

The Public Guardian and Trustee Act

being

Chapter P-36.3* of the *Statutes of Saskatchewan, 1983* (effective April 1, 1984) as amended by the *Statutes of Saskatchewan, 1984-85-86, c.34 and 105; 1988-89, c.44; 1989-90, c.6, 18 and 20; 1990-91, c.C-8.1; 1992, c.P-6.001, 34 and 62; 1993, c.17; 1997, c.18; 1998, c.P-42.1 and c.48; 2000, c.A-5.3 and L-5.1; 2001, c.33 and 51; 2004, c.10; 2009, c.T-23.01; 2011, c.1; 2014, c.E-13.1, c.24 and c.25; 2015, c.11 and c.21; 2018, c.42; and 2020, c.11 .*

***Note:** This chapter number was formerly P-43.1

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER P-36.3

An Act respecting the Public Guardian and Trustee

SHORT TITLE AND INTERPRETATION

Short title

1 This Act may be cited as *The Public Guardian and Trustee Act*.

2001, c.33, s.5.

Interpretation

2(1) In this Act:

- (a) **Repealed.** 1989-90, c.18, s.10.
- (a.1) **“business day”** means a day other than a Saturday, Sunday or holiday;
- (a.2) **“capacity”** means the ability:
 - (i) to understand information relevant to making a decision; and
 - (ii) to appreciate the reasonably foreseeable consequences of making or not making a decision;
- (b) **“court”** means, except in section 6.3, the Court of Queen’s Bench or a judge of that court sitting in chambers and, for the purposes of section 24, includes any Saskatchewan Court;
- (c) **“Crown”** means the Crown in right of Saskatchewan;
 - (c.1) **“dependent adult”** means a person with respect to whom the public guardian and trustee acts pursuant to clause 29(2)(a) or subsection 29(4) or 40.1(2) or *The Adult Guardianship and Co-decision-making Act*;
 - (c.2) **“financial institution”** means a bank, a credit union, a trust corporation or a loan corporation licensed pursuant to *The Trust and Loan Corporations Act, 1997*, a company that is a registered dealer pursuant to *The Securities Act, 1988* or any other financial institution that the minister may designate;
- (d) **“guardian”** means the guardian of the property of an infant appointed or constituted pursuant to section 30 of *The Children’s Law Act, 1997*, who has:
 - (i) filed a bond of a guarantee company in an amount approved by the court pursuant to subsection 34(2) of *The Children’s Law Act, 1997* or any other security required by the court pursuant to subsection 34(3) of that Act; or
 - (ii) obtained an order pursuant to subsection 34(3) of *The Children’s Law Act, 1997* dispensing with the requirement of a bond or other security;

- (e) **“infant”** means a person under the age of 18 years;
- (f) **“land”** means lands, messuages, tenements and hereditaments, corporeal and incorporeal, of every nature and description, and every estate or interest therein, whether the estate or interest is legal or equitable, together with paths, passages, ways, water-courses, liberties, privileges and easements appertaining thereto, and trees and timber thereon, and mines, minerals and quarries thereon or thereunder lying or being, unless any such are specially excepted;
- (f.1) **“legal custodian”** means the legal custodian of an infant appointed or constituted pursuant to *The Children’s Law Act, 1997* or otherwise;
- (f.2) **“letters of administration”** means all letters of administration of the property of a deceased person, with or without the will annexed, and whether granted for general, special or limited purposes;
- (g) **Repealed.** 1989-90, c.18, s.10.
- (h) **“minister”** means, except for the purposes of section 19, the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (h.1) **“prescribed”** means prescribed in the regulations;
- (i) **“public guardian and trustee”** means the corporation sole of the Public Guardian and Trustee of Saskatchewan continued pursuant to section 3;
- (j) **“trustee”** means a person who would be considered a trustee for the purposes of *The Trustee Act, 2009* and includes a trustee described in section 33 of *The Children’s Law Act, 1997*.
- (2) Where the minister designates a financial institution pursuant to clause (1)(c.2), the minister shall cause a copy of the designation to be published in the Gazette

1983, c.P-43.1, s.2; 1984-85-86, c.105, s.3;
 1989-90, c.18, s.10; 1990-91, c.C-8.1, s.75; 2000,
 c.A-5.3, s.84; 2001, c.33, s.6; 2009, c.T-23.01,
 s.64; 2014, c.24, s.3; 2014, c.25, s.3; 2018, c.42,
 s.65; 2020, c.11, s.3.

PUBLIC GUARDIAN AND TRUSTEE CONTINUED

Public guardian and trustee as corporation sole

- 3(1) The Public Trustee is continued as a corporation sole under the name of the Public Guardian and Trustee of Saskatchewan.
- (2) The Lieutenant Governor in Council may create a seal for the public guardian and trustee.

- (3) The public guardian and trustee is the successor in office to:
- (a) the Official Guardian appointed pursuant to *The Infants Act*; and
 - (b) the Administrator of Estates appointed pursuant to *The Administration of Estates of Mentally Disordered Persons Act*.
- (4) The public guardian and trustee is the official administrator of estates for Saskatchewan.

1983, c.P-43.1, s.3; 2001, c.33, s.7 and 23; 2020, c 11, s.4.

Vesting of property in public guardian and trustee

4(1) All the lands, estates, leases, charges, mortgages, encumbrances, securities, assets, properties, effects, rights, credits, choses-in-action and causes of action of every description belonging to, under the control of or standing in the name of the Official Guardian or the Administrator of Estates are hereby transferred to and vested in the public guardian and trustee without further act, conveyance or other deed.

(2) No suit, action, appeal, application or other proceeding being carried on or power or remedy being exercised by or against the Official Guardian or the Administrator of Estates is to be discontinued or abated on account of this Act, but may be continued in the name of the public guardian and trustee and the public guardian and trustee has the same rights, is subject to the same liabilities, and shall pay or receive the same costs, as if the suit, action, appeal, application or other proceeding had been commenced or defended in the name of the Official Guardian or Administrator of Estates, as the case may be.

(3) The public guardian and trustee may bring, maintain and exercise in his corporate name any suit, action, appeal, application or other proceeding or exercise any power, right or remedy or right of distress that could have been brought, maintained or exercised by the Official Guardian or the Administrator of Estates.

1983, c.P-43.1, s.4; 2001, c.33, s.23.

Act is evidence of transfer

5(1) For the purposes of the Land Titles Registry and every registry office and other public office in Saskatchewan, this Act is a legal and valid grant, conveyance, transfer and assignment to the public guardian and trustee of all lands or interests in land, all mortgages, charges encumbrances or other documents and of all other property of every description standing in the name of, or vested in, the Official Guardian or the Administrator of Estates.

- (2) Notwithstanding any other Act:
- (a) it is not necessary to register or file this Act or register, file or issue any further or other instrument, document or certificate or make any entry showing the transmission or assignment of title of the property mentioned in subsection (1) from the Official Guardian or the Administrator of Estates to the public guardian and trustee, or in the case of lands under *The Land Titles Act, 2000*, to have title issued in, or to have any mortgage, charge, encumbrance or other document transmitted to, the name of the public guardian and trustee;

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- (b) in any instrument or document whereby the public guardian and trustee deals with any of the property mentioned in subsection (1), it is sufficient to cite this Act as effecting the grant, conveyance or transfer of title from the Official Guardian or Administrator of Estates and the vesting of title in the public guardian and trustee;
- (c) it is not necessary to pay fees in connection with a grant or assignment effected by this Act of any of the property mentioned in subsection (1).

1983, c.P-43.1, s.5; 2000, c.L-5.1, s.446; 2001, c.33, s.23.

Public guardian and trustee

6(1) The Lieutenant Governor in Council shall appoint the public guardian and trustee.

(2) The public guardian and trustee shall perform any duties assigned to him in this or any other Act and any other duties that may be prescribed by the Lieutenant Governor in Council.

1983, c.P-43.1, s.6; 2001, c.33, s.23.

Public guardian and trustee may be appointed as property guardian, etc.

6.1 The public guardian and trustee may be appointed:

- (a) as a property guardian pursuant to *The Missing Persons and Presumption of Death Act*, subject to section 44.1;
- (b) as a decision-maker pursuant to *The Adult Guardianship and Co-decision-making Act*, subject to section 44.1;
- (c) as an attorney respecting the property of a person in accordance with the terms of a power of attorney, if the public guardian and trustee consents to the appointment;
- (d) as a trustee:
- (i) by the court pursuant to this or any other Act, subject to section 44.1;
 - or
 - (ii) in any other manner, if the public guardian and trustee consents to the appointment; or
- (e) as an executor if the public guardian and trustee consents to the appointment.

2020, c 11, s.5.

Investment of money from victims' fund, etc.

6.2(1) The public guardian and trustee may accept money from the victims' fund continued pursuant to *The Victims of Crime Act, 1995* and shall place the money in the common fund mentioned in section 47.

(2) The public guardian and trustee may accept money from other sources approved by the Lieutenant Governor in Council and shall place the money in the common fund.

1997, c.18, s.3; 2001, c.33, s.23.

Lawyer for child in protection hearing

6.3(1) In this section, “**child**”, “**court**” and “**protection hearing**” have the same meaning as in section 2 of *The Child and Family Services Act*.

(2) Notwithstanding any of the court’s other powers, if an application for a protection hearing is made, the court may direct that the child be represented by a lawyer if the court is satisfied that the interests or views of the child would not otherwise be adequately represented.

(3) If the court directs that a child be represented by a lawyer pursuant to subsection (2), the court shall refer the child to the public guardian and trustee and the public guardian and trustee shall appoint a lawyer to represent the child.

(4) On receiving a referral from anyone other than the court, the public guardian and trustee may appoint a lawyer to represent a child with respect to all matters relating to the protection of the child.

(5) If the public guardian and trustee has appointed a lawyer pursuant to subsection (3) or (4), the public guardian and trustee shall file a notice with the court that a lawyer has been appointed.

(6) For the purpose of making appointments pursuant to subsection (3) or (4), the public guardian and trustee may establish and maintain a list of lawyers and may enter into contracts with lawyers and law firms.

(7) The public guardian and trustee and a lawyer appointed pursuant to this section are entitled to do the following:

- (a) have reasonable access to the child;
- (b) obtain disclosure from parties to the protection hearing;
- (c) participate in all matters relating to the protection hearing;
- (d) address the court in a protection hearing;
- (e) file written submissions in a protection hearing;
- (f) call, examine, cross-examine and re-examine witnesses in a protection hearing.

(8) If any person fails to provide access or disclosure in accordance with clause (7)(a) or (b), the public guardian and trustee, or any person designated by the public guardian and trustee on an application without notice, may request that the court grant an order requiring that person to immediately provide access or disclosure, as the case may be, and the court may make any other order that it considers necessary to enforce the provisions in subsection (7).

(9) Before making an appointment pursuant to subsection (4), the public guardian and trustee shall consider all relevant factors, including:

- (a) any difference between the interests or views of the child and the interests or views of the parties to the protection hearing;
- (b) the nature of the protection hearing, including the seriousness and complexity of the issues;

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- (c) the ability of the child to express his or her interests or views; and
- (d) the views of the child regarding representation.

2014, c.25, s.4; 2018, c 42, s.65.

Deputy Public guardian and trustee

7(1) The Lieutenant Governor in Council may appoint one or more deputy public guardian and trustees.

(2) A deputy public guardian and trustee has the power to fix and authenticate the seal of the public guardian and trustee and shall:

- (a) perform any duties that are assigned to him by the public guardian and trustee;
- (b) in the absence of the public guardian and trustee or in the case of a vacancy in the office of public guardian and trustee, perform the duties of the public guardian and trustee.

(3) All acts performed by a deputy public guardian and trustee pursuant to this section have the same force and effect as if they had been performed by the public guardian and trustee.

1983, c.P-43.1, s.7; 2001, c.33, s.23.

Public guardian and trustee may authorize employees

7.1(1) The public guardian and trustee may authorize, in writing, any person employed pursuant to *The Public Service Act, 1998* and assigned to the office of the public guardian and trustee to do any act or thing required or permitted to be done by the public guardian and trustee.

(2) The authority given to a person by the public guardian and trustee pursuant to this section may be general or may apply to a particular case.

(3) All acts performed by a person pursuant to this section have the same effect as if they had been performed by the public guardian and trustee.

1997, c.18, s.4; 1998, c.P-42.1, s.42; 2001, c.33, s.23.

Remuneration

8 The Lieutenant Governor in Council may determine the remuneration to be received by the public guardian and trustee and a deputy public guardian and trustee.

1983, c.P-43.1, s.8; 2001, c.33, s.23.

Public servants

9 The public guardian and trustee, a deputy public guardian and trustee and all employees of the public guardian and trustee are subject to *The Public Service Act, 1998* and *The Superannuation (Supplementary Provisions) Act*.

1983, c.P-43.1, s.9; 1998, c.P-42.1, s.42; 2001, c.33, s.23.

PROPERTY OF INFANTS

Disposition of land by public guardian and trustee

10(1) Subject to subsection (2), where an infant has an interest in land and a sale, lease, mortgage or other disposition of the land is proposed to the public guardian and trustee by:

- (a) the infant's legal custodian or the guardian of the property of the infant constituted or appointed pursuant to *The Children's Law Act, 1997*;
- (b) an executor or administrator;
- (c) any responsible adult who appears to be acting in the infant's best interest;
or
- (d) the infant;

the public guardian and trustee may, if he considers it in the best interests of the infant, consent on behalf of the infant to the sale, lease, mortgage or other disposition on any terms and conditions that he considers expedient, and for that purpose the public guardian and trustee may execute the transfer or other instrument in place of the infant.

(2) The public guardian and trustee shall not consent to any sale, lease mortgage or other disposition without the consent of;

- (a) the infant, if he is over the age of 14 years; and
- (b) either:
 - (i) a guardian of the property of the infant constituted or appointed pursuant to *The Children's Law Act, 1997*, if there is one; or
 - (ii) if there is no guardian as described in subclause (i), a legal custodian of the infant.

(3) Where the public guardian and trustee consents to a sale, lease, mortgage or other disposition or where the public guardian and trustee executes a transfer or other instrument in place of the infant, the sale, lease, mortgage or other disposition is binding on the infant and is as effectual as if the infant executed it and had been of the full age of 18 years at the time.

1983, c.P-43.1, s.10; 1990-91, c.C-8.1, s.75; 2001, c.33, s.23; 2014, c.24, s.5.

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Encumbered estate

11 The public guardian and trustee may, on behalf of an infant who has an interest in land:

- (a) negotiate on behalf of the infant settlement of an encumbrance held by any person against the land;
- (b) negotiate on behalf of the infant settlement of an encumbrance held by the infant against land owned by another person;
- (c) calculate the reasonable value of any lien or encumbrance of uncertain duration against land, and authorize payment of the amount from any funds of the infant.

1983, c.P-43.1, s.11; 2001, c.33, s.23.

Disposition of land by court order

12(1) Where the public guardian and trustee does not consent to a sale, lease, mortgage or other disposition of land in which an infant has an interest, any person mentioned in subsection 10(1) may apply to the court for approval of the disposition and where the court is satisfied that it is in the infant's best interests, the court may approve the sale, lease, mortgage or other disposition on any terms and conditions that it considers expedient.

(2) On an application under this section, unless the court orders otherwise, the consent of the infant shall be filed if the infant is over the age of 14 years.

(3) Where the court makes an order under subsection (1) and the property is registered in name of the infant, it shall direct the manner of effecting the sale, lease, mortgage or other disposition and may issue a vesting order or authorize a person to execute any instrument on the infant's behalf, and a transfer or other instrument so executed is as effectual as if the infant had executed it and had been of the full age of 18 years at the time.

(4) The public guardian and trustee shall be served with notice of an application under subsection (1).

1983, c.P-43.1, s.12; 2001, c.33, s.23.

Payment of proceeds

13(1) Unless the court otherwise orders, the proceeds to which an infant is entitled from a sale, lease, mortgage or other disposition of land shall be paid to:

- (a) the guardian if there is one; or
- (b) if there is no guardian, the public guardian and trustee;

but the court, on application by the public guardian and trustee or by the guardian, may order that additional security be furnished if the court considers the amount of the security furnished pursuant to *The Children's Law Act, 1997* to be insufficient.

(2) Subsection (1) does not affect the right or authority of an executor of a will or a trustee to hold in trust the proceeds to which an infant is entitled if the will or instrument creating the trust expressly authorizes or directs the executor or trustee to do so.

1990-91, c.C-8.1, s.75; 2001, c.33, s.23; 2014, c.24, s.6.

Transactions subject to controlling trust

14 No sale, lease, mortgage or other disposition of land, or a part thereof, shall be made contrary to the provisions of the will or conveyance by which the land or part or interest in it has been devised or granted to an infant.

1983, c.P-43.1, s.14; 2001, c.33, s.23.

Payment to public guardian and trustee

15(1) Where the public guardian and trustee has received no notice that an infant has a guardian, he shall be entitled to receive money to which an infant is entitled:

- (a) as a beneficiary under a life insurance policy;
- (b) as a death benefit pursuant to *The Automobile Accident Insurance Act*;
- (c) as a beneficiary on an intestacy or under a will where the executor is not empowered to act as trustee of the infant's share and no other trustee is appointed in the will to receive the money;

and the public guardian and trustee may give a release for the money which shall be as binding and effectual as if the infant had executed it and been of the full age of 18 years at the time.

(2) Subject to subsection (3), the public guardian and trustee may, in his discretion, receive money to which an infant is entitled, from any source not mentioned in subsection (1).

(3) The public guardian and trustee shall not receive money payable to an infant where the money:

- (a) is wages or salary earned by an infant; or
- (b) is not vested absolutely in the infant and payable upon the infant's attaining the age of majority.

(4) Where:

- (a) an infant's share in an estate consists of cash or liquid securities; and
- (b) the executor or administrator of the estate or a trustee appointed in the will to hold the cash or liquid securities desires to be discharged;

the public guardian and trustee, in the discretion of the public guardian and trustee, may accept the infant's share on behalf of the infant for administration during the infant's minority and release the executor, administrator or trustee insofar as the share of the infant is concerned.

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(5) The public guardian and trustee's release pursuant to subsection (4) is as binding and effectual as if the infant had:

- (a) executed it; and
- (b) been of the full age of 18 years at the time.

1983, c.P-43.1, s.15; 1990-91, c.C-8.1, s.75; 2001, c.33, s.23; 2015, c.21, s.64.

Payment to responsible adult

16(1) Where a person holds money not in excess of \$10,000 to which an infant is entitled, the public guardian and trustee may, in his discretion, authorize payment of the money to a responsible adult acting on the infant's behalf.

(2) Where the public guardian and trustee holds money for an infant in the common fund in an amount not greater than \$10,000 he may, in his absolute discretion, pay all or part of the money to a responsible adult acting on the infant's behalf.

(3) The responsible adult to whom moneys are paid pursuant to this section may use the income and capital, without court order, only in a manner that is in the best interests of the infant.

1983, c.P-43.1, s.16; 1992, c.34, s.3; 2001, c.33, s.23.

Infant's maintenance

17(1) Where monies belonging to an infant are held by the public guardian and trustee, he may, subject to the maximum amount payable in any year that may be fixed by the regulations, apply the whole or any part of the monies for the maintenance and education of the infant or for any special circumstance or expenditure in the best interests of the infant.

(2) Where monies belonging to an infant, including any proceeds from the sale of land belonging to the infant, are held in trust for the infant by a guardian or a trustee other than the public guardian and trustee, the public guardian and trustee may authorize the trustee or guardian to apply, in addition to any amount under section 16, an amount not exceeding \$10,000 for the maintenance and education of the infant comprised of amounts not exceeding in any year:

- (a) \$3,600 for the maintenance of the infant;
- (b) the actual cost of tuition fees, books and equipment required by the infant in connection with his attendance at an educational institution; and
- (c) any additional amounts that in the opinion of the public guardian and trustee are required to meet special circumstances or expenditures in the best interests of the infant.

(3) Where a guardian or other trustee holds in trust for an infant personal property, including personal property registered in the infant's name, that does not exceed \$10,000 in value, the public guardian and trustee may authorize that guardian or trustee:

- (a) to sell and dispose of any portion of that property; and
- (b) subject to the restrictions set forth in subsection (2) in regard to the amount to be used in any year, to apply the whole or any part of the proceeds of the sale for the maintenance and education of the infant.

1983, c.P-43.1, s.17; 1990-91, c.C-8.1, s.75; 2001, c.33, s.23.

Sale of infant's shares of corporation

18(1) Where, on an application by a person who, in the opinion of the court, has a sufficient interest, the court is satisfied that it is in the best interests of an infant and necessary or advisable to sell shares in a corporation in which an infant has a beneficial interest, it may by order authorize the sale and transfer of the shares and may set any terms and conditions of sale that it considers advisable.

(2) The court may order the costs and expenses of an application under this section to be paid from the proceeds of the sale of shares authorized under subsection (1).

(3) The proceeds to which the infant is entitled from a sale of shares shall be paid to the guardian if there is one, and otherwise to the public guardian and trustee.

(4) The court may, on application by the public guardian and trustee or the guardian, order that additional security be furnished if the court considers the amount of security furnished pursuant to *The Children's Law Act, 1997* to be insufficient.

(5) An order of the court under this section is a complete indemnity and discharge to all banks, corporations, non-profit corporations and societies and their officers and servants for all acts and things done or permitted done pursuant to it.

(6) This section is not to be interpreted as requiring an order pursuant to this section for a sale of shares in a corporation in which an infant has a beneficial interest.

1983, c.P-43.1, s.18; 1989-90, c.6, s.3; 1990-91, c.C-8.1, s.75; 2001, c.33, s.23; 2014, c.24, s.7.

Release of infant's property by public guardian and trustee

19 Where the public guardian and trustee is charged with the administration of the property or interest in property of an infant, he may pay or release the property or interest to:

- (a) the guardian;
- (b) a minister of the Crown to whom the estate of the infant has been committed under an Act of the Legislature or of the Parliament of Canada; or
- (c) where the infant or person claiming entitlement is under the jurisdiction of the Department of Indian and Northern Affairs (Canada), to that department;
- (d) where the infant is a dependent adult, to his property guardian;

and upon receipt of a written acknowledgement of the payment or release, signed by the guardian, minister, the authorized representative of the Saskatchewan Region of the Department of Indian and Northern Affairs (Canada) or property guardian, as the case may be, the public guardian and trustee is released from further obligation with respect to administration of the estate or interest.

1983, c.P-43.1, s.19; 1989-90, c.18, s.10; 2001, c.33, s.23.

Appointment of public guardian and trustee as next friend or guardian of estate of an infant

20(1) With the consent of the public guardian and trustee or on the application of the public guardian and trustee made with or without notice, the court may, if it appears to the court desirable to do so:

- (a) appoint the public guardian and trustee to act as:
 - (i) litigation guardian of an infant; or
 - (ii) guardian of the property of an infant; and
- (b) specify that the appointment made pursuant to subclause (a)(i) or (ii) is limited to a particular fund or is for a special purpose.

(2) The material filed in support of an application made pursuant to subsection (1) shall consist of:

- (a) an affidavit of the public guardian and trustee; and
 - (b) any other evidence that the court may require in proof of the facts.
- (3) If the public guardian and trustee is appointed as litigation guardian or guardian of the property of an infant pursuant to this section, it is not necessary:
- (a) to issue letters of appointment; or
 - (b) to provide any security.

2020, c 11, s.6.

Application for dependants' relief

21(1) The public guardian and trustee may commence an application pursuant to *The Dependants' Relief Act, 1996* on behalf of an infant or on behalf of an adult who may lack capacity if it appears to the public guardian and trustee to be necessary or advisable or in the best interests of the infant or adult.

(2) On an application made pursuant to subsection (1), the public guardian and trustee may act as litigation guardian of the infant or adult without first obtaining a court order if:

- (a) it appears to the public guardian and trustee that no other responsible, qualified adult intends to act as litigation guardian; or
- (b) in the opinion of the public guardian and trustee, the proposed litigation guardian has interests that are adverse to those of the infant or adult.

2020, c 11, s.6.

Applications in which interest of guardian adverse

22 On all applications pertaining to property in which an infant is interested, if the infant's legal custodian or the guardian of the property of the infant constituted or appointed pursuant to *The Children's Law Act, 1997* appears to the court to have an interest adverse to that of the infant:

- (a) the court may require that notice of the application be served on the public guardian and trustee; and
- (b) for the purposes of the application, the public guardian and trustee shall act as litigation guardian of the infant.

2020, c 11, s.6.

Applications in estates or affecting infants' property

23(1) Subject to any exception in this or any other Act and unless the court dispenses with service or otherwise directs, on every application to a court:

- (a) in an estate in which an infant is or may be interested, including a future or contingent interest;
- (b) on a matter affecting property in which an infant or a person unborn has or may have an interest, including a future or contingent interest;

notice of the application shall be served on the infant's legal custodian or guardian of the property of the infant constituted or appointed pursuant to *The Children's Law Act, 1997*, if there is one, and otherwise on the public guardian and trustee.

(2) Where a legal custodian or guardian is served under this section, he shall take all steps and proceedings necessary to protect and represent the interests of the infant and for that purpose shall communicate with all proper parties.

(3) If at any time it appears to the court that the legal custodian or guardian has failed or is failing to discharge the responsibilities mentioned in subsection (2), it may order that notice of the application be served on the public guardian and trustee, and the public guardian and trustee shall, for the purpose of the application, act as litigation guardian of the infant.

(4) Subsection (1) does not apply to matters falling within the provisions of section 46 of *The Family Property Act*.

(5) Notwithstanding subsection (1), the public guardian and trustee shall be served with notice of all applications brought under this Act.

1983, c.P-43.1, s.23; 1990-91, c.C-8.1, s.75; 2001, c.51, s.11; 2001, c.33, s.10 and 23; 2020, c 11, s.7.

Right of public guardian and trustee to appeal

24(1) The public guardian and trustee has the right to appeal any judgment or order of any Saskatchewan court respecting damages claimed by or payable to an infant or respecting property or land in which an infant has an interest, notwithstanding that the public guardian and trustee may not have been previously named as a party or otherwise involved in the cause or proceedings.

(2) An appeal under subsection (1) lies to the appropriate court having appellate jurisdiction over the cause or proceedings.

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(3) The public guardian and trustee may be allowed his costs of appeal payable out of the funds of the infant if there are funds of the infant available or the court may order that any other party to the proceeding pay the costs of the public guardian and trustee.

1983, c.P-43.1, s.24; 2001, c.33, s.23.

Settlement of damages on behalf of infant

25(1) Where an action is maintainable on behalf of an infant for damages for personal injury or for damages under *The Fatal Accidents Act*, and:

(a) in the case of a personal injury action, the legal custodian or litigation guardian acting on behalf of the infant; or

(b) in the case of an action for damages under *The Fatal Accidents Act*, the personal representative of the person deceased or the person maintaining or authorized to maintain an action pursuant to *The Fatal Accidents Act*;

has, before or after the commencement of an action, agreed on settlement of the claim or action, the public guardian and trustee may, if he is satisfied that the amount of the settlement and the apportionment of damages and any agreement relating to costs is fair and reasonable and in the best interests of the infant, approve the settlement.

(2) Where the public guardian and trustee approves a settlement pursuant to subsection (1), he may release the defendant from further claims in connection with the injury or fatal accident, and the written approval of the public guardian and trustee is binding on the infant and is as effectual as if the infant had been of the full age of 18 years and executed a consent and release.

(3) If the public guardian and trustee declines to review or refuses to approve a settlement pursuant to subsection (1), the legal custodian, litigation guardian, personal representative of the deceased person or the person maintaining or authorized to maintain an action pursuant to *The Fatal Accidents Act*, or the defendant:

(a) may apply to the court requesting that the court review and issue an order confirming the settlement; and

(b) must give the opposite party and the public guardian and trustee at least 10 days' notice of the application made pursuant to clause (a).

(4) The court may, on an application under subsection (3), confirm or disallow the settlement and, if the settlement is confirmed, the defendant is discharged from further claims in connection with the injury or fatal accident.

(5) The funds to which an infant is entitled from a settlement confirmed under this section shall be paid to the infant's guardian, if there is one, and otherwise to the public guardian and trustee, but the court, on application by the public guardian and trustee or by the guardian, may order that additional security be furnished if the court considers the amount of the security furnished pursuant to *The Children's Law Act, 1997* to be insufficient.

1983, P-43.1, s.25; 1984-85-86, c.34, s.4; 1990-91, c.C-8.1, s.75; 2001, c.33, s.23; 2014, c.24, s.9; 2020, c 11, s.8.

Solicitor's fees on settlement application

26(1) In approving a settlement on behalf of an infant under section 25, the public guardian and trustee may also approve and agree to:

- (a) the amount of fees payable to a solicitor who acted on behalf of the infant;
- (b) payment of the fees approved and agreed pursuant to clause (a) from the funds payable to the infant.

(2) Where the public guardian and trustee considers that the suggested fees mentioned in subsection (1) are greater than he considers to be reasonable having regard to all the circumstances, the person requesting the fees may make an application to the court for an order fixing the fees.

(3) The public guardian and trustee shall be served with notice of an application under subsection (2).

1983, c.P-43.1, s.26; 2001, c.33, s.23.

Certificate of no infants

27 Where a certificate that no infants are interested in an estate is required for the purposes of *The Land Titles Act, 2000* and the regulations made pursuant to that Act, the right of an infant to make an application for relief under *The Dependants' Relief Act, 1996* is deemed not to be an interest in an estate after six months from the grant of letters probate or letters of administration, unless a judge's order has been made extending the time for an application or the public guardian and trustee has reason to believe that an application is contemplated.

1983, c.P-43.1, s.27; 2000, c.L-5.1, s.447; 2001, c.33, s.23; 2014, c.24, s.10.

Authority to execute instruments

28(1) Notwithstanding any other Act, the public guardian and trustee has the authority to execute, on behalf of any infant, any instrument or application for registration pursuant to *The Land Titles Act, 2000*.

(2) Any instrument or application for registration executed by the public guardian and trustee for the purposes mentioned in subsection (1) is as binding and effectual as if the infant had executed it and had been the full age of 18 years at the time.

2000, c.L-5.1, s.448; 2001, c.33, s.23.

CERTIFICATES OF INCAPACITY AND CAPACITY

Interpretation of sections 28.2 to 28.9

28.1 In sections 28.2 to 28.9:

- (a) **“chief psychiatrist”** means a chief psychiatrist as defined in *The Mental Health Services Act*;

- (b) “**facility**” means a mental health centre, psychiatric ward or mental health clinic, as those terms are defined in *The Mental Health Services Act*;
- (c) “**in-patient**” means an in-patient as defined in *The Mental Health Services Act*;
- (d) “**nearest relative**” means the nearest relative as defined in *The Mental Health Services Act*;
- (e) “**physician**”, except a physician who resides outside Saskatchewan and who conducts an examination on a person mentioned in subsection 28.4(4), means a physician as defined in *The Mental Health Services Act*;
- (f) “**review panel**” means a review panel as defined in *The Mental Health Services Act*.

2014, c.24, s.11.

Certificates re in-patient

28.2(1) If a person is an in-patient, the chief psychiatrist of the facility in which the person is an in-patient may cause the person to be examined by a physician to determine whether the person has the capacity to manage his or her estate and, if it is found that the person lacks that capacity, the chief psychiatrist shall:

- (a) issue a certificate of incapacity with respect to that person;
- (b) forward the certificate to the public guardian and trustee; and
- (c) notify the patient and the nearest relative of the patient that the certificate has been issued.

(2) When the chief psychiatrist is about to issue a certificate of incapacity pursuant to subsection (1) and the chief psychiatrist is of the opinion that it is imperative that the patient’s estate be brought immediately under the control of the public guardian and trustee, the chief psychiatrist shall immediately inform the public guardian and trustee of his or her opinion and that a certificate of incapacity is about to be issued and forwarded.

(3) When an in-patient with respect to whom a certificate of incapacity has been issued is to be released from the facility and he or she is not required to return to the facility within a specified period, the chief psychiatrist of the facility shall cause the person to be examined by a physician to determine whether the person has the capacity to manage his or her estate and, if it is found that:

- (a) he or she lacks the capacity to manage his or her estate, the chief psychiatrist shall notify the in-patient, his or her nearest relative and the public guardian and trustee of the result of the examination; or
- (b) he or she has the capacity to manage his or her estate, the chief psychiatrist shall issue a certificate of capacity with respect to the in-patient, forward the certificate to the public guardian and trustee and notify the patient and his or her nearest relative that the certificate has been issued.

2014, c.24, s.11.

Certificates re other persons

28.3(1) If a chief psychiatrist considers it advisable, he or she may make arrangements for a person to be examined by any physician whom the chief psychiatrist may designate to determine whether the person has the capacity to manage his or her estate.

(2) If a physician considers it advisable, he or she may conduct an examination without a designation pursuant to subsection (1) to determine whether a person has the capacity to manage his or her estate and, if the physician finds that the person lacks that capacity, the physician shall notify the chief psychiatrist of his or her finding.

(3) If it is found following an examination pursuant to subsection (1) or (2) that the person lacks the capacity to manage his or her estate, the chief psychiatrist shall:

- (a) issue a certificate of incapacity with respect to that person;
- (b) forward the certificate to the public guardian and trustee; and
- (c) notify the person and the nearest relative of the person that the certificate has been issued.

2014, c.24, s.11.

Request for re-examination

28.4(1) A person with respect to whom a certificate of incapacity has been issued pursuant to section 28.2 or 28.3 may be examined to determine whether he or she has the capacity to manage his or her estate:

- (a) at the request of the person;
- (b) at the request of the nearest relative of the person; or
- (c) if the chief psychiatrist considers it advisable.

(2) If the request pursuant to subsection (1) is made to the chief psychiatrist, the chief psychiatrist shall designate a physician to make the examination and determination pursuant to subsection (1).

(3) If the request pursuant to subsection (1) is made to a physician, the physician may examine the person to determine whether he or she has the capacity to manage his or her estate.

(4) If the person to be examined pursuant to subsection (1), (2) or (3) resides outside Saskatchewan, the person may be examined in the province, territory or state in which he or she resides.

(5) If the physician who conducts the examination on a person mentioned in subsection (4) resides outside Saskatchewan, he or she must be a registered physician in good standing in the province, territory or state in which the examination is made, and he or she is not required to be registered with The College of Physicians and Surgeons of the Province of Saskatchewan.

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- (6) If, on examination pursuant to this section it is found that the person examined lacks the capacity to manage his or her estate:
- (a) the physician who performed the examination pursuant to a designation by a chief psychiatrist shall notify the chief psychiatrist who designated the physician of the result of the examination; or
 - (b) the physician who performed the examination in the absence of a designation by a chief psychiatrist shall notify the chief psychiatrist of a facility of the result of the examination.
- (7) On receipt of a notification pursuant to subsection (6), the chief psychiatrist shall issue a certificate of incapacity.
- (8) The chief psychiatrist mentioned in clause (6)(a) or (b) shall notify the person examined, that person's nearest relative and the public guardian and trustee of the result of the examination.
- (9) If, on examination pursuant to this section it is found that the person examined has the capacity to manage his or her estate:
- (a) the physician who performed the examination pursuant to a designation by a chief psychiatrist shall notify the chief psychiatrist who designated the physician of the result of the examination; or
 - (b) the physician who performed the examination in the absence of a designation by a chief psychiatrist shall notify the chief psychiatrist of a facility of the result of the examination.
- (10) The chief psychiatrist mentioned in clause (9)(a) or (b) shall:
- (a) issue a certificate of capacity with respect to the person examined;
 - (b) forward the certificate to the public guardian and trustee; and
 - (c) notify the person examined and his or her nearest relative that the certificate has been issued.
- (11) A chief psychiatrist may restrict the number of examinations pursuant to subsection (1), (2), (3) or (4) of any one person to one examination during any period of six months.

2014, c.24, s.11.

Transitional

- 28.5(1)** Every certificate of incompetence in effect on the day before the day on which this section comes into force and issued on the finding that a person was not competent to manage his or her own estate is deemed to be a certificate of incapacity issued because the person lacked the capacity to manage his or her estate.
- (2) Every certificate of incompetence issued pursuant to *The Mental Health Act* or *The Mentally Disordered Persons Act* and in effect on the day before the day on which this section comes into force is deemed to be a certificate of incapacity issued pursuant to this Act.

2014, c.24, s.11.

Notice re review panel

28.6 If a certificate of incapacity is issued with respect to a person, the chief psychiatrist shall immediately notify that person and his or her nearest relative of:

- (a) the existence and function of the review panel appointed for the region where the facility is located;
- (b) the name and address of the chairperson of the review panel; and
- (c) the right of appeal to the review panel provided in section 28.7.

2014, c.24, s.11.

Appeal to review panel

28.7(1) Subject to subsection (4), a person with respect to whom a certificate of incapacity has been issued or his or her nearest relative on his or her behalf may, in writing, appeal the decision to issue the certificate by delivering an appeal to the chairperson of the review panel alleging that a certificate of incapacity ought not to have been issued or that it should be revoked.

(2) In this section, “**appellant**” means a person with respect to whom a certificate of incapacity has been issued who makes an appeal, or on behalf of whom an appeal is made, pursuant to subsection (1).

(3) When the chairperson of the review panel receives an appeal pursuant to subsection (1), the chairperson shall notify the public guardian and trustee, the chief psychiatrist who issued the certificate of incapacity and any other person that the review panel may direct.

(4) Only one appeal may be made to a review panel:

- (a) with respect to the issuance of a certificate of incapacity; or
- (b) if a certificate of incapacity has not been revoked on the basis of an examination pursuant to subsection 28.2(3) or section 28.4, with respect to the opinion of the physician who conducted that examination, each time an examination is made.

(5) On receipt by the chairperson of the review panel of a request for an appeal pursuant to this section, the review panel:

- (a) shall immediately carry out any investigation that it considers necessary to determine expeditiously the validity of the appeal; and
- (b) may invite the appellant and other persons considered by the review panel to be affected by the appeal to testify or produce evidence relating to the appeal.

(6) Subsection 32(8) of *The Mental Health Services Act* applies, with any necessary modification, to a review panel acting pursuant to this section.

(7) The appellant has the right to be personally present when oral evidence is presented to the review panel, unless the review panel is of the opinion that the appellant’s presence would be detrimental to his or her health, and, in that case, the appellant has the right to be represented by any other person.

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- (8) The appellant or the appellant's representative has the right of cross-examination.
- (9) The review panel shall decide whether the certificate of incapacity is to be revoked or remain in effect.
- (10) The chairperson of the review panel shall make a written report of the review panel's decision and shall, within 10 business days after the day that the appeal was received, or within any further period that may be fixed by the minister, forward the report to:
 - (a) the appellant;
 - (b) the nearest relative, if the nearest relative brought the appeal;
 - (c) the chief psychiatrist who issued the certificate of incapacity; and
 - (d) the public guardian and trustee.
- (11) If the review panel does not find in favour of the appellant, the chairperson of the review panel shall include in the written report forwarded to the appellant pursuant to subsection (10) a notice of the right to apply to the court provided for in section 28.8.

2014, c.24, s.11.

Application to court

- 28.8(1)** A person who made an appeal to a review panel pursuant to section 28.7 and who is aggrieved by its decision may apply to the court within 20 business days after the date of the decision for an order revoking the certificate of incapacity.
- (2) An application must be served on:
 - (a) the public guardian and trustee;
 - (b) the chief psychiatrist who issued the certificate of incapacity; and
 - (c) any other person that the court may direct.
 - (3) On an application pursuant to this section, the court may order that the person for whom a certificate of incapacity has been issued submit to a further examination by a physician.
 - (4) The court, after considering all of the evidence, shall:
 - (a) determine whether a person for whom a certificate of incapacity has been issued has the capacity to manage his or her estate; and
 - (b) direct that the certificate of incapacity remain in effect or be revoked.
 - (5) The court may make any order as to the costs of an appeal pursuant to this section that it considers appropriate.

(6) With leave of a judge of the Court of Appeal, any of the following persons may appeal a decision of the court made pursuant to this Act to the Court of Appeal on a question of law or jurisdiction:

- (a) the person for whom a certificate of incapacity has been issued or his or her nearest relative on his or her behalf;
- (b) a person served pursuant to subsection (2).

(7) An application for leave to appeal pursuant to subsection (6) must be made within 20 business days after the date of the decision for which leave to appeal is being sought or within any further time that a judge of the Court of Appeal may allow.

2014, c.24, s.11.

Deemed revocation of certificate of incapacity

28.9(1) Subject to subsection (2), every certificate of incapacity is deemed to be revoked one year from the date the certificate of incapacity is issued.

(2) A certificate of incapacity issued with respect to a person is not deemed to be revoked pursuant to subsection (1) if:

- (a) proceedings have been commenced pursuant to *The Adult Guardianship and Co-decision-making Act* to appoint a property guardian for that person;
- (b) a property guardian for that person has been appointed pursuant to *The Adult Guardianship and Co-decision-making Act*; or
- (c) the public guardian and trustee is property guardian for that person.

2014, c.24, s.11.

**PUBLIC GUARDIAN AND TRUSTEE AS PROPERTY
CO-DECISION-MAKER, PROPERTY GUARDIAN OR
TEMPORARY PROPERTY GUARDIAN**

Appointment to act

29(1) The public guardian and trustee shall act as the property co-decision-maker or temporary property guardian of a dependent adult where the public guardian and trustee has been appointed property co-decision-maker or temporary property guardian pursuant to subsection (4) or *The Adult Guardianship and Co-decision-making Act*.

(2) Subject to subsection (3.1), the public guardian and trustee shall act as the property guardian of a dependent adult where:

- (a) a certificate of incapacity has been issued pursuant to this Act and an acknowledgement to act in the prescribed form has been signed under seal by the public guardian and trustee; or
- (b) the public guardian and trustee has been appointed property guardian pursuant to subsection (4) or *The Adult Guardianship and Co-decision-making Act*.

(3) For the purposes of clause (2)(a), the public guardian and trustee shall sign under seal an acknowledgment to act if:

(a) no person applies, appears to be interested in applying or appears to the public guardian and trustee to be suitable to apply pursuant to *The Adult Guardianship and Co-decision-making Act* to be appointed property guardian of a person with respect to whom a certificate of incapacity has been issued pursuant to this Act; and

(b) the public guardian and trustee is of the opinion that the estate or part of the estate requires administering.

(3.01) If, pursuant to clause (3)(b), the public guardian and trustee is of the opinion that only part of the estate requires administering, the public guardian and trustee shall set out in the acknowledgment to act any limitation on its role as property guardian.

(3.1) If an acknowledgment to act has been signed under seal pursuant to subsection (3) and the public guardian and trustee is of the opinion that the signing of the acknowledgment to act was done in error or was not appropriate and should not have been done, the public guardian and trustee may revoke the acknowledgment to act and it is deemed for the purposes of subclause 19(1)(g.1)(ii) of *The Powers of Attorney Act, 2002* not to have been signed.

(3.2) If an acknowledgment to act has been signed under seal pursuant to subsection (3) and the public guardian and trustee is of the opinion that the estate no longer requires administering, the public guardian and trustee may revoke the acknowledgment to act.

(4) The court may, with the consent of the public guardian and trustee, make an order appointing the public guardian and trustee as property co-decision-maker, property guardian or temporary property guardian where:

(a) a person has applied pursuant to *The Adult Guardianship and Co-decision-making Act* for an order appointing him or her as property co-decision-maker, property guardian or temporary property guardian of a dependent adult and it appears to the court that it would not be in the best interests of the dependent adult to appoint the applicant as property co-decision-maker, property guardian or temporary property guardian;

(b) a property co-decision-maker, property guardian or temporary property guardian of a dependent adult appointed pursuant to *The Adult Guardianship and Co-decision-making Act* resigns or is discharged and no alternate decision-maker who has been appointed pursuant to section 64.1 of that Act is able and willing to act; or

(c) an alternate decision-maker who was appointed pursuant to *The Adult Guardianship and Co-decision-making Act* and who has assumed the position of a property co-decision-maker or property guardian resigns or is discharged.

(5) An order appointing the public guardian and trustee as property co-decision-maker, property guardian or temporary property guardian, or an acknowledgment to act mentioned in this section signed under seal by the public guardian and trustee, does not preclude any other person from applying to the court pursuant to *The Adult Guardianship and Co-decision-making Act* to be appointed as property co-decision-maker, property guardian or temporary property guardian in place of the public guardian and trustee.

(6) Where the public guardian and trustee acts as property co-decision-maker, property guardian or temporary property guardian pursuant to clause (2)(a), subsection (4) or *The Adult Guardianship and Co-decision-making Act*, the public guardian and trustee's authority as property co-decision-maker, property guardian or temporary property guardian is the authority given to the public guardian and trustee by sections 30 to 31 of this Act.

2001, c.33, s.12; 2011, c.1, s.18; 2014, c.24, s.12;
2020, c.11, s.9.

Authority of public guardian and trustee as property guardian

30(1) Subject to the court order appointing the public guardian and trustee, the public guardian and trustee, in his or her capacity as property guardian of a dependent adult, has the authority to:

- (a) do all things that the dependent adult could do if he or she had the capacity to manage his or her estate, including the power to sell, mortgage or otherwise dispose of the real property of the dependent adult and to execute any document that would be considered an instrument for the purposes of *The Land Titles Act, 2000*, including an application for registration pursuant to that Act;
- (b) acquire anything that in his or her opinion is necessary or desirable to administer the dependent adult's estate;
- (c) bring, maintain or defend an action or proceeding with respect to the dependent adult or his or her property;
- (d) compromise or otherwise settle any claim by or against the dependent adult;
- (e) make any provision he or she considers expedient for the maintenance or benefit of the dependent adult; and
- (f) make any provision he or she considers expedient or desirable for the support and maintenance of anyone dependent on the dependent adult.

(2) Anything done by the public guardian and trustee as property guardian pursuant to the authority conferred on him or her by this Act is binding on the dependent adult for whom the public guardian and trustee is property guardian in the same manner and to the same extent as if the dependent adult had done the thing himself or herself and had been an adult capable of doing so at the time.

2001, c.33, s.13; 2014, c.24, s.13.

Authority of public guardian and trustee as property co-decision-maker

30.1(1) Subject to the court order appointing the public guardian and trustee, the public guardian and trustee, in his or her capacity as property co-decision-maker of a dependent adult, may advise the dependent adult respecting anything relating to the matters mentioned in section 30 and, subject to subsection (2), shall share with the dependent adult the authority to make decisions respecting those matters and may do all things necessary to give effect to the authority vested in him or her.

(2) Where the public guardian and trustee is appointed as a property co-decision-maker, section 41 and subsection 42(2) of *The Adult Guardianship and Co-decision-making Act* apply.

2001, c.33, s.13.

Authority of public guardian and trustee as temporary property guardian

30.2 Subject to the court order appointing the public guardian and trustee, the public guardian and trustee, in his or her capacity as temporary property guardian of a dependent adult, has the authority necessary to protect the dependent adult's estate from serious damage or loss and to provide the dependent adult with the necessities of life.

2001, c.33, s.13.

Additional powers

31(1) In addition to the powers set out in section 30, the public guardian and trustee has the power:

- (a) to administer the estate that the property guardian was administering until a new property guardian is appointed with all the powers conferred by this Act if:
 - (i) the property guardian dies and has not made a testamentary nomination of another property guardian and no alternate property guardian has been appointed; or
 - (ii) the property guardian becomes a dependent adult and no alternate property guardian has been appointed;
 - (b) to take any steps that he or she considers necessary for the prudent management of the property of a deceased person for whom the public guardian and trustee was property guardian:
 - (i) pending the grant of letters probate or letters of administration; or
 - (ii) if letters probate or letters of administration are not required, until the estate can be delivered to a proper representative for the estate;
 - (c) to apply to the court for letters of administration in respect of the estate of a deceased person where a dependent adult for whom he acts:
 - (i) is a beneficiary under the will and there is no executor or the executor has renounced probate;
 - (ii) is entitled to the estate or a portion of the estate under *The Intestate Succession Act, 2019*; or
 - (iii) is the executor or the administrator of the deceased person's estate.
- (1.1) The public guardian and trustee's powers mentioned in clause (1)(a) commence on the day on which the public guardian and trustee signs under the public guardian and trustee's seal an acknowledgement to act in similar form to the acknowledgement mentioned in subsection 29(3).
- (2) Where the public guardian and trustee applies for letters of administration under this section he has the same priority of right to a grant as the dependent adult would have if he or she were an adult capable of making the application.
- (3) The public guardian and trustee is not required to give a bond or security when he acts or is appointed under this section.

1983, c.P-43.1, s.31; 1989-90, c.18, s.10; 1992, c.62, s.28; 2001, c.33, s.14 and 23; 2011, c.1, s.18; 2014, c.24, s.14; 2020, c.11, s.10.

Public guardian and trustee may request will

31.1(1) Where the public guardian and trustee has the power to administer the estate of a dependent adult, the public guardian and trustee may request and receive an original will made by the dependent adult from any person, including a lawyer, who has possession of it, and that person shall provide the will to the public guardian and trustee when requested to do so.

(2) A person who had possession of the will before providing it to the public guardian and trustee may retain a copy.

1997, c.18, s.5; 2001, c.33, s.23.

Service on person of unsound mind

32(1) Where it is necessary to serve any court process on a person who may lack capacity and who has no property decision-maker, whether or not that person is a dependent adult, the person seeking to effect service may make an application to the court, and the court may direct that service be effected by delivering a copy of the process to the public guardian and trustee or to any other person the court considers to be suitable.

(2) If the court directs service on the public guardian and trustee pursuant to subsection (1) and if the public guardian and trustee consents, the public guardian and trustee shall act as litigation guardian of the person alleged to lack capacity after 30 days from the date of the order made pursuant to subsection (1), unless the court directs otherwise.

(3) If the court directs service on another person pursuant to subsection (1) and if that person consents, the person directed to be served shall act as litigation guardian of the person alleged to lack capacity from the date on which service of the court process is effected, unless the court directs otherwise.

1984-85-86, c.34, s.6; 1989-90, c.18, s.10; 2000, c.A-5.3, s.84; 2001, c.33, s.23; 2014, c.24, s.15; 2020, c.11, s.11.

Notice to commence court proceedings

33(1) In cases where section 63 of *The Adult Guardianship and Co-decision-making Act* does not apply, no action, suit or proceeding, whether judicial or extra-judicial, shall be brought against or with respect to:

- (a) a person with respect to whom a certificate of incapacity has been issued or order made pursuant to section 29; or
- (b) the estate of a person described in clause (a);

during the period commencing on the date of the issue of the certificate or order and ending on the date of the issue of a certificate of capacity or the date that a certificate of incapacity is revoked pursuant to this Act, or the date of an order declaring that the dependent adult is no longer in need of a property guardian, unless 30 days' written notice of the intention to do so setting out particulars of the proposed action, suit or proceeding has been given to the public guardian and trustee.

(2) The public guardian and trustee may, before or after an action, suit or proceeding is brought, waive the notice required by subsection (1).

1983, c.P-43.1, s.33; 1989-90, c.6, s.5; 1989-90, c.18, s.10; 1992, c.34, s.4; 2000, c.A-5.3, s.84; 2001, c.33, s.23; 2014, c.24, s.16.

c. P-36.3**PUBLIC GUARDIAN AND TRUSTEE****Notice to issue judgment or execution**

34 In cases where section 71 of *The Adult Guardianship and Co-decision-making Act* does not apply, during the period commencing on the date of the issue of an order pursuant to section 29 or a certificate of incapacity pursuant to this Act and ending on the date of the issue of a certificate of capacity or the date that a certificate of incapacity is revoked pursuant to this Act, or the date of an order declaring that the dependent adult is no longer in need of a property guardian:

(a) no judgment shall be entered against the person named in the certificate in an action or proceeding brought or taken against him before the date of the issue of the certificate of incapacity; and

(b) no execution shall be issued upon a judgment obtained against the person named in the certificate before the date of the issue of a certificate of incapacity;

unless 30 days' written notice of intention to do so has been given to the public guardian and trustee.

1983, c.P-43.1, s.34; 1989-90, c.18, s.10; 1992, c.34, s.5; 2000, c.A-5.3, s.84; 2001, c.33, s.23; 2014, c.24, s.17.

Interest in disposition of property

34.1(1) A dependent adult and the dependent adult's heirs, executors, administrators, next of kin, devisees, legatees and assigns have the same interest in the proceeds of any sale, mortgage or other disposition of the dependent adult's real property that they would have had in the property if no sale, mortgage or other disposition had been made.

(2) Any surplus proceeds from the sale, mortgage or disposition of property mentioned in subsection (1) are deemed to be of the same nature as the property sold, mortgaged or disposed of.

(3) The public guardian and trustee may direct that the proceeds mentioned in this section be held in a separate account.

2001, c.33, s.15.

Notice to Registrar of Titles

35(1) Where the public guardian and trustee acts as property guardian of a dependent adult pursuant to section 29 or 31, the public guardian and trustee shall notify the Registrar of Titles, in accordance with section 40 of *The Land Titles Act, 2000*, of the public guardian and trustee's authority to act, accompanied by a notice that sets out the titles for which the dependent adult is a registered owner and the interests for which the dependent adult is an interest holder.

(2) Once the Registrar of Titles has been notified in accordance with subsection (1), no application for a transfer of title or for registration of an assignment of an interest to which the public guardian and trustee's notice applies may be registered without the public guardian and trustee's consent.

2000, c.L-5.1, s.450; 2001, c.33, s.23.

Withdrawal or correction of notice

36(1) In any of the circumstances mentioned in subsection (2), the public guardian and trustee shall, as the case may require:

- (a) notify the Registrar of Titles of the withdrawal of the notice mentioned in section 35; or
- (b) send an additional notice to the Registrar of Titles, setting out the titles and interests affected.

(2) The public guardian and trustee shall notify the Registrar of Titles pursuant to subsection (1) where:

- (a) the public guardian and trustee discovers that another person is property guardian of a person for whom the public guardian and trustee is acting pursuant to section 29;
- (b) the public guardian and trustee ceases to act as property guardian of a person pursuant to section 38; or
- (c) an additional notice is required to notify the Registrar of Titles of an addition or deletion to a notice mentioned in section 35.

(3) Where a title or an interest to which the public guardian and trustee's notice applies is transferred or assigned, and the transfer or assignment is signed by the public guardian and trustee, the registration of the transfer of title or of the assignment of the interest in the Land Titles Registry is deemed to be a withdrawal of the notice mentioned in section 35.

2000, c.L-5.1, s.450; 2001, c.33, s.23.

Appointment as property guardian in Saskatchewan

37(1) The minister may, where he is satisfied that an official of another province of Canada is property guardian of a dependent adult or holds a position similar to that of property guardian in another province and that person has property in Saskatchewan, by order appoint that official to be the property guardian of the person in Saskatchewan.

(2) A property guardian appointed under subsection (1) has the same powers as are conferred upon the public guardian and trustee by this Act.

1983, c.P-43.1, s.37; 1984-85-86, c.34, s.8;
1989-90, c.18, s.10; 2001, c.33, s.23.

Powers in another jurisdiction

37.1 Where the public guardian and trustee acts in any of the following capacities for a person in Saskatchewan, the public guardian and trustee may act in that capacity for that person in another jurisdiction in accordance with the laws and procedures in that jurisdiction:

- (a) a litigation guardian;
- (b) a personal co-decision-maker, personal guardian, temporary personal guardian, property co-decision-maker, property guardian or temporary property guardian, whether appointed pursuant to this Act or *The Adult Guardianship and Co-decision-making Act*.

2001, c.33, s.16.

c. P-36.3**PUBLIC GUARDIAN AND TRUSTEE****Termination of authority**

38(1) Where the public guardian and trustee is acting as property guardian of a dependent adult, he shall cease to act when:

- (a) he receives a certificate of capacity in respect of the person;
 - (a.1) the certificate of incapacity is revoked pursuant to this Act;
 - (a.2) the public guardian and trustee revokes the acknowledgment to act signed pursuant to subsection 29(3);
 - (b) he receives a copy of a court order appointing another property guardian or discharging the public guardian and trustee from his duties; or
 - (c) the person dies.
- (2) When the public guardian and trustee ceases to act as property guardian pursuant to subsection (1) he shall release the property he holds to the person for whom he holds it, and submit along with it an accounting of the guardianship if requested to do so.
- (3) When the public guardian and trustee is acting as property co-decision-maker or temporary property guardian for a dependent adult, clauses (1)(b) and (c) and subsection (2) apply with any necessary modification.

1983, c.P-43.1, s.38; 1989-90, c.6, s.7; 1989-90, c.18, s.10; 2001, c.33, s.17 and 23; 2014, c.24, s.18; 2020, c.11, s.12.

Financing expenses of public guardian and trustee

39(1) Where there are insufficient funds included in the property of which the public guardian and trustee is property guardian to defray expenses incurred by him in the administration of the property, those expenses may be paid initially out of moneys appropriated by the Legislature for the purposes of this Act, but the amount of the expenses so paid shall be payable to the public guardian and trustee out of the property.

(2) Notwithstanding subsection (1), the Minister of Finance may advance to the public guardian and trustee, by way of loan upon any terms and conditions that the Minister of Finance sees fit, the sums that the public guardian and trustee may request for the purposes of the administration of property of which he is property guardian.

1983, c.P-43.1, s.39; 1989-90, c.18, s.10; 2001, c.33, s.23.

Lien for expenses

40(1) The public guardian and trustee may apply to the Registrar of Titles to register an interest based on a lien for the expenses mentioned in subsection (2) against the affected titles or interests.

(2) An application pursuant to subsection (1) must be accompanied by a statement that contains a description of the parcels of land affected and that is signed by the public guardian and trustee certifying the amount of moneys expended pursuant to subsection 39(1) or lent pursuant to subsection 39(2) or the administration fees that are payable in connection with the administration of property of which the public guardian and trustee has been the property guardian.

- (3) An interest registered in accordance with this section binds and forms a lien and charge on the parcels of land contained in all titles against which the interest is registered, for the amount certified in the statement mentioned in subsection (2) to the same extent as if the title was charged in writing by the owner of land under his or her hand and seal.
- (4) After registration of the interest in accordance with this section, the minister may, if the minister considers it expedient to do so, proceed in court to realize on the lien and charge created by the lien.
- (5) The interest registered pursuant to this section may be discharged, in whole or in part, by the registration of a discharge executed by the public guardian and trustee.

2000, c.L-5.1, s.451; 2001, c.33, s.23.

PUBLIC GUARDIAN AND TRUSTEE AS PERSONAL
CO-DECISION-MAKER, PERSONAL GUARDIAN OR
TEMPORARY PERSONAL GUARDIAN

Appointment to act

- 40.1(1)** The public guardian and trustee shall act as the personal co-decision-maker, personal guardian or temporary personal guardian of a dependent adult where the public guardian and trustee has been appointed personal co-decision-maker, personal guardian or temporary personal guardian pursuant to subsection (2) or *The Adult Guardianship and Co-decision-making Act*.
- (2) The court may, with the consent of the public guardian and trustee, make an order appointing the public guardian and trustee as personal co-decision-maker, personal guardian or temporary personal guardian where:
- (a) a person has applied pursuant to *The Adult Guardianship and Co-decision-making Act* for an order appointing him or her as personal co-decision-maker, personal guardian or temporary personal guardian of a dependent adult and it appears to the court that it would not be in the best interests of the dependent adult to appoint the applicant as personal co-decision-maker, personal guardian or temporary personal guardian;
 - (b) a personal co-decision-maker, personal guardian or temporary personal guardian of a dependent adult appointed pursuant to *The Adult Guardianship and Co-decision-making Act* resigns or is discharged and no alternate decision-maker who has been appointed pursuant to section 64.1 of that Act is able and willing to act; or
 - (c) an alternate decision-maker who was appointed pursuant to *The Adult Guardianship and Co-decision-making Act* and who has assumed the position of a personal co-decision-maker or personal guardian resigns or is discharged.
- (3) An order appointing the public guardian and trustee as personal co-decision-maker, personal guardian or temporary personal guardian does not preclude any other person from applying to the court pursuant to *The Adult Guardianship and Co-decision-making Act* to be appointed as personal co-decision-maker, personal guardian or temporary personal guardian in place of the public guardian and trustee.

c. P-36.3

PUBLIC GUARDIAN AND TRUSTEE

(4) Where the public guardian and trustee acts as personal co-decision-maker, personal guardian or temporary personal guardian pursuant to subsection (2) or *The Adult Guardianship and Co-decision-making Act*, the public guardian and trustee's authority as personal co-decision-maker, personal guardian or temporary personal guardian is the authority given to the public guardian and trustee by sections 40.11 to 40.3 of this Act.

2001, c.33, s.18; 2020, c.11, s.13.

Authority of public guardian and trustee as personal guardian

40.11(1) Subject to the court order appointing the public guardian and trustee, the public guardian and trustee, in his or her capacity as personal guardian of a dependent adult, has authority with respect to the following matters:

- (a) decisions respecting where, with whom and under what conditions the dependent adult is to live, whether permanently or temporarily;
- (b) decisions respecting with whom the dependent adult is to associate and who may have access to the dependent adult;
- (c) decisions respecting whether the dependent adult should engage in social activities and, if so, the nature and extent of those activities and related matters;
- (d) decisions respecting whether the dependent adult should work and, if so, the nature or type of work, for whom he or she is to work and related matters;
- (e) decisions respecting whether the dependent adult should participate in any educational, vocational or other training and, if so, the nature and extent of that training and related matters;
- (f) decisions respecting whether the dependent adult should apply for any licence, permit, approval or other consent or authorization required by law that does not relate to the estate of the dependent adult;
- (g) subject to the powers of any litigation guardian, decisions respecting the carrying on of any legal proceeding that does not relate to the estate of the dependent adult;
- (h) subject to *The Health Care Directives and Substitute Health Care Decision Makers Act, 2015*, decisions respecting the dependent adult's health care, including decisions respecting admission to a health care facility or respecting treatment of the dependent adult;
- (i) subject to regulations pursuant to *The Adult Guardianship and Co-decision-making Act*, decisions respecting the restraint of the dependent adult's movement or behaviour by the use of a device, medication or physical force, where necessary to protect the health or safety of the dependent adult or others;
- (j) decisions respecting the dependent adult's diet, dress, grooming, hygiene and other matters of daily living;
- (k) decisions respecting any other matters specified by the court and required to be made by the public guardian and trustee in the best interests of the dependent adult.

(2) Anything done by the public guardian and trustee as personal guardian pursuant to the authority conferred on him or her by this Act is binding on the dependent adult for whom the public guardian and trustee is personal guardian in the same manner and to the same extent as if the dependent adult had done the thing himself or herself and had been an adult capable of doing so at the time.

2001, c.33, s.18; 2015, c 11, s.5.

Authority of public guardian and trustee as personal co-decision-maker

40.2(1) Subject to the court order appointing the public guardian and trustee, the public guardian and trustee, in his or her capacity as personal co-decision-maker of a dependent adult, may advise the dependent adult respecting anything relating to the matters mentioned in section 40.11 and, subject to subsection (2), shall share with the dependent adult the authority to make decisions respecting those matters and may do all things necessary to give effect to the authority vested in him or her.

(2) Where the public guardian and trustee is appointed as a personal co-decision-maker, section 16 and subsection 17(2) of *The Adult Guardianship and Co-decision-making Act* apply.

2001, c.33, s.18.

Authority of public guardian and trustee as temporary personal guardian

40.3 Subject to the court order appointing the public guardian and trustee, the public guardian and trustee, in his or her capacity as temporary personal guardian of a dependent adult, has the authority necessary to protect the dependent adult from serious physical or mental harm.

2001, c.33, s.18.

Termination of authority

40.4 When the public guardian and trustee is acting as personal co-decision-maker, personal guardian or temporary personal guardian of a dependent adult, the public guardian and trustee shall cease to act on the earliest of the following dates:

- (a) the date on which the public guardian and trustee receives a copy of a court order appointing another personal co-decision-maker, personal guardian or temporary personal guardian or discharging the public guardian and trustee from acting as personal co-decision-maker, personal guardian or temporary personal guardian;
- (b) the date specified in the court order appointing the public guardian and trustee, if a date is specified;
- (c) the date on which the dependent adult dies.

2020, c 11, s.14.

PUBLIC GUARDIAN AND TRUSTEE AS OFFICIAL ADMINISTRATOR

Application of sections 40.42 to 40.493

40.41 Sections 40.42 to 40.493 apply with respect to the administration of the estates of deceased persons.

2020, c 11, s.15.

Public guardian and trustee to take possession of neglected property of deceased persons

40.42(1) If it is brought to the attention of the public guardian and trustee that a person has died and the person's executors or next of kin have not taken possession of the person's property, the public guardian and trustee may take possession of that property for the purpose of preserving and protecting it.

(2) Pending the grant of letters probate or letters of administration, the public guardian and trustee has all the powers of an executor or administrator with respect to the property mentioned in subsection (1).

2020, c 11, s.15.

When letters of administration may issue to another person

40.43(1) If the public guardian and trustee receives a notice pursuant to subsection 5(1.1) of *The Administration of Estates Act*, the public guardian and trustee may:

- (a) consent to the application; or
- (b) within 30 days after receiving the notice, apply for letters of administration with respect to the property of the deceased person.

(2) If the public guardian and trustee consents to the application pursuant to clause (1)(a), the letters of administration may issue to the applicant immediately.

(3) When letters of administration issue to an applicant as provided in this section, the public guardian and trustee may do one or more of the following:

- (a) request the administrator to render a just and full account of the administration;
- (b) apply to the court for an order requiring the administrator to render a just and full account of the administration;
- (c) in the application mentioned in clause (b), question the validity of any release by or settlement with any alleged next of kin.

(4) If the court is satisfied that it is necessary or appropriate to do so, the court, on an application pursuant to subsection (3), may revoke the administration of the administrator and grant administration to the public guardian and trustee.

2020, c 11, s.15.

Grant of administration to public guardian and trustee

40.44(1) On the application of the public guardian and trustee, the court may grant letters of administration with respect to the property of a deceased person to the public guardian and trustee:

- (a) if no application for letters probate or letters of administration has been made within 30 days after the death of that person; or
- (b) if letters probate or letters of administration granted to another person have been revoked.

(2) On the application of the public guardian and trustee, the court shall grant letters of administration with respect to the property of a deceased person to the public guardian and trustee if:

- (a) the public guardian and trustee does not consent to the application mentioned in the notice sent to the public guardian and trustee pursuant to subsection 5(1.1) of *The Administration of Estates Act*;
- (b) within 30 days after receiving the notice, the public guardian and trustee applies for letters of administration; and
- (c) the deceased person died intestate, leaving:
 - (i) no known next of kin living in Saskatchewan; and
 - (ii) no known next of kin living elsewhere who can be readily communicated with.

(3) Letters of administration granted to the public guardian and trustee pursuant to this section may be revoked on the application of:

- (a) any executor applying for letters probate; or
- (b) any next of kin or any domiciliary executor or administrator of the deceased applying for letters of administration.

(4) Subject to subsection (5), after the expiration of 2 years from the date of the grant of letters of administration to the public guardian and trustee pursuant to this section, any person who is interested in the estate as beneficiary or creditor may require the public guardian and trustee to pass the accounts of the administration before the court.

(5) Subsection (4) does not apply to an estate if the value of the estate does not exceed the amount prescribed for the purposes of subsection 40.47(1).

2020, c 11, s.15.

No security by public guardian and trustee

40.45 The public guardian and trustee is not required to provide security as administrator of any estate.

2020, c 11, s.15.

c. P-36.3**PUBLIC GUARDIAN AND TRUSTEE****Public guardian and trustee required to act**

40.46(1) After the expiry of 30 days from the death of a person who leaves property, any person who is interested in the estate may, by written notice, request that the public guardian and trustee apply for letters of administration.

(2) On receiving notice pursuant to subsection (1) and if the public guardian and trustee is of the opinion that the estate of the deceased person requires administering and that there is no other person who is capable of administering the estate, the public guardian and trustee:

(a) may request that the person who gave the notice provide a deposit to cover the fees and expenses of the public guardian and trustee; and

(b) shall apply for letters of administration if the deposit requested pursuant to clause (a) is paid.

(3) On an application by the public guardian and trustee pursuant to subsection (2), the court may require a person who gave notice pursuant to subsection (1) to deposit with the public guardian and trustee an amount that the court considers sufficient to cover the fees and expenses of the public guardian and trustee.

(4) Notwithstanding subsections (1) and (2), the public guardian and trustee is not required to apply for letters of administration if the value of the estate of the deceased person does not exceed the amount prescribed for the purposes of subsection 40.47(1).

2020, c 11, s.15.

When letters of administration not required

40.47(1) Notwithstanding sections 40.44 and 40.46, the public guardian and trustee is not required to apply for letters of administration if the value of the estate of the deceased person does not exceed the prescribed amount.

(2) In the circumstance described in subsection (1), the public guardian and trustee has the same power and authority to administer the estate as if the court had granted letters of administration to the public guardian and trustee, and may do any of the following:

(a) arrange the funeral of the deceased person;

(b) make an inventory of, take possession of, and safeguard and dispose of the property of the deceased person;

(c) pay the debts of the deceased person;

(d) settle or compromise a debt or claim asserted by or against the deceased person;

(e) distribute any remaining property of the deceased person in accordance with the law;

(f) do any other thing that the public guardian and trustee considers necessary to administer the deceased person's estate.

2020, c 11, s.15.

Claims on estates administered by public guardian and trustee

40.48(1) This section applies if the estate of a deceased person is administered by the public guardian and trustee.

(2) If a person claims to be entitled to the estate of a deceased person, an interest in the estate, or part of the proceeds of the estate, that person may apply to the court for an order declaring the person's rights with respect to the estate.

(3) On an application pursuant to subsection (2), the court may direct such inquiries as may be necessary to determine the rights of the person with respect to the estate, and may make an order determining those rights.

(4) The court shall not direct the public guardian and trustee to make inquiries pursuant to subsection (3) unless security for fees and expenses is given by the applicant, if security is requested by the public guardian and trustee.

2020, c 11, s.15.

Compensation agreements

40.49(1) In this section:

“beneficiary” includes the following persons:

- (a) a person claiming to be a beneficiary;
- (b) an executor, administrator or beneficiary of a beneficiary;

“compensation” means compensation for services provided pursuant to a compensation agreement or the payment of fees and expenses relating to those services, and includes legal fees;

“compensation agreement” means an agreement with a beneficiary of an estate to which this section applies that provides for compensation, directly or indirectly, to one or more persons or entities on the location, recovery or distribution of any interest in the estate to which the beneficiary is or may be entitled, and includes an agreement for such compensation that is in the form of a power of attorney.

(2) This section applies with respect to the estate of a deceased person if the public guardian and trustee:

- (a) is conducting an investigation with respect to the estate;
- (b) has applied for letters of administration with respect to the estate; or
- (c) has been granted letters of administration with respect to the estate.

(3) A person who intends to rely on a compensation agreement for the purposes of this Act shall give the original compensation agreement to the public guardian and trustee.

c. P-36.3

PUBLIC GUARDIAN AND TRUSTEE

- (4) A compensation agreement is not enforceable unless:
- (a) it provides for compensation of not more than 10% of the distributable value of the interest in the estate to which the beneficiary is or may be entitled;
 - (b) it sets out the services to be provided to or on behalf of the beneficiary pursuant to the compensation agreement;
 - (c) it contains the following statements and information:
 - (i) that the public guardian and trustee is administering or considering administering the estate named in the compensation agreement;
 - (ii) that the beneficiary does not need to sign the compensation agreement in order to claim the beneficiary's interest in the estate from the public guardian and trustee;
 - (iii) that the beneficiary may contact the public guardian and trustee directly regarding the estate or the beneficiary's interest in the estate, and the current contact information for the public guardian and trustee must be included as part of this statement;
 - (iv) that the beneficiary may wish to obtain independent legal advice before signing the compensation agreement;
 - (d) it is signed by:
 - (i) the beneficiary; and
 - (ii) a person who witnessed the signing by the beneficiary and who is neither a party to the compensation agreement nor an employee or agent of a party to the compensation agreement; and
 - (e) it meets all additional requirements that may be prescribed.
- (5) Despite the existence of a compensation agreement, the public guardian and trustee may pay all or any part of the estate to which the beneficiary is entitled directly to the beneficiary if:
- (a) the compensation agreement is not given to the public guardian and trustee as required pursuant to subsection (3);
 - (b) the compensation agreement does not meet the requirements set out in subsection (4); or
 - (c) the public guardian and trustee receives information indicating that a term or condition set out in a compensation agreement has been breached.
- (6) Nothing in this section prevents a beneficiary from asserting at any time that the compensation payable pursuant to a compensation agreement to which the beneficiary is a party is excessive or unjust.
- (7) This section only applies with respect to compensation agreements that are entered into on or after the date on which this section comes into force.

Fees of public guardian and trustee

40.491(1) The public guardian and trustee is entitled to the prescribed fees and expenses for the administration of the estate of a deceased person, and section 49.2 applies with any necessary modification.

(2) On the application of any person interested in the estate, made without notice or on any notice that the court may direct, the court may increase or decrease the amount of the fees and expenses to be paid to the public guardian and trustee.

2020, c 11, s.15.

Common fund

40.492 The public guardian and trustee may place money received by the public guardian and trustee in the administration of the estate of a deceased person in the common fund mentioned in section 47.

2020, c 11, s.15.

Unclaimed assets

40.493(1) Money realized from the estate of a deceased person that is administered by the public guardian and trustee and that is not claimed within 6 years after the person's death may be paid into the general revenue fund.

(2) After giving any notice that the public guardian and trustee considers expedient and notwithstanding that the six-year period mentioned in subsection (1) has not elapsed, the public guardian and trustee may pay any unclaimed money, or any part of it, or assign any unclaimed personal property, in accordance with any direction of the Lieutenant Governor in Council made pursuant to section 4 of *The Escheats Act*.

(3) Any interest in real property in the estate of a deceased person that is administered by the public guardian and trustee and that is not claimed within 6 years after the person's death may be escheated to the Crown.

2020, c 11, s.15.

GENERAL

Freezing of funds by financial institution

40.5(1) In this section and in sections 40.6 to 40.9:

(a) **“financial abuse”** means the misappropriation of funds, resources or property by fraud, deception or coercion;

(b) **“record”** means a book, paper, document or thing, whether in electronic form or otherwise, that may contain information respecting the finances of a vulnerable adult;

(c) **“vulnerable adult”** means an individual, 16 years of age or more, who has an illness, impairment, disability or aging process limitation that places the individual at risk of financial abuse.

c. P-36.3

PUBLIC GUARDIAN AND TRUSTEE

- (2) A financial institution may suspend the withdrawal or payment of funds from a person's account for up to five business days where the financial institution has reasonable grounds to believe that the person is a vulnerable adult and:
- (a) is being subjected to financial abuse by another person, including a person appointed as his or her property decision-maker pursuant to *The Adult Guardianship and Co-decision-making Act*; or
 - (b) is unable to make reasonable judgments respecting matters relating to his or her estate and that the estate is likely to suffer serious damage or loss.
- (3) The financial institution shall immediately advise the public guardian and trustee of the suspension, the reasons for the suspension and any financial information held by the financial institution respecting that person.
- (4) Where the withdrawal or payment of funds has been suspended pursuant to subsection (2), the financial institution may allow certain payments to be made where it is of the opinion that it is appropriate to do so.
- (5) A financial institution acting pursuant to this section is not in breach of any other Act.

2001, c.33, s.19.

Freezing of funds by public guardian and trustee

40.6(1) The public guardian and trustee may require a financial institution to suspend the withdrawal or payment of funds from a person's account for up to 30 days and may require that the financial institution provide the public guardian and trustee with any financial information held by the financial institution respecting that person where:

- (a) the public guardian and trustee has reasonable grounds to believe that the person is a vulnerable adult; and
 - (b) the public guardian and trustee receives an allegation that the person:
 - (i) is being subjected to financial abuse by another person, including a person appointed as his or her property decision-maker pursuant to *The Adult Guardianship and Co-decision-making Act*; or
 - (ii) is unable to make reasonable judgments respecting matters relating to his or her estate and that the estate is likely to suffer serious damage or loss.
- (1.1) On notice to the financial institution, the public guardian and trustee may renew the suspension mentioned in subsection (1) for additional periods of 30 days if the public guardian and trustee is of the opinion that it is appropriate to do so.
- (2) Where the withdrawal or payment of funds has been suspended pursuant to this section, the public guardian and trustee may authorize the financial institution to allow certain payments to be made where the public guardian and trustee is of the opinion that it is appropriate to do so.
- (3) A financial institution acting pursuant to this section is not in breach of any other Act.

2001, c.33, s.19; 2020, c.11, s.16.

Authority to investigate

40.7(1) The public guardian and trustee may investigate an allegation that a person the public guardian and trustee has reasonable grounds to believe is a vulnerable adult:

- (a) is being subjected to financial abuse by another person, including a person appointed as his or her property decision-maker pursuant to *The Adult Guardianship and Co-decision-making Act*; or
 - (b) is unable to make reasonable judgments respecting matters relating to his or her estate and that the estate is likely to suffer serious damage or loss.
- (2) In an investigation pursuant to subsection (1), the public guardian and trustee may:
- (a) at any reasonable time, examine any record, whether in the possession of the person believed to be a vulnerable adult or any other person; and
 - (b) request any person to provide any information and explanations the public guardian and trustee considers necessary to the investigation.
- (3) If requested to do so by the public guardian and trustee, a person shall make available any record or shall provide the information and explanations mentioned in clause (2)(b).
- (4) The public guardian and trustee may specify a reasonable time within which a person shall comply with subsection (3).

2001, c.33, s.19.

Copies of records

40.8(1) Where a record has been examined pursuant to section 40.7, the public guardian and trustee may make copies of that record.

- (2) A record certified by the public guardian and trustee to be a copy made pursuant to this section:
- (a) is admissible in evidence without proof of the office or signature of the public guardian and trustee; and
 - (b) has the same probative force as the original record.
- (3) The public guardian and trustee shall ensure that after a copy of any record examined pursuant to section 40.7 is made, the original is promptly returned to:
- (a) the place from which it was removed; or
 - (b) any other place that may be agreed to by the public guardian and trustee and the person who was in possession of the record.

2001, c.33, s.19.

c. P-36.3

PUBLIC GUARDIAN AND TRUSTEE

Warrants

40.9(1) Where the public guardian and trustee requires the production of any record and the person from whom the record is required refuses or neglects to produce it, the public guardian and trustee may apply without notice to a justice of the peace or a judge of the Provincial Court for a warrant authorizing the public guardian and trustee or a person named in the warrant to:

- (a) enter and search any premises named in the warrant for the record that the person refused or neglected to produce; and
- (b) seize and take possession of the record.

(2) A justice of the peace or judge of the Provincial Court, if satisfied on oath of the public guardian and trustee that he or she has required production of a record and the person from whom production was required has refused or neglected to produce that record, may issue the warrant.

2001, c.33, s.19; 2018, c.42, s.65.

Passing of accounts and subsequent steps

41(1) Where a dependent adult for whom the public guardian and trustee acts as property guardian or an infant has an interest in an estate of a deceased person, the public guardian and trustee may apply to a judge of the court at any time he considers necessary or advisable for an order to compel the executor or administrator to file and pass his accounts.

(2) Following a passing of accounts under subsection (1) or if the executor or administrator fails to comply with an order pursuant to subsection (1), the public guardian and trustee may take any further steps or proceedings that he considers necessary to protect the infant or dependent adult and may, if it appears necessary to do so, apply pursuant to *The Administration of Estates Act* for an order revoking letters probate or letters of administration.

1983, c.P-43.1, s.41; 1989-90, c.18, s.10; 1992, c.62, s.28; 1997, c.18, s.6; 2001, c.33, s.23; 2009, c.T-23.01, s.64; 2014, c.24, s.19.

Notice

42(1) Repealed. 2020, c.11, s.17.

(2) **Repealed.** 2020, c.11, s.17.

(3) Where a will creates a beneficial interest for an infant, the public guardian and trustee shall advise the personal representative or trustee if the public guardian and trustee intends to monitor the beneficial interest.

(4) The public guardian and trustee is not obligated to monitor a beneficial interest mentioned in subsection (3).

(5) Where the public guardian and trustee advises the personal representative or trustee of the public guardian and trustee's intention to monitor the beneficial interest of an infant, the personal representative or trustee is required to provide the public guardian and trustee with his or her accounts on an annual basis.

1983, c.P-43.1, s.42; 1989-90, c.18, s.10; 1992, c.62, s.28; 1997, c.18, s.7; 2001, c.51, s.11; 2001, c.33, s.23; 2014, c.24, s.20; 2020, c.11, s.17.

Whereabouts unknown for six years

43(1) Where the public guardian and trustee holds funds for:

- (a) a dependent adult whose whereabouts is unknown to the public guardian and trustee for a period of six years or more; or
- (b) a person who would otherwise be entitled to receive payment of his funds, but whose whereabouts is unknown to the public guardian and trustee for a period of six years or more following the attaining of the age of majority by that person;

the public guardian and trustee may take any steps, including advertising, that he considers reasonable for the purpose of ascertaining the whereabouts of that person, and if, after those steps have been taken, his whereabouts are still unknown to the public guardian and trustee, the public guardian and trustee may dispose of any money then held on behalf of the person and may convert any other property belonging to the person into money and dispose of it under subsection (2).

(2) If the public guardian and trustee is of the opinion that no lawful claim will be made to the moneys mentioned in subsection (1) he may pay the moneys into the general revenue fund, and a sum so paid shall be property of the Crown.

(3) Where a person claims to be entitled to any money paid into the general revenue fund under subsection (2) the Lieutenant Governor in Council may, if he is satisfied that the claimant is entitled to the amount claimed or any portion of it, authorize the Minister of Finance to pay to the claimant the amount claimed, or a specified portion thereof, together with any interest that he may specify.

1983, c.P-43.1, s.43; 1989-90, c.18, s.10; 2001, c.33, s.23; 2004, c.10, s.17; 2020, c11, s.18.

Reimbursement for certain losses

43.1 Where a loss is incurred in an estate under the administration of the public guardian and trustee that:

- (a) in the opinion of the public guardian and trustee, results from a clerical error in the office of the public guardian and trustee; and
- (b) does not exceed \$500;

the public guardian and trustee may reimburse the estate for the amount of the loss.

1989-90, c.6, s.8; 2001, c.33, s.23.

Duty of public guardian and trustee upon service

44 Where the public guardian and trustee is served under this Act with notice of an application to a court, he shall take the steps or proceedings he considers necessary or advisable for the protection of the person on whose behalf he is served.

1983, c.P-43.1, s.44; 2001, c.33, s.23.

c. P-36.3**PUBLIC GUARDIAN AND TRUSTEE****When appointment may be made**

44.1 An appointment of the public guardian and trustee by the court pursuant to this or any other Act may not be made until:

- (a) the public guardian and trustee has had the opportunity to make representations respecting the appointment; or
- (b) the public guardian and trustee consents to the appointment.

1997, c.18, s.8; 2001, c.33, s.23.

Application for directions

45(1) The public guardian and trustee may apply to the court for the advice, opinion or direction of the court on any matter touching the management or administration of the trust property of any infant or dependent adult for whom he is guardian, trustee or property guardian or of any deceased person for whom the public guardian and trustee is executor or administrator of the estate.

(2) Where the public guardian and trustee acts on the opinion, advice and direction given by the court, he is deemed to have acted in good faith.

1983, c.P-43.1, s.45; 1989-90, c.18, s.10;
1990-91, c.C-8.1, s.75; 2001, c.33, s.23; 2020,
c 11, s.19.

Compliance with *The Homesteads Act, 1989*

46(1) Where the registered owner or the non-owning spouse, as defined in *The Homesteads Act, 1989*, of the registered owner of land is an infant or a person for whom the public guardian and trustee is property guardian, and the public guardian and trustee considers it necessary or advisable to sign an agreement for sale, transfer, lease, mortgage or other instrument and compliance with *The Homesteads Act, 1989* is required, the public guardian and trustee is deemed to have complied with the provisions of that Act where:

- (a) the owner has a non-owning spouse as defined in that Act:
 - (i) who refuses to sign the instrument; or
 - (ii) whose whereabouts is unknown and who cannot be found after a reasonable search;

and the public guardian and trustee obtains an order of the court dispensing with the consent and acknowledgment of the non-owning spouse and complies with any terms and conditions that the judge may direct;

(b) the public guardian and trustee swears an affidavit in compliance with section 8 of *The Homesteads Act, 1989*; or

(c) the public guardian and trustee consents in writing to the disposition in accordance with *The Homesteads Act, 1989* on behalf of the infant or dependent adult non-owning spouse.

(2) The public guardian and trustee may endorse his or her consent pursuant to clause (1)(c) notwithstanding that the public guardian and trustee is also the property guardian for the owning spouse.

1989-90, c.20, s.8; 1989-90, c.18, s.10; 1992, c.34,
s.6; 1993, c.17, s.20; 2001, c.33, s.23.

Investment in the common fund

- 47(1) Subject to sections 40.492 and 48, the public guardian and trustee:
- (a) place money received by the public guardian and trustee pursuant to this Act, any other Act or court order in a common fund; and
 - (b) subject to section 47.1, invest in the name of the public guardian and trustee that part of the common fund that in the public guardian and trustee's opinion is not immediately required for persons for whom the public guardian and trustee holds funds.
- (2) The public guardian and trustee shall distribute to the credit of persons for whom the public guardian and trustee holds funds, in the prescribed manner:
- (a) interest and dividends earned on the common fund; and
 - (b) prescribed gains or losses.

2001, c.33, s.20; 2020, c 11, s.20.

Investment of moneys

47.1 For the purposes of subsection 47(1), the public guardian and trustee may from time to time invest all or any part of the moneys of the common fund in any securities authorized for investment of moneys pursuant to *The Pension Benefits Act, 1992*.

1988-89, c.44, s.11; 1992, c.P-6.001, s.75; 2001, c.33, s.23.

Investment services

- 47.2(1) The public guardian and trustee may:
- (a) enter into any agreement;
 - (b) engage the services of or retain any technical, professional or other adviser, specialist or consultant; or
 - (c) do any other things;
- that are necessary for the purposes of managing, investing or disposing of all or any part of the assets of the fund.
- (2) Notwithstanding section 53, the:
- (a) costs incurred pursuant to subsection (1) in; and
 - (b) other expenses related to;
- managing, investing or disposing of all or any part of the assets of the common fund are payable out of the fund.

1988-89, c.44, s.11; 2001, c.33, s.23.

Payment of banking services

47.3 Where the public guardian and trustee enters into a contract for banking services with respect to the common fund mentioned in section 47, any costs pursuant to the contract are payable out of the common fund.

1997, c.18, s.9; 2001, c.33, s.23.

c. P-36.3**PUBLIC GUARDIAN AND TRUSTEE****Separate investments by the public guardian and trustee**

48(1) Subject to subsection (2), the public guardian and trustee may make investments separate from the common fund in the name of a person for whom the public guardian and trustee holds funds if:

- (a) in the public guardian and trustee's opinion:
 - (i) the funds are not immediately required for the individual; and
 - (ii) the separate investment is in the best interests of the individual; and
- (b) the separate investment is of a kind permitted to be made by trustees pursuant to *The Trustee Act, 2009*.

(2) If the public guardian and trustee holds funds on behalf of an infant, the legal custodian or person responsible for the care of the infant must consent to the public guardian and trustee making the separate investment for the infant.

2020, c 11, s.21.

Costs, fees of public guardian and trustee

49(1) Where the public guardian and trustee has been served with notice of a court application and the public guardian and trustee or his agent has taken steps to protect the interests of the infant or dependent adult or the estate of a deceased person or has been required to appear in court on the matter, the public guardian and trustee may have his costs fixed or ordered taxed by the court and the court shall specify from what source of funds or by what party the costs of the public guardian and trustee are to be paid.

(2) If the public guardian and trustee has acted in a proceeding as property guardian of a dependent adult and the dependent adult is awarded costs of the proceeding, the public guardian and trustee is entitled to the costs awarded to the dependent adult for the purpose of defraying the expenses of the public guardian and trustee.

(2.1) If the public guardian and trustee has acted in a proceeding as executor or administrator of a deceased person's estate and the estate is awarded costs of the proceeding, the public guardian and trustee is entitled to the costs awarded to the estate for the purpose of defraying the expenses of the public guardian and trustee.

(3) If the public guardian and trustee has acted in a proceeding as litigation guardian of an infant and the infant is awarded costs of the proceeding, the public guardian and trustee is entitled to the costs awarded to the infant for the purpose of defraying the expenses of the public guardian and trustee.

(4) The public guardian and trustee shall maintain at a chartered bank or credit union an account in which to deposit fees.

1983, c.P-43.1, s.49; 1989-90, c.18, s.10; 2001, c.33, s.23; 2020, c 11, s.22.

Agreements with other jurisdictions

49.1 The public guardian and trustee may enter into an agreement with:

- (a) another public guardian and trustee; or
- (b) a person performing similar functions and having similar powers and duties as the public guardian and trustee;

in another jurisdiction of Canada to provide services in Saskatchewan with respect to the estate of an infant or dependent adult over whom the other public guardian and trustee or person has responsibility.

1989-90, c.6, s.10; 1989-90, c.18, s.10; 2001, c.33, s.23.

Change of fee

49.2(1) Where, in the opinion of the public guardian and trustee, it is reasonable to do so, the public guardian and trustee may charge a fee that is greater or smaller than the prescribed fee.

(2) A person affected by a decision of the public guardian and trustee made pursuant to subsection (1) may appeal the decision to the court within 30 days of the date of the decision.

1989-90, c.6, s.10; 2001, c.33, s.23; 2020, c.11, s.23.

Immunity

50 No action or proceeding lies or shall be commenced against the minister, the Public Guardian and Trustee of Saskatchewan, the Government of Saskatchewan, or any employee or agent of the Government of Saskatchewan for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by any of them pursuant to or in the exercise or supposed exercise of any power conferred on them, or in the carrying out or supposed carrying out of any duty imposed on them, in relation to the Public Guardian and Trustee of Saskatchewan by this Act or any other Act or any regulations.

2020, c.11, s.24.

Audit

51 The Provincial Auditor, or any other auditor that may be designated by the Lieutenant Governor in Council, shall annually audit the records and accounts of the public guardian and trustee.

1983, c.P-43.1, s.51; 2001, c.33, s.23.

Annual report

52(1) The public guardian and trustee shall, in each fiscal year, in accordance with section 13 of *The Executive Government Administration Act*, prepare and submit to the minister:

- (a) a report of the public guardian and trustee upon his business for the immediately preceding fiscal year;
- (b) a financial statement showing the business of the public guardian and trustee for the immediately preceding fiscal year, in any form that may be required by Treasury Board.

(2) The minister shall, in accordance with section 13 of *The Executive Government Administration Act*, lay before the Legislative Assembly each report and statement received by him pursuant to subsection (1).

1983, c.P-43.1, s.52; 2001, c.33, s.23; 2014, c.E-13.1, s.62.

Appropriation

53 Sums required for the purposes of this Act are to be paid out of moneys appropriated by the Legislature for the purpose.

1983, c.P-43.1, s.53; 2001, c.33, s.23.

Regulations

54 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) prescribing the amounts that may be paid pursuant to subsection 17(1);
- (c) prescribing the form of acknowledgement to act mentioned in section 29;
- (d) prescribing an amount for the purposes of subsection 40.47(1);
- (e) prescribing additional requirements respecting compensation agreements for the purposes of clause 40.49(4)(e);
- (f) with respect to review panels:
 - (i) conferring on review panels any ancillary powers that are considered advisable for carrying out their functions pursuant to this Act; and
 - (ii) regulating practice and procedure before review panels;
- (g) prescribing the manner in which the public guardian and trustee shall dispose of:
 - (i) interest paid or payable by a bank with respect to moneys deposited in the common fund pursuant to section 47; and
 - (ii) moneys derived from investments made pursuant to section 47;

- (h) prescribing the time and manner of settlement of accounts;
- (i) prescribing the manner in which any gains or losses are to be dealt with resulting from the difference between the cost and selling price of common fund investments when sold;
- (j) prescribing the payments that may be made by the public guardian and trustee from the current account;
- (k) prescribing the fees payable to the public guardian and trustee for services performed pursuant to this Act;
- (l) prescribing any matter or thing that is required or authorized by this Act to be prescribed in the regulations;
- (m) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

2020, c.11, s.25.

Crown bound

55 The Crown is bound by this Act.

1983, c.P-43.1, s.55; 2001, c.33, s.23.

