

2014

CHAPTER 25

An Act to amend *The Public Guardian and Trustee Act* and to make a consequential amendment to *The Provincial Court Act, 1998*

(Assented to May 14, 2014)

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

Short title

1 This Act may be cited as *The Public Guardian and Trustee Amendment Act, 2014 (No. 2)*.

S.S. 1983, c.P-36.3 amended

2 *The Public Guardian and Trustee Act* is amended in the manner set forth in this Act.

Section 2 amended

3 **Clause 2(1)(b) is amended by adding “, except in section 6.3,” after “means”.**

New section 6.3

4 **The following section is added after section 6.2:**

“Lawyer for child in protection hearing

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

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

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

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

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

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

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

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

(8) If any person fails to provide access or disclosure in accordance with clause (7)(a) or (b), the public guardian and trustee, or any person designated by the public guardian and trustee on an application *ex parte*, may request that the court grant an order requiring that person to immediately provide access or disclosure, as the case may be, and the court may make any other order that it considers necessary to enforce the provisions in subsection (7).

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

- (a) any difference between the interests or views of the child and the interests or views of the parties to the protection hearing;
- (b) the nature of the protection hearing, including the seriousness and complexity of the issues;
- (c) the ability of the child to express his or her interests or views; and
- (d) the views of the child regarding representation”.

S.S. 1998, c.P-30.11, new section 64.1

5 The following section is added after section 64 of *The Provincial Court Act, 1998*:

“Appointment of lawyer in protection hearing

64.1(1) In this section, ‘**child**’ and ‘**protection hearing**’ have the same meaning as in section 2 of *The Child and Family Services Act*.

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

(3) If the court directs that a child be represented by a lawyer pursuant to subsection (2), the court shall refer the child to the public guardian and trustee in accordance with section 6.3 of *The Public Guardian and Trustee Act*, and the public guardian and trustee shall appoint a lawyer to represent the child.

- (4) In making a direction pursuant to subsection (2), the court shall consider all relevant factors, including:
- (a) any difference between the interests or views of the child and the interests or views of the parties to the protection hearing;
 - (b) the nature of the protection hearing, including the seriousness and complexity of the issues;
 - (c) the ability of the child to express his or her interests or views; and
 - (d) the views of the child regarding representation.
- (5) Notwithstanding that a child is represented by a lawyer, the child is not a party to the protection hearing”.

Coming into force

- 6** This Act comes into force on proclamation.

