

The Adult Guardianship and Co-decision-making Act

being

Chapter A-5.3* of the *Statutes of Saskatchewan, 2000* (effective July 15, 2001) as amended by the *Statutes of Saskatchewan, 2001, c.20* and *c.33*; *2004, c.65*; *2005, c.2*; *2011, c.1*; and *2015, c.21* and *c.24*.

***NOTE:** Pursuant to subsection 33(1) of *The Interpretation Act, 1995*, the Consequential Amendment sections, schedules and/or tables within this Act have been removed. Upon coming into force, the consequential amendments contained in those sections became part of the enactment(s) that they amend, and have thereby been incorporated into the corresponding Acts. Please refer to the Separate Chapter to obtain consequential amendment details and specifics.

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 A-5.3

An Act respecting Adult Guardianship and Co-decision-making and making consequential amendments to other Acts

PART I Preliminary Matters

Short title

1 This Act may be cited as *The Adult Guardianship and Co-decision-making Act*.

Interpretation

2 In this Act:

- (a) **“adult”** means an individual, 16 years of age or more, who is the subject of an application pursuant to section 6, 19, 30, 44 or 65.1;
- (a.1) **“alternate decision-maker”** means a person appointed by the court pursuant to section 64.1 to act as:
 - (i) an alternate personal co-decision-maker;
 - (ii) an alternate personal guardian;
 - (iii) an alternate property co-decision-maker; or
 - (iv) an alternate property guardian;
- (b) **“applicant”** means a person or agency who makes an application pursuant to section 6, 19, 30 or 44;
- (c) **“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;
- (d) **“court”** means the Court of Queen’s Bench for Saskatchewan;
- (d.1) **“court outside Saskatchewan”** means a court of another province or territory of Canada, of the United Kingdom or any other member of the Commonwealth or of any state of the United States of America;
- (e) **“decision-maker”** means a personal decision-maker or a property decision-maker;
- (f) **“estate”** means the real and personal property of an adult;
- (g) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;

- (h) **“personal co-decision-maker”** means a person appointed by the court pursuant to clause 14(1)(a);
- (i) **“personal decision-maker”** means a personal co-decision-maker, a personal guardian or a temporary personal guardian;
- (j) **“personal guardian”** means a person appointed by the court pursuant to clause 14(1)(b);
- (k) **“prescribed”** means prescribed in the regulations;
- (l) **“property co-decision-maker”** means a person appointed by the court pursuant to clause 40(1)(a);
- (m) **“property decision-maker”** means a property co-decision-maker, a property guardian or a temporary property guardian;
- (n) **“property guardian”** means a person appointed by the court pursuant to clause 40(1)(b);
- (o) **“public guardian and trustee”** means the Public Guardian and Trustee continued pursuant to section 3 of *The Public Guardian and Trustee Act*;
- (p) **“temporary personal guardian”** means a person appointed by the court pursuant to section 19;
- (q) **“temporary property guardian”** means a person appointed by the court pursuant to section 44.

2000, c.A-5.3, s.2; 2001, c.33, s.22; 2011, c.1, s.3.

Principles

3 This Act shall be interpreted and administered in accordance with the following principles:

- (a) adults are entitled to have their best interests given paramount consideration;
- (b) adults are entitled to be presumed to have capacity, unless the contrary is demonstrated;
- (c) adults are entitled to choose the manner in which they live and to accept or refuse support, assistance or protection, as long as they do not harm themselves or others and have the capacity to make decisions about those matters;
- (d) adults are entitled to receive the most effective, but the least restrictive and intrusive, form of support, assistance or protection, when they are unable to care for themselves or their estates;
- (e) adults who have difficulty communicating because of physical or mental disabilities are entitled to communicate by any means that enables them to be understood;
- (f) adults are entitled to be informed about and, to the best of their ability, participate in, decisions affecting them.

2000, c.A-5.3, s.3.

Crown bound

4 The Crown in right of Saskatchewan is bound by this Act.

2000, c.A-5.3, s.4.

PART II
Personal Co-decision-makers and Personal Guardians

Interpretation

5(1) In this Part and Part III, “**nearest relatives**” means all persons, other than the applicant, over the age of 18 years, in the first of the following clauses that describes a living person:

- (a) the spouse or person with whom the adult has been in a spousal relationship of some permanence and the sons and daughters of the adult;
 - (b) the parents or legal guardians of the adult immediately before that person reached 16 years of age, except where the legal guardian was the Minister of Community Resources and Employment;
 - (c) the brothers and sisters of the adult;
 - (d) the grandparents of the adult;
 - (e) the grandchildren of the adult;
 - (f) the uncles and aunts of the adult;
 - (g) the nephews and nieces of the adult;
 - (h) the next of kin of the adult determined on the basis provided by sections 13 and 14 of *The Intestate Succession Act, 1996*.
- (2) For the purposes of subsection (1):
- (a) “**relatives**” includes adoptive relatives; and
 - (b) “**spouse or person**” in clause (a) includes persons who are less than 18 years of age.

2000, c.A-5.3, s.5; 2004, c.65, s.2.

Who may make application

6 The following may make an application to the court, in the prescribed form, to be appointed as a personal co-decision-maker or personal guardian pursuant to section 14:

- (a) any person who, in the opinion of the court, has a sufficient interest in the personal welfare of the adult;
- (b) the public guardian and trustee;
- (c) an individual, corporation or agency or a category of individuals, corporations or agencies designated by the minister in accordance with the regulations.

2000, c.A-5.3, s.6; 2001, c.33, s.22.

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Service of application

- 7(1) An applicant mentioned in section 6 shall serve a copy of the application on:
- (a) the adult;
 - (b) the nearest relatives, except any nearest relative who has consented in the prescribed form to the order requested in the application;
 - (c) the Minister of Community Resources and Employment where the adult is receiving services pursuant to section 10 or 56 of *The Child and Family Services Act*;
 - (d) the personal decision-maker or the proposed personal decision-maker, of the adult;
 - (e) the property decision-maker or the proposed property decision-maker, of the adult;
 - (f) any attorney under a power of attorney given by the adult, if known;
 - (g) any proxy under a health care directive made by the adult, if known;
 - (h) any supporter nominated by the adult pursuant to section 9 of *The Personal Care Homes Regulations, 1996*, if known;
 - (i) any person who acts as a trustee for the purpose of administering financial benefits on behalf of the adult, if known; and
 - (j) the public guardian and trustee.
- (2) Nothing in subsection (1) requires a person to conduct a search for any person mentioned in clause (1)(f) to (i) if the existence of that person is not known.

2000, c.A-5.3, s.7; 2004, c.65, s.2; 2001, c.33,
s.22.

Statement of objection

- 8(1) A person who is served with a copy of an application pursuant to section 7 may, within 10 days after the last person is served, file a statement of objection with the court setting out the reasons he or she objects to the application.
- (2) Any person who claims to have a sufficient interest in the personal welfare of the adult may file a statement of objection with the court within 10 days after the last person is served pursuant to section 7.
- (3) The statement of objection mentioned in subsections (1) and (2) is to be in the prescribed form.
- (4) A person filing a statement of objection pursuant to this section shall serve a copy of it on the applicant, the persons mentioned in section 7 and any person who consented in the prescribed form to the order requested in the application.

2000, c.A-5.3, s.8.

Hearing

9(1) If the court considers that a hearing is necessary, the court shall set a date, time and place for a hearing and, at least 10 days before the date the application is to be heard, a local registrar of the court shall notify, in the prescribed manner, the following persons of the date, time and place of the hearing:

- (a) the applicant pursuant to section 6;
- (b) all persons who were served pursuant to section 7;
- (c) any person who consented in the prescribed form to the order requested in the application;
- (d) any person who filed a statement of objection pursuant to section 8.

(2) At the hearing mentioned in subsection (1), the onus is on the applicant to prove, on the balance of probabilities, that the adult is in need of a personal co-decision-maker or personal guardian.

(3) A hearing may be held in chambers or as the court directs and any issue may be tried on affidavit or *viva voce* evidence as the court considers appropriate in the circumstances.

2000, c.A-5.3, s.9.

No hearing necessary

10(1) If the court does not consider that a hearing is necessary, the court may consider the application in the absence of the persons mentioned in section 9.

(2) A hearing is not necessary by reason only of the fact that a statement of objection has been filed pursuant to section 8.

(3) If a hearing is not held and an order is made pursuant to this Act, the local registrar of the court shall provide a copy of the order to the applicant and any person who has filed a statement of objection pursuant to section 8.

2000, c.A-5.3, s.10.

Powers of the court

11(1) The court may, where it considers it appropriate:

- (a) dispense with service on all or any of the persons mentioned in clauses 7(1)(a) to (i);
- (b) vary the time for filing a statement of objection pursuant to section 8 or for notification of any person pursuant to section 9; or
- (c) at any time, order that any person who, in the opinion of the court, has a sufficient interest in the personal welfare of the adult be served with an application or a statement of objection or be notified of a hearing pursuant to this Part.

(2) Notwithstanding clause (1)(a), the court shall not dispense with service on the adult unless it is satisfied, on the basis of sufficient medical evidence, that special circumstances exist and service would be injurious to the adult and contrary to the best interests of the adult.

2000, c.A-5.3, s.11; 2001, c.33, s.22.

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Responsibilities of public guardian and trustee

11.1 The public guardian and trustee, on being served with an application, shall:

- (a) review the matter; and
- (b) provide information respecting the application to any prescribed advocacy group:
 - (i) that is currently involved in the affairs of the adult;
 - (ii) that the adult requests be provided with the information; or
 - (iii) whose involvement the public guardian and trustee considers would be in the best interests of the adult.

2001, c.33, s.22.

Powers of public guardian and trustee

11.2 The public guardian and trustee, on being served with an application or a statement of objection or on being notified of a hearing, may do any one or more of the following:

- (a) contact the adult and determine whether he or she wishes to be represented in the application;
- (b) contact the applicant or any person filing a statement of objection to discuss the application or statement of objection;
- (c) inform any relatives of the adult who have not been served pursuant to section 7 about the application, statement of objection or hearing;
- (d) provide information about the application, statement of objection or hearing to an agency that provides health care or other services to or for the adult;
- (e) engage a lawyer to represent the adult in the application;
- (f) intervene and make representations in the application;
- (g) make inquiries about whether any person acts as a trustee for the adult;
- (h) do any other thing that the public guardian and trustee considers appropriate.

2001, c.33, s.22.

Assessment required

12(1) Before an order may be made pursuant to section 14, an assessment of the adult's capacity respecting the matters mentioned in section 15 and the likelihood of change respecting that capacity shall be carried out in the prescribed manner.

(2) The court may require an adult with respect to whom an application is made pursuant to section 6 to submit to an examination by one or more health professionals at any time and place that the court may direct.

2000, c.A-5.3, s.12.

Court's inquiry

13(1) In determining whether to make an order pursuant to section 14, the court shall inquire into the extent to which the adult is in need of a personal co-decision-maker or personal guardian, and for that purpose shall consider:

- (a) the information in the assessment carried out pursuant to section 12;
 - (b) the types of decisions the adult needs or is likely to need to make respecting his or her physical, psychological, emotional, social, health, residential, vocational or other needs;
 - (c) the resources available to assist the adult in making the decisions mentioned in clause (b), including less intrusive forms of support or assistance in decision-making;
 - (d) the wishes of the adult, having regard to his or her capacity respecting matters relating to his or her person;
 - (e) the suitability of the proposed personal co-decision-maker or personal guardian, taking into account:
 - (i) whether he or she has been appointed as a decision-maker for any other person;
 - (ii) if he or she has been appointed as a decision-maker for any other person, details respecting fees for services he or she receives or has received;
 - (iii) whether he or she is or has been in a relationship of financial trust with any person, including a relationship respecting a power of attorney;
 - (iv) whether he or she has ever been convicted of a criminal offence relating to assault, sexual assault or other acts of violence, intimidation, criminal harassment, uttering threats, theft or fraud;
 - (v) whether he or she has ever been a respondent pursuant to *The Victims of Interpersonal Violence Act* or a defendant pursuant to a section of the *Criminal Code* relating to securing a peace bond;
 - (vi) whether he or she has ever applied for or been petitioned into bankruptcy and the status or outcome of that application or petition;
 - (vii) the ability of the proposed personal co-decision-maker or personal guardian to carry out his or her duties in a satisfactory manner; and
 - (viii) the relationship between the proposed personal co-decision-maker or personal guardian and the adult; and
 - (f) any other information that is, in the opinion of the court, relevant to the application and that has been filed by the applicant, the adult, a person filing a statement of objection or any other person.
- (2) Before making an order pursuant to section 14, the court must be satisfied that the adult is in need of a personal co-decision-maker or personal guardian, and for that purpose the court may require the applicant to supply further information to the court.

c. A-5.3**Order appointing personal co-decision-maker or personal guardian**

14(1) Following a hearing pursuant to section 9 or after considering an application pursuant to section 10, the court may:

- (a) make an order appointing one or more persons as a personal co-decision-maker for the adult where the court is of the opinion that it is in the best interests of the adult to make the order and the court is satisfied based on the information submitted to it that the adult:
 - (i) is a person whose capacity is impaired to the extent that the adult requires assistance in decision-making in order to make reasonable decisions with respect to some or all of the matters mentioned in section 15; and
 - (ii) is in need of a personal co-decision-maker; or
 - (b) make an order appointing one or more persons as a personal guardian for the adult where the court is of the opinion that it is in the best interests of the adult to make the order and the court is satisfied based on the information submitted to it that the adult:
 - (i) is a person whose capacity is impaired to the extent that the adult is unable to make reasonable decisions with respect to some or all of the matters mentioned in section 15; and
 - (ii) is in need of a personal guardian.
- (2) The court shall not:
- (a) make an order pursuant to subsection (1) unless alternative ways to assist the adult in making decisions with respect to matters relating to his or her person, including less intrusive forms of support or assistance in decision-making, have been tried or carefully considered; or
 - (b) in an order made pursuant to subsection (1), give the personal co-decision-maker or personal guardian the authority to act with respect to all the matters mentioned in section 15 if an order providing particular powers would be sufficient to meet the needs of the adult.
- (3) Where the court makes an order pursuant to subsection (1):
- (a) the court shall determine whether it is in the best interests of the adult to require a review of the order pursuant to clause 22(1)(b) and, if a review is required, shall specify the period within which the review is to take place; and
 - (b) where practicable, the court shall appoint a personal co-decision-maker or personal guardian who has a long-standing caring relationship with the adult.
- (4) If, according to the assessment mentioned in section 12, the capacity of the adult is likely to improve, the court shall order a review pursuant to clause 22(1)(b).

Extent of authority

15 Where the court makes an order pursuant to section 14, the court shall specify which of the following matters are to be subject to the authority of the personal co-decision-maker or personal guardian:

- (a) decisions respecting where, with whom and under what conditions the adult is to live, whether permanently or temporarily;
- (b) decisions respecting with whom the adult is to associate and who may have access to the adult;
- (c) decisions respecting whether the adult should engage in social activities and, if so, the nature and extent of those activities and related matters;
- (d) decisions respecting whether the 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 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 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 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 adult;
- (h) subject to *The Health Care Directives and Substitute Health Care Decision Makers Act*, decisions respecting the adult's health care, including decisions respecting admission to a health care facility or respecting treatment of the adult;
- (i) subject to the regulations, decisions respecting the restraint of the 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 adult or others;
- (j) decisions respecting the 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 personal co-decision-maker or personal guardian in the best interests of the adult.

2000, c.A-5.3, s.15; 2001, c.33, s.22.

Signing of documents

16(1) Where a decision made by the adult and the personal co-decision-maker requires the signing of any document for its implementation, the document is voidable unless the adult and the personal co-decision-maker co-sign the document.

(2) The co-signature of a personal co-decision-maker pursuant to subsection (1) is not a guarantee for a loan or other document.

2000, c.A-5.3, s.16.

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Personal co-decision-maker's authority

17(1) Subject to section 22, the personal co-decision-maker may advise the adult respecting the matters the court determines are within the personal co-decision-maker's authority and, subject to subsection (2), shall share with the 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) A personal co-decision-maker shall acquiesce in a decision made by the adult and shall not refuse to sign a document mentioned in section 16 if a reasonable person could have made the decision in question and no harm to the adult is likely to result from the decision.

2000, c.A-5.3, s.17.

Personal guardian's authority

18 Subject to section 22, the personal guardian may make decisions on the adult's behalf, and the adult ceases to have the authority to make decisions with respect to the matters the court determines are within the personal guardian's authority, and the personal guardian may sign documents and do all things necessary to give effect to the authority vested in him or her.

2000, c.A-5.3, s.18.

Appointment of temporary personal guardian

19(1) Any person who, in the opinion of the court, has a sufficient interest in the personal welfare of an adult, including the public guardian and trustee and any entity mentioned in clause 6(c), may apply, in the prescribed form, to be appointed temporary personal guardian for the adult, where the applicant has reason to believe that:

- (a) the adult is a person described in clause 14(1)(a) or (b); and
- (b) an immediate appointment is necessary to protect the adult from serious physical or mental harm.

(2) An applicant pursuant to subsection (1) shall serve a copy of the application on the adult and, if the applicant is not the public guardian and trustee, the public guardian and trustee but is not required to serve a copy of the application on the other persons mentioned in section 7.

(3) The court may make an order appointing one or more persons as temporary personal guardian for the adult for a period not exceeding six months that the court considers appropriate, where the court is of the opinion that:

- (a) the conditions set out in subsection (1) exist; and
- (b) it would not be in the best interests of the adult to wait until an application is made pursuant to section 6.

(4) The court shall restrict the authority of the temporary personal guardian to those matters mentioned in section 15 that are necessary to protect the adult from serious physical or mental harm.

(5) The court may require an adult with respect to whom an application is made pursuant to subsection (1) to submit to an examination by one or more health professionals at any time and place that the court may direct.

2000, c.A-5.3, s.19; 2001, c.33, s.22.

Right to be informed

20(1) Every adult who is the subject of an order pursuant to section 14 or 19 shall be informed, by the personal decision-maker, promptly and in a manner that the adult may best understand, of the appointment and authority included in the order and whether the order has been made subject to limitations, conditions or requirements pursuant to section 22.

(2) The court may make it a condition of an order mentioned in subsection (1) that the personal decision-maker file an affidavit with the court stating when and how the personal decision-maker complied with subsection (1).

2000, c.A-5.3, s.20.

Limitations on appointment

21(1) No person shall be appointed a personal decision-maker:

- (a) without the consent of the person being appointed;
- (b) in the case of an individual, unless the individual is 18 years of age or older;
- (c) if the person provides personal care or health care services to the adult for remuneration; or
- (d) if the person will be in a position where the person's interests may conflict with the adult's interests.

(2) Notwithstanding clauses (1)(c) and (d), the court may appoint a person described in those clauses if that person is the most appropriate person to appoint.

2000, c.A-5.3, s.21.

Conditions or requirements

22(1) In making an order appointing a personal decision-maker, the court may:

- (a) make its order subject to any limitations or conditions that it considers necessary; or
- (b) if it is in the best interests of the adult, require that the personal decision-maker apply to the court to have the order reviewed by the court within a specified period.

(2) Where the court makes an order pursuant to clause (1)(b), sections 66 to 68 apply, with any necessary modification, to the review.

(3) Where an order appointing a personal decision-maker is made subject to limitations, conditions or requirements pursuant to this section, the personal decision-maker shall comply with those limitations, conditions or requirements.

(4) No authority granted pursuant to clause 14(1)(b) or section 19 includes the authority to:

- (a) consent to the withdrawal of life-support systems used for the adult;
- (b) consent on behalf of the adult to a donation for the purposes of an *inter vivos* transplant pursuant to *The Human Tissue Gift Act*;

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- (c) consent on behalf of the adult to a procedure, the sole purpose of which is sterilization;
 - (d) consent on behalf of the adult to an abortion authorized by law, except where the continuation of the pregnancy of the adult would be likely to cause imminent danger to the life or health of the adult;
 - (e) consent on behalf of the adult to the termination of the adult's parental rights;
 - (f) commence divorce proceedings on behalf of the adult; or
 - (g) interfere with the adult's exercise of religious practices, except to the extent that those practices threaten the adult's health or safety.
- (5) A personal guardian or temporary personal guardian may apply to the court for an order authorizing any of the matters mentioned in subsection (4).

2000, c.A-5.3, s.22.

Effect of decision by personal co-decision-maker

23(1) Any decision made, action taken, consent given or thing done by a personal co-decision-maker in good faith respecting any matter within his or her shared authority with the adult is deemed for all purposes to have been made, taken, given or done by the adult.

(2) When a personal co-decision-maker co-signs a contract with an adult pursuant to the authority granted pursuant to this Part, the contract is binding on the adult after the order is terminated in the same manner and to the same extent as if the adult had made the contract while capable of making the contract.

2000, c.A-5.3, s.23.

Effect of decision by personal guardian or temporary personal guardian

24(1) Any decision made, action taken, consent given or thing done by a personal guardian or temporary personal guardian in good faith respecting any matter within his or her authority is deemed for all purposes to have been made, taken, given or done by the adult as though the adult had capacity respecting that matter.

(2) When a personal guardian or temporary personal guardian enters into a contract on behalf of an adult pursuant to the authority granted pursuant to this Part, the contract is binding on the adult after the order is terminated in the same manner and to the same extent as if the adult had made the contract while capable of making the contract.

2000, c.A-5.3, s.24.

Duties of personal decision-maker

25 A personal decision-maker shall exercise the duties and powers assigned by the court diligently, in good faith, in the best interests of the adult and in a manner so as to:

- (a) ensure that the adult's civil and human rights are protected;
- (b) encourage the adult to:
 - (i) participate to the maximum extent in all decisions affecting the adult; and
 - (ii) act independently in all matters in which the adult is able to; and
- (c) limit the personal decision-maker's interference in the life of the adult to the greatest extent possible.

2000, c.A-5.3, s.25.

Order re fees

26(1) On the application of a person having, in the opinion of the court, a sufficient interest in the personal welfare of the adult, the court may make an order directing that the personal decision-maker receive a specified amount of money each month or other period out of the estate of the adult for the purpose of sheltering, supporting and caring for the adult, without the consent of:

- (a) the adult; or
 - (b) the adult's property decision-maker, if one exists.
- (2) A personal decision-maker shall not charge a fee unless:
- (a) the court has made an order setting a fee for services rendered by the personal decision-maker; or
 - (b) if the court has not made an order pursuant to clause (a) but there is a prescribed fee schedule, the fee that the personal decision-maker charges for a service is not more than the fee set out in the prescribed fee schedule for that service.
- (3) A fee charged in accordance with subsection (2) is to be paid out of the estate of the adult.

2000, c.A-5.3, s.26; 2011, c.1, s.4.

Orders for access

27 On application, the court may make an order providing for access to the adult by a person other than the personal decision-maker, if the court is satisfied that it is in the best interests of the adult to make the order.

2000, c.A-5.3, s.27.

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Limitations on orders

28(1) Nothing in this Part shall be construed as derogating from the authority of any person pursuant to any other Act or law respecting a person for whom a personal decision-maker has been appointed pursuant to this Act.

(2) Nothing in this Act limits the *parens patriae* jurisdiction of the court.

2000, c.A-5.3, s.28.

Application for direction

29 A personal decision-maker may apply to the court for advice or directions.

2000, c.A-5.3, s.29.

PART III

Property Co-decision-makers and Property Guardians

Who may make application

30 The following may make an application to the court, in the prescribed form, to be appointed as a property co-decision-maker or property guardian pursuant to section 40:

- (a) any person who, in the opinion of the court, has a sufficient interest in the financial welfare of the adult;
- (b) the public guardian and trustee;
- (c) an individual, corporation or agency or a category of individuals, corporations or agencies designated by the minister in accordance with the regulations.

2000, c.A-5.3, s.30; 2001, c.33, s.23.

Service of application

31(1) An applicant mentioned in section 30 shall serve a copy of the application on:

- (a) the adult;
- (b) the nearest relatives, except any nearest relative who has consented in the prescribed form to the order requested in the application;
- (c) the Minister of Community Resources and Employment where the adult is receiving services pursuant to section 10 or 56 of *The Child and Family Services Act*;
- (d) the property decision-maker, or the proposed property decision-maker, of the adult;
- (e) the personal decision-maker, or the proposed personal decision-maker, of the adult;

- (f) any attorney under a power of attorney given by the adult, if known;
 - (g) any proxy under a health care directive made by the adult, if known;
 - (h) any supporter nominated by the adult pursuant to section 9 of *The Personal Care Homes Regulations, 1996*, if known;
 - (i) any person who acts as a trustee for the purpose of administering financial benefits on behalf of the adult, if known; and
 - (j) the public guardian and trustee.
- (2) Nothing in subsection (1) requires a person to conduct a search for any person mentioned in clause (1)(f) to (i) if the existence of that person is not known.

2000, c.A-5.3, s.31; 2001, c.33, s.23; 2004, c.65,
s.2.

Statement of objection

- 32(1)** A person who is served with a copy of an application pursuant to section 31 may, within 10 days after the last person is served, file a statement of objection with the court setting out the reasons he or she objects to the application.
- (2) Any person who claims to have a sufficient interest in the financial welfare of the adult may file a statement of objection with the court within 10 days after the last person is served pursuant to section 31.
- (3) The statement of objection mentioned in subsections (1) and (2) is to be in the prescribed form.
- (4) A person filing a statement of objection pursuant to this section shall serve a copy of it on the applicant, the persons mentioned in section 31 and any person who consented in the prescribed form to the order requested in the application.

2000, c.A-5.3, s.32.

Hearing

- 33(1)** If the court considers that a hearing is necessary, the court shall set a date, time and place for a hearing and, at least 10 days before the date the application is to be heard, a local registrar of the court shall notify, in the prescribed manner, the following persons of the date, time and place of the hearing:
- (a) the applicant pursuant to section 30;
 - (b) all persons who were served pursuant to section 31;
 - (c) any person who consented in the prescribed form to the order requested in the application;
 - (d) any person who filed a statement of objection pursuant to section 32.
- (2) At the hearing mentioned in subsection (1), the onus is on the applicant to prove, on the balance of probabilities, that the adult is in need of a property co-decision-maker or property guardian.
- (3) A hearing may be held in chambers or as the court directs, and any issue may be tried on affidavit or *viva voce* evidence as the court considers appropriate in the circumstances.

2000, c.A-5.3, s.33.

c. A-5.3**No hearing necessary**

34(1) If the court does not consider that a hearing is necessary, the court may consider the application in the absence of the persons mentioned in section 33.

(2) A hearing is not necessary by reason only of the fact that a statement of objection has been filed pursuant to section 32.

(3) If a hearing is not held and an order is made pursuant to this Act, the local registrar of the court shall provide a copy of the order to the applicant and any person who has filed a statement of objection pursuant to section 32.

2000, c.A-5.3, s.34.

Powers of the court

35(1) The court may, where it considers it appropriate:

(a) dispense with service on all or any of the persons mentioned in clauses 31(1)(a) to (i);

(b) vary the time for filing a statement of objection pursuant to section 32 or for notification of any person pursuant to section 33; or

(c) at any time, order that any person who, in the opinion of the court, has a sufficient interest in the financial welfare of the adult be served with an application or a statement of objection or be notified of a hearing pursuant to this Part.

(2) Notwithstanding clause (1)(a), the court shall not dispense with service on the adult unless it is satisfied, on the basis of sufficient medical evidence, that special circumstances exist and service would be injurious to the adult and contrary to the best interests of the adult.

2000, c.A-5.3, s.35.

Responsibilities of public guardian and trustee

36 The public guardian and trustee, on being served with an application, shall:

(a) review the matter; and

(b) provide information respecting the application to any prescribed advocacy group:

(i) that is currently involved in the affairs of the adult;

(ii) that the adult requests be provided with the information; or

(iii) whose involvement the public guardian and trustee considers would be in the best interests of the adult.

2000, c.A-5.3, s.36; 2001, c.33, s.23.

Powers of public guardian and trustee

37 The public guardian and trustee, on being served with an application or a statement of objection or being notified of a hearing, may do any one or more of the following:

- (a) contact the adult and determine whether he or she wishes to be represented in the application;
- (b) contact the applicant or any person filing a statement of objection to discuss the application or statement of objection;
- (c) inform any relatives of the adult who have not been served pursuant to section 31 about the application, statement of objection or hearing;
- (d) provide information about the application, statement of objection or hearing to an agency that provides health care or other services to or for the adult;
- (e) engage a lawyer to represent the adult in the application;
- (f) intervene and make representations in the application;
- (g) make inquiries about whether any person acts as a trustee for the adult;
- (h) do any other thing that the public guardian and trustee considers appropriate.

2000, c.A-5.3, s.37; 2001, c.33, s.23.

Assessment required

38(1) Before an order may be made pursuant to section 40, an assessment of the adult's capacity respecting matters relating to his or her estate and the likelihood of change respecting that capacity shall be carried out in the prescribed manner.

(2) The court may require an adult with respect to whom an application is made pursuant to section 30 to submit to an examination by one or more health professionals at any time and place that the court may direct.

2000, c.A-5.3, s.38.

Court's inquiry

39(1) In determining whether to make an order pursuant to section 40, the court shall inquire into the extent to which the adult is in need of a property co-decision-maker or property guardian, and for that purpose may consider the physical, psychological, emotional, social, health, residential, vocational or other needs of the adult and shall consider:

- (a) the information in the assessment carried out pursuant to section 38;
- (b) the types of decisions the adult needs or is likely to need to make respecting his or her estate;
- (c) the resources available to assist the adult in making the decisions mentioned in clause (b), including less intrusive forms of support or assistance in decision-making;

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- (d) the wishes of the adult, having regard to his or her capacity with respect to matters relating to his or her estate;
 - (e) the extent, nature and complexity of the adult's estate;
 - (f) the suitability of the proposed property co-decision-maker or property guardian, taking into account:
 - (i) whether he or she has been appointed as a decision-maker for any other person;
 - (ii) if he or she has been appointed as a decision-maker for any other person, details respecting fees for services he or she receives or has received;
 - (iii) whether he or she is or has been in a relationship of financial trust with any person, including a relationship respecting a power of attorney;
 - (iv) whether he or she has ever been convicted of a criminal offence relating to assault, sexual assault or other acts of violence, intimidation, criminal harassment, uttering threats, theft or fraud;
 - (v) whether he or she has ever been a respondent pursuant to *The Victims of Domestic Violence Act* or a defendant pursuant to a section of the *Criminal Code* relating to securing a peace bond;
 - (vi) whether he or she has ever applied for or been petitioned into bankruptcy and the status or outcome of that application or petition;
 - (vii) the ability of the proposed property co-decision-maker or property guardian to carry out his or her duties in a satisfactory manner; and
 - (viii) the relationship between the proposed property co-decision-maker or property guardian and the adult; and
 - (g) any other information that is, in the opinion of the court, relevant to the application and that has been filed by the applicant, the adult, the public guardian and trustee, a person filing a statement of objection or any other person.
- (2) Before making an order pursuant to section 40, the court must be satisfied that the adult is in need of a property co-decision-maker or property guardian, and for that purpose the court may require that the applicant supply further information to the court.

Order appointing property co-decision-maker or property guardian

40(1) Following a hearing pursuant to section 33 or after considering an application pursuant to section 34, the court may:

- (a) make an order appointing one or more persons as a property co-decision-maker for the adult where the court is of the opinion that it is in the best interests of the adult to make the order and the court is satisfied based on the information submitted to it that the adult:
 - (i) is a person whose capacity is impaired to the extent that the adult requires assistance in decision-making in order to make reasonable decisions with respect to matters relating to his or her estate; and
 - (ii) is in need of a property co-decision-maker; or
 - (b) make an order appointing one or more persons as a property guardian for the adult where the court is of the opinion that it is in the best interests of the adult to make the order and the court is satisfied based on the information submitted to it that the adult:
 - (i) is a person whose capacity is impaired to the extent that the adult is unable to make reasonable decisions with respect to matters relating to his or her estate; and
 - (ii) is in need of a property guardian.
- (2) The court shall not make an order pursuant to subsection (1) unless:
- (a) alternative ways to assist the adult in making decisions with respect to matters relating to his or her estate, including less intrusive forms of support or assistance in decision-making, have been tried or carefully considered; and
 - (b) consideration has been given to whether the order should be made subject to limitations, conditions or requirements pursuant to section 47, including limiting the authority of the property co-decision-maker or property guardian to decisions involving more than a certain dollar amount.
- (3) Where the court makes an order pursuant to subsection (1):
- (a) the court shall determine whether it is in the best interests of the adult to require a review of the order pursuant to clause 47(1)(b) and, if a review is required, shall specify the period within which the review is to take place; and
 - (b) where practicable, the court shall appoint a property co-decision-maker or property guardian who has a long-standing caring relationship with the adult.
- (4) If, according to the assessment mentioned in section 38, the capacity of the adult is likely to improve, the court shall order a review pursuant to clause 47(1)(b).

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Signing of documents

41(1) Where a decision made by the adult and the property co-decision-maker requires the signing of any document for its implementation, the document is voidable unless the adult and the property co-decision-maker co-sign the document.

(2) The co-signature of a property co-decision-maker pursuant to subsection (1) is not a guarantee for a loan or other document.

2000, c.A-5.3, s.41.

Property co-decision-maker's authority

42(1) Subject to section 47, the property co-decision-maker may advise the adult respecting anything relating to the adult's estate and, subject to subsection (2), shall share with the 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) A property co-decision-maker shall acquiesce in a decision made by the adult and shall not refuse to sign a document mentioned in section 41 if a reasonable person could have made the decision in question and no loss to the adult's estate is likely to result from the decision.

2000, c.A-5.3, s.42.

Property guardian's authority

43(1) Subject to section 47, the property guardian may, on the adult's behalf, do, and the adult ceases to have the authority to do, anything respecting the adult's estate that the adult could do if he or she had the capacity to make reasonable decisions respecting matters relating to his or her estate, except make a will, and the property guardian may sign documents and do all things necessary to give effect to the authority vested in him or her.

(2) Subject to section 47, a property guardian may pay out of the adult's estate any amounts the property guardian considers necessary towards the maintenance, education or benefit of the adult's spouse or dependent children, including the property guardian if the property guardian is the adult's spouse.

2011, c.1, s.5.

Appointment of temporary property guardian

44(1) Any person who, in the opinion of the court, has a sufficient interest in the financial welfare of an adult, including the public guardian and trustee and any entity mentioned in clause 30(c), may apply, in the prescribed form, to be appointed temporary property guardian for the adult, where the applicant has reason to believe that:

- (a) the adult is a person described in clause 40(1)(a) or (b); and
- (b) an immediate appointment is necessary to protect the adult's estate from serious damage or loss.

(2) An applicant pursuant to subsection (1) shall serve a copy of the application on the adult and, if the applicant is not the public guardian and trustee, the public guardian and trustee, but is not required to serve a copy of the application on the other persons mentioned in section 31.

- (3) The court may make an order appointing one or more persons as temporary property guardian for the adult for a period not exceeding six months that the court considers appropriate, where the court is of the opinion that:
- (a) the conditions set out in subsection (1) exist; and
 - (b) it would not be in the best interests of the adult to wait until an application is made pursuant to section 30.
- (4) The court shall restrict the authority of the temporary property guardian to those matters relating to the adult's estate that are necessary to protect the adult's estate from serious damage or loss and to provide the adult with the necessities of life, and may authorize the temporary property guardian to:
- (a) instruct any financial institution where the adult has an account that no funds are to be withdrawn from the account until further notice;
 - (b) direct any source of the adult's income to send the income to an account that is the subject of an instruction pursuant to clause (a); and
 - (c) stop any disposition of the adult's estate or direct that the proceeds of a disposition be paid into court.
- (5) The court may require an adult with respect to whom an application is made pursuant to subsection (1) to submit to an examination by one or more health professionals at any time and place that the court may direct.
- (6) Subject to subsection (9), if an order appointing a person as a temporary property guardian is made pursuant to this section, the court may require the person to file a bond, in the prescribed form, with the local registrar of the court, undertaking to properly act as temporary property guardian for the adult, with any sureties that the court may require.
- (7) If the court requires a bond to be filed pursuant to subsection (6), the court shall determine the amount of the bond.
- (8) The court may direct that more than one bond be given in order to limit the liability of a surety to an amount that the court considers reasonable.
- (9) No bond is to be required pursuant to subsection (6) if the value of the adult's estate does not exceed the prescribed amount.

2000, c.A-5.3, s.44; 2001, c.33, s.23; 2011, c.1,
s.6.

Right to be informed

45(1) Every adult who is the subject of an order pursuant to section 40 or 44 shall be informed, by the property decision-maker, promptly and in a manner that the adult may best understand, of the appointment and authority included in the order and whether the order has been made subject to limitations, conditions or requirements pursuant to section 47.

(2) The court may make it a condition of an order mentioned in subsection (1) that the property decision-maker file an affidavit with the court stating when and how the property decision-maker complied with subsection (1).

2000, c.A-5.3, s.45.

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Limitations on appointment

- 46(1)** No person shall be appointed a property decision-maker:
- (a) without the consent of the person being appointed;
 - (b) in the case of an individual, unless the individual is 18 years of age or older;
 - (c) if the person provides personal care or health care services to the adult for remuneration; or
 - (d) if the person will be in a position where the person's interests may conflict with the adult's interests.
- (2) Notwithstanding clauses (1)(c) and (d), the court may appoint a person described in those clauses if that person is the most appropriate person to appoint.

2000, c.A-5.3, s.46.

Conditions or requirements

- 47(1)** In making an order appointing a property decision-maker, the court may:
- (a) make its order subject to any limitations or conditions that it considers necessary; or
 - (b) if it is in the best interests of the adult, require that the property decision-maker apply to the court to have the order reviewed by the court within a specified period.
- (2) Where the court makes an order pursuant to clause (1)(b), sections 66 to 68 apply, with any necessary modification, to the review.
- (3) Where an order appointing a property decision-maker is made subject to limitations, conditions or requirements pursuant to this section, the property decision-maker shall comply with those limitations, conditions or requirements.

2000, c.A-5.3, s.47.

Effect of decision by property co-decision-maker

- 48(1)** Any decision made, action taken, consent given or thing done by a property co-decision-maker in good faith respecting any matter within his or her shared authority with the adult is deemed for all purposes to have been made, taken, given or done by the adult.
- (2) When a property co-decision-maker co-signs a contract with an adult pursuant to the authority granted pursuant to this Part, the contract is binding on the adult after the order is terminated in the same manner and to the same extent as if the adult had made the contract while capable of making the contract.

2000, c.A-5.3, s.48.

Effect of decision by property guardian or temporary property guardian

49(1) Any decision made, action taken, consent given or thing done by a property guardian or temporary property guardian in good faith respecting any matter within his or her authority is deemed for all purposes to have been made, taken, given or done by the adult as though the adult had capacity respecting that matter.

(2) When a property guardian or temporary property guardian enters into a contract on behalf of an adult pursuant to the authority granted pursuant to this Part, the contract is binding on the adult after the order is terminated in the same manner and to the same extent as if the adult had made the contract while capable of making the contract.

2000, c.A-5.3, s.49.

Duties of property decision-maker

50 A property decision-maker shall exercise the duties and powers assigned by the court diligently, in good faith, in the best interests of the adult and the adult's estate and in a manner so as to:

- (a) ensure that the adult's civil and human rights are protected;
- (b) encourage the adult to:
 - (i) participate to the maximum extent in all decisions affecting the adult's estate; and
 - (ii) act independently in all matters in which the adult is able to; and
- (c) limit the property decision-maker's interference in the life of the adult to the greatest extent possible.

2000, c.A-5.3, s.50.

Fees for services by property decision-maker

51(1) A property decision-maker shall not charge a fee unless:

- (a) the court has made an order setting a fee for services rendered by the property decision-maker; or
- (b) if the court has not made an order pursuant to clause (a) but there is a prescribed fee schedule, the fee that the property decision-maker charges for a service is not more than the fee set out in the prescribed fee schedule for that service.

(2) A fee charged in accordance with subsection (1) is to be paid out of the estate of the adult.

2011, c.1, s.7.

Order prevails

52 Unless the court otherwise orders, an order appointing a property decision-maker prevails over the terms of a power of attorney given by the adult.

2000, c.A-5.3, s.52.

c. A-5.3**Inventory of estate**

53(1) Where a property co-decision-maker or property guardian has been appointed for an adult:

- (a) the property co-decision-maker or property guardian shall, at the time of the application or within three months after being appointed, provide the local registrar of the court and the public guardian and trustee with an accurate inventory of the estate of the adult so far as this information has come to the knowledge of the property co-decision-maker or property guardian:
 - (i) stating the income and profits of the estate; and
 - (ii) setting out the assets, debts and credits of the adult;
 - (b) if property belonging to the estate is discovered after the filing of an inventory pursuant to clause (a), the property co-decision-maker or property guardian shall provide the local registrar of the court and the public guardian trustee with an accurate inventory of the estate immediately on the property being discovered; and
 - (c) the property co-decision-maker or property guardian shall verify by affidavit every inventory required pursuant to this subsection.
- (2) The public guardian and trustee may carry out an investigation to ensure the accuracy of the inventory.
- (3) If a property co-decision-maker or property guardian does not provide an inventory pursuant to subsection (1), the public guardian and trustee may request that the court review the order appointing the property co-decision-maker or property guardian, and sections 66 to 68 apply, with any necessary modification, to the review.
- (4) If a request is made to the court or the public guardian and trustee by a person mentioned in clauses (a) to (f), the court or public guardian and trustee shall permit the information provided pursuant to subsection (1) to be made available to that person:
- (a) the applicant mentioned in section 30;
 - (b) a person who was served pursuant to section 31;
 - (c) any person who consented in the prescribed form pursuant to clause 31(1)(b);
 - (d) any person who filed a statement of objection pursuant to section 32;
 - (e) any person served or notified pursuant to clause 35(1)(c); and
 - (f) any other person the court directs.

Annual accounting

54(1) Subject to the regulations, every property co-decision-maker or property guardian shall provide an annual accounting, in the prescribed form, of the decisions made, actions taken and consents given respecting the adult to the local registrar of the court and the public guardian and trustee, and the property co-decision-maker or property guardian shall verify by affidavit the annual accounting required pursuant to this subsection.

(1.1) An annual accounting required by subsection (1) must be provided to the local registrar of the court and the public guardian and trustee within three months after each anniversary of the date on which:

- (a) the order was made appointing the property co-decision-maker or the property guardian; or
- (b) in the case of an alternate decision-maker who has assumed the position of a property co-decision-maker or property guardian, the order was made appointing the property co-decision-maker or property guardian whose position the alternate decision-maker has assumed.

(2) The public guardian and trustee may carry out an investigation to ensure the accuracy of the annual accounting.

(3) If a property co-decision-maker or property guardian does not provide an annual accounting pursuant to subsection (1), the public guardian and trustee may request that the court review the order appointing the property co-decision-maker or property guardian, and sections 66 to 68 apply, with any necessary modification, to the review.

(4) If a request is made to the court or the public guardian and trustee by a person mentioned in clauses (a) to (f), the court or public guardian and trustee shall permit the information provided pursuant to subsection (1) to be made available to that person:

- (a) the applicant mentioned in section 30;
- (b) a person who was served pursuant to section 31;
- (c) any person who consented in the prescribed form pursuant to clause 31(1)(b);
- (d) any person who filed a statement of objection pursuant to section 32;
- (e) any person served or notified pursuant to clause 35(1)(c); and
- (f) any other person the court directs.

c. A-5.3**Final accounting**

54.1(1) Every property co-decision-maker or property guardian shall:

- (a) provide a final accounting, in the prescribed form, of the decisions made, actions taken and consents given respecting the adult to:
 - (i) the local registrar of the court; and
 - (ii) the public guardian and trustee; and
- (b) verify by affidavit the final accounting required pursuant to this subsection.

(2) A final accounting required by subsection (1) must be provided to the local registrar of the court and the public guardian and trustee within six months after the date on which the adult died or the date on which an order discharging the property co-decision-maker or property guardian from office was made.

(3) The public guardian and trustee may carry out an investigation to ensure the accuracy of the final accounting.

(4) If a property co-decision-maker or property guardian does not provide a final accounting pursuant to subsection (1), the public guardian and trustee may request that the court issue an order directing the property co-decision-maker or property guardian to provide that final accounting.

(5) If a request is made to the court or the public guardian and trustee by a person mentioned in clauses (a) to (e), the court or public guardian and trustee shall permit the information provided pursuant to subsection (1) to be made available to that person:

- (a) the adult;
- (b) an alternate property co-decision-maker or alternate property guardian;
- (c) a new property co-decision-maker or new property guardian;
- (d) if the adult has died, the executor or administrator of the adult's estate;
- (e) any other person the court directs.

2011, c.1, s.10.

Undertaking required

55(1) A person, other than the public guardian and trustee, who is appointed property co-decision-maker or property guardian shall file a bond, in the prescribed form, with the local registrar of the court, undertaking to properly act as property co-decision-maker or property guardian for the adult, with any sureties that the court may require.

(2) Unless the court directs otherwise, the bond required by this section is to be in an amount that is equal to or greater than the sworn value of the adult's estate.

(3) The court may direct that more than one bond be given in order to limit the liability of a surety to an amount that the court considers reasonable.

- (4) The court may dispense with the filing of a bond pursuant to subsection (1):
- (a) where the value of the estate does not exceed a prescribed amount;
 - (b) where the nearest relatives and public guardian and trustee consent in writing; or
 - (c) in any other situation the court considers appropriate.

2000, c.A-5.3, s.55; 2001, c.33, s.23.

Application for direction

56 A property decision-maker may apply to the court for advice or directions.

2000, c.A-5.3, s.56.

Onus of proof, contracts

56.1(1) This section applies if:

- (a) a property guardian or temporary property guardian has been appointed for the adult pursuant to this Act; or
- (b) the public guardian and trustee has been appointed, or has executed an acknowledgement to act, as property guardian for the adult pursuant to *The Public Guardian and Trustee Act*.

(2) In a proceeding respecting a contract entered into by an adult mentioned in subsection (1) within one year before the appointment or execution of acknowledgement to act, as the case may be, if an issue arises regarding the knowledge of the other party to the contract with respect to the capacity of the adult, the onus lies on that other party to prove that, at the time of the contract, he or she did not have reasonable grounds to believe the adult lacked the capacity to understand the nature and effect of the contract.

2005, c.2, s.2.

Filing of appointment

57(1) A property decision-maker shall register the following in the Land Titles Registry where, in the opinion of the property decision-maker, the adult has an interest in a title to land or in a registered interest in land:

- (a) a notice of his or her authority to act in the prescribed form;
- (b) a copy, certified by a local registrar of the court to be a true copy, of the order appointing him or her to act as a property decision-maker.

(2) The notice mentioned in subsection (1) is to contain a description of the titles and registered interests with respect to which the notice is to be registered.

(3) On receipt of the documents mentioned in subsection (1), the Registrar of Titles shall register the notice against all titles and interests described in the notice.

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(4) After a notice is registered pursuant to subsection (3), any application to transfer title or to amend, assign or discharge an interest with respect to which the registered notice applies must be authorized by the property decision-maker in writing.

(5) Subsection (4) does not apply to:

- (a) an application to transfer title or to amend, assign or discharge an interest based on a court order; or
- (b) an application to register a transfer of title where the consent of the registered owner is not required pursuant to *The Land Titles Act, 2000*.

2001, c.20, s.41.

Withdrawal or amended notice

58(1) A property decision-maker shall apply to the Registrar of Titles, in the prescribed form, to discharge a notice registered pursuant to section 57 or to register an amended notice containing the alterations and corrections to the notice registered pursuant to section 57 where:

- (a) the appointment for which the notice was registered pursuant to section 57 has been varied;
- (b) the adult with respect to whom the notice was registered pursuant to section 57 does not have an interest in the title or interest, or in any specified part of the title or interest, described in the notice; or
- (c) an error was made in the notice registered pursuant to section 57.

(2) Where there is a transfer of title or an assignment of an interest that is the subject of a notice mentioned in section 57 and the transfer or assignment is in accordance with the order mentioned in clause 57(1)(b), registration of the transfer or assignment in the Land Titles Registry is deemed to be a discharge of that notice respecting the title transferred or interest assigned.

2001, c.20, s.41.

Death of adult

59 Where an adult with respect to whom a notice has been registered pursuant to section 57 dies, receipt by the Registrar of Titles of a notarial copy of the adult's death certificate or a copy, certified by a local registrar of the court to be a true copy, of letters probate or letters of administration with respect to the adult is deemed to be a withdrawal of the notice mentioned in section 57.

2001, c.20, s.41.

Will of adult

60(1) Where a property co-decision-maker or a property guardian has been appointed, that person:

- (a) shall endeavour to determine whether the adult has a will; and
- (b) if the adult has a will:
 - (i) subject to subsection (2), shall review the will; and
 - (ii) may take into account the provisions of the will in carrying out his or her duties as property co-decision-maker or property guardian.

(2) A property co-decision-maker shall only review the adult's will with the consent of the adult.

2000, c.A-5.3, s.60.

Interest in disposition of property

61(1) The adult and the adult's heirs, executors, administrators, next of kin, devisees, legatees and assigns have the same interest in proceeds of any sale, mortgage or other disposition of 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 court may direct that any proceeds identified in this section be maintained by the property guardian in a separate account.

2000, c.A-5.3, s.61; 2001, c.33, s.22.

Act is indemnity

62(1) This Act and every order made pursuant to this Act are deemed to be full indemnities and discharges to any person for all acts and things done or permitted to be done pursuant to this Act or the order insofar as those acts or things relate to any property in which an adult is interested, either in the adult's own right or in trust.

(2) For the purposes of subsection (1), a person is not required to inquire into the propriety of an order or the jurisdiction of the court to make an order purporting to have been made pursuant to this Act.

2000, c.A-5.3, s.62; 2015, c.21, s.64.

Notice of action or proceeding

63(1) During the period commencing on the date of an order made pursuant to section 40 or 44 and ending on the date of an order superseding, vacating or setting aside the order, no person with knowledge of the order, unless 30 days' written notice of intention to do so has been given to the property decision-maker, shall:

- (a) bring, take or continue an action or proceeding, whether judicial or extra-judicial, against an adult; or
- (b) bring, take or continue an action or proceeding that affects or may affect the adult's estate.

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(2) The notice required by subsection (1) shall set out the full particulars of the action or proceeding or proposed action or proceeding.

(3) The property decision-maker may in any particular case, either before or after an action or proceeding is brought or taken, waive the notice required by subsection (1).

(4) The court may set aside any decision or judgment in an action or proceeding brought, taken or continued without 30 days' written notice to the property decision-maker, whether or not the person bringing the action or proceeding had knowledge of the order appointing the property decision-maker.

2000, c.A-5.3, s.63.

Gifts

63.1(1) A property decision-maker, other than the public guardian and trustee, shall not make a gift out of the adult's estate except as provided in this section.

(2) Subject to the regulations and any limitations or conditions in the order appointing a property guardian, a property guardian may make a gift out of the adult's estate if:

(a) the portion of the estate that constitutes the gift is not required to meet the adult's needs or the needs of the adult's dependants;

(b) the property guardian has reasonable grounds to believe, based on the actions of the adult while the adult had capacity, that the adult would make the gift if the adult had capacity; and

(c) the value of the gift does not exceed the prescribed amount.

(3) The court may authorize a property decision-maker to make a gift that is not authorized by subsection (2) if the court is satisfied that it would be appropriate for the property decision-maker to make the gift.

2011, c.1, s.11.

PART IV
Death of Decision-maker

Testamentary nomination

64(1) A decision-maker may nominate by will any person to act in that person's place as a decision-maker of the adult on the death of the decision-maker.

(2) Subject to subsection (8.1) and to section 64.1, on the death of a decision-maker who has made a testamentary nomination pursuant to subsection (1), the testamentary nominee becomes the decision-maker as though the nominee had been named as the decision-maker in the order appointing the deceased.

- (3) A person who becomes a decision-maker pursuant to subsection (2) shall:
- (a) apply to the court for confirmation of the nomination within six months of the death of the testator; and
 - (b) immediately notify the public guardian and trustee.
- (4) A person who is required to apply to the court pursuant to clause (3)(a) shall serve notice of the application on the persons mentioned in section 7 or 31, as the case may be.
- (5) Clauses 11(1)(a) and 35(1)(a) apply, with any necessary modification, to service pursuant to subsection (4).
- (6) The court shall not confirm a nomination unless the court has made the inquiry mentioned in clauses 13(1)(d) and (e) or 39(1)(d) and (f), as the case may be, and is satisfied that the adult is in need of a decision-maker.
- (7) On confirmation of a nomination made pursuant to subsection (1):
- (a) the court shall specify whether there are to be any limitations or conditions on or requirements respecting the authority of the decision-maker; and
 - (b) in the case of a property decision-maker, section 55 applies.
- (8) Where the person required to apply to the court pursuant to clause (3)(a) fails to do so, the public guardian and trustee may make the application to be confirmed as the decision-maker.
- (8.1) A testamentary nomination by a decision-maker of a person to act in that decision-maker's place terminates if the decision-maker is discharged pursuant to section 67.
- (9) In this section, "**decision-maker**" does not include a temporary personal guardian or a temporary property guardian.

2000, c.A-5.3, s.64; 2001, c.33, s. 23; 2004, c.65,
s.2; 2011, c.1, s.12; 2001, c.33, s.22.

Order appointing alternate decision-maker

- 64.1(1)** In this section, "**current decision-maker**" means a decision-maker for whom the alternate decision-maker is designated in the order.
- (2) At the time of making an order pursuant to section 14 or 40, if the application for the order includes a request to appoint an alternate decision-maker and the court is of the opinion that it is in the best interests of an adult to do so, the court may:
- (a) make an order appointing one or more persons as an alternate decision-maker for the adult to assume, in accordance with this Act, the position of a designated decision-maker; and
 - (b) in the case of an alternate decision-maker appointed to assume the position of a personal decision-maker, specify which of the matters mentioned in section 15 are to be subject to the authority of the alternate decision-maker.

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- (3) In determining whether to appoint a person as an alternate decision-maker pursuant to this section, the court shall consider the suitability of that person to act taking into account the matters mentioned in clause 13(1)(e) or 39(1)(f), as the case may be.
- (4) Section 21 or 46 applies, as the case may be, to a person who is proposed as an alternate decision-maker.
- (5) In making an order appointing an alternate decision-maker, the court may make any order that can be made pursuant to section 22 or 47, as the case may be.
- (6) Subject to subsection (7) and to the terms of the order appointing a decision-maker, if an alternate decision-maker is appointed, the alternate decision-maker shall assume the position of decision-maker without further proceedings:
- (a) on becoming aware of:
 - (i) the death of the current decision-maker;
 - (ii) the discharge of the current decision-maker;
 - (iii) the appointment of a decision-maker for the current decision-maker;
or
 - (iv) the coming into effect, because of the current decision-maker's lack of capacity, of a personal directive or enduring power of attorney made by the current decision-maker; or
 - (b) if authorized in writing by the current decision-maker, during the period set out in the authorization.
- (7) Before assuming the position of decision-maker pursuant to subsection (6) and if required in the order appointing the alternate decision-maker, the alternate decision-maker shall file a bond, in the prescribed form, with the local registrar of the court, with any sureties that the court may require.
- (8) An authorization pursuant to clause (6)(b) must indicate the period during which the alternate decision-maker may assume the position of decision-maker and terminates whenever the earlier of the following occurs:
- (a) at the end of the period indicated on the authorization;
 - (b) the date on which the current decision-maker revokes the authorization in writing.
- (9) If an alternate decision-maker assumes the position of decision-maker because of an event mentioned in subclause (6)(a)(i), (iii) or (iv), the alternate decision-maker shall, in the prescribed form, notify the local registrar of the court and the public guardian and trustee and provide evidence of the event.
- (10) If an alternate decision-maker assumes the position of decision-maker because of an event mentioned in subsection (6):
- (a) subject to any order of the court made pursuant to clause (2)(b), the authority of the alternate decision-maker is the same as that of the current decision-maker;

- (b) the alternate decision-maker shall inform the adult who is the subject of the order appointing the alternate decision-maker, promptly and in a manner that the adult may best understand, that the alternate decision-maker is assuming the position of decision-maker and of whether the order has been made subject to limitations, conditions or requirements pursuant to either or both of subsections (2) and (5);
- (c) in the case of the alternate decision-maker who assumes the position of:
 - (i) a personal co-decision-maker, a reference in the Act or the regulations to “personal co-decision-maker” is deemed to be a reference to the alternate decision-maker;
 - (ii) a personal guardian, a reference in the Act or the regulations to “personal guardian” is deemed to be a reference to the alternate decision-maker;
- (d) in the case of the alternate decision-maker who assumes the position of:
 - (i) a property co-decision-maker, a reference in the Act or the regulations to “property co-decision-maker” is deemed to be a reference to the alternate decision-maker;
 - (ii) a property guardian, a reference in the Act or the regulations to “property guardian” is deemed to be a reference to the alternate decision-maker; and
- (e) the alternate decision-maker may exercise the powers given to, and shall fulfil the duties imposed on, the current decision-maker pursuant to this Act, the regulations and any order of the court.

2011, c.1, s.13.

No testamentary nomination or appointment of alternate decision-maker

65 The public guardian and trustee may assume the position of a property co-decision-maker, property guardian, personal co-decision-maker or personal guardian until an appointment has been made pursuant to this Act if:

- (a) the property co-decision-maker, property guardian, personal co-decision-maker or personal guardian has died;
- (b) the property co-decision-maker, property guardian, personal co-decision-maker or personal guardian has not made a nomination pursuant to section 64; and
- (c) an alternate decision-maker has not been appointed by the court pursuant to section 64.1 to assume the position of the property co-decision-maker, property guardian, personal co-decision-maker or personal guardian.

2001, c.33, s.22.

PART IV.1
Foreign Orders**Foreign orders**

65.1(1) In this section, “**foreign order**” means an order made by a court outside Saskatchewan that appoints a person to have duties comparable to those of a personal guardian or property guardian with respect to the personal welfare of the adult or with respect to the financial welfare of the adult.

(2) A person who is appointed by a foreign order to have duties comparable to those of a personal guardian or property guardian may apply to the court, in the prescribed form, to have the foreign order resealed.

(3) An applicant for resealing shall:

(a) produce to and deposit with a local registrar of the court the foreign order to be resealed;

(b) pay the prescribed fees;

(c) in the case of an applicant who has duties comparable to those of a property guardian:

(i) provide the local registrar of the court with an accurate inventory of the estate of the adult in Saskatchewan so far as this information has come to the knowledge of the applicant:

(A) stating the income and profits of the estate; and

(B) setting out the assets, debts and credits of the adult; and

(ii) if property in Saskatchewan belonging to the estate is discovered after the filing of an inventory pursuant to subclause (i), provide the local registrar of the court with an accurate inventory of the estate immediately on the property being discovered; and

(iii) verify by affidavit every inventory required pursuant to this clause; and

(d) serve a copy of the application in accordance with section 65.3.

(4) On an application pursuant to subsection (2) and after any hearing that the court considers necessary, if the applicant has complied with subsection (3), the court may order that the foreign order be resealed.

(5) On resealing a foreign order pursuant to subsection (4):

(a) the foreign order:

(i) is of the same force and effect in Saskatchewan as if it were issued by the court;

(ii) is subject to any orders of the court as if the foreign order had been granted in Saskatchewan; and

(iii) is, with respect to the adult who is the subject of the foreign order, subject to appeal and review in the same manner as an order appointing a personal guardian or property guardian; and

- (b) without limiting the generality of clause (a), the applicant for resealing may exercise the same powers and is subject to the same duties as a personal guardian or property guardian as if the foreign order were issued by the court, including the duty to provide an annual accounting and a final accounting in accordance with this Act.
- (6) If the court makes an order pursuant to subsection (4), the court shall determine whether it is in the best interests of the adult to require a review of the resealed foreign order and, if a review is required, shall specify the period within which the review is to take place.
- (7) For the purposes of this section, a duplicate of a foreign order sealed with the seal of the court outside Saskatchewan that sealed it or a copy of a foreign order certified by or under the direction of the court outside Saskatchewan that granted it has the same effect as the original foreign order.
- (8) The court may not reseal a foreign order pursuant to this section until the registrar, clerk or other officer of the court outside Saskatchewan that issued the foreign order has issued a certificate to the effect that the foreign order is wholly unrevoked and of full effect.

2011, c.1, s.15.

Security required on resealing foreign order

- 65.2(1)** Subject to subsection (4), if the court makes an order pursuant to subsection 65.1(4) and the order is with respect to the appointment as a property guardian, the court may require the person who is to act as property guardian to file a bond, in the prescribed form, with the local registrar of the court, undertaking to properly act as property guardian for the adult, with any sureties that the court may require.
- (2) If the court requires a bond to be filed pursuant to subsection (1), the court shall determine the amount of the bond.
- (3) The court may direct that more than one bond be given in order to limit the liability of a surety to an amount that the court considers reasonable.
- (4) No bond is to be required pursuant to subsection (1) if:
- (a) a certificate of the registrar, clerk or other officer of the court outside Saskatchewan that issued the foreign order is filed, stating that security has been given in that court in an amount that is sufficient to cover the assets within the jurisdiction of that court and the assets within Saskatchewan; or
 - (b) the value of the adult's estate does not exceed the prescribed amount.

2011, c.1, s.15.

c. A-5.3**Service of application to reseal a foreign order**

65.3(1) A copy of an application to reseal a foreign order pursuant to section 65.1 must be served on:

- (a) the adult;
 - (b) the nearest relatives within the meaning of section 5, except any nearest relative who has consented in the prescribed form to the order requested in the application;
 - (c) the member of the Executive Council responsible for the administration of *The Child and Family Services Act* if the adult is receiving services pursuant to section 10 or 56 of *The Child and Family Services Act*;
 - (d) the personal decision-maker in Saskatchewan of the adult;
 - (e) the property decision-maker in Saskatchewan of the adult;
 - (f) any attorney under a power of attorney given by the adult, if known;
 - (g) any proxy under a health care directive made by the adult, if known;
 - (h) any supporter nominated by the adult pursuant to section 9 of *The Personal Care Homes Regulations, 1996*, if known;
 - (i) any person who acts as a trustee for the purpose of administering financial benefits on behalf of the adult, if known; and
 - (j) the public guardian and trustee.
- (2) Nothing in subsection (1) requires a person to conduct a search for any person mentioned in clauses (1)(f) to (i) if the existence of that person is not known.
- (3) If the court considers it appropriate to do so, the court may dispense with service on all or any of the persons mentioned in clauses (1)(a) to (i).

2011, c.1, s.15.

PART V
General

Review of appointment

66(1) The court may review the appointment or testamentary nomination of a decision-maker on the application of:

- (a) the adult;
- (b) the personal decision-maker;
- (c) the property decision-maker;
- (d) a person having, in the opinion of the court, a sufficient interest in the personal or financial welfare of the adult; or
- (e) the public guardian and trustee.

(2) The person making an application pursuant to subsection (1) shall serve a copy of the application on:

- (a) in the case of a review of an order appointing a personal co-decision-maker or personal guardian, the persons mentioned in section 7 and any person who consented in the prescribed form to the order;
- (b) in the case of an order appointing a temporary personal guardian, the adult and the public guardian and trustee;
- (c) in the case of a review of an order appointing a property co-decision-maker or property guardian, the persons mentioned in section 31 and any person who consented in the prescribed form to the order; and
- (d) in the case of an order appointing a temporary property guardian, the adult and the public guardian and trustee.

2000, c.A-5.3, s.66; 2001, c.33, s.23; 2001, c.33,
s.22.

Order discharging decision-maker or alternate decision-maker

67(1) On an application pursuant to section 66, the court may make an order discharging a decision-maker or alternate decision-maker from office or make any other order it considers appropriate in the circumstances if the court is satisfied that:

- (a) an adult is not in need of a decision-maker; or
- (b) a decision-maker or alternate decision-maker:
 - (i) is unable or unwilling to act or continue to act;
 - (ii) fails to act in accordance with an order pursuant to this Act;
 - (iii) acts in an improper manner or in a manner that has endangered or that may endanger the well-being or the estate of the adult; or
 - (iv) is not a suitable person to act as a decision-maker or alternate decision-maker.

(2) Before making an order discharging a decision-maker or alternate decision-maker pursuant to subsection (1), the court shall consider whether:

- (a) suitable arrangements have been made for the care of the adult or the adult's estate, including the withdrawal of a notice registered pursuant to subsection 57(3) if the adult will no longer have a property decision-maker;
- (b) an alternate decision-maker has been appointed; and
- (c) an application for another order pursuant to this Act will be made.

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(3) The court may appoint the public guardian and trustee as decision-maker for the adult if:

- (a) in the opinion of the court the adult is still in need of a decision-maker;
- (b) no alternate decision-maker has been appointed;
- (c) no application for another order pursuant to this Act will be made; and
- (d) the public guardian and trustee consents to the appointment.

(4) On the application of any of the persons mentioned in subsection 66(1), the court may vary an order appointing a decision-maker or alternate decision-maker.

2011, c.1, s.16; 2001, c.33, s.22.

Filing and passing of accounts

68 The court may make an order requiring a property co-decision-maker or property guardian to file and pass the property co-decision-maker's or property guardian's accounts.

2000, c.A-5.3, s.68.

Appeal

69 A person who is aggrieved or affected by an order of the court may appeal the order to the Court of Appeal within the time and in accordance with the practices and procedures established pursuant to *The Court of Appeal Act*.

2000, c.A-5.3, s.69.

Immunity

70 No action lies or shall be instituted against any person who performs a duty, exercises a power or carries out a responsibility pursuant to this Act or the regulations for any loss or damage suffered by any person by reason of anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done, by that person, in the performance or supposed performance of that duty, the exercise or supposed exercise of that power or the carrying out or supposed carrying out of that responsibility.

2000, c.A-5.3, s.70.

Notice of prior judgments, writs of execution

71 Unless 30 days' written notice of intention to do so has been given to the property decision-maker or, if no property decision-maker has been appointed, to the personal decision-maker, no person, during the period in which a decision-maker has been appointed, shall:

- (a) enter judgment against the adult in an action or proceeding brought or taken against the adult before the date of the appointment; or
- (b) execute a judgment obtained against the adult before the date of the appointment.

2000, c.A-5.3, s.71.

Copies of orders to public trustee

72 The local registrar of the court shall transmit to the public guardian and trustee, without charge, a certified copy of:

- (a) every order appointing a person as a decision-maker; and
- (b) every order made pursuant to section 67 or 68.

2000, c.A-5.3, s.72; 2001, c.33, s.23.

Payment of money

73(1) Where there is money in court to the credit of an adult, the court may make an order for payment of that money if:

- (a) the adult resides in another province or territory or in a prescribed jurisdiction; and
 - (b) an order made by a superior court exercising jurisdiction where the adult resides authorizing another person to receive that money is submitted to the court.
- (2) The order shall state that the money is to be paid to the person mentioned in clause (1)(b).

2000, c.A-5.3, s.73.

Order as to costs

74 The court may order that any costs or expenses incurred pursuant to this Act be paid:

- (a) by any party to the application, issue or proceeding;
- (b) out of the estate of the adult; or
- (c) partly by the party mentioned in clause (a) and partly by the estate mentioned in clause (b).

2000, c.A-5.3, s.74.

Regulations

75 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 any forms or fee schedules required pursuant to this Act;
- (c) prescribing the terms and conditions for making a designation pursuant to clause 6(b) or 30(c);
- (d) respecting assessments pursuant to subsections 12(1) and 38(1);

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- (e) respecting the use of restraints pursuant to clause 15(i);
- (f) prescribing advocacy groups for the purposes of clause 36(b);
- (g) prescribing requirements for inventories mentioned in subsection 53(1), annual accountings mentioned in subsection 54(1), or final accountings mentioned in subsection 54.1(1);
- (h) exempting persons from requirements to do the annual accounting mentioned in subsection 54(1);
- (i) prescribing:
 - (A) the maximum value of an adult's estate for which a bond is not required for the purposes of subsection 44(9) or 65.2(4);
 - (B) the value of an estate for which a bond is not required pursuant to subsection 55(4);
- (i.1) prescribing the maximum value of a gift pursuant to subsection 63.1(2);
- (j) prescribing jurisdictions for the purposes of clause 73(1)(a);
- (k) establishing registers with respect to orders pursuant to this Act;
- (l) respecting means of filing or service, including electronic filing or service, pursuant to this Act;
- (m) prescribing any other matter or thing required or authorized by this Act to be prescribed in the regulations;
- (n) respecting any other matter or thing the Lieutenant Governor in Council considers necessary or expedient to carry out the intent of this Act.

PART VI
Repeal, Transitional, Consequential and Coming into Force

S.S. 1989-90, c.D-25.1 repealed

76 *The Dependent Adults Act* is repealed.

2000, c.A-5.3, s.76.

Transitional

77 An order issued pursuant to *The Dependent Adults Act* that is in force on the day before section 1 of this Act comes into force, continues in force pursuant to this Act and shall be dealt with pursuant to this Act, and any person appointed as a personal guardian or property guardian pursuant to that Act is bound by the provisions of this Act.

2000, c.A-5.3, s.77.

78 to 85 **Dispensed.** These sections make consequential amendments to other Acts. The amendments have been incorporated into the corresponding Acts.

Coming into force

86 This Act comes into force on proclamation.

2000, c.A-5.3, s.86.

