

**20** An assisted adult and a co-decision-maker may apply, in accordance with the regulations, for the opinion, advice or direction of the Court on any question respecting the assisted adult.

**Review of co-decision-making order**

- 21(1)** An assisted person, a co-decision-maker or any interested person may apply to the Court, in accordance with the regulations, for a review of a co-decision-making order.
- (2)** A co-decision-maker shall apply for a review under subsection (1)
- (a) as required by the terms of the co-decision-making order,
  - (b) if there has been a significant change in the needs, circumstances or capacity of the assisted person that the co-decision-maker considers would make a variation or termination of the order in the assisted person's best interests, or
  - (c) if there has been a change in circumstances that affects the co-decision-maker's
    - (i) ability to exercise the authority or carry out the duties and responsibilities of co-decision-maker, or
    - (ii) suitability to be a co-decision-maker for the assisted person.
- (3)** The person applying for a review of a co-decision-making order shall file a recent capacity assessment report respecting the assisted person with the Court
- (a) subject to the regulations, if the capacity of the assisted person is in issue, or
  - (b) as otherwise required by the regulations.
- (4)** Subject to subsections (5)(a) and (6), on an application for a review of a co-decision-making order under subsection (1), the Court may make an order continuing, amending, replacing or terminating the co-decision-making order on any terms or conditions the Court considers appropriate.
- (5)** On an application for a review of a co-decision-making order under subsection (1), the Court
- (a) shall make an order terminating a co-decision-making order where the Court is satisfied that the assisted person's capacity to make decisions about all of the personal matters

in respect of which the order is made is no longer significantly impaired, and

- (b) may make an order terminating a co-decision-making order, an order discharging a co-decision-maker and appointing a new co-decision-maker, or any other order the Court considers appropriate in the circumstances, where the Court is satisfied that
  - (i) a co-decision-maker is not acting or is unable, unwilling or refusing to continue to act as a co-decision-maker,
  - (ii) a co-decision-maker has failed to apply for a review of the co-decision-making order, if applicable, or has otherwise failed to act in accordance with the co-decision-making order or any conditions, limits or requirements to which the co-decision-making order is subject,
  - (iii) a co-decision-maker has not complied with the duties and responsibilities of a co-decision-maker,
  - (iv) a co-decision-maker has acted in an improper manner or in a manner that has endangered or might endanger the assisted person's well-being,
  - (v) a co-decision-maker is no longer suitable to be a co-decision-maker for the assisted person,
  - (vi) the assisted person's capacity to make decisions about some of the personal matters in respect of which the order is made is no longer significantly impaired,
  - (vii) the relationship between a co-decision-maker and the assisted person has broken down,
  - (viii) the assisted person is unable, unwilling or refusing to accept the assistance of a co-decision-maker, or
  - (ix) it is in the best interests of the assisted person to do so.
- (6) Before making an order terminating a co-decision-making order the Court shall satisfy itself that, if necessary,
  - (a) suitable arrangements have been or will be made in respect of the assisted person, or



- (b) an application for a guardianship order in respect of the assisted person has been or will be made.

#### **Access to personal information**

**22(1)** A co-decision-maker is entitled to access, collect or obtain from a public body, custodian or organization personal information, except financial information, about the assisted adult that is relevant to the exercise of the authority and the carrying out of the duties and responsibilities of the co-decision-maker.

**(2)** A public body, a custodian and an organization may disclose personal information respecting an assisted adult that is referred to in subsection (1) to a co-decision-maker.

**(3)** Where a co-decision-maker accesses, collects or obtains personal information about an assisted adult under this section, the co-decision-maker

- (a) may use and disclose the information only for the purpose of exercising the authority and carrying out the duties and responsibilities of the co-decision-maker, and
- (b) shall take reasonable care to ensure the information is kept secure from unauthorized access, use or disclosure.

**(4)** A co-decision-maker shall not attempt to access, collect or obtain personal information about the assisted adult under this section from a public body, custodian or organization other than the personal information that the co-decision-maker is entitled to access, collect or obtain under subsection (1).

#### **Liability**

**23** No action lies against a co-decision-maker for anything done or omitted to be done in good faith while exercising the authority or carrying out the duties and responsibilities of the co-decision-maker in accordance with this Act.

### **Division 3 Guardianship**

#### **Interpretation**

**24(1)** An application for the appointment of a guardian under section 26(1) may be made in respect of a person who has not attained the age of majority if the person will attain the age of majority within 12 months.

**(2)** Where an application is made in respect of a person referred to in subsection (1),

- (a) subject to the regulations, this Act and the regulations apply in respect of the application and, if a guardianship order is made, in respect of the guardianship order, as if the person were an adult;
- (b) a guardianship order may be made in respect of the person but does not take effect until the person attains the age of majority.

#### **Application of Division**

**25** This Division applies only in respect of personal matters.

#### **Guardianship order**

**26(1)** An interested person may apply to the Court, in accordance with this section and the regulations, for an order appointing a guardian for an adult.

**(2)** Where, in the opinion of the Public Guardian, an adult is in need of a guardian and no person is willing, able and suitable to make an application for the appointment of a guardian, the Public Guardian shall, in accordance with the regulations, apply to the Court for an order appointing a guardian for the adult.

**(3)** The following documents must be filed in support of an application for a guardianship order under this section:

- (a) subject to section 105, a capacity assessment report respecting the adult who is the subject of the application,
- (b) a guardianship plan in the prescribed form, and

(c) any other documents prescribed by the regulations.

**(4)** Subject to subsection (5), a notice, in the prescribed form, of an application under this section must be personally served, in accordance with the regulations, on the adult who is the subject of the application.

**(5)** If the Court is satisfied that notification of an application under this section would be harmful to the adult who is the subject of the application, the Court may make an order dispensing with service under subsection (4).

**(6)** The Court may, on an application under this section, make an order appointing a guardian for an adult if the Court is satisfied that

(a) the adult does not have the capacity to make decisions about the personal matters that are to be referred to in the order,

(b) less intrusive and less restrictive alternative measures than the appointment of a guardian have been considered or have been implemented and would not likely be or have not been effective to meet the needs of the adult, and

(c) it is in the adult's best interests to make the order.

**(7)** In determining whether it is in an adult's best interests to appoint a guardian, the Court shall consider

(a) subject to section 105, the capacity assessment report respecting the adult and any other relevant information respecting the adult's capacity,

(b) the report of the review officer,

(c) the proposed guardianship plan,

(d) any personal directive made by the adult,

(e) any supported decision-making authorization made by the adult,

(f) any co-decision-making order that is in effect appointing a co-decision-maker for the adult,

(g) whether the adult's lack of capacity to make decisions about the personal matters that are to be referred to in the order is likely to expose the adult to harm,

- (h) the personal matters with respect to which the adult needs or will likely need to make decisions,
- (i) whether the appointment of a guardian would be likely to produce benefits for the adult that would outweigh any adverse consequences for the adult, and
- (j) any other matter the Court considers relevant.

**(8)** Nothing in subsection (2) affects the Public Guardian's authority to make an application under subsection (1) in respect of a person referred to in section 24(1).

### **Guardianship order in urgent cases**

**27(1)** An interested person who has reason to believe that

- (a) an adult lacks the capacity to make a decision about a personal matter, and
- (b) there is immediate danger of death of the adult or serious physical or mental harm to the adult and it is necessary for someone to make decisions to prevent the death of or harm to the adult,

may apply to the Court, in accordance with the regulations, for a guardianship order under this section.

**(2)** Notwithstanding any other provision of this Act or the regulations, on an application under this section the Court, if satisfied that the urgency of the matter makes it appropriate to do so, may dispense with or modify any requirement that would otherwise apply, including any requirement respecting

- (a) the documents to be filed in support of the application,
- (b) service of notice of the application, and
- (c) the evidence that may be considered on the application.

**(3)** The Court may, on an application under this section, appoint a guardian for the adult who is the subject of the application if the Court is satisfied that there is evidence that the adult

- (a) lacks the capacity to make a decision about a personal matter, and

- (b) is in immediate danger of
  - (i) death, or
  - (ii) suffering serious physical or mental harm

if a guardianship order is not granted under this section.

**(4)** The Court shall, in a guardianship order granted under this section, specify a date, not later than 90 days after the date of the guardianship order, by which the guardianship order must be reviewed by the Court and after which the guardianship order expires unless it is extended under subsection (5)(b).

**(5)** On a review of a guardianship order granted under this section, the Court may

- (a) terminate the guardianship order,
- (b) extend the guardianship order for up to 6 months, after which time the guardianship order expires, or
- (c) proceed with the matter as an application under section 26 if the requirements for an application under that section have been met.

#### **Persons eligible to be guardian**

**28(1)** The Court may appoint as a guardian for an adult an individual who is 18 years of age or older, who consents to act as guardian and who the Court is satisfied

- (a) will act in the best interests of the adult, and
- (b) is suitable to be appointed as guardian having regard to
  - (i) the views and wishes of the adult, if ascertainable,
  - (ii) the relationship between the adult and the proposed guardian insofar as it appears relevant to the ability of the proposed guardian to discharge the responsibilities of guardian,
  - (iii) the apparent ability of the proposed guardian to effectively exercise authority about the personal matters to be referred to in the order,

- (iv) any matter prescribed by the regulations, and
- (v) any other matter the Court considers relevant.

**(2)** In assessing whether a proposed guardian will act in the best interests of an adult, the Court may consider evidence of any matter, including a potential conflict of interest, that might create a substantial risk that the proposed guardian would not act in the adult's best interests.

**(3)** For the purposes of subsection (2), a proposed guardian shall not be considered to have a potential conflict of interest by reason only that the proposed guardian

- (a) is a relative of the adult, or
- (b) is a potential beneficiary of the adult.

#### **Appointment of Public Guardian as guardian**

**29(1)** The Court may appoint the Public Guardian as a guardian for an adult only

- (a) on the application of the Public Guardian,
- (b) with the consent of the Public Guardian, or
- (c) if
  - (i) no other individual is willing, able and suitable to act as guardian for the adult, and
  - (ii) the Public Guardian has been notified of and given a reasonable opportunity to make representations to the Court regarding the proposed appointment.

**(2)** The Public Guardian may apply to the Court for the termination or amendment of a guardianship order made contrary to subsection (1).

#### **Appointment of guardian other than proposed guardian**

**30** If the Court is satisfied that it is appropriate to make a guardianship order in respect of an adult but is not satisfied that the proposed guardian meets the requirements of section 28, the Court

may, on any notice the Court directs, appoint as guardian another person who meets the requirements of section 28.

**Appointment of multiple guardians**

**31(1)** The Court may appoint one or more guardians for an adult.

**(2)** Where the Court appoints 2 or more guardians for an adult, the Court

(a) may grant a guardian exclusive authority to act and make decisions respecting specified personal matters of the adult, and

(b) may provide that the guardians are to act jointly or separately in respect of any one or more personal matters of the adult.

**(3)** Except as otherwise provided under subsection (2), if 2 or more guardians are appointed for an adult, the guardians may act and make decisions separately respecting the personal matters of the adult specified in the order.

**(4)** If the Public Guardian is appointed as one of 2 or more guardians for an adult, the Court shall grant the Public Guardian exclusive authority to act and make decisions respecting specified personal matters of the adult, and the Public Guardian's authority and responsibility are limited to those personal matters.

**Appointment of alternate guardian**

**32(1)** The Court may appoint an alternate guardian for an adult if

(a) the person proposed as alternate guardian has given written consent to the appointment, and

(b) the Court is satisfied that the persons on whom notice of the application for a guardianship order or a review of a guardianship order is required to be served pursuant to the regulations have had sufficient notice of the willingness of the person proposed as alternate guardian to act as an alternate guardian.

**(2)** Section 28 applies to a person proposed as an alternate guardian.

**(3)** Subject to the terms of the guardianship order, if an alternate guardian is appointed, the alternate guardian shall act as guardian without further proceedings

(a) on becoming aware of

(i) the death of the previous guardian,

(ii) the appointment of a guardian or trustee for the previous guardian, or

(iii) the coming into effect, because of the previous guardian's incapacity, of a personal directive or enduring power of attorney made by the previous guardian,

or

(b) if authorized in writing by the previous guardian, during the period set out in the authorization.

**(4)** An authorization under subsection (3)(b) must 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.

**(5)** Where an alternate guardian acts as guardian because of an event referred to in subsection (3)(a), the alternate guardian shall notify the clerk of the Court in writing and provide evidence of the event, in accordance with the regulations, to the clerk of the Court.

**(6)** Where an alternate guardian acts as guardian, the authority of the alternate guardian is the same as that of the previous guardian.

**(7)** In this section, "previous guardian" means a guardian for whom the alternate guardian is designated as alternate in the guardianship order.

#### **Terms of guardianship order**

**33(1)** The Court shall, in a guardianship order, grant to the guardian authority to act and make decisions with respect to only



those personal matters of the adult that the Court considers necessary.

**(2)** The Court may, in a guardianship order, specify any of the following personal matters of the adult as matters with respect to which the guardian has authority to act and make decisions:

- (a) the adult's health care;
- (b) where, with whom and under what conditions the adult is to live, either permanently or temporarily;
- (c) with whom the adult may associate;
- (d) the adult's participation in social activities;
- (e) the adult's participation in any educational, vocational or other training;
- (f) the adult's employment;
- (g) the carrying on of any legal proceeding that does not relate primarily to the financial matters of the adult;
- (h) any other personal matters as the Court considers necessary.

**(3)** When making a guardianship order, the Court shall

- (a) approve the guardianship plan, subject to any variations the Court considers necessary, or
- (b) require the guardian to submit an amended guardianship plan for approval within the time specified in the order.

**(4)** A guardian may, in accordance with the regulations, amend a guardianship plan.

**(5)** If the Court is aware that the adult who is the subject of an application for a guardianship order has made a personal directive that is in effect, the Court may not grant to a guardian any authority that may be exercised by an agent under the personal directive unless the Court terminates the authority of the agent.

**(6)** If a co-decision-making order is in effect in respect of an adult who is the subject of an application for a guardianship order, the Court shall, if it makes a guardianship order in respect of the adult, terminate the co-decision-making order in the guardianship order.

- (7) The Court may make a guardianship order subject to any conditions, limits or requirements that it considers necessary.
- (8) On making a guardianship order, the Court
- (a) shall specify a date in the order by which an application for a review of the order must be made, if the capacity assessment report indicates that the represented adult's capacity is likely to improve, or
  - (b) may specify a date in the order by which an application for a review of the order must be made, in any other case.

#### **Authority of guardian**

- 34(1)** A guardian may act, make decisions, give consents and do any thing with respect to those personal matters of the represented adult with respect to which the guardian has been granted authority in the guardianship order and may sign documents and do all things necessary to give effect to any authority vested in the guardian.
- (2) Any action taken, decision made, consent given or thing done by a guardian with respect to a personal matter of the represented adult referred to in subsection (1) has the same effect for all purposes as if the represented adult had taken the action, made the decision, given the consent or done the thing while having capacity.
- (3) A guardian, subject to any provision contained in the guardianship order appointing the guardian, may purchase necessaries for the represented adult without the consent of the represented adult, any trustee of the represented adult or any attorney under an enduring power of attorney.
- (4) When a guardian purchases necessaries for the represented adult under subsection (3),
- (a) the represented adult is liable to pay for the necessaries or reimburse the guardian for the cost of the necessaries, or
  - (b) if there is a trustee or an attorney under an enduring power of attorney for the represented adult, the trustee or the attorney, as the case may be, shall pay for the necessaries or reimburse the guardian for the cost of the necessaries out of the property of the represented adult.

**Duties and responsibilities of guardian**

**35(1)** A guardian shall exercise the guardian's authority

- (a) in the represented adult's best interests,
- (b) diligently,
- (c) in good faith,
- (d) in a way that encourages the represented adult to become, to the extent possible, capable of caring for himself or herself and of making decisions in respect of matters relating to his or her person, and
- (e) in the least intrusive and least restrictive manner that, in the opinion of the guardian, is likely to be effective.

**(2)** Notwithstanding subsection (1), where a guardian has been granted authority with respect to a personal matter with respect to which a personal directive of the represented adult contains instructions, the guardian shall exercise the guardian's authority in accordance with any clear and relevant instructions in the personal directive.

**(3)** A guardian shall comply with any conditions, limits or requirements set out in the guardianship order.

**(4)** On the making of a guardianship order, the guardian shall, promptly and in a manner that the represented adult is likely to best understand, inform the represented adult of the guardian's appointment, the extent of the guardian's authority and any conditions, limits or requirements to which the guardianship order is subject.

**(5)** Subject to the regulations, a guardian shall, within a reasonable time and in a manner that the represented adult is likely to best understand, inform the represented adult of important decisions made by the guardian for the represented adult.

**Death or incapacity of guardian**

**36(1)** When the Public Guardian is notified

- (a) of the death of a guardian,
- (b) of the appointment of a guardian or trustee for a guardian, or

- (c) of the coming into effect, because of the incapacity of the guardian, of an enduring power of attorney or personal directive made by the guardian,

if there is no other guardian or alternate guardian with the authority to act with respect to the matters with respect to which the deceased or incapacitated guardian had authority, the Public Guardian becomes the guardian of the represented adult with the same authority as the deceased or incapacitated guardian.

**(2)** On becoming the guardian of a represented adult under subsection (1), the Public Guardian shall notify the clerk of the Court in writing of that fact and send evidence of the event referred to in subsection (1)(a), (b) or (c), in accordance with the regulations, to the clerk of the Court.

**(3)** The Public Guardian continues to be the guardian of the represented 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 represented adult.

#### **Payment to guardian**

**37(1)** A guardian is entitled to be reimbursed for direct expenses incurred in exercising the authority and carrying out the duties and responsibilities of a guardian.

**(2)** A guardian is not entitled to any remuneration, compensation, fees or allowance for effort made or for time expended on behalf of the represented adult in exercising the authority and carrying out the duties and responsibilities of a guardian.

#### **Order to give effect to decision**

**38(1)** A guardian may apply to the Court, in accordance with the regulations, for an order under this section where the guardian has reason to believe that

- (a) a decision made by the guardian under the guardian's power and authority is not being given effect because

- (i) the represented adult is failing or refusing to act in accordance with the decision, or
- (ii) a person is obstructing the doing of anything necessary to give effect to the decision,

and

- (b) there would be a serious risk to the health or safety of the represented adult if the decision were not given effect.

**(2)** Where the Court is satisfied that the circumstances referred to in subsection (1)(a) and (b) exist, the Court may make any order the Court considers necessary and appropriate to give effect to the decision of the guardian, including, without limitation, an order authorizing the police to assist the guardian or another person in doing anything necessary to give effect to the decision.

#### **Application to Court for opinion, advice or direction**

**39(1)** A guardian may apply, in accordance with the regulations, for the opinion, advice or direction of the Court on any question respecting the represented adult.

**(2)** A guardian acting on an opinion, advice or direction given by the Court is deemed, so far as the guardian's responsibility is concerned, to have discharged the guardian's duty as guardian in respect of the subject-matter of the opinion, advice or direction.

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

#### **Review of guardianship order**

**40(1)** A represented person, a guardian or any interested person may apply to the Court, in accordance with the regulations, for a review of a guardianship order.

**(2)** A guardian shall apply for a review under subsection (1)

- (a) as required by the terms of the guardianship order,

- (b) if there has been a significant change in the needs, circumstances or capacity of the represented person that the guardian considers would make a variation or termination of the order in the represented adult's best interests, or
  - (c) if there has been a change in circumstances that affects the guardian's
    - (i) ability to exercise the authority or carry out the duties and responsibilities of guardian, or
    - (ii) suitability to be a guardian for the represented person.
- (3)** The person applying for a review of a guardianship order shall file a recent capacity assessment report respecting the represented person with the Court
- (a) subject to the regulations, if the capacity of the represented person is in issue, or
  - (b) as otherwise required by the regulations.
- (4)** Subject to subsections (5)(a) and (6), on an application for a review of a guardianship order, the Court may make an order continuing, amending, replacing or terminating the guardianship order on any terms or conditions the Court considers appropriate.
- (5)** The Court
- (a) shall make an order terminating a guardianship order if the Court is satisfied that the represented person is no longer in need of a guardian, and
  - (b) may make an order terminating a guardianship order, an order discharging a guardian and appointing a new guardian who meets the requirements of section 28, or any other order that the Court considers appropriate in the circumstances, where the Court is satisfied that
    - (i) a guardian is not acting or is unable, unwilling or refusing to continue to act as guardian,
    - (ii) a guardian has failed to apply for a review of the guardianship order, if applicable, or has otherwise failed to act in accordance with the guardianship order or any conditions, limits or requirements to which the guardianship order is subject,

- (iii) a guardian has not complied with the duties and responsibilities of a guardian,
  - (iv) a guardian has acted in an improper manner or in a manner that has endangered or might endanger the represented person's well-being,
  - (v) a guardian is no longer suitable to be a guardian for the represented person,
  - (vi) the relationship between a guardian and the represented person has broken down, or
  - (vii) it is in the represented person's best interests to do so.
- (6)** Before making an order terminating a guardianship order, the Court shall satisfy itself that, if necessary,
- (a) suitable arrangements have been or will be made in respect of the represented person, or
  - (b) an application for another guardianship order in respect of the represented person has been or will be made.

**Access to personal information**

**41(1)** A public body, custodian or organization may disclose to a person personal information about an adult, except financial information, where the public body, custodian or organization is satisfied that

- (a) the person to whom the information is to be disclosed intends to make an application for a guardianship order in respect of the adult, and
- (b) the information is relevant to and necessary for the application.

**(2)** Where personal information is disclosed under subsection (1), the person to whom the information is disclosed

- (a) may use the information only for the purpose of making an application for a guardianship order in respect of the adult, and

(b) shall take reasonable care to ensure the information is kept secure from unauthorized access, use or disclosure.

**(3)** A person who intends to make an application for a guardianship order in respect of an adult shall not attempt to access, collect or obtain personal information about the adult under this section from a public body, custodian or organization other than personal information that may be disclosed under subsection (1).

**(4)** A guardian is entitled to access, collect or obtain from a public body, custodian or organization personal information about the represented adult that is relevant to the exercise of the guardian's authority and the carrying out of the guardian's duties and responsibilities.

**(5)** A public body, a custodian and an organization may disclose to a guardian personal information about a represented adult that is referred to in subsection (4).

**(6)** Where a guardian accesses, collects or obtains personal information about a represented adult under this section, the guardian

(a) may use the information only for the purpose of exercising the authority and carrying out the duties and responsibilities of the guardian, and

(b) shall take reasonable care to ensure the information is kept secure from unauthorized access, use or disclosure.

**(7)** A guardian shall not attempt to access, collect or obtain personal information about the represented adult under this section from a public body, custodian or organization other than the personal information that the guardian is entitled to access, collect or obtain under subsection (4).

### **Liability**

**42** No action lies against a guardian for anything done or omitted to be done in good faith while exercising the authority or carrying out the duties and responsibilities of the guardian in accordance with this Act.



## Division 4 Trusteeship

### Interpretation

**43(1)** In this Division, “personal representative” in respect of a deceased person means the executor of the person’s will or the administrator of the person’s estate.

**(2)** An application for the appointment of a trustee under section 46(1) may be made in respect of a person who has not attained the age of majority if the person will attain the age of majority within 12 months.

**(3)** Where an application is made in respect of a person referred to in subsection (2),

- (a) subject to the regulations, this Act and the regulations apply in respect of the application and, if a trusteeship order is made, in respect of the trusteeship order, as if the person were an adult;
- (b) a trusteeship order may be made in respect of the person but does not take effect until the person attains the age of majority.

### Application of Division

**44(1)** This Division applies only in respect of financial matters.

**(2)** Except as otherwise provided by this Act, the *Trustee Act* does not apply to a trustee appointed under this Act.

### Jurisdiction

**45** The Court may make a trusteeship order under this Division

- (a) in respect of an adult who is ordinarily resident in Alberta, or
- (b) in respect of an adult who is not ordinarily resident in Alberta if
  - (i) the order applies only to real property of the adult that is located in Alberta, or

- (ii) the Court is satisfied that exceptional circumstances make it appropriate to make a trusteeship order.

**Trusteeship order**

**46(1)** An interested person may apply to the Court, in accordance with this section and the regulations, for an order appointing a trustee for an adult.

**(2)** The following documents must be filed in support of an application for a trusteeship order under this section:

- (a) subject to section 105, a capacity assessment report respecting the adult who is the subject of the application,
- (b) a trusteeship plan in the prescribed form, and
- (c) any other documents prescribed by the regulations.

**(3)** Subject to subsection (4), a notice, in the prescribed form, of an application under this section must be personally served, in accordance with the regulations, on the adult who is the subject of the application.

**(4)** If the Court is satisfied that notification of an application under this section would be harmful to the adult who is the subject of the application, the Court may make an order dispensing with service under subsection (3).

**(5)** The Court may, on an application under this section, appoint a trustee for an adult if the Court is satisfied that

- (a) the adult does not have the capacity to make decisions respecting any or all financial matters,
- (b) less intrusive and less restrictive alternative measures than the appointment of a trustee would not adequately protect the adult's interests in respect of financial matters, and
- (c) it is in the adult's best interests for a trustee to be appointed.

**(6)** A determination that an adult does not have the capacity to make decisions respecting a financial matter may not be made solely on the basis of evidence that the adult

- (a) is making decisions about the financial matter in a manner that a reasonably prudent person would not adopt, or
  - (b) has difficulty communicating about the financial matter.
- (7) In determining whether it is in an adult's best interests to appoint a trustee, the Court shall consider
- (a) subject to section 105, the capacity assessment report respecting the adult and any other relevant information respecting the adult's capacity,
  - (b) the report of the review officer,
  - (c) the proposed trusteeship plan,
  - (d) any enduring power of attorney given by the adult,
  - (e) whether the appointment of a trustee would be likely to produce benefits for the adult that would outweigh any adverse consequences for the adult, and
  - (f) any other matter the Court considers relevant.

**Duty of Public Trustee to inquire into alleged need for trustee**

**47(1)** Where the Public Trustee receives a written allegation that an adult is in need of a trustee, the Public Trustee shall make any inquiries and take any action that the Public Trustee considers necessary for the purpose of determining whether the Public Trustee is required to make an application pursuant to subsection (2).

**(2)** The Public Trustee shall apply under section 46 for an order appointing the Public Trustee as trustee of an adult who is the subject of an allegation referred to in subsection (1) if, after inquiring into the allegation, the Public Trustee is of the opinion that

- (a) the criteria for the appointment of a trustee in section 46 are satisfied,
- (b) the adult is likely to suffer serious financial loss if a trustee is not appointed within a reasonable time, and

- (c) no other person is likely to apply within a reasonable time for the appointment of a trustee for the adult.

**(3)** The Public Trustee may refuse to act under subsection (1) if the Public Trustee is of the opinion that the allegation is frivolous or vexatious.

#### **Order in urgent cases**

**48(1)** An interested person who has reason to believe that an adult

- (a) lacks the capacity to make a decision about a financial matter, and
- (b) is in immediate danger of suffering serious financial loss

may apply to the Court, in accordance with the regulations, for an order under this section.

**(2)** Notwithstanding any other provision of this Act or the regulations, on an application under this section the Court, if satisfied that the urgency of the matter makes it appropriate to do so, may dispense with or modify any requirement that would otherwise apply, including any requirement respecting

- (a) the documents required to be filed in support of the application,
- (b) service of notice of the application, and
- (c) the evidence that may be considered on the application.

**(3)** The Court may, on an application under this section, make an order if the Court is satisfied that there is evidence that the adult who is the subject of the application

- (a) lacks the capacity to make a decision about a financial matter, and
- (b) is in immediate danger of suffering serious financial loss if an order is not granted under this section.

**(4)** The Court may, in an order under this section,

- (a) appoint a trustee for the adult,

- (b) prohibit or restrict any dealing with property specified in the order, or
- (c) require a person in possession or control of property specified in the order to deliver the property to a trustee or to another person specified in the order.

**(5)** Subject to the terms of the order, an order under this section appointing a trustee

- (a) applies only to property specified in the order,
- (b) authorizes the trustee
  - (i) to take possession and control of and to do all things necessary to preserve and protect the property,
  - (ii) to pay the represented adult's ordinary living expenses out of the property, and
  - (iii) to do any other thing in relation to the property that is specifically authorized by the order,

and

- (c) does not authorize the trustee to sell, dispose of or encumber the property.

**(6)** The Court shall, in an order granted under this section, specify a date, not later than 90 days after the date of the order, by which the order must be reviewed by the Court and after which the order expires unless it is extended by the Court under subsection (7)(b).

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

- (a) terminate the order,
- (b) extend the order for up to 6 months, after which time the order expires, or
- (c) proceed with the matter as an application under section 46 if the requirements for an application under that section have been met.

(8) Where an order under this section expires, a trustee or other person who had possession or control of the property specified in the order shall

- (a) account to the adult, and
- (b) deliver the property to or as directed by the adult.

**Persons eligible to be trustee**

**49(1)** The Court may appoint as a trustee for an adult

- (a) an individual who is 18 years of age or older, who consents to act as trustee and who the Court is satisfied
  - (i) will act in the best interests of the adult, and
  - (ii) is suitable to be appointed as trustee having regard to
    - (A) the views and wishes of the adult, if ascertainable,
    - (B) the relationship between the adult and the individual proposed as trustee, insofar as it appears relevant to the ability of the individual to discharge the responsibilities of trustee,
    - (C) the apparent ability of the individual proposed as trustee to effectively manage the financial matters of the adult,
    - (D) any circumstance, including but not limited to the trustee's place of residence, that could impair the Court's ability to exercise effective oversight and control over the trustee,
    - (E) any matter prescribed by the regulations, and
    - (F) any other matter the Court considers relevant,
- (b) a trust corporation that consents to act as trustee, or
- (c) the Public Trustee.

(2) In assessing whether a proposed trustee will act in the best interests of an adult, the Court may consider evidence of any matter, including a potential conflict of interest, that may create a

substantial risk that the proposed trustee would not act in the adult's best interests.

(3) For the purposes of subsection (2), a proposed trustee shall not be considered to have a potential conflict of interest by reason only that the proposed trustee

- (a) is a relative of the adult, or
- (b) is a potential beneficiary of the adult.

(4) Subject to subsection (6), the Court may appoint an individual who is not ordinarily resident in Alberta as a trustee only if the individual provides a bond or other security for the performance of the individual's duties as trustee.

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

(6) The Court may dispense with the requirement for a bond or other security if the Court is satisfied that, having regard to other safeguards that are or will be in place, it would be in the represented adult's best interests to do so.

(7) The Court may require a trustee who is ordinarily resident in Alberta, other than the Public Trustee or a trust corporation, to provide a bond or other security for the performance of the trustee's duties.

#### **Appointment of Public Trustee as trustee**

**50(1)** The Court may appoint the Public Trustee as trustee for an adult only

- (a) on the application of the Public Trustee,
- (b) with the consent of the Public Trustee, or
- (c) if
  - (i) no other person is willing, able and suitable to act as trustee for the adult, and
  - (ii) the Public Trustee has been notified of and has been given a reasonable opportunity to make representations to the Court regarding the proposed appointment.

- (2) The Public Trustee may apply to the Court for the termination or amendment of a trusteeship order made contrary to subsection (1).

#### **Appointment of trustee other than proposed trustee**

**51** If the Court is satisfied that it is appropriate to make a trusteeship order in respect of an adult but is not satisfied that the proposed trustee meets the requirements of section 49, the Court may, on any notice the Court directs, appoint as trustee another person who meets the requirements of section 49.

#### **Appointment of multiple trustees**

**52(1)** The Court may appoint one or more trustees for an adult.

(2) Where the Court appoints 2 or more trustees for an adult, the Court

- (a) may grant a trustee exclusive authority over specified financial matters of the adult, and
- (b) may provide that the trustees are to act jointly or separately in respect of any one or more financial matters of the adult.

(3) Except as otherwise provided under subsection (2), if 2 or more trustees are appointed for an adult, the trustees shall act jointly.

(4) If the Public Trustee is appointed as one of 2 or more trustees for an adult, the Court shall grant the Public Trustee exclusive authority over specified financial matters of the adult, and the Public Trustee's authority and responsibility are limited to those financial matters.

#### **Appointment of alternate trustee**

**53(1)** The Court may appoint an alternate trustee for an adult if

- (a) the person proposed as alternate trustee has given written consent to the appointment, and
- (b) the Court is satisfied that the persons on whom notice of the application for a trusteeship order or a review of a trusteeship order is required to be served pursuant to the



regulations have had sufficient notice of the willingness of the person proposed as alternate trustee to act as an alternate trustee.

- (2) Section 49 applies to a person proposed as alternate trustee.
- (3) Subject to the terms of the trusteeship order, if an alternate trustee is appointed, the alternate trustee shall act as trustee without further proceedings
- (a) on becoming aware of
    - (i) the death of the previous trustee,
    - (ii) the appointment of a guardian or trustee for the previous trustee, or
    - (iii) the coming into effect, because of the previous trustee's incapacity, of a personal directive or enduring power of attorney made by the previous trustee,
  - or
  - (b) if authorized in writing by the previous trustee, during the temporary absence of the previous trustee.
- (4) An authorization under subsection (3)(b) must 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.
- (5) Where an alternate trustee acts as trustee because of an event referred to in subsection (3)(a), the alternate trustee shall notify the clerk of the Court in writing and provide evidence of the event, in accordance with the regulations, to the clerk of the Court.
- (6) Where an alternate trustee acts as trustee, the authority of the alternate trustee is the same as that of the previous trustee.
- (7) In this section, "previous trustee" means a trustee for whom the alternate trustee is designated as alternate in the trusteeship order.

**Terms of trusteeship order**

**54(1)** When making a trusteeship order, the Court shall

- (a) approve the trusteeship plan, subject to any variations the Court considers necessary, or
- (b) require the trustee to submit an amended trusteeship plan for approval within the time specified in the order.

**(2)** A trustee may, with the approval of the Court, amend a trusteeship plan.

**(3)** If a co-decision-making order is in effect in respect of an adult who is the subject of an application for a trusteeship order, the Court shall, if it makes a trusteeship order in respect of the adult, terminate the co-decision-making order in the trusteeship order.

**(4)** When appointing a trustee, other than the Public Trustee, the Court

- (a) shall consider whether it would be in the represented adult's best interests to impose any limits or conditions on the trustee's authority, and
- (b) may, in the trusteeship order, impose any limits or conditions on the trustee's authority that the Court considers appropriate.

**(5)** The Court may provide in a trusteeship order that the trusteeship order applies

- (a) only to property or financial matters specified in the order, or
- (b) to the real property of the adult located outside Alberta.

**(6)** The Court may, in a trusteeship order, authorize a trustee to permit the represented adult to open or maintain a deposit account in the name of the represented adult at a financial institution subject to any limits or conditions the Court considers appropriate.

**(7)** The Court

- (a) shall specify a date in the trusteeship order by which an application for a review of the trusteeship order must be made, if the capacity assessment report indicates that the represented adult's capacity is likely to improve, and

- (b) may specify a date in the trusteeship order by which an application for a review of the trusteeship order must be made, in any other case.

**Property subject to trusteeship order and authority of trustee**

**55(1)** Except as otherwise provided by the terms of the trusteeship order, this Act or the regulations, a trusteeship order

- (a) applies to all of the represented adult's real and personal property, except real property located outside Alberta, and
- (b) authorizes the trustee, with respect to the property to which the order applies,
  - (i) to take possession and control of the property,
  - (ii) to do anything in relation to financial matters of the represented adult that the represented adult could do if the represented adult were capable of making decisions with respect to financial matters, and
  - (iii) to sign all documents and do all things necessary to give effect to any power or authority vested in the trustee.

**(2)** Except as specifically permitted by subsection (3), the regulations or a trusteeship order, a trustee, other than the Public Trustee, may not sell, transfer or encumber the real property of or purchase real property on behalf of the represented adult.

**(3)** The trustee may register the trusteeship order against the title to the represented adult's real property in accordance with the *Land Titles Act*.

**(4)** Any action taken, decision made, consent given or thing done by a trustee with respect to a matter within the trustee's authority has the same effect for all purposes as if the represented adult had taken the action, made the decision, given the consent or done the thing while having capacity.

**Duties and responsibilities of trustee**

**56(1)** A trustee shall

- (a) exercise the trustee's authority in the best interests of the represented adult, and
- (b) act in accordance with the trusteeship order and the trusteeship plan approved by the Court.

**(2)** A trustee shall make expenditures out of the represented adult's property that are reasonably required for the education, support and care of the represented adult.

**(3)** Subject to subsection (2), a trustee may exercise the trustee's authority for the benefit of any or all of the following:

- (a) the spouse or adult interdependent partner of the represented adult, if any;
- (b) any child of the represented adult who is less than 18 years of age;
- (c) any child of the represented adult who is 18 years of age or older and is unable to earn a livelihood because of a physical or mental disability;
- (d) with the consent of the Court, any other person.

#### **Standard of care**

**57(1)** A trustee shall exercise the care, skill and diligence that a reasonably prudent person would exercise in managing the person's own financial matters.

**(2)** If in any proceeding it appears to the Court that

- (a) a trustee is or might be personally liable for a breach of any duty arising under this Act, but
- (b) the trustee has acted honestly and reasonably and ought fairly to be excused for the breach of duty and for omitting to obtain the direction of the Court in the matter in which the trustee committed the breach,

the Court may relieve the trustee either wholly or partly from personal liability for the breach.

**Deposit account**

**58** A trustee who permits a represented adult to open or maintain a deposit account in accordance with an authorization under section 54(6) is not liable to account for or see to the application of any money paid into or out of the account.

**Investments**

**59(1)** Sections 2 to 8, except section 3(5)(b), of the *Trustee Act* apply to a trustee appointed under this Act, other than the Public Trustee.

**(2)** Section 4(1) of the *Trustee Act* does not apply in the case of liability for loss arising from a decision or course of action by a trustee that

- (a) contravenes the express terms of the trusteeship order, or
- (b) is contrary to the express terms of a trusteeship plan approved by the Court.

**(3)** A trusteeship order and any trusteeship plan approved by the Court are deemed to be an instrument creating a trust for the purposes of section 2(1) of the *Trustee Act*.

**Gifts**

**60(1)** A trustee, other than the Public Trustee, may not make gifts out of the represented adult's property except as provided in this section.

**(2)** Subject to the regulations and any specific restrictions in the trusteeship order, a trustee may make a gift out of the represented adult's property if

- (a) the property that constitutes the gift is not required to meet the represented adult's needs or the needs of a person referred to in section 56(3), and
- (b) the trustee has reasonable grounds to believe, based on the actions of the represented adult while the represented adult had capacity, that the represented adult would make the gift if the represented adult had capacity.

(3) The Court may authorize a trustee to make a gift that is not authorized by subsection (2) if the Court is satisfied that it would be appropriate for the trustee to make the gift.

#### **Will of represented adult**

**61(1)** A trustee shall make reasonable efforts to determine whether the represented adult has a will.

(2) A trustee may call in or receive an original will made by the represented adult from any person, including a lawyer, who has possession of it, and that person shall surrender the original will to the trustee on request.

(3) A person who has possession of a will before surrendering it under subsection (2) may retain a copy.

#### **Property to be kept separate**

**62** Except as otherwise specifically provided by an enactment, a trusteeship order or a trusteeship plan approved by the Court, a trustee shall

- (a) keep property subject to the trusteeship separate from the trustee's own property, and
- (b) hold any money or financial assets that are subject to the trusteeship in a separate account that identifies the represented adult as the beneficial owner.

#### **Trustee's accounts**

**63(1)** A trustee shall maintain accounts in accordance with the regulations.

(2) A trusteeship order may specify a time by which a trustee shall submit the trustee's accounts for examination and approval by the Court.

(3) The represented adult or any interested person may apply at any time to the Court, in accordance with the regulations, for an order directing a trustee to submit the trustee's accounts for examination and approval by the Court.

- (4) The Court on its own initiative may at any time direct the trustee to submit the trustee's accounts for examination and approval by the Court.
- (5) On the death of the represented adult the trustee shall account to the represented adult's personal representative.
- (6) If the trustee does not provide an accounting under subsection (5) to the satisfaction of the represented adult's personal representative, the personal representative may apply to the Court for an order under subsection (3).
- (7) The personal representative of a deceased trustee or the attorney or trustee of an incapacitated trustee shall, on request, provide an accounting to
- (a) an alternate trustee who is acting as trustee under section 53(3)(a),
  - (b) a new trustee appointed by the Court, or
  - (c) the Public Trustee acting under section 64.
- (8) If the personal representative, attorney or trustee does not provide an accounting under subsection (7) to the satisfaction of the alternate trustee, new trustee or Public Trustee, the alternate trustee, new trustee or Public Trustee may apply to the Court, in accordance with the regulations, for an order under subsection (3).
- (9) A trustee
- (a) shall submit the trustee's accounts for examination and approval by the Court when directed to do so by the Court, and
  - (b) may submit the trustee's accounts for examination and approval by the Court at any other time.
- (10) An application to the Court for examination and approval of a trustee's accounts must be made in accordance with the regulations.

**Death or incapacity of trustee**

- 64(1)** When the Public Trustee is notified

- (a) of the death of a trustee,
- (b) of the appointment of a guardian or trustee for a trustee, or
- (c) of the coming into effect, because of the incapacity of a trustee, of an enduring power of attorney or personal directive made by the trustee,

if there is no other trustee who has the authority to act with respect to the property subject to the trusteeship, the Public Trustee may take possession and control of the property.

**(2)** On taking possession and control of property under subsection (1), the Public Trustee may

- (a) take any action with respect to the property that in the Public Trustee's opinion is necessary or advisable to protect and preserve the property,
- (b) pay the ordinary living expenses of the represented adult out of the property, and
- (c) apply to be appointed as trustee for the represented adult.

**(3)** The Public Trustee is accountable only for property subject to the trusteeship that comes into the Public Trustee's possession or over which the Public Trustee exercises control.

**(4)** Where a new trustee is appointed, the Public Trustee shall provide an accounting to the new trustee for the property subject to the trusteeship that came into the Public Trustee's possession or over which the Public Trustee exercised control.

**(5)** If an application for the appointment of a trustee for the adult is not commenced within 60 days after the day on which the Public Trustee was notified of the event referred to in subsection (1)(a), (b) or (c), the Public Trustee shall apply to be appointed as trustee for the adult or for a review of the trusteeship order.

#### **Death of represented adult**

**65** Where a represented adult dies while a trusteeship order is in effect, the trustee's authority continues to the extent necessary for the trustee to preserve and protect the property subject to the trusteeship until the represented adult's personal representative exercises authority over the property.



**Payment to trustee**

- 66(1)** A trustee, other than the Public Trustee, is entitled to be compensated out of the property of the represented adult in accordance with this section.
- (2)** A trustee may, in accordance with the regulations, elect to be compensated in accordance with the fee schedule prescribed by the regulations.
- (3)** Where a trustee has made an election under subsection (2),
- (a)** the trustee is not entitled to take the compensation under the prescribed schedule until authorized to do so by the Court, and
  - (b)** the Court may reduce or eliminate the compensation to which the trustee would otherwise be entitled under the prescribed schedule if the Court is satisfied the trustee has not adequately discharged the trustee's duties.
- (4)** If a trustee has not made an election under subsection (2), the Court may determine the trustee's compensation, having regard to the trustee's effort, care and responsibility and the time expended on behalf of the represented adult.
- (5)** A trustee's compensation may be determined and authority to take compensation may be given on an interim or final application for examination and approval of the trustee's accounts or as otherwise permitted by the Court.
- (6)** The Public Trustee shall be compensated for acting as trustee as determined in accordance with the *Public Trustee Act*.
- (7)** A trustee is entitled to be reimbursed for the direct expenses incurred and disbursements made on behalf of the represented adult.

**Property that is the subject of a bequest**

- 67(1)** A trustee may apply to the Court for an order authorizing the trustee to sell property that is the subject of a specific gift in the will of the represented 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 represented adult.

(2) If a trustee complies with an order under subsection (1), the specific gift of the property in the will of the represented adult does not fail under the doctrine of ademption.

(3) If a trustee has sold or otherwise disposed of property that was the subject of a specific gift in the will of the represented adult otherwise than in accordance with an order under subsection (1), the Court on the application of any affected person may make an order that it considers will best give effect to the represented adult's testamentary intentions, having regard to the circumstances in which the property was sold.

(4) An application under subsection (3) may be made either before or after the death of the represented adult.

#### **Application to Court for opinion, advice or direction**

**68(1)** A trustee may apply, in accordance with the regulations, for the opinion, advice or direction of the Court on any question respecting a represented adult or respecting the management or administration of the represented adult's financial matters.

(2) A trustee acting on an opinion, advice or direction given by the Court is deemed, so far as the trustee's responsibility is concerned, to have discharged the trustee's duty as trustee in respect of the subject-matter of the opinion, advice or direction.

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

#### **Reimbursement of represented adult**

**69(1)** The Court may on an application under this Act relating to a trusteeship order

- (a) inquire into a complaint or claim of misconduct, neglect or default on the part of the trustee, and
- (b) order that the trustee reimburse the represented adult to the extent of any loss suffered by the represented adult as a result of the misconduct, neglect or default of the trustee and grant judgment accordingly.

**(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.

**Review of trusteeship order**

**70(1)** A represented person, a trustee or any interested person may apply to the Court, in accordance with the regulations, for a review of a trusteeship order.

**(2)** A trustee shall apply for a review under subsection (1)

- (a) as required by the terms of the trusteeship order,
- (b) if there has been a significant change in the needs, circumstances or capacity of the represented person that the trustee considers would make a variation or termination of the order in the represented adult's best interests, or
- (c) if there has been a change in circumstances that affects the trustee's
  - (i) ability to exercise the authority or carry out the duties and responsibilities of trustee, or
  - (ii) suitability to be a trustee for the represented person.

**(3)** The person applying for a review of a trusteeship order shall file a recent capacity assessment report respecting the represented person with the Court,

- (a) subject to the regulations, if the capacity of the represented person is in issue, or
- (b) as otherwise required by the regulations.

**(4)** Subject to subsections (5)(a) and (6), on an application for a review of a trusteeship order, the Court may make an order continuing, amending, replacing or terminating the trusteeship order on any terms or conditions the Court considers appropriate.

**(5)** The Court

- (a) shall make an order terminating a trusteeship order if the Court is satisfied that the represented person is no longer in need of a trustee, and

- (b) may make an order terminating a trusteeship order, an order discharging a trustee and appointing a new trustee who meets the requirements of section 49, or any other order that the Court considers appropriate in the circumstances, where the Court is satisfied that a trustee
  - (i) is not acting or is unable or unwilling to continue to act as a trustee,
  - (ii) has refused or is refusing to act or to continue to act as a trustee,
  - (iii) has failed or is failing to act as a trustee or to act in accordance with a trusteeship order or the trusteeship plan approved by the Court,
  - (iv) has acted in an improper manner or in a manner that has endangered or that might endanger the property of the represented person,
  - (v) has been guilty of a breach of trust, or
  - (vi) is no longer suitable to be a trustee for the represented person.
- (6) Before making an order terminating a trusteeship order, the Court shall satisfy itself that, if necessary,
  - (a) suitable arrangements have been or will be made in respect of the property of the represented person, or
  - (b) an application for another trusteeship order has been or will be made.

**Determination of incapacity without appointment of trustee**

**71(1)** A person may, without applying for the appointment of a trustee, apply to the Court, in accordance with the regulations, for a determination as to whether an adult lacks capacity in relation to financial matters if the determination is required for the purposes of an enactment or a law of Canada that is prescribed by the regulations.

**(2)** On an application under subsection (1), the Court may determine whether the adult who is the subject of the application

lacks capacity in relation to financial matters and may make an order accordingly.

**(3)** The Court, on application, may review a determination of capacity made under this section.

#### **Access to personal information**

**72(1)** A public body, custodian or organization may disclose to a person personal information about an adult, except financial information, where the public body, custodian or organization is satisfied that

- (a) the person to whom the information is to be disclosed intends to make an application for a trusteeship order in respect of the adult, and
- (b) the information is relevant to and necessary for the application.

**(2)** Where personal information is disclosed under subsection (1), the person to whom the information is disclosed

- (a) may use the information only for the purpose of making an application for a trusteeship order, and
- (b) shall take reasonable care to ensure the information is kept secure from unauthorized access, use or disclosure.

**(3)** A person who intends to make an application for a trusteeship order in respect of an adult shall not attempt to access, collect or obtain personal information about the adult under this section from a public body, custodian or organization other than personal information that may be disclosed under subsection (1).

**(4)** A trustee is entitled to access, collect or obtain from a public body, custodian or organization personal information about the represented adult that is relevant to the exercise of the authority and the carrying out of the duties and responsibilities of the trustee.

**(5)** A public body, a custodian and an organization may disclose to a trustee personal information about a represented adult that is referred to in subsection (4).

**(6)** Where a trustee accesses, collects or obtains personal information about a represented adult under this section, the trustee

- (a) may use and disclose the information only for the purpose of exercising the authority and carrying out the duties and responsibilities of the trustee, and
- (b) shall take reasonable care to ensure the information is kept secure from unauthorized access, use or disclosure.

(7) A trustee shall not attempt to access, collect or obtain personal information about the represented adult under this section from a public body, custodian or organization other than the personal information that the trustee is entitled to access, collect or obtain under subsection (4).

## **Division 5 Foreign Orders**

### **Foreign orders**

**73(1)** In this section, “foreign order” means an order made by a court or body outside Alberta that appoints a person having duties comparable to those of a co-decision-maker, guardian or trustee with respect to a person who is 18 years or age or older or with respect to the property 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 Court and, on resealing, the foreign order

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

(3) On making an order under subsection (2), the Court may set a date for the review of the resealed order.

- (4) A duplicate of a foreign order sealed with the seal of the court or body that sealed it or a copy of a foreign order certified by or under the direction of the court or body that granted it is as effective as the original.
- (5) The Court may not reseal a foreign order under this section until
- (a) a certificate has been issued by the registrar, clerk or other officer of the court or body that issued the foreign order to the effect that the order is wholly unrevoked and of full effect, and
  - (b) a bond or other security has been given to a court in Alberta to cover the property in Alberta of the person in respect of whom the foreign order was made, unless the Court dispenses with security.
- (6) An application to reseal a foreign order and a copy of the resealed order must be served on the persons specified in the regulations.

## **Division 6**

### **Protective Measures**

#### **Temporary protection order**

- 74(1)** Where the Public Guardian has reasonable grounds to believe that a represented adult is at risk of serious harm, the Public Guardian may apply to the Court in accordance with the regulations for a temporary protection order.
- (2) An application under subsection (1) may be made ex parte if the Court considers it appropriate.
- (3) Where the Court is satisfied that a represented adult is at risk of serious harm, the Court may make a temporary protection order and may, in the order,
- (a) authorize a police officer to assist the Public Guardian or another person to remove the represented adult to a temporary place of safety,
  - (b) appoint the Public Guardian as the temporary guardian of the represented adult,

- (c) include any terms or conditions the Court considers appropriate, and
- (d) direct the Public Guardian to prepare and file with the Court a report respecting any matter as the Court considers appropriate.

(4) Where the Public Guardian is appointed as the temporary guardian of a represented adult under subsection (3)(b), the power and authority of any co-decision-maker or guardian of the represented adult is suspended while the temporary guardianship order is in effect.

(5) Where an order is made on an ex parte application, the Court may impose any terms or conditions in the order it considers appropriate respecting

- (a) notice to the represented adult and other persons, and
- (b) the opportunity for the represented adult and other persons to be heard.

(6) Unless otherwise ordered by the Court, a temporary protection order expires 30 days after the date of the order.

**Complaints respecting co-decision-makers,  
guardians and trustees**

**75(1)** Any interested person may make a complaint to a complaints officer if the interested person has reason to believe that

- (a) a co-decision-maker, guardian or trustee has failed or is failing to comply with
    - (i) a co-decision-making, guardianship or trusteeship order, or
    - (ii) the duties of a co-decision-maker, guardian or trustee,
- and
- (b) the failure is likely to cause
    - (i) harm to the physical or mental health of the assisted adult or represented adult, or



- (ii) financial loss to the represented adult, including loss to property of the represented adult.

**(2)** A complaint under subsection (1) must be in writing and signed by the complainant, and may be in the prescribed form.

**(3)** No complaint may be made under subsection (1) in respect of anything done or omitted to be done by a guardian or trustee before the coming into force of this section.

### **Investigation**

**76(1)** A complaints officer shall

- (a) review any complaint received by the complaints officer under section 75 to decide whether an investigation of the complaint is necessary,
- (b) refer the complaint to an investigator if the complaints officer decides that an investigation of the complaint is necessary, and
- (c) notify the complainant of the decision under clause (a).

**(2)** A complaints officer may refuse to refer a complaint to an investigator if the complaints officer considers that the complaint is frivolous or vexatious.

**(3)** If a complaints officer decides not to refer a complaint to an investigator, the complaints officer shall provide written reasons to the complainant.

**(4)** If a complaints officer refers a complaint to an investigator, the complaints officer shall, as soon as is practicable in the circumstances, make a reasonable effort to notify the following persons that an investigation is being conducted:

- (a) the assisted adult or represented adult;
- (b) the co-decision-maker, guardian or trustee who is the subject of the complaint;
- (c) any other co-decision-maker, guardian or trustee appointed in the co-decision-making, guardianship or trusteeship order;

- (d) any other person as the complaints officer considers appropriate.
- (5)** For the purpose of conducting an investigation an investigator may
- (a) interview the assisted adult or represented adult and any person who may provide any information relevant to the investigation,
  - (b) access all records that may be relevant to the investigation that are held by the co-decision-maker, guardian or trustee who is the subject of the complaint or any other person, including records containing personal information, for the purpose of inspecting them, making copies of them or taking extracts from them, and
  - (c) enter premises, with the permission of the person in charge of the premises, at any reasonable hour, for the purposes of interviewing a person referred to in clause (a), assessing any potential risk of harm to the assisted adult or represented adult or accessing records referred to in clause (b).
- (6)** An investigator may apply to the Court, in accordance with the regulations, for an order under subsection (7) if
- (a) the person in charge of the premises
    - (i) refuses to permit the investigator to enter the premises, or
    - (ii) after permitting the investigator to enter the premises, obstructs the investigator in exercising rights and performing duties under this section,
- or
- (b) the investigator is of the opinion that requesting permission to enter from the person in charge of the premises might compromise the purpose of the investigation.
- (7)** On being satisfied that there are reasonable grounds to believe that a co-decision-maker, guardian or trustee has failed or is failing to comply with a co-decision-making, guardianship or trusteeship order, or the duties of a co-decision-maker, guardian or trustee, and the failure is likely to cause harm to the physical or mental health of the assisted adult or represented adult, or financial loss to the

represented adult, including loss to property of the represented adult, the Court may make an order

- (a) directing the person in charge of the premises to permit the investigator or a person acting under the investigator to enter the premises for the purposes referred to in subsection (5)(c),
- (b) directing a person to produce to the investigator or a person acting under the investigator any records or other documents relevant to the investigation,
- (c) directing any police officer to assist the investigator or a person acting under the investigator in enforcing the order, and
- (d) addressing any other matter the Court considers appropriate.

**(8)** An application under subsection (6) may be made ex parte if the Court considers it appropriate.

#### **Powers of investigator after investigation**

**77(1)** If, after conducting an investigation, an investigator is satisfied that a complaint made under section 75 is founded, the investigator may

- (a) attempt to resolve any matter relating to the complaint,
- (b) refer the complainant, the co-decision-maker, guardian or trustee who is the subject of the complaint and any other persons as the investigator considers appropriate to an alternative dispute resolution process acceptable to the investigator or provided for in the regulations, or
- (c) recommend that
  - (i) the Public Guardian apply to the Court for a guardianship order under section 26 or a temporary protection order under section 74, or
  - (ii) the Public Trustee apply to the Court for a trusteeship order under section 46.

**(2)** An investigator shall notify the persons specified in the regulations as to whether the investigator concluded that the

complaint was founded or not founded and whether action was taken under this section.

**(3)** If an investigator concludes that the complaint was not founded, the investigator shall provide written reasons to the complainant.

#### **Collection and disclosure of information**

**78(1)** An investigator and anyone acting for or under the direction of an investigator

- (a) may collect and use personal information for the purposes of conducting an investigation or resolving a complaint made under section 75;
- (b) shall not disclose any personal information collected under this section, except as provided in this section.

**(2)** An investigator may use or disclose, or may authorize anyone acting for or under the direction of the investigator to use or disclose, personal information

- (a) if the use or disclosure is necessary for the purposes of this Division or making an application to the Court,
- (b) if the disclosure is for the purposes of section 79, or
- (c) if the disclosure is authorized or required under the *Freedom of Information and Protection of Privacy Act* or another enactment.

#### **Notification of authorities**

**79(1)** If a complaints officer or a person acting for or under the direction of a complaints officer reasonably believes that the subject-matter of a complaint could constitute

- (a) an offence under the *Criminal Code* (Canada), the complaints officer or person may refer the complaint to a police service;
- (b) abuse against a client under the *Protection for Persons in Care Act*, the complaints officer or person may refer the complaint to the Minister responsible for that Act;

(c) an offence under a statute or regulation of Alberta, the complaints officer or person may refer the complaint to the Minister of Justice and Solicitor General.

(2) A complaints officer or a person acting for or under the direction of a complaints officer may, when referring a complaint under subsection (1), disclose information that the complaints officer or person reasonably believes relates to the possible offence or abuse.

2008 cA-4.2 s79;2013 c10 s34

## Division 7 General

### Limit on orders

**80** For greater certainty, the Court may not make an order that would result in a person being an assisted adult and a represented adult at the same time.

### Review officers

**81(1)** The Minister may designate one or more individuals as review officers for the purposes of this Act.

(2) Subject to sections 27 and 48, where an application is made to the Court for an order appointing a co-decision-maker, guardian or trustee for an adult, a review officer shall, in accordance with the regulations, provide a written report to the Court respecting

- (a) subject to the regulations, the views and wishes of the adult who is the subject of the application respecting the application,
- (b) the suitability of each proposed co-decision-maker, guardian or trustee and any proposed alternate guardian or trustee, and
- (c) any other matter prescribed by the regulations.

(3) A person who consents to act as a co-decision-maker, guardian or trustee or an alternate guardian or trustee shall provide the prescribed personal information to a review officer.

(4) Subsections (2) and (3) do not apply in respect of an application made by the Public Guardian or Public Trustee.

**Complaints officers**

**82** The Minister may designate one or more individuals as complaints officers for the purposes of this Act.

**Investigators**

**83** The Minister may designate one or more individuals as investigators for the purposes of this Act.

**Effect of termination of order**

**84(1)** The termination of a co-decision-making order does not affect the validity of any decision made by the assisted adult while the co-decision-making order was in effect.

**(2)** The termination of a guardianship or trusteeship order does not affect the validity of any action taken, decision made, consent given or thing done by a guardian or trustee on behalf of the represented adult while the guardianship or trusteeship order was in effect.

**(3)** Subject to a term of a co-decision-making order referred to in section 17(5), a contract entered into by an assisted adult while a co-decision-making order was in effect is binding on the assisted adult after the co-decision-making order is terminated to the same extent as if the assisted adult had entered into the contract while having capacity to enter into the contract.

**(4)** A contract entered into by a guardian or trustee on behalf of a represented adult is binding on the represented adult after the guardianship or trusteeship order is terminated to the same extent as if the represented adult had entered into the contract while having capacity to enter into the contract.

**Testamentary disposition**

**85(1)** A guardianship order or trusteeship order is not of itself sufficient to establish that the represented adult who is the subject of the order does not have legal capacity to make a testamentary disposition.

**(2)** A guardian or trustee of a represented adult has no power to make, on behalf of the represented adult, a will or other disposition that has testamentary effect.

**Offence**

**86(1)** A supporter who wilfully contravenes section 9(3) or (4) is guilty of an offence.

**(2)** A co-decision-maker who wilfully

(a) causes serious mental or physical harm to the assisted adult who is the subject of the co-decision-making order, or

(b) contravenes section 22(3) or (4)

is guilty of an offence.

**(3)** A guardian who wilfully

(a) causes serious mental or physical harm to the represented adult who is the subject of the guardianship order, or

(b) contravenes section 41(6) or (7)

is guilty of an offence.

**(4)** A trustee who wilfully

(a) causes damage or loss to the property of the represented adult who is the subject of the trusteeship order, or

(b) contravenes section 72(6) or (7)

is guilty of an offence.

**(5)** A supporter, co-decision-maker, guardian or trustee who is guilty of an offence under this section is liable to a fine of not more than \$10 000.

**(6)** A prosecution under this section may be commenced within 2 years after the commission of the alleged offence, but not afterwards.

## Part 3 Specific Decisions and Emergency Health Care

### Division 1 Specific Decisions

#### Authority to select specific decision maker

**87(1)** Where a health care provider has reason to believe that an adult may lack the capacity to make a decision respecting the adult's health care or the adult's temporary admission to a residential facility, the health care provider may assess, in accordance with the regulations, the adult's capacity to make the decision.

**(2)** Subject to section 88, a health care provider may, in accordance with this Division, select a specific decision maker to make a decision for an adult respecting

- (a) the adult's health care, or
- (b) the adult's temporary admission to or discharge from a residential facility

where the adult has been assessed, under subsection (1), as not having the capacity to make the decision.

#### Limit on appointment and authority

**88(1)** Subject to the regulations, a specific decision maker may not be selected to make and has no authority to make a decision referred to in section 87(1) in respect of which

- (a) the adult has made a personal directive, or
- (b) a guardian of the adult has power and authority to make a decision.

**(2)** A specific decision maker may not be selected to make and has no authority to make a decision respecting the following types of health care for an adult:

- (a) psychosurgery as defined in the *Mental Health Act*;
- (b) sterilization that is not medically necessary to protect the adult's health;



- (c) removal of tissue from the adult's living body
  - (i) repealed 2006 cH-14.5 s15,
  - (ii) for medical education or research purposes;
- (d) health care that involves participation by the adult in research or experimental activities, if the health care offers little or no potential benefit to the adult;
- (e) any other health care prescribed in the regulations.  
2008 cA-4.2 s88;2006 cH-14.5 s15;2008 cA-4.2 s134

**Selection of specific decision maker**

**89(1)** A health care provider shall select as the specific decision maker for an adult the nearest relative of the adult who

- (a) is 18 years of age or older,
- (b) is available and willing to make the decision,
- (c) is able to make the decision,
- (d) has been in contact with the adult in the previous 12 months,
- (e) has knowledge of the adult's wishes respecting the decision to be made or of the beliefs and values of the adult, and
- (f) does not have a dispute with the adult that might affect the relative's ability to comply with the duties of a specific decision maker.

**(2)** In accordance with the regulations, if there is a dispute about who is to be selected under subsection (1), the health care provider may select the Public Guardian or a person authorized by the Public Guardian to be the specific decision maker.

**(3)** If there is no person available who meets the criteria set out in subsection (1), a health care provider may select the Public Guardian as the specific decision maker for an adult.

**Requirement for declaration**

**90** A person other than the Public Guardian selected as a specific decision maker may not act as a specific decision maker until the

person has made a declaration in the prescribed form that the person

- (a) meets the criteria set out in section 89(1),
- (b) will carry out the duties and responsibilities of a specific decision maker, and
- (c) will comply with the requirements of this Division in making a decision for the adult.

#### **Requirement to keep record**

**91** A health care provider who selects a specific decision maker for an adult shall, in accordance with the regulations, keep a written record that includes

- (a) the declaration referred to in section 90,
- (b) a record of the decision that was made by the specific decision maker, and
- (c) any other information required by the regulations.

#### **Exercise of decision-making authority**

**92(1)** Subject to sections 88 and 90, a specific decision maker selected under section 87 has the authority to make a decision on behalf of the adult respecting the matter for which the specific decision maker has been selected.

**(2)** In making a decision for an adult, a specific decision maker shall consult the adult to the extent possible.

**(3)** A specific decision maker shall make a decision that is in the adult's best interests.

**(4)** In determining whether a decision is in an adult's best interests, a specific decision maker shall consider

- (a) any wishes known to have been expressed by the adult while the adult had capacity,
- (b) any values and beliefs known to have been held by the adult while the adult had capacity, and

- (c) the matters referred to in section 93(1) or (2), as the case may be.

**Matters to be considered in making decisions**

**93(1)** In making a decision respecting proposed health care for an adult, a specific decision maker shall consider

- (a) whether the adult's condition or quality of life is likely to be improved by the proposed health care,
- (b) whether the benefit that the adult is expected to obtain from the proposed health care is greater than the risk of harm,
- (c) whether a less restrictive or less intrusive alternative form of health care would be as effective and as beneficial to the adult as the proposed health care, and
- (d) any other matter specified in the regulations.

**(2)** In making a decision respecting whether an adult should be temporarily admitted to a residential facility, a specific decision maker shall consider

- (a) whether the adult's condition or quality of life is likely to be improved by admission to the residential facility,
- (b) whether the benefit that the adult is expected to obtain from admission to the residential facility is greater than the risk of harm that may be caused to the adult by the admission,
- (c) whether an alternative other than temporary admission to a residential facility, or temporary admission to a less restrictive residential facility, would be as effective and as beneficial to the adult as temporary admission to the proposed residential facility, and
- (d) any other matter specified in the regulations.

**Notification to nearest relative**

**94(1)** A specific decision maker shall, as soon as is reasonably practicable after making a decision, make reasonable efforts to notify the nearest relative of the adult, other than the specific decision maker, of a decision made for the adult.

(2) If there is no nearest relative, a specific decision maker shall notify the Public Guardian of a decision made for the adult.

#### **Discharge from residential facility**

**95** Where an adult has been temporarily admitted to a residential facility on the basis of the decision of a specific decision maker,

- (a) the adult may discharge himself or herself from the residential facility if he or she has been assessed, in accordance with the regulations, as having the capacity to make the decision to be discharged, or
- (b) a health care provider may select a specific decision maker to discharge the adult from the residential facility if the adult has been assessed, in accordance with the regulations, as not having the capacity to make a decision to be discharged and it is in the adult's best interests to be discharged.

#### **Request for capacity assessment**

**96(1)** An adult who has been assessed as not having the capacity to make a decision referred to in section 87(1), any relative of the adult referred to in section 1(x), a legal representative of the adult or a person who has a close and substantial personal relationship with the adult may request a capacity assessor to conduct a capacity assessment of the adult.

(2) Where a capacity assessment is requested under subsection (1), a capacity assessor shall, as soon as practicable, conduct a capacity assessment of the adult in accordance with the regulations.

(3) A determination of an adult's capacity to make a decision referred to in section 87(1) in a capacity assessment report prevails over an assessment of the adult's capacity made under section 87(1).

#### **Application for review**

**97(1)** An adult who has been assessed as not having the capacity to make a decision referred to in section 87(1), any relative of the adult referred to in section 1(x), a legal representative of the adult or a person who has a close and substantial personal relationship

with the adult may apply to the Court, in accordance with the regulations, for a review of

- (a) an assessment of the adult's capacity made under section 87(1), or
- (b) a decision of a specific decision maker.

**(2)** On an application under this section, the Court may require a capacity assessment report respecting the adult.

**(3)** On hearing an application under subsection (1), the Court may

- (a) confirm or set aside an assessment made under section 87(1), or
- (b) confirm or set aside the decision of the specific decision maker.

#### **Authority of health care provider to act on decision**

**98(1)** Subject to subsection (2) and section 88, a health care provider may act on a decision made by a specific decision maker and may, in accordance with the decision,

- (a) provide health care to or withhold or withdraw health care from the adult for whom the specific decision maker was selected, or
- (b) temporarily admit the adult for whom the specific decision maker was selected to a residential facility.

**(2)** Except as provided in subsection (3), a health care provider shall not act on a decision made by a specific decision maker for an adult if the health care provider is informed that the adult or a person referred to in section 96(1) or 97(1)

- (a) has requested or intends to request a capacity assessment of the adult under section 96, or
- (b) has applied or intends to apply to the Court
  - (i) for a review under section 97, or
  - (ii) for the appointment of a co-decision-maker or guardian for the adult.

- (3)** A health care provider may act on a decision made by a specific decision maker if
- (a) arrangements for a capacity assessment referred to in subsection (2)(a) are not made within the prescribed period,
  - (b) a capacity assessment report confirms that the adult lacks the capacity to make the decision for which the specific decision maker was selected,
  - (c) an application referred to in subsection (2)(b)
    - (i) is not commenced within 7 days after the day on which the health care provider was informed of the intention to make the application, or
    - (ii) is withdrawn,
- or
- (d) the Court confirms the decision of the specific decision maker on an application under section 97(1)(b).
- (4)** Nothing in this section
- (a) affects the application of Division 2, or
  - (b) requires a health care provider to provide health care to an adult where, in the opinion of the health care provider, the provision of the health care would be futile.

**Access to personal information****99(1)** A health care provider

- (a) may access, collect or obtain from any person personal information about an adult, except financial information, for the purposes of
  - (i) assessing the adult's capacity under section 87(1), and
  - (ii) selecting a specific decision maker for the adult;
- (b) shall not disclose any personal information accessed, collected or obtained under this section except
  - (i) as is necessary to select a specific decision maker,

- (ii) to a person selected as specific decision maker, or
- (iii) as otherwise authorized by the *Freedom of Information and Protection of Privacy Act*, the *Health Information Act* or the *Personal Information Protection Act*.

(2) A specific decision maker is entitled to access, collect or obtain from a public body, custodian or organization personal information about the adult, except financial information, that is relevant to the decision the specific decision maker has been selected to make.

(3) A public body, a custodian and an organization may disclose personal information about an adult that is referred to in subsection (1) or (2) to a health care provider or a specific decision maker.

(4) Where a specific decision maker accesses, collects or obtains personal information about an adult under this section, the specific decision maker

- (a) may use or disclose the information only for the purpose of exercising the authority or carrying out the duties and responsibilities of the specific decision maker, and
- (b) shall take reasonable care to ensure the information is kept secure from unauthorized access, use or disclosure.

#### **Liability**

**100(1)** No action lies against a health care provider or specific decision maker for anything done or omitted to be done in good faith while exercising a power or performing a duty or function under this Division.

(2) A health care provider is entitled to rely on the accuracy of information provided by a person in a declaration under section 90 to establish the person's eligibility to be selected as a specific decision maker.

## Division 2 Emergency Health Care

### Emergency health care

**101(1)** Notwithstanding any other provision of this Act or the regulations, a physician may provide emergency health care to an adult in accordance with this section.

**(2)** Subject to subsections (3) and (4), a physician may provide emergency health care to an adult without consent if

- (a) the health care is necessary
    - (i) to preserve the adult's life,
    - (ii) to prevent serious physical or mental harm to the adult,  
or
    - (iii) to alleviate severe pain,
- and
- (b) the physician is satisfied that the adult lacks capacity to consent or refuse to consent to the emergency health care as a result of
    - (i) drug or alcohol impairment,
    - (ii) complete or partial lack of consciousness, or
    - (iii) another cause.

**(3)** A physician

- (a) shall, if practicable, obtain the written opinion of a 2nd physician or health care provider respecting the matters referred to in subsection (2)(a) and (b) before providing the emergency health care to the adult, and
- (b) may not provide the emergency health care to the adult where the written opinion of a 2nd physician or health care provider is obtained unless the 2nd physician or health care provider is satisfied with respect to the matters referred to in subsection (2)(a) and (b).



- (4)** Nothing in this section authorizes a physician to provide health care to an adult who the physician has reasonable grounds to believe
- (a) expressed a wish or instruction that is applicable to the circumstances, after having attained the age of 18 years and while having capacity, to refuse the health care, and
  - (b) did not later, while having capacity, express a wish or instruction contrary to that referred to in clause (a).

## **Part 4 General**

### **Capacity assessment**

**102** A capacity assessor shall

- (a) conduct an assessment of an adult's capacity that is required for the purposes of this Act in accordance with the regulations, and
- (b) complete a capacity assessment report respecting the adult in the prescribed form.

### **Access to personal information**

**103(1)** For the purpose of carrying out a capacity assessment of an adult, a capacity assessor may access, collect or obtain from a public body, custodian or organization personal information about the adult, except financial information, that is relevant to the capacity assessment.

**(2)** A public body, custodian or organization may disclose to a capacity assessor personal information that is referred to in subsection (1).

**(3)** If a capacity assessor is of the opinion that access to financial information about the adult who is the subject of the capacity assessment is needed for the purposes of the capacity assessment, the person making the application for which the capacity assessment is required may apply to the Court, in accordance with the regulations, for an order under subsection (4).

- (4) The Court may, on application, make an order directing a public body, custodian or organization to provide financial information about the adult to the capacity assessor.
- (5) Where a capacity assessor accesses, collects or obtains personal information about an adult under this section, the capacity assessor
- (a) may use and disclose the information only for the purposes of the capacity assessment, and
  - (b) shall take reasonable care to ensure the information is kept secure from unauthorized access, use or disclosure.

**Court order requiring capacity assessment**

**104(1)** If an adult's capacity to make decisions is in issue in a proceeding under this Act, the Court may order a capacity assessment of the adult.

(2) An order under subsection (1) may direct the adult whose capacity is in issue

- (a) to undergo the capacity assessment, and
- (b) to
  - (i) permit a capacity assessor and any person assisting the capacity assessor to enter the adult's place of residence for the purpose of conducting the capacity assessment, or
  - (ii) attend at another place at the times specified in the order for the purpose of undergoing the capacity assessment.

**Determination of capacity without capacity assessment**

**105** If an adult refuses to undergo a capacity assessment as directed under section 104 or is prevented from undergoing a capacity assessment, the Court may consider any evidence that the Court considers relevant to the adult's capacity and may, if the Court considers that the available evidence is sufficient for it to do so, make a determination with respect to the adult's capacity.

**Establishment of registry**

**106(1)** The Minister shall establish and maintain a registry containing

- (a) copies of orders made or continued under this Act,
- (b) certificates of incapacity continued under the *Public Trustee Act*, and
- (c) any documents or information prescribed by the regulations.

**(2)** On making an order under this Act, the Court shall notify the Minister and shall provide the Minister with a copy of the order on request.

**(3)** The Minister shall deposit into the registry copies of orders received under subsection (2) and any orders and certificates of incapacity in the custody or under the control of the Public Guardian or the Public Trustee.

**(4)** The Public Guardian or the Public Trustee may collect, use and disclose information in the registry, including personal information,

- (a) to determine whether an adult is the subject of a co-decision-making, guardianship or trusteeship order,
- (b) to determine whether a co-decision-making, guardianship or trusteeship order has been reviewed in accordance with the terms of the order, and
- (c) to exercise the powers and carry out the duties of the Public Guardian or Public Trustee under this Act and the regulations.

**(5)** The Public Guardian and the Public Trustee may disclose information in the registry in accordance with the regulations.

**Appointment of Public Guardian**

**107(1)** In accordance with the *Public Service Act*, there may be appointed one or more Public Guardians and any other persons required for the purposes of this Act and the regulations.

**(2)** Where the Public Guardian is given any power, function or duty under this Act or any other enactment or by an order of the Court, the Public Guardian may authorize in writing one or more

persons to exercise that power or carry out that function or duty on any conditions or in any circumstances that the Public Guardian prescribes, and afterwards that power, function or duty may be exercised or carried out by the person or persons so authorized in addition to the Public Guardian.

#### **Limit on duties of Public Guardian and Public Trustee**

**108(1)** The Public Guardian has no duties under or by virtue of this Act other than duties

- (a) as a guardian, where the Public Guardian has been appointed as a guardian in accordance with this Act,
- (b) expressly given to the Public Guardian by this Act or the regulations, or
- (c) arising from specific functions given to the Public Guardian by an order of the Court made in accordance with this Act.

**(2)** The Public Trustee has no duties under or by virtue of this Act other than duties

- (a) as a trustee, where the Public Trustee has been appointed as a trustee in accordance with this Act,
- (b) that are expressly given to the Public Trustee by this Act or the regulations, or
- (c) that arise from specific functions given to the Public Trustee by an order of the Court made in accordance with this Act.

#### **Liability**

**109(1)** No action lies against the Minister, the Public Guardian, another person appointed under section 107(1), a capacity assessor, a review officer, a complaints officer, an investigator or any person acting under the Minister, Public Guardian, other person, capacity assessor, review officer, complaints officer or investigator 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 Act.

**(2)** Except where the Public Trustee is exercising powers or authority or carrying out duties, responsibilities or functions as trustee of a represented adult, no action lies against the Public

Trustee or a person acting under the Public Trustee 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 Act.

#### **Protection re reports or information**

**110** No action lies against a person who makes an allegation or report or gives information for the purpose of an application, complaint or investigation under this Act, or to assist in deciding whether an application should be made or an investigation should be conducted under this Act, for making the allegation or report or giving the information if the person makes the allegation or report or gives the information in good faith and has reasonable and probable grounds for believing the allegation, report or information is true.

#### **Circumstances in which hearing is not required**

**111(1)** Subject to the regulations, the Court may consider and determine an application for an order under section 13, 21, 26, 27, 40, 46, 48, 63 or 70 in the absence of the applicant and any other persons if

- (a) no person who is entitled by the regulations to request a hearing has, in accordance with the regulations, requested a hearing, and
- (b) the Court is of the opinion that it is not necessary to hold a hearing.

**(2)** On considering and determining an application for an order referred to in subsection (1), the Court shall satisfy itself that the views and wishes of the adult who is the subject of the application are considered where appropriate.

#### **Persons at hearing**

**112** At a hearing of an application under this Act, any person served with the application and any other person who wishes to make representations and whom the Court agrees to hear may appear and make representations.

**Access by public**

**113(1)** Subject to this section, a hearing of an application under this Act must be open to the public.

**(2)** Where the Court is of the opinion that it would be in the best interests of the adult who is the subject of an application or to whom an application relates, in the interests of the proper administration of justice or otherwise appropriate, the Court may make an order

- (a) limiting the persons who may be present at all or part of a hearing,
- (b) providing that all or part of a hearing is to be held in private, or
- (c) prohibiting or restricting access to or publication of information given at a hearing or contained in documents filed with or received by the Court.

**Appeal to Court of Appeal**

**114(1)** An appeal on a question of law lies to the Court of Appeal in respect of any order made under this Act.

**(2)** An interested person may appeal under subsection (1) on behalf of an assisted adult or a represented adult.

**(3)** A notice of appeal must be served in accordance with the regulations.

**Costs**

**115** The Court of Queen's Bench or the Court of Appeal may order that all or part of the costs of any application or report made to it under this Act

- (a) be paid by or from 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 for the person to pay the costs;

- (iii) the person in respect of whom the application is made, where it is satisfied that it would not be a hardship for the person to pay the costs;
  - (iv) the property of the represented adult, where it is satisfied that it would not be a hardship for the represented adult to pay the costs;
- (b) be paid by a trustee if the trustee has been ordered to reimburse the represented adult under section 69;
  - (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.

### **Regulations**

**116(1)** The Lieutenant Governor in Council may make regulations

- (a) defining, for the purposes of this Act,
  - (i) “residential facility”,
  - (ii) “significantly impaired”, and
  - (iii) other words and expressions used but not defined in this Act;
- (b) 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 an adult;

- (c) designating health care professions for the purposes of the definition of “health care provider”;
- (d) 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 a notice of the application, the documents required to be served, the manner of service and the time within which service must be effected;
- (e) respecting the application of this Act and the regulations to persons referred to in section 11(1), 24(1) or 43(2);
- (f) prescribing matters for the purposes of section 14, 28 or 49;
- (g) respecting actions that may be taken by the Public Guardian for the purposes of section 17(12);
- (h) dispensing with the requirement for filing a capacity report under section 21(3)(a), 40(3)(a) or 70(3)(a) and respecting circumstances in which a recent capacity assessment report must be filed under section 21(3)(b), 40(3)(b) or 70(3)(b);
- (i) respecting guardianship plans and trusteeship plans and the matters required to be dealt with in a guardianship plan or trusteeship plan;
- (j) respecting the evidence to be provided to the clerk of the Court under section 32(5), 36(2) or section 53(5);
- (k) respecting the duty of a guardian to inform a represented adult of important decisions under section 35(5);
- (l) respecting the authority of trustees, including, without limitation, regulations
  - (i) prescribing, for the purposes of section 55(1)(a), property to which a trusteeship order does not apply unless the trusteeship order specifically provides that it applies to such property,
  - (ii) prescribing, for the purposes of section 55(1)(b)(ii), things that a trustee may not do in relation to financial



matters of the represented adult unless the trusteeship order specifically authorizes the trustee to do such things,

- (iii) prescribing, for the purposes of section 55(2), circumstances in which a trustee may sell, transfer, encumber or purchase real property without specific authority to do so in the trusteeship order, and
- (iv) prescribing, for the purposes of section 60(2), limits on the authority of trustees to make gifts;
- (m) respecting the form and contents of accounts to be maintained and submitted by trustees;
- (n) respecting the examination and approval of trustees' accounts;
- (o) 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;
- (p) prescribing enactments or laws for the purposes of section 71, respecting the persons who may make an application under section 71 and respecting the procedure to be followed on the application;
- (q) providing for an alternative dispute resolution process for the purposes of section 77(1)(b);
- (r) specifying persons required to be notified under section 77(2);
- (s) prescribing additional duties and functions of review officers;
- (t) respecting reports of review officers, including, without limitation, regulations
  - (i) prescribing matters to be dealt with in a report under section 81(2),
  - (ii) respecting circumstances in which a report is not required to contain information respecting the views and wishes of the adult who is the subject of an application, and

- (iii) prescribing the information that a person who consents to act as a co-decision-maker, guardian or trustee or an alternate guardian or trustee is required to provide to a review officer under section 81(3);
- (u) prescribing documents and information to be contained in the registry;
- (v) respecting the disclosure of information in the registry;
- (w) respecting the assessment of an adult's capacity to make decisions under section 87;
- (x) authorizing a health care provider to select a specific decision maker in the circumstances referred to in section 88(1);
- (y) respecting any matter relating to the selection of a specific decision maker under section 89(2) and the authorization of a person to be a specific decision maker by the Public Guardian;
- (z) specifying matters that a specific decision maker is required to consider in making decisions;
- (aa) respecting the scope of decisions that may be made by a specific decision maker and the parameters within which the decisions are effective;
- (bb) prescribing types of health care with respect to which a specific decision maker shall not make a decision;
- (cc) respecting records to be kept by health care providers under section 91;
- (dd) respecting capacity assessments, including, without limitation, regulations
  - (i) governing the manner in which capacity assessments are to be conducted,
  - (ii) authorizing the establishment of guidelines for capacity assessments, and
  - (iii) respecting the circumstances in which the fees for a capacity assessment may be paid by the Crown and

authorizing the payment of the fees in those circumstances;

- (ee) prescribing a time period for the purposes of section 98(3)(a);
  - (ff) respecting capacity assessors, including, without limitation, regulations
    - (i) designating health professions members of which may be designated as capacity assessors,
    - (ii) respecting the training, qualifications and designation of capacity assessors,
    - (iii) respecting the designation of capacity assessors, and
    - (iv) respecting fees that may be charged by capacity assessors;
  - (gg) respecting the duties of the Public Guardian and the Public Trustee under this Act, including prescribing additional duties of the Public Guardian and Public Trustee;
  - (hh) specifying the persons who are entitled to request a hearing in respect of an application under section 13, 21, 26, 27, 40, 46, 48, 63 or 76 and the process by which a hearing may be requested;
  - (ii) specifying circumstances in addition to those referred to in section 111 in which a hearing must be held in respect of an application referred to in section 111;
  - (jj) respecting the procedure for considering and determining applications under section 111;
  - (kk) respecting the persons required to be served on an appeal under this Act;
  - (ll) respecting the awarding of costs against the Crown in right of Alberta.
- (2)** The Minister may make regulations
- (a) respecting forms that may be necessary for the purposes of this Act;

- (b) respecting the requirements to be met by persons to be eligible for appointment as supporters;
- (c) respecting the responsibilities of supporters and the manner in which supporters are to exercise their powers and carry out their responsibilities,
- (d) respecting supported decision-making authorizations, including, without limitation, regulations
  - (i) respecting the form, contents and requirements for the proper execution of a supported decision-making authorization, and amendments to and termination of a supported decision-making authorization, and
  - (ii) respecting the validity of supported decision-making authorizations and amendments to supported decision-making authorizations that do not comply with specified provisions of this Act or the regulations;
- (e) establishing standards for the conduct of persons who are designated as capacity assessors.

## **Part 5 Transitional Provisions, Consequential and Related Amendments, Repeal and Coming into Force**

### **Transitional provisions**

**117(1)** In this section, “former Act” means the *Dependent Adults Act*, RSA 2000 cD-11.

**(2)** A guardianship order that is in effect under the former Act immediately before the coming into force of this section continues as if it were made under this Act, and where a guardian has, in a guardianship order continued under this subsection, been granted power and authority with respect to a matter referred to in section 10(3)(f) or (i) of the former Act, the guardian may exercise the power and authority until an order is made on a review of the guardianship order under section 40 of this Act.

**(3)** Where the Public Guardian is the guardian of a dependent adult under section 28 of the former Act, the Public Guardian continues as the guardian under this Act until

- (a) a new guardian is appointed under this Act, or
- (b) the Court makes an order discharging the Public Guardian as guardian.

**(4)** A trusteeship order that is in effect under the former Act immediately before the coming into force of this section continues as if it were made under this Act, and sections 38, 39, 40 and 52 of the former Act apply to a trusteeship order continued under this subsection as if that Act had not been repealed until an order is made on a review of the trusteeship order under section 70 of this Act.

**(5)** Where the Public Trustee is the trustee of the estate of a dependent adult under section 55 of the former Act, the Public Trustee shall continue to act as trustee in accordance with that section until

- (a) a new trustee is appointed under this Act, or
- (b) the Court makes an order discharging the Public Trustee as trustee.

**(6)** A person whose appointment as a Public Guardian is in effect under the former Act immediately before the coming into force of this section continues as a Public Guardian under this Act.

**(7)** A compulsory care certificate or compulsory care order that is in effect under the former Act immediately before the coming into force of this section ceases to have effect on the coming into force of this Act.

**(8)** The Lieutenant Governor in Council may make regulations

- (a) governing applications under this Act in respect of guardianship orders continued under subsection (2) or trusteeship orders continued under subsection (4);
- (b) respecting the application or the extent of the application of any provision of this Act or the former Act to guardianship orders continued under subsection (2) or trusteeship orders continued under subsection (4);

- (c) respecting the transition to this Act of anything under the former Act, including the interpretation of any transitional provision in this Act;
- (d) to remedy any confusion, difficulty, inconsistency or impossibility resulting from the transition to this Act from the former Act.

**(9)** A regulation made under subsection (8) may be made retroactive to the extent set out in the regulation.

**(10)** If there is a conflict between a regulation made under subsection (8) and a provision in this section, the regulation prevails.

**(11)** A regulation made under subsection (8)(b), (c) or (d) is repealed on the earliest of

- (a) the coming into force of an amendment that adds the subject-matter of the regulation to this or any other Act,
- (b) the coming into force of a regulation that repeals the regulation made under subsection (8)(b), (c) or (d), and
- (c) 3 years after the regulation comes into force.

**(12)** The repeal of a regulation under subsection (11) does not affect anything done, incurred or acquired under the authority of the regulation before the repeal of the regulation.

**(13)** A regulation shall not be made under subsection (8)(b), (c) or (d) after the expiration of 2 years from the day that this section comes into force, but any regulation made under subsection (8)(b), (c) or (d) that is in force on the expiration of that 2-year period remains in force until it is repealed under subsection (11).

**(14)** A regulation shall not be made under subsection (8) altering the provisions of subsection (11).

**118 to 152** *(These sections amend other Acts; the amendments have been incorporated into those Acts.)*

**Repeal**

**153** The *Dependent Adults Act*, RSA 2000 cD-11, is repealed.

**Coming into force**

**154** This Act comes into force on Proclamation.

*(NOTE: Proclaimed in force October 30, 2009.)*









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