

**CONSOLIDATION OF  
GUARDIANSHIP AND TRUSTEESHIP ACT**

S.N.W.T. 1994,c.29

In force July 1, 1997: SI-004-97

*(Current to: April 23, 2013)*

The following provisions have been deleted for the purposes of this consolidation: s.65 to 67 (Consequential Amendments)

**AS AMENDED BY NORTHWEST TERRITORIES STATUTES:**

S.N.W.T. 1997,c.8

**AS AMENDED BY NUNAVUT STATUTES:**

S.Nu. 2011,c.25,s.9

s.9 in force October 31, 2011

S.Nu. 2012,c.17,s.13

s.13 in force June 8, 2012

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

**TABLE OF CONTENTS**

|   |     |       |
|---|-----|-------|
| Definitions                                       | 1   | (1)   |
| Minister of Health and Social Services            |     | (2)   |
| Minister of Justice                               |     | (3)   |
| Presumption of capability                         | 1.1 |       |
| <b>GUARDIANSHIP</b>                               |     |       |
| Guardianship Order                                |     |       |
| Application for guardianship order                | 2   | (1)   |
| Report  |     | (2)   |
| Content of report                                 |     | (3)   |
| Consent   |     | (4)   |
| Proof of friendly contact                         |     | (5)   |
| Exception   |     | (6)   |
| Explanation of proceedings                        | 3   | (1)   |
| Understanding of explanation                      |     | (2)   |
| Language rights                                   |     | (3)   |
| Application by petition                           | 4   | (1)   |
| Persons entitled to copy of application           |     | (2)   |
| Language of report                                |     | (3)   |
| Service outside jurisdiction                      |     | (4)   |
| Order for service                                 |     | (5)   |
| Preparation of report                             | 5   |       |
| Persons at hearing                                | 6   |       |
| Appointment of guardian                           | 7   | (1)   |
| Alternative course of action                      |     | (1.1) |
| Copy of order                                     |     | (2)   |
| Persons eligible as guardian                      | 8   | (1)   |
| Special considerations                            |     | (1.1) |
| Conflict of interest exception                    |     | (2)   |
| Attendance of proposed guardian                   |     | (3)   |
| Expiration of guardianship order                  | 9   | (1)   |
| Time for review of guardianship order             |     | (2)   |
| Notice to guardian                                |     | (3)   |
| Order to appoint a temporary guardian             | 10  | (1)   |
| In need of a guardian                             |     | (1.1) |
| <i>Ex parte</i> application                       |     | (2)   |
| Prescribed form                                   |     | (3)   |
| Order to appoint a temporary guardian             |     | (4)   |
| Expiration of order appointing temporary guardian |     | (5)   |
| Extension of order appointing temporary guardian  |     | (6)   |
| Status of order appointing temporary guardian     |     | (7)   |
| Order appointing guardian                         | 11  | (1)   |

|  |    |      |
|--|----|------|
| Powers of guardian                     |    | (2)  |
| Power of Court                         |    | (3)  |
| Definition of "capable"                | 12 | (1)  |
| Duties of guardian                     |    | (2)  |
| Explanation                            |    | (3)  |
| Understanding of explanation           |    | (4)  |
| Language rights                        |    | (5)  |
| Decisions on person's behalf           |    | (6)  |
| Best interests                         |    | (7)  |
| Participation                          |    | (8)  |
| Family and friends                     |    | (9)  |
| Consultation                           |    | (10) |
| Independence                           |    | (11) |
| Least restrictive course of action     |    | (12) |
| Application for review                 | 13 | (1)  |
| Prescribed form                        |    | (2)  |
| Service                                |    | (3)  |
| Service                                |    | (4)  |
| Court powers for review                | 14 | (1)  |
| Service of amended or varied order     |    | (2)  |
| Extraterritorial guardianship order    | 15 | (1)  |
| Service of application                 |    | (2)  |
| Resealing of extraterritorial orders   |    | (3)  |
| Service of resealed order              |    | (4)  |
| Date for review                        |    | (5)  |
| Duplicate                              |    | (6)  |
| Certificate                            |    | (7)  |
| Appointment of alternate guardian      | 16 | (1)  |
| Eligibility provisions apply           |    | (2)  |
| Service of copy of order               |    | (3)  |
| Authority of alternate guardian        | 17 | (1)  |
| Term of authorization                  |    | (2)  |
| Notice of death of guardian            |    | (3)  |
| Power of alternate guardian            |    | (4)  |
| Discharge of guardian                  | 18 | (1)  |
| Service                                |    | (2)  |
| Service outside jurisdiction           |    | (3)  |
| Discharge of guardian                  |    | (4)  |
| Arrangements for represented person    |    | (5)  |
| Service                                |    | (6)  |
| Death of guardian                      | 19 | (1)  |
| Notice to Court                        |    | (2)  |
| Guardianship continues                 |    | (3)  |
| Effect of guardian's power             | 20 | (1)  |
| Decision of guardian                   |    | (2)  |
| Contract binding on represented person |    | (3)  |

|  |    |       |
|--|----|-------|
| Purchase of necessaries                            | 21 | (1)   |
| Liability for necessaries                          |    | (2)   |
| Liability for loss or damage                       | 22 |       |
| Public Guardian                                    |    |       |
| Appointment  | 23 |       |
| Delegation   | 24 |       |
| Public Guardian to apply for order of appointment  | 25 |       |
| Public Guardian as guardian                        | 26 |       |
| TRUSTEESHIP  |    |       |
| Trusteeship Order                                  |    |       |
| Application for trusteeship order                  | 27 | (1)   |
| <i>Indian Act</i> (Canada)                         |    | (2)   |
| Application for trusteeship and guardianship order | 28 |       |
| Form   | 29 |       |
| Service  | 30 |       |
| Court order  | 31 | (1)   |
| Alternative course of action                       |    | (1.1) |
| Declaration of mental incompetence                 |    | (2)   |
| Qualifications of trustee                          | 32 | (1)   |
| Special considerations                             |    | (2)   |
| Attendance of proposed trustee                     | 33 |       |
| Conflict of interest                               | 34 |       |
| Power of Court                                     | 35 |       |
| Authority of trustee                               | 36 | (1)   |
| Powers of trustee                                  |    | (2)   |
| Wills  |    | (3)   |
| Appointment of alternate trustee                   | 37 | (1)   |
| Eligibility provisions apply                       |    | (2)   |
| Service of copy of order                           |    | (3)   |
| Attendance by alternate trustee                    | 38 |       |
| Authority of alternate trustee                     | 39 | (1)   |
| Termination of alternate trustee authorization     |    | (2)   |
| Notice of death of trustee                         |    | (3)   |
| Power of alternate trustee                         |    | (4)   |
| Accounting to alternate trustee                    |    | (5)   |
| Order for accounting to alternate trustee          |    | (6)   |
| Expiration of trusteeship order                    | 40 | (1)   |
| Court order  |    | (2)   |
| Requirements to be complied with by trustee        |    | (3)   |
| Trustee's power                                    | 41 | (1)   |
| Decision of trustee                                |    | (2)   |

|   |    |     |
|---|----|-----|
| Contract binding represented person                                     |    | (3) |
| Application by Public Trustee   | 42 | (1) |
| Notice  |    | (2) |
| Duties of Trustee   |    |     |
| Duties of trustee   | 43 | (1) |
| Explanation   |    | (2) |
| Understanding of explanation  |    | (3) |
| Language rights   |    | (4) |
| Participation   |    | (5) |
| Accounts  |    | (6) |
| Standard of care of trustee not receiving compensation                  |    | (7) |
| Standard of care of trustee receiving compensation                      |    | (8) |
| Inventory and account   | 44 | (1) |
| Order for passing accounts and filing inventory                         |    | (2) |
| Trustee to file accounts  |    | (3) |
| <i>Probate and Administration Rules of the Nunavut Court of Justice</i> |    | (4) |
| Dispense with passing accounts  |    | (5) |
| Passing of accounts by Public Trustee                                   |    | (6) |
| Service of order  |    | (7) |
| Application for review  | 45 | (1) |
| Service   |    | (2) |
| Service outside jurisdiction  |    | (3) |
| Court review  | 46 | (1) |
| Service of order  |    | (2) |
| Extraterritorial trusteeship order                                      | 47 |     |
| Discharge of trustee  | 48 | (1) |
| Service of application  |    | (2) |
| Application of section 46   |    | (3) |
| Order discharging trustee   |    | (4) |
| Arrangements for represented person                                     |    | (5) |
| Service   |    | (6) |
| Death of trustee  | 49 | (1) |
| Public Trustee to continue  |    | (2) |
| Accounting by legal representative of deceased trustee                  | 50 | (1) |
| Order for accounting  |    | (2) |
| Termination or discharge of trusteeship order                           | 51 |     |
| Death of represented person   | 52 | (1) |
| Application for order to pass accounts                                  |    | (2) |
| Death of represented person where Public Trustee is trustee             |    | (3) |
| Application by Public Trustee   |    | (4) |
| Where Public Trustee administering estate of represented person         |    | (5) |
| Application of <i>Public Trustee Act</i>                                |    | (6) |

|                                  |    |     |
|----------------------------------|----|-----|
| Exercise of authority by trustee | 53 |     |
| Liability of trustee             | 54 | (1) |
| Relief from liability            |    | (2) |

## COMMON GUARDIANSHIP AND TRUSTEESHIP PROVISIONS

### General

|                                      |    |     |
|--------------------------------------|----|-----|
| Application for direction of Court   | 55 | (1) |
| Reliance on direction of Court       |    | (2) |
| Exclusion                            |    | (3) |
| Testamentary disposition             | 56 |     |
| Order for costs                      | 57 |     |
| Confidentiality of information       | 58 | (1) |
| Ban on publication                   |    | (2) |
| Exception                            |    | (3) |
| Disclosure                           |    | (4) |
| Offence and punishment               |    | (5) |
| Protection of reports or information | 59 |     |

### Appeal

|                           |    |     |
|---------------------------|----|-----|
| Appeal to Court of Appeal | 60 | (1) |
| Service                   |    | (2) |
| Rules                     | 61 |     |

### Actions

|                                      |    |     |
|--------------------------------------|----|-----|
| Actions regarding represented person | 62 | (1) |
| Form of application                  |    | (2) |
| Conditions of leave                  |    | (3) |

### Limitation Period

|                              |    |     |
|------------------------------|----|-----|
| Computation of time          | 63 | (1) |
| Power to commence proceeding |    | (2) |

### Regulations

|                                      |    |     |
|--------------------------------------|----|-----|
| Regulations relating to guardianship | 64 | (1) |
| Regulations relating to trusteeship  |    | (2) |
| Deleted                              | 65 |     |
| Deleted                              | 66 |     |
| Deleted                              | 67 |     |

COMMENCEMENT

Coming into force

68



## GUARDIANSHIP AND TRUSTEESHIP ACT

### Definitions

#### 1. (1) In this Act,

"adult" means a person who has attained the age of 18 years; (*adulte*)

"Clerk" means the Clerk of the Nunavut Court of Justice appointed under the *Judicature Act*; (*greffier*)

"Court" means the Nunavut Court of Justice; (*Cour*)

"extraterritorial order" means

- (a) an order made by a court outside Nunavut that appoints a person having duties comparable to a trustee or guardian, or
- (b) an official appointment of a person appointed outside Nunavut who is charged with the duty of managing, handling, administering or caring for another person or estate of another person; (*ordonnance extraterritoriale*)

"guardian" means a person named as a guardian or alternate guardian in a guardianship order or a person who becomes a guardian or an alternate guardian by the operation of this Act; (*tuteur*)

"guardianship order" means an order of the Court appointing a guardian under section 7 or an alternate guardian under section 16; (*ordonnance de tutelle*)

"health care" includes

- (a) any examination, diagnosis, procedure or treatment undertaken to prevent any disease or ailment,
- (b) any procedure undertaken for the purpose of an examination or a diagnosis,
- (c) any medical, surgical, obstetrical or dental treatment, and
- (d) anything done that is ancillary to any examination or diagnosis, procedure or treatment, and
- (e) psychiatric treatment; (*soins médicaux*)

"interested person" means

- (a) the Public Guardian,
- (b) the Public Trustee, or
- (c) any other adult who is concerned for the welfare of the person in respect of whom a guardianship order or trusteeship order is sought or has been obtained; (*intéressé*)

"nearest relative" means, with respect to any person,

- (a) the living relative of that person who is the adult relative first listed in the following subparagraphs and who is the eldest of two or more relatives of the same category:
  - (i) spouse,
  - (ii) child,
  - (iii) parent,
  - (iv) sister or brother,
  - (v) grandparent,
  - (vi) grandchild,
  - (vii) aunt or uncle,
  - (viii) niece or nephew, and
- (b) in the absence of any relative referred to in paragraph (a), an adult friend of the person; (*parent le plus proche*)

"Public Guardian" means the person appointed as the Public Guardian under section 23; (*tuteur public*)

"Public Trustee" means the Public Trustee appointed under the *Public Trustee Act*; (*curateur public*)

"represented person" means a person in respect of whom a guardianship order or a trusteeship order is in effect; (*personne représentée*)

"residence" means any place located within or outside Nunavut, for the care, treatment or housing of a represented person or a person in respect of whom an application for a guardianship order or trusteeship order is made, and includes the dwelling of the person; (*résidence*)

"spouse" has the meaning assigned to it by section 1 of the *Family Law Act*, except that a reference to "at least two years" shall be read as a reference to "at least one year"; (*conjoint*)

"trustee" means a person named as a trustee or alternate trustee in a trusteeship order or a person who becomes a trustee or alternate trustee by the operation of this Act; (*fiduciaire*)

"trusteeship order" means an order of the Court under subsection 31(1) appointing a person as a trustee. (*ordonnance portant nomination d'un fiduciaire*)

Minister of Health and Social Services

(2) The Minister responsible for the Department of Health and Social Services is responsible for the provisions of this Act relating to guardianship.

### Minister of Justice

(3) The Minister of Justice is responsible for the provisions of this Act relating to trusteeship. S.Nu. 2011,c.25,s.9(2); S.Nu. 2012,c.17,s.13(2),(5).

### Presumption of capability

**1.1.** For the purposes of this Act, every adult is presumed, until the contrary is demonstrated, to be capable of making decisions about his or her own health care, personal care and well-being and his or her own financial affairs.

## GUARDIANSHIP

### Guardianship Order

#### Application for guardianship order

**2.** (1) Subject to the requirements set out in this section and in sections 3 and 4, any interested person may apply to the Court for a guardianship order.

#### Report

(2) Every application made under subsection (1) must be accompanied by a report in prescribed form prepared for the purpose of the application by a medical practitioner, a psychologist registered under the *Psychologists Act* or a person assigned the responsibility to prepare such a report by the Public Guardian.

#### Content of report

(3) The report prepared under subsection (2) must name the adult in respect of whom the application is made and must state the opinion of the medical practitioner, psychologist or person who prepared the report as to

- (a) the present and future physical, mental, social, vocational, residential and educational needs of the adult;
- (b) the ability of the adult, by himself or herself or with assistance, to understand information that is relevant to making a decision concerning his or her own health care, nutrition, shelter, clothing, hygiene or safety, and to appreciate the reasonably foreseeable consequences of a decision based on this information or a lack of such a decision;
- (c) whether a guardianship order would be of substantial benefit to the adult;
- (d) whether the adult indicated a preference as to the person to be appointed his or her guardian; and
- (e) any other pertinent information.

#### Consent

(4) The person applying under subsection (1) shall, when the application is made, file with the Court the written consent of the person proposed as guardian to act as the guardian of the person in respect of whom the application is made.

#### Proof of friendly contact

(5) The person applying under subsection (1) must be able to provide proof of friendly, personal contact with the person in respect of whom the application is made during the 12 months before making the application.

#### Exception

(6) Subsection (5) does not apply where the application is made by the Public Guardian.

#### Explanation of proceedings

**3.** (1) The person applying under subsection 2(1) shall, before the application is made, explain the application and proceedings to the person in respect of whom the application is made.

#### Understanding of explanation

(2) The person applying under subsection 2(1) satisfies the requirement in subsection (1) if he or she explains the matter to the best of his or her ability, whether or not the person receiving the explanation understands it.

#### Language rights

(3) Where the person in respect of whom the application is made does not speak or understand the same language as the person applying, the person applying shall arrange for a suitable interpreter to provide an oral interpretation of the explanation required by subsection (1).

#### Application by petition

**4.** (1) An application for an order appointing a guardian must be made by petition.

#### Persons entitled to copy of application

(2) The person applying under subsection 2(1) shall, at least 10 days before the date the application is to be heard, serve a copy of the application and the report prepared under subsection 2(2) on

- (a) the person in respect of whom the application is made;
- (b) the person who is
  - (i) the nearest relative of the person in respect of whom the application is made, or
  - (ii) if the nearest relative is the applicant, the next nearest relative of the person in respect of whom the application is made;
- (c) the person proposed as the guardian of the person in respect of whom the application is made, if he or she is not the applicant or the nearest relative;
- (d) the person in charge of the residence of the person in respect of whom the application is made, where applicable;

- (e) the Public Guardian, if he or she is not the applicant or the person served under paragraph (c);
- (f) any trustee of the person in respect of whom the application is made, if he or she is not the applicant or a person served under another paragraph of this subsection;
- (g) the Public Trustee, if he or she is not the applicant or the person served under paragraph (f); and
- (h) any other person whom the Court directs be served.

#### Language of report

(3) Where the person in respect of whom the application is made does not read, speak or understand the language in which the report prepared under subsection 2(2) is written, the person applying under subsection 2(1) shall arrange for a suitable interpreter to provide an oral interpretation of the report before the hearing takes place.

#### Service outside jurisdiction

(4) No order for service outside the jurisdiction is necessary for service of a copy of an application on any of the persons referred to in subsection (2), but service must be effected at least

- (a) 30 days before the date the application is to be heard in the case of a person in a province or territory;
- (b) 45 days before the date the application is to be heard in the case of a person in the United States of America; and
- (c) 90 days before the date the application is to be heard in the case of a person in a country other than Canada or the United States of America.

#### Order for service

(5) The Court may, if it considers it appropriate,

- (a) shorten the time for service on a person referred to in subsection (2);
- (b) direct the manner of service, or approve the manner of service that has been used, on a person referred to in subsection (2);
- (c) dispense with the requirement for service on a person referred to in subsection (2), except the Public Guardian and the person in respect of whom the application is made; and
- (d) dispense with the requirement for service on the person in respect of whom the application is made if
  - (i) the Public Guardian consents, and
  - (ii) the Court is satisfied that it is in the best interests of that person to do so.

S.Nu. 2012,c.17,s.13(5).

#### Preparation of report

**5.** The Court may appoint a person to prepare another report on the person in respect of whom the application is made regarding any or all of his or her present and future

physical, mental, social, vocational, residential, educational or other needs and generally his or her ability to care for himself or herself and to make informed decisions with respect to matters relating to his or her person where

- (a) the Court is not satisfied with a report provided;
- (b) the Court has doubt as to whether a guardian should be appointed;  
or
- (c) a guardianship order is being reviewed by the Court.

#### Persons at hearing

**6.** At a hearing of an application for a guardianship order or on a review of a guardianship order, the following persons may appear and make representations:

- (a) the applicant;
- (b) the person in respect of whom the application is made and any other person served with an application under subsection 4(2);
- (c) a person chosen by the person in respect of whom the application is made;
- (d) any other person who wishes to make representations and whom the Court agrees to hear.

#### Appointment of guardian

**7.** (1) The Court may, on hearing an application for a guardianship order, make a guardianship order where it is satisfied that

- (a) the applicant has fulfilled the requirements of sections 2 to 4; and
- (b) the person in respect of whom an application is made
  - (i) is an adult,
  - (ii) is in need of a guardian because the person
    - (A) is not able, by himself or herself or with assistance, to understand information that is relevant to making a decision concerning his or her own health care, nutrition, shelter, clothing, hygiene or safety, or
    - (B) is not able, by himself or herself or with assistance, to appreciate the reasonably foreseeable consequences of a decision referred to in clause (A) or a lack of such a decision, and
  - (iii) will substantially benefit from the guardianship order.

#### Alternative course of action

(1.1) The Court shall not make a guardianship order under this section if it is satisfied that an alternative course of action is available that

- (a) is less restrictive of the decision-making rights of the person in respect of whom the application is made; and
- (b) will provide substantial benefits to the person in respect of whom the application is made that are comparable to those that would be provided by a guardianship order.

#### Copy of order

(2) Where the Court makes a guardianship order under this section, the applicant shall serve a copy of the order on the persons who are required to be served with an application under subsection 4(2).

#### Persons eligible as guardian

- 8.** (1) The Court may appoint as a guardian
- (a) any adult who consents to act as guardian and who
    - (i) during the 12 months immediately before the making of the application, has had friendly, personal contact with the person in respect of whom the application is made,
    - (ii) will act, in accordance with this Act, on behalf of the person in respect of whom the application is made;
    - (iii) is not in a position where his or her interests conflict with the interests of the person in respect of whom the application is made,
    - (iv) will be easily accessible to the person in respect of whom the application is made,
    - (v) is a suitable person and is able to act as the guardian of the person in respect of whom the application is made, and
    - (vi) is a resident of Nunavut; or
  - (b) the Public Guardian.

#### Special considerations

- (1.1) When appointing a guardian, the Court shall give special consideration to
- (a) the existence and closeness of the family relationship, if any, between the person proposed as guardian and the person in respect of whom the application is made; and
  - (b) the wishes of the person in respect of whom the application is made, if they can be ascertained.

#### Conflict of interest exception

(2) Notwithstanding subparagraph (1)(a)(iii), a person shall not be considered to be in a position where his or her interests conflict with the interests of the person in respect of whom the application is made by reason only of the fact that the person is a potential beneficiary of the estate of or is a relative of the person in respect of whom the application is made.

#### Attendance of proposed guardian

(3) The Court may require a person proposed as guardian to attend and answer questions relating to the requirements of paragraph (1)(a) and to the matters referred to in subsection (1.1). S.Nu. 2012,c.17,s.13(5).

## Expiration of guardianship order

- 9.** (1) No guardianship order or portion of a guardianship order expires
- (a) until the date fixed by the Court in the order; or
  - (b) if the Court does not fix an expiration date, until the Court amends or vacates the order.

## Time for review of guardianship order

- (2) On making or reviewing a guardianship order, the Court shall specify
- (a) the time within which the order must be reviewed by the Court, which must be between three and five years after the date of the order or the review of the order, as the case may be;
  - (b) the person required to apply to the Court for the review;
  - (c) any requirement to be complied with by the guardian or any other person with respect to a Court review of the circumstances of the represented person; and
  - (d) the expiration date of the order, where applicable.

## Notice to guardian

(3) Prior to the date of review or expiration of a guardianship order, the Public Guardian shall notify the guardian, in writing, of that date.

## Order to appoint a temporary guardian

- 10.** (1) Where no guardianship order is in force under this Act in respect of an adult, the Court may make an order to appoint a temporary guardian if the Court considers the adult to be in need of a guardian and to be at risk of
- (a) physical or mental abuse;
  - (b) neglect; or
  - (c) the deprivation of liberty or personal security.

## In need of a guardian

(1.1) When determining whether an adult is in need of a guardian under subsection (1), a court shall only consider whether the adult is, by himself or herself, able to understand the information and to appreciate the matters referred to in subparagraph 7(1)(b)(ii), and whether the adult will substantially benefit from the guardianship order.

*Ex parte* application

(2) An application for an order to appoint a temporary guardian may be made *ex parte*.

## Prescribed form

(3) An application for a temporary order must be made by notice of motion.



#### Order to appoint a temporary guardian

(4) The Court may make an order appointing a temporary guardian and conferring those powers referred to in subsection 11(2) as the Court may specify in the order.

#### Expiration of order appointing temporary guardian

(5) Where the Court makes an order under subsection (4), the order shall not continue for longer than three months and the Court shall set the date on which the order expires.

#### Extension of order appointing temporary guardian

(6) The Court may extend an order made under subsection (4), once, for a maximum of three months.

#### Status of order appointing temporary guardian

(7) An order made under subsection (4) may be treated, under this Act, as a guardianship order. S.N.W.T. 1997,c.8,s.14(3).

#### Order appointing guardian

**11.** (1) Where the Court makes a guardianship order, the Court shall grant to the guardian only the powers referred to in subsection (2) that it considers necessary for the guardian to make or assist in making reasonable decisions relating to the personal care and well-being of the person in respect of whom the application is made.

#### Powers of guardian

(2) In making a guardianship order, the Court shall specify whether the guardian may

- (a) decide where the represented person is to live, whether permanently or temporarily;
- (b) decide with whom the represented person is to live;
- (c) decide with whom the represented person is to consort;
- (d) decide whether the represented person may engage in social activities and, if so, the nature and extent of the social activities and related matters;
- (e) decide whether the represented person should work and, if so, the nature or type of work, for whom he or she is to work and related matters;
- (f) decide whether the represented person should participate in any educational, vocational or other training and, if so, the nature and extent of that training and any other related matters;
- (g) decide whether the represented person should apply for any licence, permit, approval or other consent or authorization required by law;
- (h) commence, compromise or settle any legal proceeding involving the represented person that does not relate to the estate of the represented person;

- (i) commence divorce proceedings on behalf of the represented person;
- (j) consent to
  - (i) any type of health care other than that referred to in subparagraph (ii) or paragraph (k), or
  - (ii) any type of health care designated by regulation as requiring specific authorization in a guardianship order;
- (k) consent to the withholding of or the withdrawal of life-support systems used for the represented person;
- (l) make normal day-to-day decisions on behalf of the represented person including the diet and dress of the represented person;
- (m) consent to the restraint or confinement of the represented person;
- (n) consent on behalf of the represented person to the termination of the parental rights of the represented person;
- (o) make or withdraw a direction, on behalf of the represented person, under the *Human Tissue Act*; and
- (p) decide any other matters as the Court considers necessary.

#### Power of Court

- (3) In making a guardianship order, the Court may
  - (a) make the order subject to any conditions or restrictions the Court considers necessary; or
  - (b) restrict, modify, change or add to any of the powers of the guardian referred to in subsection (2) as the Court considers necessary.

#### Definition of "capable"

- 12.** (1) In this section, a person is "capable" if the person has
- (a) the ability, by himself or herself or with assistance, to understand information that is relevant to making a decision concerning his or her own health care, nutrition, shelter, clothing, hygiene or safety; and
  - (b) the ability, by himself or herself or with assistance, to appreciate the reasonably foreseeable consequences of a decision referred to in paragraph (a) or lack of such a decision.

#### Duties of guardian

- (2) A guardian shall exercise his or her powers and perform his or her duties diligently and in good faith.

#### Explanation

- (3) A guardian shall explain the nature of the guardian's powers and duties to the represented person.

#### Understanding of explanation

(4) A guardian satisfies the requirement in subsection (3) if he or she explains the nature of his or her powers and duties to the best of his or her ability, whether or not the represented person understands the explanation.

#### Language rights

(5) Where the represented person does not speak or understand the same language as the guardian, the guardian shall arrange for a suitable interpreter to provide an oral interpretation of the explanation required by subsection (3).

#### Decisions on person's behalf

(6) A guardian shall make decisions on the represented person's behalf in accordance with the following principles:

- (a) if the guardian knows of a wish or instruction applicable to the circumstances that the represented person expressed while capable, the guardian shall make the decision in accordance with the wish or instruction;
- (b) the guardian shall use reasonable diligence in ascertaining whether there are such wishes or instructions;
- (c) a later wish or instruction expressed by the represented person while capable prevails over an earlier wish or instruction of that person;
- (d) if the guardian does not know of a wish or instruction applicable to the circumstances that the represented person expressed while capable, or if it is impossible to make the decision in accordance with the wish or instruction, the guardian shall make the decision that is in the best interests of the represented person.

#### Best interests

(7) In deciding what decision is in the best interests of the represented person, a guardian shall take into consideration,

- (a) the values and beliefs that the guardian knows the represented person held when capable and believes the person would still act on if capable; and
- (b) the represented person's current wishes, if they can be ascertained.

#### Participation

(8) A guardian shall encourage the represented person to participate, to the best of his or her ability, in the guardian's decisions on his or her behalf.

#### Family and friends

(9) A guardian shall seek to foster regular personal contact between the represented person and supportive family members and friends of the represented person.

### Consultation

- (10) A guardian shall consult from time to time with
- (a) supportive family members and friends of the represented person who are in regular personal contact with the represented person; and
  - (b) the persons from whom the represented person receives personal care.

### Independence

(11) A guardian shall, to the extent possible, seek to foster the independence of the represented person.

### Least restrictive course of action

(12) A guardian shall choose the least restrictive and intrusive course of action that is available and is appropriate in the particular case.

### Application for review

**13.** (1) A represented person or any interested person acting on his or her behalf may, at any time, apply to the Court for a review of all or part of a guardianship order.

### Prescribed form

- (2) An application under subsection (1) must be made by notice of motion.

### Service

(3) Where an application is made for a review of a guardianship order, the person applying shall, at least 10 days before the application is to be heard, serve a copy of the application on

- (a) the represented person;
- (b) the person who is
  - (i) the nearest relative of the represented person, or
  - (ii) the next nearest relative of the represented person, if the nearest relative referred to in subparagraph (i) is the applicant;
- (c) the guardian of the represented person, if he or she is not the applicant or the nearest relative served under paragraph (b);
- (d) the person in charge of the residence of the represented person;
- (e) the Public Guardian, if he or she is not the applicant or the person served under paragraph (c);
- (f) any trustee of the represented person, if he or she is not the applicant or a person served under this subsection;
- (g) the Public Trustee, if he or she is not the applicant or the person served under paragraph (f); and
- (h) any other person whom the Court may direct.

### Service

(4) Subsections 4(4) and (5) apply in respect of service under subsection (3).  
S.N.W.T. 1997,c.8,s.14(4).

### Court powers for review

- 14.** (1) On hearing an application for review of a guardianship order, the Court
- (a) shall satisfy itself that the conditions referred to in paragraph 7(1)(b) are still applicable and that the guardian has exercised his or her powers in accordance with the guardianship order and section 12; and
  - (b) may amend, terminate, continue, vary or replace the order subject to any conditions or requirements the Court considers necessary.

### Service of amended or varied order

(2) If the Court amends, terminates, continues, varies or replaces an order under subsection (1), the applicant for the order shall serve a copy of the amendment, termination, continuation, variation or replacement order on the persons who are required to be served with an application under subsection 13(3).

### Extraterritorial guardianship order

**15.** (1) A person may apply to have an extraterritorial order for guardianship resealed by the Court.

### Service of application

(2) The person who applies under subsection (1) shall serve the application on the persons referred to in subsection 4(2).

### Resealing of extraterritorial orders

- (3) The Court may make an order resealing an extraterritorial order and, on resealing,
- (a) the extraterritorial order is of the same force and effect in Nunavut as if it were a guardianship order made by the Court under this Act;
  - (b) the Court may impose or make any conditions, restrictions, modifications or additions that the Court may impose or make under this Act in making a guardianship order; and
  - (c) the extraterritorial order is subject in Nunavut to the provisions of this Act respecting guardians and guardianship orders, including those provisions providing for the appeal and review of guardianship orders.

### Service of resealed order

(4) The person who applied to reseat an extraterritorial order shall serve a copy of the resealed order on the persons referred to in subsection 4(2).

#### Date for review

(5) Where the Court makes an order under subsection (3), the Court shall specify the time within which the resealed order must be reviewed by the Court and that time must not extend past the earlier of

- (a) the date provided for review by the terms of the resealed order; or
- (b) the date for review required by this Act.

#### Duplicate

(6) A duplicate of an extraterritorial order sealed with the seal of the court that sealed it or a copy of an extraterritorial order certified by or under the direction of the court that made it is as effective as the original.

#### Certificate

(7) An extraterritorial order must not be resealed under this section until a certificate has been issued by the registrar, clerk or other officer of the court that issued the extraterritorial order stating that the order to be resealed is in full effect.

S.Nu. 2012,c.17,s.13(5).

#### Appointment of alternate guardian

**16.** (1) On making a guardianship order or on a review of a guardianship order, the Court may appoint an alternate guardian if

- (a) the person proposed as alternate guardian has given his or her written consent to act as alternate guardian; and
- (b) the Court is satisfied that the persons on whom the application for a guardianship order or review is served under subsection 13(3) have had sufficient notice of the willingness to act of the person proposed as alternate guardian.

#### Eligibility provisions apply

(2) Section 8 applies in respect of a person proposed as alternate guardian.

#### Service of copy of order

(3) Where the Court makes a guardianship order and appoints an alternate guardian under subsection (1), the applicant for the guardianship order shall serve a copy of the order appointing the alternate guardian on the persons who are required to be served with an application under subsection 4(2).

#### Authority of alternate guardian

**17.** (1) If an alternate guardian is appointed, the alternate guardian shall take over as guardian without further proceedings

- (a) if the guardian dies;
- (b) if the guardian is incapacitated; or
- (c) if authorized in writing by the guardian, during the illness or absence of the guardian.

#### Term of authorization

(2) An authorization under paragraph (1)(c) must indicate the period during which the alternate guardian may act as guardian and terminates on the earlier of

- (a) the end of the period indicated in the authorization; and
- (b) its revocation, in writing, by the guardian.

#### Notice of death of guardian

(3) If the guardian dies, the alternate guardian shall notify the Clerk in writing of the death of the guardian and send the Clerk a copy of the death certificate of the guardian.

#### Power of alternate guardian

(4) An alternate guardian who replaces a guardian has the same powers and duties as the guardian. S.Nu. 2012,c.17,s.13(5).

#### Discharge of guardian

**18.** (1) The guardian or any interested person may apply to the Court for an order discharging the guardian.

#### Service

(2) The guardian or other person applying under subsection (1) shall, at least 10 days before the date the application is to be heard, serve a copy of the application on the persons who are required to be served under subsection 13(3).

#### Service outside jurisdiction

(3) Subsections 4(4) and (5) apply, with such modifications as the circumstances require, in respect of service under subsection (2).

#### Discharge of guardian

(4) The Court may make an order discharging a guardian or make any other order it considers appropriate where the Court is satisfied that a represented person is no longer in need of a guardian or that the guardian

- (a) is unable to continue to act as guardian;
- (b) refuses to act or to continue to act as guardian;
- (c) fails to act as guardian or fails to act in accordance with a guardianship order;
- (d) acts in an improper manner or in a manner that has endangered or that may endanger the well-being of the represented person;
- (e) is no longer a suitable person to act as guardian; or
- (f) is no longer a resident of Nunavut.

#### Arrangements for represented person

(5) Before making an order under subsection (4), the Court shall satisfy itself that, if necessary,

- (a) suitable arrangements have been or will be made in respect of the represented person; or
- (b) an application for an order appointing a new guardian has been made.

#### Service

(6) Where the Court makes an order under subsection (4), the applicant shall serve a copy of the order on the persons who are required to be served with a copy of an application under subsection 13(3). S.Nu. 2012,c.17,s.13(5).

#### Death of guardian

**19.** (1) Where a guardian dies and there is no alternate guardian, the Public Guardian, on receiving notice of the death, becomes the guardian with the same powers and duties as the former guardian.

#### Notice to Court

(2) On becoming a guardian under subsection (1), the Public Guardian shall notify the Clerk, in writing, of that fact.

#### Guardianship continues

(3) The Public Guardian continues to be the guardian of the represented person until

- (a) a new guardian is appointed by the Court; or
- (b) the Court makes an order discharging the Public Guardian.  
S.Nu. 2012,c.17,s.13(5).

#### Effect of guardian's power

**20.** (1) A guardian may, on behalf of a represented person, sign and do all things necessary to give effect to any power vested in the guardian.

#### Decision of guardian

(2) Any decision made, action taken, consent given or thing done by a guardian with regard to any matter in respect of which he or she is acting as guardian shall be deemed for all purposes to have been decided, taken, given, or done by the represented person as if he or she were capable of making an informed decision.

#### Contract binding on represented person

(3) When a guardian enters into a contract on behalf of a represented person, the contract is binding on the represented person, after the guardianship order is terminated, in the same manner and to the same extent as if the represented person had made the contract and he or she had been capable of making the contract.



#### Purchase of necessities

**21.** (1) A guardian, subject to the guardianship order appointing him or her, may purchase necessities for the represented person without the consent of the represented person or of any trustee of the estate of the represented person.

#### Liability for necessities

- (2) When a guardian purchases necessities for the represented person,
- (a) the represented person is liable to pay for them or reimburse the guardian; or
  - (b) if there is a trustee of the estate of the represented person, the trustee shall pay for the necessities or reimburse the guardian out of the estate.

#### Liability for loss or damage

**22.** No guardian shall be liable for any loss or damage suffered by reason of anything done or omitted to be done by the guardian in the performance of a duty or in the exercise of a power under this Act or the regulations if the guardian has acted diligently and in good faith.

### Public Guardian

#### Appointment

**23.** The Minister shall appoint a Public Guardian.

#### Delegation

**24.** Where the Public Guardian is given any power or duty under this Act or by an order of the Court, he or she may authorize, in writing, one or more persons to exercise that power or perform that duty on such conditions and in such circumstances as are set out in the authorization.

#### Public Guardian to apply for order of appointment

**25.** Where, in the opinion of the Public Guardian, a person is in need of a guardian and no suitable person is willing and able to make an application for a guardianship order, the Public Guardian shall make an application for an order appointing the Public Guardian or any other person as guardian.

#### Public Guardian as guardian

**26.** Where the Court is not satisfied that a person proposed as a guardian meets the requirements of this Act, it may, after giving notice of its intention to the Public Guardian, appoint the Public Guardian as the guardian of the person in respect of whom the application is made.

## TRUSTEESHIP

## Trusteeship Order

## Application for trusteeship order

**27.** (1) An interested person may apply to the Court for a trusteeship order for the estate of an adult.

*Indian Act (Canada)*

(2) For the purposes of section 51 of the *Indian Act* (Canada), an interested person may apply to the Court for a declaration that a person to whom that Act applies is mentally incompetent.

## Application for trusteeship and guardianship order

**28.** An application for a trusteeship order may be accompanied by an application for a guardianship order under section 2.

## Form

**29.** Sections 2 to 6 apply, with such modifications as the circumstances require, to an application for a trusteeship order and to an application referred to in subsection 27(2).

## Service

**30.** Where an application is made under section 27, the applicant shall serve a copy of the application on the Public Guardian and the Public Trustee.

## Court order

**31.** (1) The Court may, on hearing an application for a trusteeship order, make a trusteeship order where the Court is satisfied that

- (a) the applicant has fulfilled the requirements set out in sections 2 to 6 that are adopted under section 29; and
- (b) the person in respect of whom the application is made
  - (i) is an adult,
  - (ii) is in need of a trustee because the person
    - (A) is not able, by himself or herself or with assistance, to understand information that is relevant to making a decision concerning his or her financial affairs, or
    - (B) is not able, by himself or herself or with assistance, to appreciate the reasonably foreseeable consequences of a decision concerning his or her financial affairs or the lack of such a decision, and
  - (iii) the person will substantially benefit from the trusteeship order.

## Alternative course of action

(1.1) The Court shall not make a trusteeship order under subsection (1) if it is satisfied that an alternative course of action is available that

- (a) is less restrictive of the decision-making rights of the person in respect of whom the application is made; and
- (b) will provide substantial benefits to the person in respect of whom the application is made that are comparable to those that would be provided by a trusteeship order.

#### Declaration of mental incompetence

(2) The Court may, on hearing an application referred to in subsection 27(2), declare a person to be mentally incompetent where the Court is satisfied that

- (a) the applicant has fulfilled the requirements set out in sections 2 to 6 that are adopted under section 29; and
  - (b) the person in respect of whom the application is made
    - (i) is an adult, and
    - (ii) either
      - (A) is not able, by himself or herself or with assistance, to understand information that is relevant to making a decision concerning his or her financial affairs, or
      - (B) is not able, by himself or herself or with assistance, to appreciate the reasonably foreseeable consequences of a decision concerning his or her financial affairs or the lack of such a decision.
- S.N.W.T. 1997,c.8,s.14(5).

#### Qualifications of trustee

**32.** (1) The Court may appoint as trustee

- (a) any adult person who consents to act as trustee and who
  - (i) during the 12 months immediately before making the application, has had friendly, personal contact with the person in respect of whom the application is made,
  - (ii) will act on behalf of the person in respect of whom the application is made in accordance with this Act,
  - (iii) is not in a position where his or her interests will conflict with the interests of the person in respect of whom the application is made,
  - (iv) is suitable and is able to act as the trustee of the person in respect of whom the application is made, and
  - (v) is a resident of Nunavut; or
- (b) the Public Trustee.

#### Special considerations

- (2) When appointing a trustee, the Court shall give special consideration to
- (a) the existence and closeness of the family relationship, if any, between the person proposed as trustee and the person in respect of whom the application is made; and

- (b) the wishes of the person in respect of whom the application is made, if they can be ascertained.  
S.Nu. 2012,c.17,s.13(5).

#### Attendance of proposed trustee

**33.** The Court may require a person proposed as trustee to attend and answer questions relating to the requirements of paragraph 32(1)(a) and to the matters referred to in subsection 32(2).

#### Conflict of interest

**34.** A person shall not be considered to be in a position where the interests of the person conflict with the interests of the represented person by reason only of the fact that the person is a potential beneficiary of the estate of or is a relative of the represented person.

#### Power of Court

- 35.** In making a trusteeship order, the Court may
- (a) make the order subject to any conditions or restrictions the Court considers necessary; or
  - (b) restrict, modify, change or add to any of the powers of the trustee referred to in section 36, as the Court considers necessary.

#### Authority of trustee

- 36.** (1) Where the Court makes a trusteeship order, the trustee may, subject to this Act and to any condition or restriction imposed by the Court,
- (a) take possession and control of all the real and personal property of the represented person; and
  - (b) manage, handle, administer, sell, dispose of or otherwise deal with the estate of the represented person to the same extent as the represented person could have if he or she were an adult capable of making informed decisions in respect of his or her estate.

#### Powers of trustee

(2) For greater certainty, a trustee may, subject to this Act and to any condition or restriction imposed by the Court, do all or any of the following in respect of the estate of the represented person under his or her trusteeship:

- (a) grant or accept leases of real or personal property for a term of less than three years;
- (b) purchase, sell, mortgage, grant or accept leases for more than three years or otherwise dispose of real or personal property;
- (c) exchange or partition property and give or receive money to establish equality of exchange or partition;
- (d) surrender a lease, with or without accepting a new lease, or accept a surrender of a lease;
- (e) carry on the trade or business of the represented person;

- (f) exercise a power or give a consent required for the exercise of a power vested in the represented person;
- (g) exercise a right or obligation to elect, belonging to or imposed on the represented person;
- (h) invest any money in investments in which trustees are authorized to invest trust money under the *Trustee Act*;
- (i) deposit any money in the manner in which trust money may be deposited under the *Trustee Act*;
- (j) transfer property held in trust by the represented person, either solely or jointly with another, to the person beneficially entitled to the property;
- (k) consent to the transfer or assignment of a lease if consent is required;
- (l) perform a contract entered into by the represented person or by his or her guardian;
- (m) draw, accept and endorse bills of exchange and promissory notes, endorse bonds, debentures, coupons and other negotiable instruments and securities, and assign choses in action;
- (n) give or receive a notice on behalf of the represented person that relates to his or her estate;
- (o) commence, compromise or settle a debt, claim or court action that relates to the estate;
- (p) reimburse himself or herself from or pay or discharge from the estate all reasonable expenses properly incurred in or about the performance of a duty or in the exercise of a power under this Act or the regulations;
- (q) take compensation from the estate, in accordance with the prescribed fees, for acting as the trustee of the represented person.

#### Wills

(3) For greater certainty, a trustee may not make a will on behalf of the represented person under this Act.

#### Appointment of alternate trustee

**37.** (1) On making a trusteeship order or on a review of a trusteeship order, the Court may appoint an alternate trustee if

- (a) the person proposed as alternate trustee has given written consent to act as alternate trustee; and
- (b) the Court is satisfied that the persons on whom the application for a trusteeship order or review is served under subsection 4(2) have had sufficient notice of the willingness of the person proposed as alternate trustee to act.

#### Eligibility provisions apply

(2) Section 32 applies in respect of an individual proposed as an alternate trustee.

#### Service of copy of order

(3) Where the Court appoints an alternate trustee under subsection (1), the applicant shall serve a copy of the order appointing the alternate trustee on the persons who are required to be served with an application under subsection 4(2).

#### Attendance by alternate trustee

**38.** The Court may require a person proposed as alternate trustee to attend and answer questions to determine whether the requirements of section 32 are met.

#### Authority of alternate trustee

**39.** (1) Where an alternate trustee is appointed, the alternate trustee shall take over as trustee without further proceedings

- (a) if the trustee dies;
- (b) if the trustee is incapacitated; or
- (c) if authorized in writing by the trustee, during the illness or absence of the trustee.

#### Termination of alternate trustee authorization

(2) An authorization under paragraph (1)(c) must indicate the period during which the alternate trustee may act as trustee and terminates on the earlier of

- (a) the end of the period indicated in the authorization; and
- (b) its revocation, in writing, by the previous trustee.

#### Notice of death of trustee

(3) If the trustee dies, the alternate trustee shall notify the Clerk in writing of the death of the trustee and send the Clerk a copy of the death certificate of the trustee.

#### Power of alternate trustee

(4) An alternate trustee who replaces a trustee has the same powers as the trustee.

#### Accounting to alternate trustee

(5) When an alternate trustee takes office as trustee because of the death of the previous trustee, the alternate trustee may require the legal representative of the previous trustee to provide an accounting with respect to the estate of the represented person.

#### Order for accounting to alternate trustee

(6) Where the legal representative of the deceased trustee does not provide the accounting required under subsection (5) to the satisfaction of the alternate trustee, the alternate trustee may apply by notice of motion to the Court for an order requiring the legal representative to bring in and pass the accounts of the deceased trustee with respect to the estate of the represented person. S.Nu. 2012,c.17,s.13(5).

#### Expiration of trusteeship order

**40.** (1) No trusteeship order or portion of a trusteeship order expires

- (a) until the date fixed by the Court in the order; or

- (b) until, if the Court does not fix an expiration date, the Court amends or vacates the order.

#### Court order

- (2) On making a trusteeship order, the Court shall specify
  - (a) the time within which the order must be reviewed by the Court, which shall be between three and five years after the date of the order or the date of the review of the order, as the case may be; and
  - (b) any requirement to be complied with by the trustee or the person required to apply for a subsequent review.

#### Requirements to be complied with by trustee

(3) On reviewing a trusteeship order, the Court shall specify any requirement to be complied with by the trustee with respect to the review of the circumstances of the represented person.

#### Trustee's power

**41.** (1) A trustee may, on behalf of a represented person, sign and do all things necessary to give effect to any power vested in the trustee.

#### Decision of trustee

(2) Any decision made, action taken, consent given or thing done by a trustee with regard to any matter in respect of which the trustee is appointed shall be deemed for all purposes to have been decided, taken, given or done by the represented person as if he or she were an adult capable of making an informed decision.

#### Contract binding represented person

(3) When a trustee enters into a contract on behalf of a represented person, the contract is binding on the represented person, after the trusteeship order is terminated, in the same manner and to the same extent as if the represented person had made the contract and he or she had been capable of making the contract.

#### Application by Public Trustee

**42.** (1) The Public Trustee may apply for an order appointing the Public Trustee as trustee of any or all of the estate of a person where, in the opinion of the Public Trustee,

- (a) no person is willing or able to apply for an order appointing a trustee; or
- (b) the person proposed as trustee in the application is not suitable to be appointed trustee.

#### Notice

(2) Before applying under subsection (1), the Public Trustee shall notify the person referred to in paragraph (1)(b) that the Public Trustee is willing to be appointed as trustee.

## Duties of Trustee

### Duties of trustee

**43.** (1) A trustee is a fiduciary and shall exercise his or her powers and perform his or her duties diligently, honestly and in good faith for the benefit of the represented person.

### Explanation

(2) A trustee shall explain the nature of the trustee's powers and duties to the represented person.

### Understanding of explanation

(3) A trustee satisfies the requirement in subsection (2) if he or she explains the nature of his or her powers and duties to the best of his or her ability, whether or not the represented person understands the explanation.

### Language rights

(4) Where the represented person does not speak or understand the same language as the trustee, the trustee shall arrange for a suitable interpreter to provide an oral interpretation of the explanation required by subsection (2).

### Participation

(5) A trustee shall encourage the represented person to participate, to the best of his or her abilities, in the trustee's decisions about the estate of the represented person.

### Accounts

(6) A trustee shall keep accounts of all transactions involving the estate of the represented person.

### Standard of care of trustee not receiving compensation

(7) A trustee who does not receive compensation for managing the estate of the represented person shall exercise the degree of care, diligence and skill that a person of ordinary prudence would exercise in the conduct of his or her own affairs.

### Standard of care of trustee receiving compensation

(8) A trustee who receives compensation for managing the estate of the represented person shall exercise the degree of care, diligence and skill that a person in the business of managing the property of others is required to exercise.

### Inventory and account

**44.** (1) A trustee shall, unless the Court otherwise directs,  
(a) file in the office of the Clerk, within six months after being appointed or taking office, an inventory of the assets and liabilities of the estate of the represented person in respect of which the trustee is appointed trustee; and



- (b) if any asset or liability of the estate of the represented person is discovered after the filing of the inventory, amend the inventory to include the asset or liability.

#### Order for passing accounts and filing inventory

(2) Any interested person may apply to the Court for an order requiring the trustee to

- (a) file accounts for passing;
- (b) file an inventory of the assets and liabilities of the estate of the represented person; or
- (c) do any other thing that the circumstances require.

#### Trustee to file accounts

(3) A trustee, other than the Public Trustee, shall, at least once every two years and unless the Court otherwise directs,

- (a) file accounts with the Clerk; and
- (b) apply to the Court, in the manner that the Court directs, for an order passing the accounts.

#### *Probate and Administration Rules of the Nunavut Court of Justice*

(4) The *Probate and Administration Rules of the Nunavut Court of Justice* apply, with such modifications as the circumstances require, to the filing of accounts by a trustee under this section, unless the Court otherwise directs.

#### Dispense with passing accounts

(5) Notwithstanding subsection (3), where the Court is satisfied that it is in the best interests of the estate and the represented person, the Court may dispense with the requirement for passing the accounts and, in accordance with the *Probate and Administration Rules of the Nunavut Court of Justice*, dispense with the passing of accounts for a period not exceeding four years from the date of the trusteeship order.

#### Passing of accounts by Public Trustee

(6) Where the Public Trustee is the trustee and the Court has made an order under subsection (2), the Public Trustee shall file the accounts for passing at the time the Court directs.

#### Service of order

(7) Where the Court makes an order under this section, the applicant shall serve a copy of the order on the persons who are required to be served with an application under subsection 45(2). S.Nu. 2012,c.17,s.13(3),(5).

#### Application for review

**45.** (1) A represented person or any interested person acting on his or her behalf may, at any time, apply to the Court by notice of motion for a review of a trusteeship order.

### Service

(2) A person applying for a review of a trusteeship order shall, at least 10 days before the application is to be heard, serve a copy of the application on

- (a) the represented person;
- (b) the person who is
  - (i) the nearest relative of the represented person, or
  - (ii) the next nearest relative of the represented person, if the nearest relative referred to in subparagraph (i) is the applicant;
- (c) the person in charge of the residence of the represented person;
- (d) the Public Trustee, if he or she is not the applicant or the person served under paragraph (c);
- (e) any trustee of the represented person if the trustee is not the applicant or a person served under this subsection; and
- (f) any other person whom the Court directs be served.

### Service outside jurisdiction

(3) Subsections 4(4) and (5) apply, with such modifications as the circumstances require, in respect of service under subsection (2).

### Court review

- 46.** (1) On hearing an application for review of a trusteeship order, the Court
- (a) shall consider whether the trustee still meets the requirements of section 32;
  - (b) shall consider whether the trustee has fulfilled the duties of a trustee under this Act; and
  - (c) may amend, terminate, continue, vary or replace the order subject to any conditions or requirements it considers necessary.

### Service of order

(2) Where the Court amends, terminates, continues, varies or replaces an order under subsection (1), the applicant shall serve a copy of the amendment, termination, continuation, variation or replacement order on the persons who are required to be served with an application under subsection 45(2).

### Extraterritorial trusteeship order

**47.** Section 15 applies, with such modifications as the circumstances require, in respect of an extraterritorial order for trusteeship.

### Discharge of trustee

**48.** (1) The trustee or any interested person may apply to the Court for an order discharging the trustee.

#### Service of application

(2) An applicant under subsection (1) shall, at least 10 days before the date the application is to be heard, serve a copy of the application on the persons referred to in subsection 45(2).

#### Application of section 46

(3) Section 46 applies, with such modifications as the circumstances require, to an application under this section.

#### Order discharging trustee

(4) The Court may make an order discharging a trustee from office or any other order it thinks fit where the Court is satisfied that a represented person is no longer in need of a trustee or where the Court is satisfied that the trustee

- (a) is unable to continue to act as trustee;
- (b) refuses to act or to continue to act as trustee;
- (c) is not acting as a trustee or is not acting in accordance with the trusteeship order appointing the trustee;
- (d) is acting in an improper manner or has acted in a manner that has endangered or that may endanger the estate of the represented person;
- (e) has been guilty of a breach of trust;
- (f) is no longer a suitable person to act as trustee; or
- (g) is no longer a resident of Nunavut.

#### Arrangements for represented person

(5) Before making an order under subsection (4), the Court shall satisfy itself that, if necessary,

- (a) suitable arrangements have been or will be made in respect of the estate of the represented person; or
- (b) an application for another trusteeship order has been made.

#### Service

(6) Where the Court makes an order under subsection (4), the applicant shall serve a copy of the order on the persons who are required to be served under subsection 45(2) with a copy of an application. S.Nu. 2012,c.17,s.13(5).

#### Death of trustee

**49.** (1) Where a trustee dies and there is no alternate trustee, the Public Trustee, on receiving notice of the death, becomes trustee of the estate of the represented person with the same powers and duties as the former trustee.

#### Public Trustee to continue

(2) The Public Trustee continues to be the trustee of the estate of the represented person until

- (a) a new trustee is appointed by the Court; or
- (b) the Court makes an order discharging the Public Trustee.

#### Accounting by legal representative of deceased trustee

**50.** (1) Where the Public Trustee takes over the office of trustee, he or she may require the legal representative of the deceased trustee to provide an accounting with respect to the estate of the represented person.

#### Order for accounting

(2) Where the legal representative of the deceased trustee does not provide an accounting required under subsection (1) to the satisfaction of the Public Trustee, the Public Trustee may apply by notice of motion to the Court for an order requiring the legal representative to bring in and pass the accounts of the deceased trustee with respect to the estate of the represented person.

#### Termination or discharge of trusteeship order

**51.** Where the Court terminates a trusteeship order or discharges a trustee, the Court may, if it is satisfied that it is in the best interests of the estate and the represented person, direct the trustee to file accounts with the Clerk and the Clerk may approve the accounts in the form in which they are filed. S.Nu. 2012,c.17,s.13(5).

#### Death of represented person

**52.** (1) On the death of a represented person, the trustee shall account to the legal representative of the estate of the represented person.

#### Application for order to pass accounts

(2) Where the trustee does not provide an accounting required under subsection (1) to the satisfaction of the legal representative, the legal representative may apply by notice of motion to the Court for an order requiring the trustee to bring in and pass accounts relating to the estate or that part of the estate formerly under the trusteeship of the trustee.

#### Death of represented person where Public Trustee is trustee

(3) Where the Public Trustee is administering an estate of a represented person and the represented person dies, the Public Trustee shall retain possession of the estate and shall continue to exercise the powers held while the deceased was alive, pending

- (a) a grant of probate or letters of administration;
- (b) a grant of letters of administration with will annexed; or
- (c) the appointment of the Public Trustee under subsection (4).

### Application by Public Trustee

#### (4) The Public Trustee

- (a) may apply to the Court for a grant of letters of administration or letters of administration with will annexed with respect to the estate of the deceased represented person; and
- (b) on complying with the practice and procedure of the Court to the extent applicable, is entitled to a grant of letters of administration or letters of administration with will annexed in priority to the next-of-kin of the deceased or any other person interested in the estate of the deceased.

### Where Public Trustee administering estate of represented person

#### (5) Where the Public Trustee is administering the estate of a represented person who is

- (a) a beneficiary under the will of a deceased person and there is no executor or the executor has renounced probate,
- (b) entitled to the estate or a portion of the estate of a deceased intestate and there is no administrator of the estate, or
- (c) the executor of a will or the administrator of the estate of a deceased person,

the Public Trustee may apply for a grant of letters of administration or letters of administration with will annexed and the Public Trustee, on complying with the applicable practice and procedure of the Court, is entitled to be granted the letters in priority to the next-of-kin of the deceased or any other person interested in the estate of the represented person.

### Application of *Public Trustee Act*

(6) Nothing in this section affects the powers of the Public Trustee under section 26 of the *Public Trustee Act*.

### Exercise of authority by trustee

**53.** Where a trustee is appointed in respect of the estate of a represented person, the trustee may, subject to the other provisions of this Act, exercise the authority of a trustee for the maintenance, education, benefit and advancement of any or all of

- (a) the represented person;
- (b) the spouse of the represented person;
- (c) any minor child of the represented person;
- (d) any adult child of the represented person who by reason of physical or mental disability is unable to earn a living; or
- (e) with the consent of the Court, any other person.

#### Liability of trustee

- 54.** (1) No trustee shall be liable for any loss or damage suffered by reason of anything done or omitted to be done by the trustee in the performance of a duty or in the exercise of a power under this Act or the regulations if the trustee
- (a) has acted honestly and in good faith; and
  - (b) has exercised the degree of care, diligence and skill required under this Act.

#### Relief from liability

(2) If the Court is satisfied that a trustee who has committed a breach of duty has nevertheless acted honestly, reasonably, diligently and in good faith, it may relieve the trustee from all or part of the liability.

### COMMON GUARDIANSHIP AND TRUSTEESHIP PROVISIONS

#### General

##### Application for direction of Court

**55.** (1) A guardian or a trustee may apply by notice of motion for the opinion, advice or direction of the Court on any question respecting a represented person or respecting the management or administration of his or her estate.

##### Reliance on direction of Court

(2) A guardian or trustee acting on the opinion, advice or direction given by the Court shall be deemed to have discharged his or her duty as guardian or trustee in respect of the subject-matter of the opinion, advice or direction.

##### Exclusion

(3) Subsection (2) does not operate to indemnify a guardian or trustee in respect of any act done or not done in accordance with the opinion, advice or direction if the guardian or trustee has been guilty of any fraud or wilful concealment or misrepresentation in obtaining the opinion, advice or direction.

##### Testamentary disposition

**56.** A guardianship order or a trusteeship order is not of itself sufficient to establish that a represented person does not have legal capacity to make a testamentary disposition.

##### Order for costs

**57.** The Court may order that the costs of any application made under this Act, including the costs of any report submitted to the Court in support of the application,

- (a) be paid by all or any of the following in the circumstances indicated:
  - (i) the person in respect of whom the application is made, where the Court is satisfied that it would not be a hardship for the person to pay part or all of the costs;

- (ii) the estate of the represented person in respect of whom the application is made, where the Court is satisfied that it would not be a hardship for the represented person if his or her estate were to pay part or all of the costs;
  - (iii) the Government of Nunavut, where the Court is satisfied that a hardship would result if part or all of the costs were to be paid by the person referred to in subparagraph (i) or by the estate referred to in subparagraph (ii); or
  - (b) be paid by the person making the application or a person opposing the application, where the Court is satisfied that the application or the opposition to the application is frivolous or vexatious.
- S.Nu. 2012,c.17,s.13(5).

#### Confidentiality of information

**58.** (1) No person shall disclose any information obtained under this Act by a guardian or a trustee where the information deals with the personal history or records of a represented person except

- (a) at a proceeding under this Act; or
- (b) where, in the opinion of the guardian or the trustee, as the case may be, it is in the best interests of the represented person.

#### Ban on publication

(2) A guardian and a trustee shall not publish

- (a) the name of a represented person or his or her nearest relative concerned in any proceeding under this Act; or
- (b) an account of the circumstances brought out in any proceeding under this Act.

#### Exception

(3) Subsections (1) and (2) do not prohibit the following from publishing notices of hearings or other notices that may be necessary in the interests of justice or for the proper administration of this Act:

- (a) a guardian or a trustee; or
- (b) the Public Guardian or the Public Trustee acting without the authority of a guardianship order or a trusteeship order.

#### Disclosure

(4) No person shall disclose any information provided in a report referred to in section 2 or 5 except

- (a) where the disclosure is made to an interested person to assist him or her in deciding whether or not an application should be made under this Act;
- (b) at a proceeding under this Act; or
- (c) where the disclosure is in the best interests of and of substantial benefit to the person who is the subject of the report.

### Offence and punishment

(5) Every person who contravenes this section is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding \$1,000.

### Protection of reports or information

**59.** A person who makes a report or gives information for the purpose of an application under this Act or to assist in deciding whether an application should be made under this Act does not acquire any liability for making the report or giving the information, if he or she makes the report or gives the information in good faith and has reasonable grounds for believing the report or information is true.

## Appeal

### Appeal to Court of Appeal

**60.** (1) A represented person or an interested person acting on behalf of a represented person may appeal an order of the Court to the Court of Appeal.

### Service

(2) A notice of appeal must be served on

- (a) the guardian of the represented person, if one has been appointed;
  - (b) the Public Guardian, if he or she is not served under paragraph (a);
  - (c) the person in charge of the residence of the person in respect of whom the order is made;
  - (d) the trustee of the represented person, if one has been appointed;
  - (e) the Public Trustee, if he or she is not served under paragraph (d);  
and
  - (f) any other person that the Court directs to be served.
- S.Nu. 2012,c.17,s.13(4).

### Rules

**61.** The rules of the Court of Appeal respecting civil appeals govern appeals under this Act.

## Actions

### Actions regarding represented person

**62.** (1) Where an action, proceeding or seizure is against the interests of a represented person, no person, without leave of the Court, shall commence or continue

- (a) an action or other proceeding in a court relating to the represented person, or
- (b) a seizure by the Sheriff or extrajudicial proceeding relating to the represented person.

### Form of application

(2) An application for leave shall be made by notice of motion.



## Conditions of leave

(3) The Court may grant leave

- (a) if the Public Trustee and Public Guardian have been given notice; and
- (b) subject to any terms as to security for costs or otherwise that the Court considers just or expedient.

## Limitation Period

## Computation of time

**63.** (1) The time during which a person is subject to a guardianship or trusteeship order made under this Act shall not be computed against the person for the purpose of the *Limitations of Actions Act* or any other Act or law limiting the time within which an action is required to be commenced or proceedings are required to be taken.

## Power to commence proceeding

(2) For greater certainty, a guardian or trustee may, subject to this Act, commence an action or proceeding on behalf of the represented person notwithstanding that the period limited for commencing the action or proceeding would, but for subsection (1), have elapsed.

## Regulations

## Regulations relating to guardianship

**64.** (1) The Commissioner, on the recommendation of the Minister responsible for the Department of Health and Social Services, may make regulations relating to guardianship,

- (a) prescribing the content of forms necessary for the purposes of this Act and the regulations;
- (b) establishing fees or a method for determining fees to be charged for reports prepared and services provided under this Act;
- (c) designating any type of health care as health care to which a guardian may not consent, on behalf of the represented person under paragraph 11(2)(j), unless specifically authorized to do so in the guardianship order; and
- (d) respecting any other matter that the Commissioner considers necessary for carrying out the purposes of this Act.

## Regulations relating to trusteeship

(2) The Commissioner, on the recommendation of the Minister of Justice, may make regulations relating to trusteeship,

- (a) prescribing the content of forms necessary for the purposes of this Act and the regulations;
- (b) establishing fees or a method for determining fees to be charged for reports prepared and services provided under this Act; and

- (c) respecting any other matter that the Commissioner considers necessary for carrying out the purposes of this Act.

**Note**

**The following provisions have been deleted for the purposes of this consolidation:  
s.65 to 67 (Consequential Amendments)**

**COMMENCEMENT**

**Coming into force**

**68. This Act or any provision of this Act comes into force on a day or days to be fixed by order of the Commissioner.**