

BILL

No. 115

An Act to amend *The Public Guardian and Trustee Act*, to repeal *The Mentally Disordered Persons Act* and to make a related amendment to another Act

(Assented to)

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, 2013*.

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 **Subsection 2(1) is amended:**

(a) **by adding the following clauses before clause (b):**

“(a.1) **‘business day’** means a day other than a Saturday, Sunday or holiday;

“(a.2) **‘capacity’** means the ability:

- (i) to understand information relevant to making a decision; and
- (ii) to appreciate the reasonably foreseeable consequences of making or not making a decision”;

(b) **by repealing clause (d) and substituting the following:**

“(d) **‘guardian’** means the guardian of the property of an infant appointed or constituted pursuant to section 30 of *The Children’s Law Act, 1997*, who has:

- (i) filed a bond of a guarantee company in an amount approved by the court pursuant to subsection 34(2) of *The Children’s Law Act, 1997* or any other security required by the court pursuant to subsection 34(3) of that Act; or
- (ii) obtained an order pursuant to subsection 34(3) of *The Children’s Law Act, 1997* dispensing with the requirement of a bond or other security”;

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(c) in clause (f.1) by striking out “*The Children’s Law Act*” and substituting “*The Children’s Law Act, 1997*”; and

(d) in clause (j) by striking out “*The Children’s Law Act*” and substituting “*The Children’s Law Act, 1997*”.

Section 6.1 amended

4 Clause 6.1(a) is repealed and the following substituted:

“(a) as a property guardian pursuant to *The Missing Persons and Presumption of Death Act*, subject to section 44.1”.

Section 10 amended

5(1) Clause 10(1)(a) is amended by striking out “*The Children’s Law Act*” and substituting “*The Children’s Law Act, 1997*”.

(2) Subclause 10(2)(b)(i) is amended by striking out “*The Children’s Law Act*” and substituting “*The Children’s Law Act, 1997*”.

Section 13 amended

6 Subsection 13(1) is amended in the portion following clause (b) by striking out “*The Children’s Law Act*” and substituting “*The Children’s Law Act, 1997*”.

Section 18 amended

7 Subsection 18(4) is amended by striking out “*The Children’s Law Act*” and substituting “*The Children’s Law Act, 1997*”.

Section 21 amended

8 Section 21 is amended in the portion preceding clause (a) by striking out “*The Dependants’ Relief Act*” and substituting “*The Dependants’ Relief Act, 1996*”.

Section 25 amended

9 Subsection 25(5) is amended by striking out “*The Children’s Law Act*” and substituting “*The Children’s Law Act, 1997*”.

Section 27 amended

10 Section 27 is amended by striking out “*The Dependants’ Relief Act*” and substituting “*The Dependants’ Relief Act, 1996*”.

New sections 28.1 to 28.9

11 The following heading and sections are added after section 28:

“CERTIFICATES OF INCAPACITY AND CAPACITY

“Interpretation of sections 28.2 to 28.9

28.1 In sections 28.2 to 28.9:

(a) ‘**chief psychiatrist**’ means a chief psychiatrist as defined in *The Mental Health Services Act*;

(b) ‘**facility**’ means a mental health centre, psychiatric ward or mental health clinic, as those terms are defined in *The Mental Health Services Act*;

(c) ‘**in-patient**’ means an in-patient as defined in *The Mental Health Services Act*;

(d) ‘**nearest relative**’ means the nearest relative as defined in *The Mental Health Services Act*;

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(e) **‘physician’**, except a physician who resides outside Saskatchewan and who conducts an examination on a person mentioned in subsection 28.4(4), means a physician as defined in *The Mental Health Services Act*;

(f) **‘review panel’** means a review panel as defined in *The Mental Health Services Act*.

“Certificates re in-patient

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

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

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

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

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

“Certificates re other persons

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

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

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

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

“Request for re-examination

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

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

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

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

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

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

(6) If, on examination pursuant to this section it is found that the person examined lacks the capacity to manage his or her estate:

- (a) the physician who performed the examination pursuant to a designation by a chief psychiatrist shall notify the chief psychiatrist who designated the physician of the result of the examination; or
- (b) the physician who performed the examination in the absence of a designation by a chief psychiatrist shall notify the chief psychiatrist of a facility of the result of the examination.

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

“Transitional

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

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

“Notice re review panel

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

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

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“Appeal to review panel

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

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

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

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

(a) with respect to the issuance of a certificate of incapacity; or

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

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

(a) shall immediately carry out any investigation that it considers necessary to determine expeditiously the validity of the appeal; and

(b) may invite the appellant and other persons considered by the review panel to be affected by the appeal to testify or produce evidence relating to the appeal.

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

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

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

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

(10) The chairperson of the review panel shall make a written report of the review panel’s decision and shall, within 10 business days after the day that the appeal was received, or within any further period that may be fixed by the minister, forward the report to:

(a) the appellant;

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- (b) the nearest relative, if the nearest relative brought the appeal;
- (c) the chief psychiatrist who issued the certificate of incapacity; and
- (d) the public guardian and trustee.

(11) If the review panel does not find in favour of the appellant, the chairperson of the review panel shall include in the written report forwarded to the appellant pursuant to subsection (10) a notice of the right to apply to the court provided for in section 28.8.

“Application to court

28.8(1) A person who made an appeal to a review panel pursuant to section 28.7 and who is aggrieved by its decision may apply to the court within 20 business days after the date of the decision for an order revoking the certificate of incapacity.

- (2) An application must be served on:
 - (a) the public guardian and trustee;
 - (b) the chief psychiatrist who issued the certificate of incapacity; and
 - (c) any other person that the court may direct.
- (3) On an application pursuant to this section, the court may order that the person for whom a certificate of incapacity has been issued submit to a further examination by a physician.
- (4) The court, after considering all of the evidence, shall:
 - (a) determine whether a person for whom a certificate of incapacity has been issued has the capacity to manage his or her estate; and
 - (b) direct that the certificate of incapacity remain in effect or be revoked.
- (5) The court may make any order as to the costs of an appeal pursuant to this section that it considers appropriate.
- (6) With leave of a judge of the Court of Appeal, any of the following persons may appeal a decision of the court made pursuant to this Act to the Court of Appeal on a question of law or jurisdiction:
 - (a) the person for whom a certificate of incapacity has been issued or his or her nearest relative on his or her behalf;
 - (b) a person served pursuant to subsection (2).
- (7) An application for leave to appeal pursuant to subsection (6) must be made within 20 business days after the date of the decision for which leave to appeal is being sought or within any further time that a judge of the Court of Appeal may allow.

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“Deemed revocation of certificate of incapacity

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

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

(a) proceedings have been commenced pursuant to *The Adult Guardianship and Co-decision-making Act* to appoint a property guardian for that person;

(b) a property guardian for that person has been appointed pursuant to *The Adult Guardianship and Co-decision-making Act*; or

(c) the public guardian and trustee is property guardian for that person”.

Section 29 amended**12(1) Subsection 29(2) is amended:**

(a) in the portion preceding clause (a) by striking out “The public” and substituting “Subject to subsection (3.1), the public”; and

(b) in clause (a) by striking out “incompetence has been issued pursuant to *The Mentally Disordered Persons Act*” and substituting “incapacity has been issued pursuant to this Act”.

(2) Clause 29(3)(a) is amended by striking out “incompetence has been issued pursuant to *The Mentally Disordered Persons Act*” and substituting “incapacity has been issued pursuant to this Act”.

(3) The following subsection is added after subsection 29(3):

“(3.1) If an acknowledgment to act has been signed under seal pursuant to subsection (3) and the public guardian and trustee is of the opinion that the signing of the acknowledgment to act was done in error or was not appropriate and should not have been done, the public guardian and trustee may revoke the acknowledgment to act and it is deemed for all purposes not to have been signed”.

Section 30 amended

13 Clause 30(1)(a) is amended by striking out “if competent” and substituting “if he or she had the capacity to manage his or her estate”.

Section 31 amended**14 Subsection 31(1) is amended:**

(a) by repealing clause (b) and substituting the following:

“(b) to take any steps that he or she considers necessary for the prudent management of the property of a deceased person for whom the public guardian and trustee was property guardian:

(i) pending the grant of letters probate or letters of administration; or

(ii) if letters probate or letters of administration are not required, until the estate can be delivered to a proper representative for the estate”; **and**

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(b) in subclause (c)(ii) by striking out “*The Intestate Succession Act*” and substituting “*The Intestate Succession Act, 1996*”.

Section 32 amended

15(1) Subsection 32(1) is amended by striking out “be of unsound mind” and substituting “lack capacity”.

(2) Subsection 32(2) is amended in the portion preceding clause (a) by striking out “be of unsound mind” and substituting “lack capacity”.

Section 33 amended

16 Subsection 33(1) is amended:

(a) in clause (a) by striking out “incompetence” and substituting “incapacity”; and

(b) in the portion following clause (b) by striking out “competence or the date that a certificate of incompetence is revoked pursuant to *The Mentally Disordered Persons Act*” and substituting “capacity or the date that a certificate of incapacity is revoked pursuant to this Act”.

Section 34 amended

17 Section 34 is amended:

(a) in the portion preceding clause (a) by striking out “a certificate of incompetence or order under section 29 and ending on the date of the issue of a certificate of competence or the date that a certificate of incompetence is revoked pursuant to *The Mentally Disordered Persons Act*” and substituting “an order pursuant to section 29 or a certificate of incapacity pursuant to this Act and ending on the date of the issue of a certificate of capacity or the date that a certificate of incapacity is revoked pursuant to this Act”;

(b) in clause (a) by striking out “incompetence” and substituting “incapacity”; and

(c) in clause (b) by striking out “incompetence” and substituting “incapacity”.

Section 38 amended

18 Subsection 38(1) is amended:

(a) in clause (a) by striking out “competence” and substituting “capacity”; and

(b) in clause (a.1) by striking out “incompetence is revoked pursuant to *The Mentally Disordered Persons Act*” and substituting “incapacity is revoked pursuant to this Act”.

Section 41 amended

19 Subsection 41(2) is amended by striking out “apply under *The Trustee Act, 2009* for an order discharging the executor or administrator and replacing him with a judicial trustee” and substituting “apply pursuant to *The Administration of Estates Act* for an order revoking letters probate or letters of administration”.

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Section 42 amended

20 Clause 42(1)(a) is amended by striking out “*The Dependants’ Relief Act*” and substituting “*The Dependants’ Relief Act, 1996*”.

Section 54 amended

21 The following clauses are added after clause 54(a):

“(a.1) conferring on review panels any ancillary powers that are considered advisable for carrying out their functions pursuant to this Act;

“(a.2) regulating practice and procedure before review panels”.

R.S.S. 1978, c.M-14 repealed

22 *The Mentally Disordered Persons Act* is repealed.

S.S. 2000, c.L-5.1, section 40 amended

23 Subclause 40(1)(a)(i) of *The Land Titles Act, 2000* is repealed and the following substituted:

“(i) a certificate of incapacity has been issued and an acknowledgment to act has been signed by the public guardian and trustee pursuant to *The Public Guardian and Trustee Act*”.

Coming into force

24 This Act comes into force on assent.