

# *The Mentally Disordered Persons Act*

*being*

Chapter M-14 of *The Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by the *Statutes of Saskatchewan*, 1983, c.80; 1983-84, c.47; 1984-85-86, c.99; 1989-90, c.D-25.1 and 20; 1992, c.A-24.1 and 29; 1996, c.9; and 2000, c.A-5.3, 56; and 2001, c.33.

## **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.

## Table of Contents

1	Short title
2	Interpretation
3 to 38	Repealed
	CERTIFICATES OF INCOMPETENCE AND COMPETENCE
38.1	Interpretation
38.2	Certificates re in-patient
38.3	Certificate re other persons
38.4	Request for re-examination
38.5	Transitional
38.6	Notice re review panel
38.7	Appeal to review panel
38.8	Regulations re appeals and investigations
38.9	Application to Court Queen's Bench
38.91	Deemed revocation of certificate of incompetence
38.92	Immunity
39 to 42	Repealed

## CHAPTER M-14

### An Act respecting Mentally Disordered Persons and their Estates

#### Short title

1 This Act may be cited as *The Mentally Disordered Persons Act*.

#### Interpretation

2 In this Act:

- (a) **Repealed.** 1989-90, c.D-25.1, s.52.
- (b) **Repealed.** 1989-90, c.D-25.1, s.52.
- (c) **“court”** means the Court of Queen’s Bench; and **“judge”** means a judge of that court;
- (d) to (k) **Repealed.** 1989-90, c.D-25.1, s.52.

R.S.S. 1978, c.M-14, s.2; 1989-90, c.D-25.1 s.52.

3 to 35 **Repealed.** 1989-90, c.D-25.1, s.52.

36 **Repealed.** 1983, c.80, s.16.

37 **Repealed.** 1989-90, c.D-25.1, s.52.

38 **Repealed.** 1989-90, c.D-25.1, s.52.

### CERTIFICATES OF INCOMPETENCE AND COMPETENCE

#### Interpretation

38.1 In sections 38.2 to 38.91:

- (a) the terms **“chief psychiatrist”**, **“in-patient”**, **“nearest relative”**, **“physician”**, except a physician who resides outside Saskatchewan and who conducts an examination on a person mentioned in subsection 38.4(2), and **“review panel”** have the meanings ascribed to them in *The Mental Health Services Act*;
- (b) **“facility”** means a mental health centre, psychiatric ward or mental health clinic, as defined in *The Mental Health Services Act*;
- (c) **“public guardian and trustee”** means the public guardian and trustee for Saskatchewan.

1984-85-86, c.19, s.2; 1992, c.29, s.3; 1996, c.9, s.14; 2001, c.33, s.23.

#### Certificates re in-patient

38.2(1) If a person is an in-patient, the chief psychiatrist of the facility in which the person is an in-patient may cause him to be examined by a physician to determine whether he is or is not competent to manage his estate and, if it is found that he is not so competent, the chief psychiatrist shall:

- (a) issue a certificate of incompetence in respect of that person;

**c. M-14****MENTALLY DISORDERED PERSONS**

- (b) forward the certificate to the public guardian and trustee; and
  - (c) notify the patient and his nearest relative of the issue of the certificate.
- (2) When the chief psychiatrist is about to issue a certificate of incompetence pursuant to subsection (1) and he 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, he shall immediately inform the public guardian and trustee of his opinion and that a certificate of incompetence is about to be issued and forwarded.
- (3) When an in-patient in respect of whom a certificate of incompetence has been issued is to be released from the facility and he is not required to return to the facility within a specified period, the chief psychiatrist shall cause him to be examined by a physician to determine whether he is then competent to manage his estate and, if it is found that:
- (a) he is not so competent, the chief psychiatrist shall notify the in-patient, his nearest relative and the public guardian and trustee of the result of the examination; or
  - (b) he is so competent, the chief psychiatrist shall issue a certificate of competence in respect of the in-patient, forward the certificate to the public guardian and trustee and notify the patient and his nearest relative that the certificate has been issued.

1984-85-86, c.99, s.2; 2001, c.33, s.23.

**Certificate re other persons**

**38.3** If a chief psychiatrist considers it advisable, he may make arrangements for a person to be examined by any physician who the chief psychiatrist may designate to determine whether the person is competent to manage his estate and, if it is found that the person is not so competent, the chief psychiatrist shall:

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

1984-85-86, c.99, s.2; 2001, c.33, s.23.

**Request for re-examination**

**38.4(1)** A person in respect of whom a certificate of incompetence has been issued pursuant to section 38.2 or 38.3 may be examined to determine whether he is then competent to manage his estate:

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

and the chief psychiatrist shall appoint a physician to make the examination and determination.

(2) Where the person to be examined pursuant to subsection (1) resides outside Saskatchewan, he may be examined in the province or state in which he resides.

(3) If the physician designated to conduct the examination on a person mentioned in subsection (2) resides outside Saskatchewan, he is to be a registered physician in good standing in the province or state in which the examination is made and he need not be registered with The College of Physicians and Surgeons of the Province of Saskatchewan.

(4) If, on examination pursuant to this section it is found that the person examined:

(a) is not competent to manage his estate, the physician who performed the examination shall notify the chief psychiatrist who appointed him of the result of the examination and that chief psychiatrist shall notify the person examined, that person's nearest relative and the public guardian and trustee of the result of the examination; or

(b) is competent to manage his estate, the physician who performed the examination shall notify the chief psychiatrist who appointed him of the result of the examination, and that chief psychiatrist shall issue a certificate of competence in respect of the person examined, forward the certificate to the public guardian and trustee and notify the person examined and his nearest relative that the certificate has been issued.

(5) A chief psychiatrist may restrict the number of examinations pursuant to subsection (1) or (2) of any one person to one examination during any period of 12 months.

1984-85-86, c.99, s.2; 2001, c.33, s.23.

#### **Transitional**

**38.5(1)** Every certificate of incompetence in effect on the day before the day this section comes into force and issued on the finding that a patient was not competent to manage his own affairs is deemed to be a certificate of incompetence issued because the patient was not competent to manage his estate.

(2) Every certificate of incompetence issued pursuant to *The Mental Health Act* and in effect on the day before the day this section comes into force is deemed to be a certificate of incompetence issued pursuant to this Act.

1984-85-86, c.99, s.2.

#### **Notice re review panel**

**38.6** If a certificate of incompetence is issued in respect of a person, the chief psychiatrist shall immediately notify that person and his 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 chairman of the review panel; and

(c) the right of appeal to the review panel provided in section 38.7.

1984-85-86, c.99, s.2.

**Appeal to review panel**

38.7(1) Subject to subsection (4), a person in respect of whom a certificate of incompetence has been issued or his nearest relative on his behalf may, in writing, appeal the decision to issue the certificate to the chairman of the review panel alleging that a certificate of incompetence ought not to have been issued or that it should be revoked.

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

(3) When the review panel receives an appeal pursuant to subsection (1), it shall notify the public guardian and trustee, the chief psychiatrist of the facility in which the appellant is an in-patient or the chief psychiatrist who arranged for the examination, as the case may be, 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 incompetence pursuant to this Act; or

(b) where a certificate of incompetence has been issued on the basis of an examination pursuant to subsection 38.2(3) or section 38.4, with respect to the opinion of the physician who conducted that examination, each time an examination is made.

(5) On receipt by the chairman 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 expeditiously determine 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 *mutatis mutandis* 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 health, and, in that case, the appellant has the right to be represented by any other person.

(8) The appellant or his representative has the right of cross-examination.

(9) The review panel shall decide whether the certificate of incompetence is to be revoked or remain in effect.

(10) The chairman of the review panel shall make a written report of the review panel’s decision and shall, within 14 days following the day that the appeal was received, or within any further period that may be fixed by the member of the Executive Council to whom, for the time being, the administration of this Act is assigned, forward the report to:

(a) the appellant;

(b) the nearest relative if he brought the appeal;

- (c) the chief psychiatrist of the facility in which the appellant is an in-patient or the chief psychiatrist who arranged for the examination, as the case may be; and
- (d) the public guardian and trustee.

(11) Where the review panel does not find in favour of the appellant, the chairman of the review panel shall include in the written report forwarded to the appellant pursuant to subsection (10) a notice of the right to make an application to the court provided for in section 38.9.

(12) *The Arbitration Act, 1992* does not apply to an investigation pursuant to this section.

1984-85-86, c.99, s.2; 1992, c.A-24.1, s.61; 2001, c.33, s.23.

#### **Regulations re appeals and investigations**

**38.8** The Lieutenant Governor in Council may make regulations:

- (a) conferring on review panels any ancillary powers that are considered advisable for carrying out their functions pursuant to this Act; and
- (b) regulating practice and procedure before review panels.

1984-85-86, c.99, s.2.

#### **Application to Court of Queen's Bench**

**38.9(1)** A person who made an appeal to a review panel pursuant to section 38.7 and who is aggrieved by its decision may apply to the court for an order revoking the certificate of incompetence within 30 days of the date of the decision.

(2) An application pursuant to this section shall be by notice of motion, and the notice of motion is to be served on:

- (a) the public guardian and trustee;
- (b) the chief psychiatrist of the facility in which the person who is the subject of the application is an in-patient or the chief psychiatrist who arranged for the examination, as the case may be; and
- (c) any other person that the court may direct.

(3) The practice and procedure of the court on an application in chambers apply, *mutatis mutandis*, to an application pursuant to this section.

(4) An application pursuant to this section is to be supported by an affidavit of the person making the application setting forth fully the facts in support of the application.

(5) In addition to the evidence adduced by the person making the application, the court may direct any further evidence to be given that it considers necessary and, for that purpose, may order that the person for whom a certificate of incompetence has been issued submit to a further examination by a physician.

- (5.1) The court, after considering all of the evidence, shall:
- (a) determine whether a person for whom a certificate of incompetence has been issued is competent to manage his or her estate; and
  - (b) direct that the certificate of incompetence remain in effect or be revoked.
- (6) The court may make any order as to the costs of an appeal pursuant to this section that it considers appropriate.
- (7) With leave of a judge of the Court of Appeal, any of the following persons may appeal to the Court of Appeal within 30 days after the decision on a question of law or jurisdiction:
- (a) the person for whom a certificate of incompetence has been issued or his or her nearest relative on his or her behalf;
  - (b) a person served with a notice of motion pursuant to subsection (2).

1984-85-86, c.99, s.2; 2000, c.56, s.3; 2001, c.33, s.23.

**Deemed revocation of certificate of incompetence**

**38.91(1)** Subject to subsection (2), every certificate of incompetence is deemed to be revoked on the later of:

- (a) one year from the date the certificate of incompetence is issued; and
  - (b) the date that this section comes into force.
- (2) A certificate of incompetence issued with a respect to a person is not deemed to be revoked pursuant to subsection (1) if:
- (a) proceedings have been commenced under *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 under *The Adult Guardianship and Co-decision-making Act*; or
  - (c) the public guardian and trustee is property guardian for that person.

1992, c.29, s.4; 1996, c.9, s.14; 2000, c.A-5.3, s.83; 2001, c.33, s.23.

**Immunity**

**38.92** 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.56, s.4.

**39 to 42 Repealed.** 1989-90, c.D-25.1, s.52.