

CARSWELL

**CONSOLIDATED
ONTARIO
ESTATES
STATUTES
AND
REGULATIONS
2022**

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Ainsley query:
can/should these
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the ToC and the
main text headings
too? They were not
in last year's
edition. There are
several examples
of these
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ABSENTEES ACT

R.S.O. 1990, c. A.3, as am. S.O. 1992, c. 32, s. 1; 1999, c. 6, s. 1; 2005, c. 5, s. 1;
2006, c. 19, Sched. C, s. 1(1).

1. Definition — An absentee within the meaning of this Act means a person who, having had his or her usual place of residence or domicile in Ontario, has disappeared, whose whereabouts is unknown and as to whom there is no knowledge as to whether he or she is alive or dead.

2. (1) Declaration by court — The Superior Court of Justice may by order declare a person to be an absentee if it is shown that due and satisfactory inquiry has been made, or may direct such further inquiry to be made and proceedings to be taken as the court considers expedient before making any order.

(2) Application, who may make — The application for the order may be made by,

- (a) the Attorney General;
- (b) any one or more of the next of kin of the alleged absentee;
- (c) the person to whom the alleged absentee is married;
- (d) the person with whom the alleged absentee was living in a conjugal relationship outside marriage immediately before the absentee's disappearance;
- (e) a creditor; or
- (f) any other person

(3) Appeal — Any person aggrieved or affected by the order has the right to appeal therefrom.

1999, c. 6, s. 1; 2005, c. 5, s. 1; 2006, c. 19, Sched. C, s. 1(1)

3. Order declaring person no longer absentee — Upon application at any time, the court, if satisfied that such person has ceased to be an absentee, may make an order so declaring and superseding, vacating and setting aside the order declaring the person an absentee for all purposes except as to acts or things done in respect of the estate of the absentee while such order was in force.

4. Administration of estate — The court may make an order for the custody, due care and management of the property of an absentee, and a committee may be appointed for that purpose.

5. Who may be appointed committee — A trust corporation with or without one or more persons may be appointed such committee.

6. Powers and duties of court and committee — Where a committee of the estate of an absentee has been appointed, the powers and duties of the court and committee are the same, with necessary modifications, as the powers and duties of the court and of a guardian of property under the *Substitute Decisions Act, 1992*.

S. 7

Absentees Act

7. Powers of committee to expend money out of estate — The committee, subject to the direction of the court, has authority to expend moneys out of the estate of an absentee for the purpose of endeavouring to trace the absentee and in endeavouring to ascertain whether he or she is alive or dead.

8. Lands in Ontario of foreign absentee — Where a person who has had his or her usual place of residence or domicile out of Ontario and who has an interest in land in Ontario has been declared to be an absentee by a court of competent jurisdiction, the Superior Court of Justice may by order, upon being satisfied that the person has disappeared, that his or her whereabouts is unknown and that there is no knowledge as to whether the person is alive or dead, appoint a committee with such authority to manage, sell or otherwise deal with the interest in land as in the opinion of the court is in his or her best interests and those of his or her family.

2006, c. 19, Sched. C, s. 1(1)

ACCUMULATIONS ACT

R.S.O. 1990, c. A.5, as am. S.O. 1993, c. 27, Sched.; 2005, c. 5, s. 2; 2009, c. 33, Sched. 2, s. 1, Sched. 16, s. 1.

1. (1) Maximum accumulation periods — No disposition of any real or personal property shall direct the income thereof to be wholly or partially accumulated for any longer than one of the following terms:

1. The life of the grantor.
2. Twenty-one years from the date of making an *inter vivos* disposition.
3. The duration of the minority or respective minorities of any person or persons living or conceived but not born at the date of making an *inter vivos* disposition.
4. Twenty-one years from the death of the grantor, settlor or testator.
5. The duration of the minority or respective minorities of any person or persons living or conceived but not born at the death of the grantor, settlor or testator.
6. The duration of the minority or respective minorities of any person or persons who, under the instrument directing the accumulations, would, for the time being, if of full age, be entitled to the income directed to be accumulated.

(2) Application of subs. (1) restrictions — The restrictions imposed by subsection (1) apply in relation to a power to accumulate income whether or not there is a duty to exercise that power, and such restrictions also apply whether or not the power to accumulate extends to income produced by the investment of income previously accumulated.

(3) Idem — The restrictions imposed by subsection (1) apply to every disposition of real or personal property, whether made before or after its enactment.

(4) Previous acts, etc., not affected — Nothing in subsection (1) affects,

- (a) the validity of any act done; or
- (b) any right acquired or obligation incurred,

under this Act before the 6th day of September, 1966.

(5) Accumulations for the purchase of land — No accumulation for the purchase of land shall be directed for any longer period than in subsection (1).

(6) Application of invalid accumulations — Where an accumulation is directed contrary to this Act, such direction is null and void, and the rents, issues, profits and produce of the property so directed to be accumulated shall, so long as they are directed to be accumulated contrary to this Act, go to and be received by such person as would have been entitled thereto if such accumulation had not been so directed.

1993, c. 27, Sched.

2. Saving as to debts or portions for children — Nothing in this Act extends to any provision for payment of debts of a grantor, settlor, devisor or other person, or to any provision for raising portions for a child of a grantor, settlor or devisor, or for a child of a person taking an interest under any such conveyance, settlement or devise, or to any direction touch-

S. 2

Accumulations Act

ing the produce of timber or wood upon any lands or tenements, but all such provisions and directions may be made and given as if this Act had not been passed.

3. (1) Rules as to accumulations not applicable to employee benefit trusts — The rules of law and statutory enactments relating to accumulations do not apply and shall be deemed never to have applied to the trusts of a plan, trust or fund established for the purpose of providing pensions, retirement allowances, annuities, or sickness, death or other benefits to employees or to their surviving spouses, dependants or other beneficiaries.

(2) Definition — In this section,

“spouse” means

- (a) a spouse as defined in section 1 of the *Family Law Act*, or
- (b) either of two persons who live together in a conjugal relationship outside marriage.

2005, c. 5, s. 2

4. Rules as to accumulations not applicable to charitable purpose trusts — The rules of law and statutory enactments relating to accumulations do not apply and shall be deemed never to have applied to trusts created for a charitable purpose, as defined in section 7 of the *Charities Accounting Act*.

2009, c. 33, Sched. 2, s. 1

5. Rules not applicable to certain trust funds — The rules of law and statutory enactments relating to accumulations do not apply and are deemed never to have applied to a trust fund required by subsection 9(1) of the *Nuclear Fuel Waste Act* (Canada).

2009, c. 33, Sched. 16, s. 1

ONT. REG. 293/92 — SUPERIOR COURT OF JUSTICE AND COURT OF APPEAL — FEES

made under the *Administration of Justice Act*

O. Reg. 293/92, as am. O. Reg. 136/94 (Fr.); 272/94; 359/94; 802/94; 212/97; 248/97 (Fr.); 403/98; 329/99; 14/00; 136/04; 10/05; 272/05; 169/07; 247/12; 335/16; 344/18; 42/19; 29/21.

[*Note: The title of this Regulation was changed from “Ontario Court (General Division) and Court of Appeal — Fees” to “Superior Court of Justice and Court of Appeal — Fees” by O. Reg. 14/00, s. 1.*]

1. (1) The following fees are payable, except in respect of proceedings to which section 1.2 applies:

1. On the issue of the following:
 - i. A statement of claim, notice of action or notice of application, \$229.
 - ii. A third or subsequent party claim, \$229.
 - iii. A statement of defence and counterclaim adding a party, \$229.
 - iv. A summons to a witness, \$31.
 - v. A certificate, other than a certificate of a search by the registrar required on an application for a certificate of appointment of estate trustee, \$31.
 - vi. A commission, \$57.
 - vii. A writ of execution, \$73.
 - viii. A notice of garnishment or notice of renewal of garnishment (including the filing of the notice with the sheriff), \$146.
2. On the signing of the following:
 - i. An order directing a reference, subject to subparagraph ii, \$297.
 - ii. An order on requisition directing the assessment of a bill under the *Solicitors Act*,
 - A. if obtained by a client, \$99,
 - B. if obtained by a solicitor, \$183.
 - iii. A notice of appointment for the assessment of costs under the Rules of Civil Procedure, \$130.
3. On the filing of the following:
 - i. A notice of intent to defend, \$183.
 - ii. If no notice of intent to defend has been filed by the same party, a statement of defence, a defence to counterclaim, a defence to crossclaim or a third party defence, \$183.
 - iii. A notice of appearance, \$162.

S. 1(1) Ont. Reg. 293/92 — Superior Court of Justice and Court of Appeal — Fees

- iv. A notice of motion served on another party, a notice of motion without notice, a notice of motion for a consent order or a notice of motion for leave to appeal, other than a notice of motion in a family law appeal, \$320.
 - v. A notice of return of motion, other than a notice of return of motion in a family law appeal, \$320.
 - vi. In a family law appeal, a notice of motion served on another party, a notice of motion without notice, a notice of motion for a consent order or a notice of return of motion, \$126.
 - vii. A notice of motion for leave to appeal in a family law case, \$126.
 - viii. A requisition for signing of default judgment by registrar, \$167.
 - ix. A trial record, \$810, for the first time only.
 - x. A notice of appeal or cross-appeal from an interlocutory order, \$229.
 - xi. A notice of appeal or cross-appeal to an appellate court of a final order of the Small Claims Court, \$130.
 - xii. A notice of appeal or cross-appeal to an appellate court of a final order of any court or tribunal, other than the Small Claims Court or the Consent and Capacity Board, \$229.
 - xiii. A request to redeem or request for sale, \$130.
 - xiv. A jury notice in a civil proceeding, \$130.
 - 4. For obtaining an appointment with a registrar for settlement of an order, \$130.
 - 5. For perfecting an appeal or judicial review application, \$608.
 - 6. For making up and forwarding of papers, documents and exhibits, \$99, plus any applicable transportation costs.
 - 7. For making copies of documents,
 - i. not requiring certification, \$1 per page,
 - ii. requiring certification, \$3.50 per page.
 - 8. For the inspection of a court file by,
 - i. a person who has entered into an agreement with the Ministry of the Attorney General for the bulk inspection of court files, \$4 per file,
 - ii. any other person, other than a solicitor or party in the proceeding, \$10 per file.
 - 9. For the retrieval from storage of a court file, \$78.
 - 10. For the taking of an affidavit or declaration by a commissioner for taking affidavits, \$21.
 - 11. For a copy on compact disc (CD) of a digital recording of a court hearing in respect of a case, if such a recording exists and a copy is available,
 - i. \$22 for a single day's recording, and
 - ii. \$10.50 for each additional day's recording, if the request is made at the same time as a request under subparagraph i.
- (2)** Despite subsection (1), no fee is payable under this Regulation in relation to a proceeding under Part II of the *Prevention of and Remedies for Human Trafficking Act, 2017* by or on behalf of a party to such a proceeding.
- O. Reg. 359/94, s. 1; 212/97, s. 1; 248/97, s. 1; 403/98, s. 1; 329/99, s. 1; 14/00, s. 2; 136/04, s. 1; 10/05, s. 1; 272/05, s. 1; 169/07, s. 1; 247/12, s. 1; 335/16, s. 1; 344/18, s. 1; 42/19, s. 1

Ont. Reg. 293/92 — Superior Court of Justice and Court of Appeal — Fees **S. 2(1)**

1.1 (1) If a minor or other person under disability is entitled to receive a payment or payments under a multi-provincial/territorial assistance program agreement between Ontario and a person who has been infected with the human immunodeficiency virus through the receipt by transfusion of blood or a blood product, no fee is payable for the issue of a notice of application under Rule 7.08 of the *Rules of Civil Procedure* on behalf of the minor or other person under disability, despite subparagraph 1 i of subsection 1(1).

(2) [Repealed O. Reg. 335/16, s. 2(2).]

O. Reg. 272/94; 136/04, s. 2; 335/16, s. 2; 42/19, s. 2

1.2 (1) The following fees are payable in respect of proceedings that are governed by Ontario Regulation 114/99 (*Family Law Rules*), except for proceedings under rule 38 (appeals), to which section 1 applies:

1. On the filing of an application, \$202.
2. On the filing of an answer, other than an answer referred to in paragraph 3, \$161.
3. On the filing of an answer that includes a request for a divorce by a respondent, \$202.
4. On the placing of an application on the list for hearing, \$420.
5. On the issue of a summons to a witness, \$31.
6. On the issue of a certificate, \$24.
7. For making copies of documents,
 - i. not requiring certification, \$1 per page,
 - ii. requiring certification, \$3.50 per page.
8. For making up and forwarding papers, documents and exhibits, \$99, plus any applicable transportation costs.
9. For a copy on compact disc (CD) of a digital recording of a court hearing in respect of a case, if such a recording exists and a copy is available,
 - i. \$22 for a single day's recording, and
 - ii. \$10.50 for each additional day's recording, if the request is made at the same time as a request under subparagraph i.

(2) Despite subsection (1), no fees are payable for the filing of an application, the filing of an answer or the placing of an application on the list for hearing in respect of,

- (a) proceedings under the *Children's Law Reform Act*, the *Family Law Act* (except Parts I and II), the *Family Responsibility and Support Arrears Enforcement Act, 1996*, the *Marriage Act* or the *Interjurisdictional Support Orders Act, 2002*; or
- (b) proceedings to enforce a parenting order, contact order or order for support made under an Act referred to in clause (a).

O. Reg. 136/04, s. 3; 169/07, s. 2; 247/12, s. 2; 42/19, s. 3; 29/21, s. 1

2. (1) The following fees are payable in estate matters:

1. For a certificate of succeeding estate trustee or a certificate of estate trustee during litigation, \$130.
2. For an application of an estate trustee to pass accounts, including all services in connection with it, \$407.
3. For a notice of objection to accounts, \$88.

S. 2(1) Ont. Reg. 293/92 — Superior Court of Justice and Court of Appeal — Fees

4. For an application other than an application to pass accounts, including an application for proof of lost or destroyed will, a revocation of a certificate of appointment, an application for directions or the filing of a claim and notice of contestation, \$219.
5. For a notice of objection other than a notice of objection to accounts, including the filing of a notice of appearance, \$89.
6. For a request for notice of commencement of proceedings, \$89.
7. For the deposit of a will or codicil for safekeeping, \$26.
8. For an assessment of costs, including the certificate, \$63.

(2) The fees set out in section 1 are payable in estate matters in addition to the fees set out in subsection (1).

O. Reg. 293/92, s. 2; 802/94; 14/00, s. 3; 10/05, s. 2; 335/16, s. 3; 42/19, s. 4

3. (1) The following fees are payable in an action under the *Construction Act*:

1. If the claim, crossclaim, counterclaim or third party claim does not exceed \$6,000, on the issuing of a statement of claim, crossclaim, counterclaim or third party claim, \$99.
2. If the claim, crossclaim, counterclaim or third party claim exceeds \$6,000,
 - i. on the issue of a statement of claim, crossclaim, counterclaim or third party claim, \$229,
 - ii. on the filing of a statement of defence, \$162,
 - iii. on the issue of a certificate of action, \$130,
 - iv. on the filing of a trial record, \$810.

(2) The fees set out in subsection (1) are payable in addition to those set out in subsection 1(1), other than in paragraphs 1, 2 and 3 of that subsection.

O. Reg. 359/94, s. 2; 212/97, s. 2; 14/00, s. 4; 10/05, s. 3; 335/16, s. 4; 42/19, s. 5

4. (1) The following fees are payable in respect of an application under the *Repair and Storage Liens Act*:

1. On the filing of an application, \$229.
2. On the filing of a notice of objection, \$162.
3. On the issue of an initial certificate or final certificate, \$130.
4. On the issue of a writ of seizure, \$73.

(2) The fees set out in subsection (1) are payable in addition to those set out in subsection 1(1), other than in paragraphs 1, 2 and 3 of that subsection.

O. Reg. 359/94, s. 3; 212/97, s. 3; 14/00, s. 5; 10/05, s. 4; 335/16, s. 5; 42/19, s. 5

5. (1) The following fees are payable to an official examiner:

1. For the appointment, for each person examined, \$9.50.
2. For the provision of facilities, \$32, plus, if the examination is longer than two hours, \$16 for each additional hour (or part of an hour).
3. For a reporter's attendance, \$40, plus, if the examination is longer than two hours, \$20 for each additional hour (or part of an hour).

Ont. Reg. 293/92 — Superior Court of Justice and Court of Appeal — Fees **S. 6(2)**

4. For the transcript of an examination, regardless of the party ordering,
 - i. \$4 per page for one copy of the first transcript ordered,
 - ii. \$3.40 per page for one copy of each transcript ordered after the reporter has satisfied the order for a transcript described in subparagraph i, and
 - iii. 80 cents for each additional copy ordered before the reporter has satisfied the order for a transcript described in subparagraph i or ii.
5. For handling costs, \$5.50 per invoice.
6. For cancellation of or failure to keep an appointment, with less than three working days' notice,
 - i. for the cancellation or failure to attend, \$11.50,
 - ii. for the first two hours reserved for the appointment, \$72, and
 - iii. for each additional hour (or part of an hour) reserved for the appointment, \$36.

(2) The official examiner shall be paid, in addition to the fees set out in subsection (1), a travelling allowance in accordance with Regulation 11 of the Revised Regulations of Ontario, 1990 (*Kilometre Allowances*) made under the Act for attendance out of the office.

(3) If a party requires a transcript within five working days of placing the order for the transcript, the party shall pay the official examiner 75 cents per page, in addition to the fee set out in paragraph 4 of subsection (1).

(4) If a party requires a transcript within two working days of placing the order for the transcript, the party shall pay the official examiner \$1.50 per page, in addition to the fee set out in paragraph 4 of subsection (1).

(5) If more than one party requires a transcript as described in subsection (3) or (4), only the first party to place the order shall be required to pay the additional fee.

Note: A solicitor who is charged more than the amounts provided in section 5 of this Regulation or who receives a transcript that does not substantially conform with Rule 4.09 of the Rules of Civil Procedure should notify the Assistant Deputy Minister, Courts Administration Division, Ministry of the Attorney General, in writing

O. Reg. 359/94, s. 4; 212/97, s. 4; 335/16, s. 6

6. (1) Beginning on January 1, 2023, and on every third January 1 that follows, the fees payable under this Regulation shall be adjusted in accordance with the following, subject to subsection (3):

1. The fees payable immediately before the applicable January 1 date shall be increased by the percentage change between the Ontario Consumer Price Index for the calendar year that is two years before the year in which the adjustment is being made, and the Ontario Consumer Price Index for the calendar year that is five years before the year in which the adjustment is being made.
2. If the percentage change in the Ontario Consumer Price Index between the two applicable calendar years, as set out in paragraph 1, results in a negative amount, the fees shall not be increased.
3. Any fee that, once increased in accordance with paragraph 1, results in an amount that is not a whole number shall be rounded to the nearest dollar.

(2) For the purposes of subsection (1), the Ontario Consumer Price Index is the Consumer Price Index for Ontario (All-Items) as published by Statistics Canada.

S. 6(3) Ont. Reg. 293/92 — Superior Court of Justice and Court of Appeal — Fees

- (3) A fee shall not be adjusted under subsection (1) if, before the date on which the adjustment would otherwise take effect, the Minister responsible for the administration of the Act,
- (a) determines that the fee as adjusted would exceed full cost recovery; and
 - (b) publishes notice of the determination, confirming the amount of the fee, on a Government of Ontario website.

(4) [Repealed O. Reg. 42/19, s. 6(2).]

O. Reg. 335/16, s. 7; 42/19, s. 6

7. If the applicable filing fee is paid on the filing of a document electronically in accordance with the rules of court, the fee is not payable again on the subsequent filing of a paper copy of the document.

O. Reg. 42/19, s. 7

ONT. REG. 43/05 — MEDIATORS’ FEES (RULE 75.1, RULES OF CIVIL PROCEDURE)

made under the *Administration of Justice Act*

O. Reg. 43/05

1. Definition — In this Regulation,

“**mandatory mediation session**” means the mediation session required by Rule 75.1 of the *Rules of Civil Procedure*.

2. Number of parties — For the purposes of this Regulation, the number of parties is determined according to the following rules:

1. An estate trustee whom an order under rule 75.1.05 requires to attend a mediation session in person shall be counted as a party only if the court makes an order to that effect.
2. If the court makes an order under paragraph 1 with respect to two or more estate trustees, they shall be counted as one party, unless the court orders otherwise.
3. If an order under rule 75.1.05 requires the Children’s Lawyer to attend a mediation session in person, he or she shall be counted as a party, unless the court orders otherwise.
4. If an order under rule 75.1.05 requires the Public Guardian and Trustee to attend a mediation session in person, he or she shall be counted as one party, irrespective of the number of persons represented, unless the court orders otherwise.
5. Paragraph 4 does not apply if the Public Guardian and Trustee is required to attend in the capacity of estate trustee.

3. Mandatory mediation session — (1) When a mandatory mediation session is conducted under Rule 75.1 of the *Rules of Civil Procedure* by a mediator named in a list described in subrule 24.1.08(1) of those Rules, fees shall be paid in accordance with this Regulation.

(2) The mediator’s fees for the mandatory mediation session cover the following services:

1. One-half hour of preparation time for each party.
2. Up to three hours of actual mediation.

S. 4(1) Ont. Reg. 43/05 — Mediators' Fees (Rule 75.1, Rules of Civil Procedure)

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4. Fees for mandatory mediation session and for any additional time — (1) The mediator's fees for the mandatory mediation session shall not exceed the amount shown in the following Table.

TABLE

| Number of Parties | Maximum Fees |
|-------------------|----------------|
| 2 | \$600 plus GST |
| 3 | \$675 plus GST |
| 4 | \$750 plus GST |
| 5 or more | \$825 plus GST |

(2) Each party is required to pay an equal share of the mediator's fees for the mandatory mediation session, unless the court orders otherwise.

(3) After the first three hours of actual mediation, the mediation may be continued if the parties and the mediator agree to do so and agree on the mediator's fees or hourly rate for the additional time.

5. Cancellation fees — (1) If the mediator cancels a session under subrule 75.1.08(4) of the *Rules of Civil Procedure* because a party fails to comply with subrule 75.1.08(1), that party shall pay any cancellation fees.

(2) If the mediator cancels a session under subrule 75.1.09(3) of the *Rules of Civil Procedure* because a party fails to attend within the first 30 minutes of the session, the party who fails to attend shall pay any cancellation fees.

(3) Two or more parties who fail to comply or to attend, as the case may be, shall pay the cancellation fees in equal shares.

(4) The cancellation fees shall not exceed the applicable amount shown in the Table to subsection 4(1).

6. Effect of party's failure to pay — A party's failure to pay a share referred to in subsection 4(2) or 5(3) does not increase the share or shares of the other party or parties.

AGE OF MAJORITY AND ACCOUNTABILITY ACT

R.S.O. 1990, c. A.7, as am. S.O. 1993, c. 27, s. 8, para. 2; 2006, c. 21, Sched. F, s. 101.

1. (1) Age of Majority — Every person attains the age of majority and ceases to be a minor on attaining the age of eighteen years.

2. Application of s. 1 — Section 1 applies for the purpose of any rule of law in respect of which the Legislature has jurisdiction

3. (1) References to “minor” and similar expressions — In the absence of a definition or of an indication of a contrary intention, section 1 applies for the construction of the expression “adult”, “full age”, “infant”, “infancy”, “minor”, “minority” and similar expressions in,

- (a) any Act of the Legislature or any regulation, rule, order or by-law made under an Act of the Legislature; and
- (b) any deed, will or other instrument made on or after the 1st of September, 1971.

(2) Idem — The use of any expression set out in subsection (1) or any similar expression shall not, in itself, be taken to indicate a contrary intention for the purposes of this section without some further indication of a contrary intention.

4. References in Federal Acts proclaimed by reference — Where, by any Act of the Legislature, an Act of Parliament or any provision thereof is made to apply in respect of any Act or matter or thing over which the Legislature has jurisdiction, in applying that Act of Parliament, or that provision thereof in respect of that Act, matter or thing, any reference to the age of twenty-one years in the Act of Parliament or that provision thereof shall be read as a reference to the age of eighteen years.

5. (1) Age — A person attains an age specified as a number of years at the first instant of the corresponding anniversary of his or her birth.

(2) Exceptions in documents — Subsection (1) does not apply in respect of a document that provides for a different method of calculating a person’s age.

2006, c. 21, Sched. F, s. 101

6. Existing Wills — Despite any rule of law, a will or codicil executed before the 1st day of September, 1971 shall not be treated for the purposes of this Act as made on or after that day by reason only that the will or codicil is confirmed by a codicil executed on or after that day.

7. Enactments incorporated in existing deeds, etc. — This Act does not effect the construction of a provision of an Act of the Legislature or a regulation, rule, order or by-law made thereunder that is incorporated in and has effect as part of a deed, will or other instrument if the construction of the deed, will or other instrument is not affected by section 3.

S. 8

Age of Majority and Accountability Act

8. Accumulations — This Act does not invalidate any direction for accumulation expressed in a settlement or other disposition made by deed, will or other instrument and executed before the 1st day of September, 1971 that, but for this Act, was a permissible period of accumulation.

9. Perpetuities — This Act does not apply so as to affect the law relating to perpetuities.

10. Persons under 18 described as minors — A person who has not attained the age of eighteen years may be described as a minor instead of as an infant.

11. This Act does not prejudice a right of action or a defence to an action based upon the age of a party and that was in existence on the 1st day of September, 1971 and notwithstanding this Act, the law that was in force immediately prior to that day applies in that case.

1993, c. 27, s. 8, para. 2

ALIENS' REAL PROPERTY ACT

R.S.O. 1990, c. A.18

1. Aliens' powers as to real estate — Every alien has the same capacity to take by gift, conveyance, descent, devise, or otherwise, and to hold, possess, enjoy, claim, recover, convey, devise, impart and transmit real estate in Ontario as a natural born or a naturalized subject of Her Majesty.

2. Descent of real estate of aliens — The real estate in Ontario of an alien dying intestate descends and may be transmitted as if it had been the real estate of a natural born or a naturalized subject of Her Majesty.

APPORTIONMENT ACT

R.S.O. 1990, c. A.23

1. Definitions — In this Act,

“**annuities**” includes salaries and pensions; (“rentes”)

“**dividends**” includes all payments made by the name of dividend, bonus or otherwise out of revenues of trading or other public companies divisible between all or any of the members, whether such payments are usually made or declared at any fixed times or otherwise, but does not include payments in the nature of a return or reimbursement of capital; (“dividends”)

“**rent**” includes rent-charge and rent-seck and all periodical payments or renderings in lieu or in the nature of rent. (“loyer”)

2. Dividends, how deemed to accrue — Dividends shall, for the purposes of this Act, be deemed to have accrued by equal daily increment during and within the period for or in respect of which the payment of the dividends is declared or expressed to be made.

3. Rents, etc., how to accrue and be apportionable — All rents, annuities, dividends, and other periodical payments in the nature of income, whether reserved or made payable under an instrument in writing or otherwise, shall, like interest on money lent, be considered as accruing from day to day, and are apportionable in respect of time accordingly.

4. When apportioned, part of rent, etc., to be payable — The apportioned part of any such rent, annuity, dividend or other periodical payment is payable or recoverable, in the case of a continuing rent, annuity, dividend or other such payment, when the entire portion, of which such apportioned part forms part, becomes due and payable, and not before, and in the case of a rent, annuity or other such payment determined by re-entry, death or otherwise, when the next entire portion of the same would have been payable if it had not so determined, and not before.

5. (1) Recovering apportioned parts — All persons and their respective heirs, executors, administrators and assigns, and also the executors, administrators and assigns, respectively, of persons whose interests determine with their own deaths, have such or the same remedies for recovering such apportioned parts when payable, allowing proportionate parts of all just allowances, as they respectively would have had for recovering such entire portions if entitled thereto.

(2) As to rents reserved in certain cases — The persons liable to pay rents reserved out of or charged on lands or other hereditaments, and the same lands or other hereditaments, shall not be resorted to for any such apportioned part forming part of an entire or continuing rent specifically, but the entire or continuing rent, including such apportioned part, shall be recovered and received by the heir or other person, who, if the rent had not been apportionable under this Act, or otherwise, would have been entitled to such entire or continuing rent,

S. 5(2)

Apportionment Act

and such apportioned part is recoverable by action from such heir or other person by the executors or other persons entitled to it under this Act.

6. Policies of assurance, stipulation against apportionment — Nothing in this Act renders apportionable any annual sums made payable in policies of assurance of any description, or extends to any case in which it is expressly stipulated that no apportionment is to take place.

CANADA PENSION PLAN

An Act to establish a comprehensive program of old age pensions and supplementary benefits in Canada payable to and in respect of contributors

R.S.C. 1985, c. C-8, as am. R.S.C. 1985, c. 6 (1st Supp.); R.S.C. 1985, c. 41 (1st Supp.), s. 12; R.S.C. 1985, c. 5 (2nd Supp.), ss. 1, 2; R.S.C. 1985, c. 13 (2nd Supp.), s. 10; R.S.C. 1985, c. 27 (2nd Supp.), s. 7; R.S.C. 1985, c. 30 (2nd Supp.), ss. 1–60; R.S.C. 1985, c. 18 (3rd Supp.), ss. 29–32; R.S.C. 1985, c. 38 (3rd Supp.), ss. 1, 2; R.S.C. 1985, c. 1 (4th Supp.), ss. 5, 44; R.S.C. 1985, c. 46 (4th Supp.), s. 1; R.S.C. 1985, c. 51 (4th Supp.), s. 9; S.C. 1990, c. 8, ss. 45, 46, 78(2); SOR/91-455; 1991, c. 14; 1991, c. 44, ss. 1–28; 1991, c. 49, ss. 203–215; 1992, c. 1, ss. 23–25, 143 [s. 24 repealed 1991, c. 44, s. 34(b).]; 1992, c. 2; 1992, c. 27, s. 90(1)(d); 1992, c. 48, s. 28; 1993, c. 24, ss. 143–146, 154; 1993, c. 27, s. 212; 1993, c. 28, s. 78 (Sched. III, item 9); 1994, c. 13, s. 8(1)(a); 1994, c. 21, ss. 123, 124; 1995, c. 33, ss. 25–46; 1996, c. 11, ss. 49, 95(b), 97(1)(b), 99(a), 101(a) [ss. 49(2), 101(a) repealed 2005, c. 34, s. 84.]; 1996, c. 16, ss. 60(1)(b), 61(1)(b); 1996, c. 23, ss. 187(a), 189(c); 1997, c. 40, ss. 58–98; 1998, c. 19, ss. 251–256; 1999, c. 17, ss. 109–112; 2000, c. 12, ss. 42–46(1), (2) (Fr.), 47–64, 65 (Fr.); 2000, c. 14, ss. 45, 46; 2000, c. 30, s. 155; 2000, c. 34, s. 94(b) (Fr.); 2001, c. 4, s. 67; 2001, c. 17, s. 254; 2002, c. 7, s. 111; 2002, c. 8, ss. 121, 182(1)(f); 2003, c. 5, ss. 1–11; 2003, c. 22, ss. 129, 130; 2004, c. 22, ss. 15–24; 2004, c. 25, ss. 111–113; 2005, c. 35, ss. 45–48, 49 (Fr.), 50–52, 66(a), 67(a); 2005, c. 38, s. 138(c); 2005, c. 47, s. 137 [Amended 2007, c. 36, s. 108.]; 2007, c. 11, ss. 1–3, 4(1), (2), (3) (Fr.), (4), (5), 5, 6, 7(1) (Fr.), (2), (3) (Fr.), (4), (5), 8–14; 2008, c. 28, s. 38; 2009, c. 31, ss. 25–40, 41(1), (2) (Fr.), (3), 42; 2010, c. 12, ss. 1668, 1669; 2010, c. 25, s. 70; 2011, c. 24, ss. 172–176; 2012, c. 19, ss. 225–234, 292–295, 305, 306, 694(a), 695(1)(a); 2012, c. 31, ss. 193–203; 2013, c. 33, s. 155; 2013, c. 40, ss. 236(1)(b), 237(1)(b), 238(1)(b); 2015, c. 17, s. 1; 2016, c. 14, ss. 1–13, 14 (Fr.), 15–56; 2018, c. 12, ss. 361–401; 2018, c. 27, ss. 127, 128; 2019, c. 29, ss. 45, 46, 153, 154.

.....

INTERPRETATION

2. (1) Definitions — In this Act,

.....

“applicant” means, in Part II,

- (a) a person or an estate that has applied for a benefit,
- (b) a person who has applied for a division of unadjusted pensionable earnings under section 55 or paragraph 55.1(1)(b) or (c), or
- (c) a person in respect of whom a division of unadjusted pensionable earnings has been approved under paragraph 55.1(1)(a);

.....

“beneficiary” means a person, estate or other body to whom a benefit has become payable;

“benefit” means a benefit payable under this Act and includes a pension;

.....

“common-law partner”, in relation to a contributor, means a person who is cohabiting with the contributor in a conjugal relationship at the relevant time, having so cohabited with the contributor for a continuous period of at least one year. For greater certainty, in the case of a contributor’s death, the **“relevant time”** means the time of the contributor’s death.

.....

“contributor” means a person who has made an employee’s contribution or a contribution in respect of the person’s self-employed earnings, and includes a person the amount of whose earnings on which a contribution has been made for a year under this Act calculated as provided in subparagraph 53(1)(b)(i) exceeds zero and a person to whom unadjusted pensionable earnings have been attributed under section 55, 55.1 or 55.2;

.....

“deduct” includes withhold;

“disabled” has the meaning assigned by section 42;

.....

“pension” means a pension payable under this Act;

.....

“prescribed” means

(a) in the case of a form or the information to be given on a form, authorized by the Minister having the control and direction of the administration of the Part of this Act to which the context extends, and

(b) in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation;

.....

“representative” means, in respect of any person, a guardian, curator, committee, executor, liquidator of a succession, administrator or other legal representative of that person;

.....

“unadjusted pensionable earnings” means base unadjusted pensionable earnings, first additional unadjusted pensionable earnings and second additional unadjusted pensionable earnings;

“year” means a calendar year;

.....

(2) When specified age deemed to be reached — For the purposes of any provision of this Act in which reference is made to the reaching by a person of a specified age — other than a reference in paragraph 13(1)(c) or (e) or (1.2)(c), 17(c), 17.1(c), 19(c) or (d) or 44(3)(a), section 70 or subparagraph 72(a)(iii) — the person is deemed to have reached the

specified age at the beginning of the month following the month in which the person actually reached that age, and in computing

- (a) any period of months ending with the time when he reached a specified age, the month in which he actually reached that age shall be included; and
- (b) any period of months commencing with the time when he reached a specified age, the month in which he actually reached that age shall not be included.

R.S.C. 1985, c. 30 (2nd Supp.), s. 1; R.S.C. 1985, c. 1 (4th Supp.), s. 45; 1991, c. 44, s. 1; 1991, c. 49, s. 203; 1995, c. 33, s. 25; 2000, c. 12, s. 42; 2004, c. 25, s. 111; 2009, c. 31, s. 25; 2011, c. 24, s. 172; 2012, c. 19, s. 225; 2012, c. 31, s. 193; 2016, c. 14, s. 1; 2018, c. 12, s. 361

.....

PART II — PENSIONS AND SUPPLEMENTARY BENEFITS (SS. 42–90.2)

Interpretation

42. (1) Definitions — In this Part,

.....

“child” of a contributor means a child of the contributor, whether born before or after the contributor’s death, and includes

- (a) an individual adopted legally or in fact by the contributor while the individual was under twenty-one years of age, and
- (b) an individual of whom, either legally or in fact, the contributor had, or immediately before the individual reached twenty-one years of age did have, the custody and control,

but does not include a child of the contributor who is adopted legally or in fact by someone other than the contributor or the contributor’s spouse or common-law partner prior to the death or disability of the contributor, unless the contributor was maintaining the child, as defined by regulation;

“dependent child” of a contributor means a child of the contributor who

- (a) is less than eighteen years of age,
- (b) is eighteen or more years of age but less than twenty-five years of age and is in full-time attendance at a school or university as defined by regulation, or
- (c) is a child other than a child described in paragraph (b), is eighteen or more years of age and is disabled, having been disabled without interruption since the time he reached eighteen years of age or the contributor died, whichever occurred later;

“disabled contributor’s child” or any form of that expression of like import means a dependent child of a contributor who is disabled, but does not include a dependent child described in paragraph (c) of the definition “dependent child” in this section;

.....

“Minister” means the Minister of Employment and Social Development;

“orphan” of a contributor means a dependent child of a contributor who has died but does not include a dependent child described in paragraph (c) of the definition “dependent child”;

.....

“survivor”, in relation to a deceased contributor, means

- (a) if there is no person described in paragraph (b), a person who was married to the contributor at the time of the contributor’s death, or
- (b) a person who was the common-law partner of the contributor at the time of the contributor’s death;

“survivor with dependent children” means a survivor of a contributor who wholly or substantially maintains one or more dependent children of the contributor;

.....

(2) When person deemed disabled — For the purposes of this Act,

(a) a person shall be considered to be disabled only if he is determined in prescribed manner to have a severe and prolonged mental or physical disability, and for the purposes of this paragraph,

- (i) a disability is severe only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful occupation, and
- (ii) a disability is prolonged only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to result in death; and

(b) a person is deemed to have become or to have ceased to be disabled at the time that is determined in the prescribed manner to be the time when the person became or ceased to be, as the case may be, disabled, but in no case shall a person — including a contributor referred to in subparagraph 44(1)(b)(ii) — be deemed to have become disabled earlier than fifteen months before the time of the making of any application in respect of which the determination is made.

R.S.C. 1985, c. 30 (2nd Supp.), s. 12; 1992, c. 1, s. 23; 1996, c. 11, s. 95; 1997, c. 40, s. 68; 2000, c. 12, s. 44; 2005, c. 35, s. 67(a)(vii); 2009, c. 31, s. 31; 2012, c. 31, s. 194; 2012, c. 19, s. 694(a)(vii); 2013, c. 40, s. 238(1)(b)(vi)

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DIVISION A — BENEFITS PAYABLE

44. (1) Benefits payable — Subject to this Part,

(a) a retirement pension shall be paid to a contributor who has reached sixty years of age;

(b) a disability pension shall be paid to a contributor who has not reached sixty-five years of age, to whom no retirement pension is payable, who is disabled and who

- (i) has made base contributions for not less than the minimum qualifying period,
- (ii) is a contributor to whom a disability pension would have been payable at the time the contributor is deemed to have become disabled if an application for a disability pension had been received before the contributor’s application for a disability pension was actually received, or
- (iii) is a contributor to whom a disability pension would have been payable at the time the contributor is deemed to have become disabled if a division of unad-

justed pensionable earnings that was made under section 55 or 55.1 had not been made;

(iv) [Repealed 1997, c. 40, s. 69.]

(c) a death benefit shall be paid to the estate or succession of a deceased contributor who has made base contributions for not less than the minimum qualifying period;

(d) a survivor's pension shall be paid

(i) before 2019, to the survivor of a deceased contributor who has made base contributions for not less than the minimum qualifying period, if the survivor

(A) has reached 65 years of age, or

(B) in the case of a survivor who has not reached 65 years of age,

(I) had at the time of the death of the contributor reached 35 years of age,

(II) was at the time of the death of the contributor a survivor with dependent children, or

(III) is disabled, and

(ii) after 2018, to the survivor of a deceased contributor who has made base contributions for not less than the minimum qualifying period;

(e) a disabled contributor's child's benefit shall be paid to each child of a disabled contributor who

(i) has made base contributions for not less than the minimum qualifying period,

(ii) is a contributor to whom a disability pension or a post-retirement disability benefit would have been payable at the time the contributor is deemed to have become disabled if an application for a disability pension or a post-retirement disability benefit had been received before the application was actually received, or

(iii) is a contributor to whom a disability pension or a post-retirement disability benefit would have been payable at the time the contributor is deemed to have become disabled if a division of unadjusted pensionable earnings that was made under section 55 or 55.1, had not been made;

(iv) [Repealed 1997, c. 40, s. 69.]

(f) an orphan's benefit shall be paid to each orphan of a deceased contributor who has made base contributions for not less than the minimum qualifying period;

(g) a post-retirement benefit shall be paid to a beneficiary of a retirement pension under this Act or under a provincial pension plan who has made a contribution in respect of the post-retirement benefit; and

(h) a post-retirement disability benefit shall be paid to a beneficiary of a retirement pension who has not reached 65 years of age, is disabled and who

(i) has made base contributions for not less than the minimum qualifying period,

(ii) is a contributor to whom a post-retirement disability benefit would have been payable at the time the contributor is deemed to have become disabled if an application for a post-retirement disability benefit had been received before the application was actually received, or

(iii) is a contributor to whom a post-retirement disability benefit would have been payable at the time the contributor is deemed to have become disabled if a divi-

sion of unadjusted pensionable earnings that was made under section 55 or 55.1 had not been made.

(1.1) [Repealed 2018, c. 12, s. 372(5).]

(2) Calculation of minimum qualifying period in case of disability pension and disabled contributor's child's benefit — For the purposes of paragraph (1)(b) and, if a disability pension is payable to a contributor, paragraph (1)(e),

(a) a contributor is deemed to have made base contributions for not less than the minimum qualifying period only if the contributor has made base contributions during the contributor's contributory period on earnings that are not less than the contributor's basic exemption, calculated without regard to subsection 20(2),

(i) for at least four of the last six calendar years included either wholly or partly in the contributor's contributory period or, where there are fewer than six calendar years included either wholly or partly in the contributor's contributory period, for at least four years,

(i.1) for at least 25 calendar years included either wholly or partly in the contributor's contributory period, of which at least three are in the last six calendar years included either wholly or partly in the contributor's contributory period, or

(ii) for each year after the month of cessation of the contributor's previous disability benefit; and

(b) the contributory period of a contributor shall be the period

(i) commencing January 1, 1966 or when he reaches eighteen years of age, whichever is the later, and

(ii) ending with the month in which he is determined to have become disabled for the purpose of paragraph (1)(b),

but excluding

(iii) any month that was excluded from the contributor's contributory period under this Act or under a provincial pension plan by reason of disability, and

(iv) in relation to any benefits payable under this Act for any month after December, 1977, any month for which the contributor was a family allowance recipient in a year for which the contributor's base unadjusted pensionable earnings are less than the basic exemption of the contributor for the year, calculated without regard to subsection 20(2).

(2.1) Proration — late applications for disability pensions — For the purpose of determining the minimum qualifying period of a contributor referred to in subparagraph (1)(b)(ii), the basic exemption for the year in which they would have been considered to have become disabled, and in which the base unadjusted pensionable earnings are less than the relevant Year's Basic Exemption for that year, is an amount equal to that proportion of the amount of that Year's Basic Exemption that the number of months that would not have been excluded from the contributory period by reason of disability is of 12.

(2.2) Family allowance — late applications for disability pensions — A contributor referred to in subparagraph (1)(b)(ii) is deemed to have made base contributions for not less than the minimum qualifying period for the purpose of subparagraph (1)(b)(i) if

(a) they became disabled in a month in which they were a family allowance recipient;

- (b) in the year in which they became disabled
- (i) the child in respect of which they were a family allowance recipient reached seven years of age, and

- (ii) their base unadjusted pensionable earnings were less than their basic exemption, calculated without regard to subsection 20(2); and

(c) in the absence of this subsection, a disability pension would not be payable to them, but had they become disabled in the year immediately before the year in which they became disabled, a disability pension would have been payable to them under subparagraph (1)(b)(ii).

(3) Calculation for other supplementary benefits — For the purposes of paragraphs (1)(c), (d) and (f), a contributor is deemed to have made base contributions for not less than the minimum qualifying period only if the contributor has made base contributions during their contributory period

- (a) for at least one third of the total number of years included either wholly or partly within their contributory period, excluding from the calculation of that contributory period any month in a year after the year in which the contributor reaches 65 years of age and for which the contributor's base unadjusted pensionable earnings were equal to or less than the contributor's basic exemption for that year, but in no case for less than three years; or

- (b) for at least ten years.

(4) Calculation of minimum qualifying period — post-retirement disability benefit — For the purposes of paragraph (1)(h) and, if a post-retirement disability benefit is payable to a contributor, paragraph (1)(e), the contributor is deemed to have made base contributions for not less than the minimum qualifying period only if the contributor has made base contributions on earnings that are not less than the contributor's basic exemption, calculated without regard to subsection 20(2),

- (a) for at least four of the last six years;

- (b) for at least 25 years of which at least three are in the last six years; or

- (c) for each year after the month of cessation of the contributor's previous disability pension or post-retirement disability benefit.

R.S.C. 1985, c. 30 (2nd Supp.), s. 13; 1991, c. 44, s. 4; 1992, c. 2, s. 1; 1997, c. 40, s. 69; 2000, c. 12, ss. 45, 64(a); 2007, c. 11, s. 2; 2009, c. 31, s. 32; 2012, c. 31, s. 195; 2016, c. 14, s. 20; 2018, c. 12, s. 372

44.1 (1) Survivor's pension, death benefit or orphan's benefit not payable — Despite section 44, a survivor's pension, death benefit or orphan's benefit is not payable to an individual in the following circumstances:

- (a) in the case of the survivor's pension, the individual who otherwise would have been entitled to receive the survivor's pension as a result of the death of the contributor is not so entitled if the Minister is informed and satisfied that the individual has been convicted of first or second degree murder or manslaughter of the contributor;

- (b) in the case of the death benefit, the individual who otherwise would have been entitled to receive the death benefit under section 71 as a result of the death of the contributor is not so entitled if the Minister is informed and satisfied that the individual has been convicted of first or second degree murder or manslaughter of the contributor; and

- (c) in the case of the orphan's benefit, the individual who otherwise would have been entitled to receive the orphan's benefit as a result of the death of the contributor is not so entitled if the Minister is informed and satisfied that the individual
- (i) has been convicted of first or second degree murder or manslaughter of the contributor,
 - (ii) has received an adult sentence for that murder or manslaughter, and
 - (iii) is 18 years of age or older.

(2) Conviction reversed — If the Minister is informed and satisfied that an individual's conviction for first or second degree murder or manslaughter of the contributor has been reversed, the charges have been withdrawn or the proceedings were stayed and not recommenced within the required time period and that all rights of appeal have been exhausted, the individual's entitlement to the pension or benefit to which they would otherwise have been entitled under this Act shall be reinstated and any amount recovered from the individual shall be repaid.

(3) Conviction outside Canada — If an individual has been convicted by a court outside Canada in respect of an offence that, if it had been committed in Canada, would have constituted first or second degree murder or manslaughter, the Minister may deem that conviction to be a conviction of first or second degree murder or manslaughter for the purposes of this section.

(4) Recovery of pension or benefits — An individual who has received a pension or benefit referred to in this section and in respect of whom the Minister is subsequently informed and satisfied that the individual has been convicted of first or second degree murder or manslaughter of the contributor shall be deemed not to have been entitled to receive such pension or benefit, which shall constitute a debt due to Her Majesty under section 66 and the Minister shall recover those amounts, including any amounts paid before the date of the individual's conviction.

(5) Conviction prior to coming into force — For greater certainty, this section applies in respect of any first or second degree murder or manslaughter conviction of which the Minister is informed before, on or after the coming into force of this section.

(6) Definition of "first or second degree murder" — For the purpose of this section, "first or second degree murder" means murder within the meaning of section 231 of the *Criminal Code*.

(7) Definition of "manslaughter" — For the purpose of this section, "manslaughter" means manslaughter within the meaning of the *Criminal Code*.

(8) Exception — probation order — This section does not apply to an individual who is convicted of manslaughter if the individual is released on the conditions prescribed in a probation order under paragraph 731(1)(a) of the *Criminal Code*.

2015, c. 17, s. 1

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DIVISION C — PAYMENT OF BENEFITS: GENERAL PROVISIONS

60. (1) Application for benefit — No benefit is payable to any person under this Act unless an application therefor has been made by him or on his behalf and payment of the benefit has been approved under this Act.

(1.1) Application for post-retirement benefit deemed to be made — An application for a post-retirement benefit under subsection (1) is deemed to be made on January 1 of the year following the year of the unadjusted pensionable earnings referred to in section 76.1 if

- (a) the person is a beneficiary of a retirement pension on that day; and
- (b) the Minister has the information necessary to determine whether a post-retirement benefit is payable to them.

(1.2) Application for retirement pension waived — The Minister may waive the requirement under subsection (1) for an application for a retirement pension to be made by a person or on their behalf if the Minister is satisfied that

- (a) the person is a contributor;
- (b) the person is 70 years old or more; and
- (c) at least one of the following applies in respect of the person:
 - (i) the person is in receipt of a benefit under this Act, the *Old Age Security Act* or a provincial pension plan, and
 - (ii) a return of income was filed by the person or on their behalf under the *Income Tax Act* in respect of the year before the year in which the Minister considers waiving the requirement.

(1.3) Effect of waiver — If the requirement for an application for a retirement pension is waived, the application is deemed to have been made and received on the day on which the requirement is waived.

(2) Application for benefit by estate, etc — Notwithstanding anything in this Act, but subject to subsections (2.1) and (2.2), an application for a benefit, other than a death benefit, that would have been payable in respect of a month to a deceased person who, prior to the person's death, would have been entitled on approval of an application to payment of that benefit under this Act may be approved in respect of that month only if it is made within 12 months after the death of that person by the estate, the representative or heir of that person or by any person that may be prescribed by regulation.

(2.1) Certain applications may not be approved — An application referred to in subsection (2) is not to be approved if it is made in respect of a post-retirement disability benefit or, if the application is received after December 31, 1997, a disability pension.

(2.2) Restriction — retirement pension — An application referred to in subsection (2) in respect of a retirement pension may only be approved in respect of a month after the deceased contributor had reached age 70.

(3) Exception — Where a disabled contributor's child's benefit would, if the application had been approved, have been payable to a child of a disabled contributor on application made prior to the death of the child or an orphan's benefit would, if the application had been approved, have been payable to an orphan of a contributor on application made prior to the death of the orphan and the child or orphan dies after December 31, 1977, not having reached eighteen years of age, and no application has been made at the time of the death of the child or orphan, an application may be made within one year after the death by the person or agency having custody and control of the child or orphan at the time of the death or, where there is at that time no person or agency having custody and control, by such person or agency as the Minister may direct.

(4) Benefits payable to estate or other persons — Where an application is made pursuant to subsection (2) or (3), a benefit that would have been payable to a deceased person referred to in subsection (2) or a deceased child or orphan referred to in subsection (3) shall be paid to the estate or such person as may be prescribed by regulation.

(5) Application deemed to have been received on date of death — Any application made pursuant to subsection (2) or (3) is deemed to have been received

- (a) on the date of the death of a person who, prior to his death, would have been entitled, on approval of an application, to payment of a benefit under this Act; or
- (b) on the date of the death of a child or an orphan referred to in subsection (3) where the person having custody and control of the child or orphan did not make an application prior to the death of the child or orphan.

(6) How application to be made — An application for a benefit shall be made to the Minister in prescribed manner and at the prescribed location.

(7) Consideration of application and approval by Minister — The Minister shall forthwith on receiving an application for a benefit consider it and may approve payment of the benefit and determine the amount thereof payable under this Act or may determine that no benefit is payable, and he shall thereupon in writing notify the applicant of his decision.

(8) Incapacity — Where an application for a benefit is made on behalf of a person and the Minister is satisfied, on the basis of evidence provided by or on behalf of that person, that the person had been incapable of forming or expressing an intention to make an application on the person's own behalf on the day on which the application was actually made, the Minister may deem the application to have been made in the month preceding the first month in which the relevant benefit could have commenced to be paid or in the month that the Minister considers the person's last relevant period of incapacity to have commenced, whichever is the later.

(9) Idem — Where an application for a benefit is made by or on behalf of a person and the Minister is satisfied, on the basis of evidence provided by or on behalf of that person, that

- (a) the person had been incapable of forming or expressing an intention to make an application before the day on which the application was actually made,
- (b) the person had ceased to be so incapable before that day, and
- (c) the application was made
 - (i) within the period that begins on the day on which that person had ceased to be so incapable and that comprises the same number of days, not exceeding twelve months, as in the period of incapacity, or
 - (ii) where the period referred to in subparagraph (i) comprises fewer than thirty days, not more than one month after the month in which that person had ceased to be so incapable,

the Minister may deem the application to have been made in the month preceding the first month in which the relevant benefit could have commenced to be paid or in the month that the Minister considers the person's last relevant period of incapacity to have commenced, whichever is the later.

(10) Period of incapacity — For the purposes of subsections (8) and (9), a period of incapacity must be a continuous period except as otherwise prescribed.

(11) Application — Subsections (8) to (10) apply only to individuals who were incapacitated on or after January 1, 1991.

(12) Making claim or providing information in person — The Minister may require an applicant or other person or a group or class of persons to be at a suitable place at a suitable time in order to make an application for benefits in person or to provide additional information about an application.

R.S.C. 1985, c. 30 (2nd Supp.), s. 28; R.S.C. 1985, c. 1 (4th Supp.), s. 44; 1991, c. 44, s. 14; 1997, c. 40, s. 77; 2009, c. 31, s. 37; 2018, c. 12, s. 386; 2019, c. 29, s. 153

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63. (1) Where spouse remarried before survivor's pension payable — Where a person whose spouse has died remarries at a time when no survivor's pension is payable to him, no survivor's pension is payable to that person during the period of his remarriage and if following the death of his spouse of that or any subsequent remarriage a survivor's pension would be payable to him if he applied for such a pension, his deceased spouse for the purposes of this Act shall be deemed to be his spouse named in the application.

(2) Discontinuance of survivor's pension — Where a person to whom a survivor's pension is being paid remarries, the survivor's pension shall be discontinued commencing with the month following the month in which that person was married.

(3) Application for survivor's pension — Where the spouse of a person whose survivor's pension has been discontinued under subsection (2) dies, that person may on application therefor be paid a survivor's pension equal to the survivor's pension that was discontinued under subsection (2) or the survivor's pension that would have been payable by reason of the death of the spouse if no survivor's pension had been previously payable to that person, whichever is the greater.

(4) Payment of pension to former spouse — Where the marriage of a person whose survivor's pension has been discontinued under subsection (2) is terminated otherwise than by the death of his spouse, the survivor's pension previously payable to that person shall thereupon become payable to him.

(5) Calculation of basic amount of survivor's pension — Where a survivor's pension payable to a person has been discontinued under subsection (2) and subsequently a survivor's pension equal to the pension so discontinued becomes payable to that person or the pension so discontinued again becomes payable to him, the basic monthly amount of the pension thereupon payable to that person shall be calculated as though the pension discontinued under subsection (2) had not been discontinued.

(6) Only one survivor's pension payable — Where, but for this subsection, more than one survivor's pension would be payable concurrently to a person under this Act, or a survivor's pension would be payable concurrently to a person under this Act and under a provincial pension plan, only one survivor's pension shall be payable to that person, the amount of which shall be the greatest or greater of the survivor's pensions that would, but for this subsection, be payable to that person.

(7) Death within 1 year of marriage — Where a contributor dies within one year after his marriage, no survivor's pension is payable to his survivor if the Minister is not satisfied that the contributor was at the time of his marriage in such a condition of health as to justify him in having an expectation of surviving for at least one year thereafter.

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(7.1) When subsection (7) does not apply — Subsection (7) does not apply if the aggregate of the following periods is one year or more:

- (a) the period during which the contributor and the survivor had cohabited during the marriage; and
- (b) the period during which the contributor and the survivor had cohabited in a conjugal relationship immediately before the marriage.

(8) Application of subsection (3) — Subsection (3) applies only to a person who has made an application pursuant to that subsection that is pending on the coming into force of section 63.1.

(9) Application of subsection (4) — Subsection (4) applies only to a person whose marriage is terminated as described in that subsection before the coming into force of section 63.1.

(10) Subsection does not apply — Subsection (5) does not apply in respect of a survivor's pension that becomes payable pursuant to section 63.1.

R.S.C. 1985, c. 30 (2nd Supp.), s. 30; 2000, c. 12, ss. 51, 64(i)

63.1 (1) Subsections do not apply — Subsections 63(1) and (2) do not apply to a person who remarries after the coming into force of this section.

(2) Application for commencement or reinstatement of survivor's pension — Where, before the coming into force of subsection (1),

- (a) a survivor's pension that, but for the operation of subsection 63(1), would have become payable to a person did not become payable to the person, or
- (b) the payment of a survivor's pension to a person was discontinued under subsection 63(2),

and the person is not being paid a survivor's pension at the time that this section comes into force, an application in writing to the Minister for the commencement or reinstatement, as the case may be, of the survivor's pension may be made by the person or on behalf of the person by such other person as may be prescribed.

(3) Commencement of survivor's pension — On approval by the Minister of an application referred to in subsection (2), a survivor's pension is payable to the applicant for each month commencing with the later of

- (a) the month in which this section comes into force, and
- (b) the eleventh month preceding the month in which the application is received by the Minister.

(4) Basic monthly amount of survivor's pension — Where a survivor's pension becomes payable under this section to a person, the basic monthly amount of the pension shall be calculated in accordance with section 58 as though

- (a) in the case of a person referred to in paragraph (2)(a), the survivor's pension that would have become payable to the person but for the operation of subsection 63(1) became payable at the time that it would have become payable but for that subsection; and
- (b) in the case of a person referred to in paragraph (2)(b), payment of the survivor's pension to the person had not been discontinued under subsection 63(2).

R.S.C. 1985, c. 30 (2nd Supp.), s. 31

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66. (1) Return of benefit where recipient not entitled — A person or estate that has received or obtained by cheque or otherwise a benefit payment to which the person or estate is not entitled, or a benefit payment in excess of the amount of the benefit payment to which the person or estate is entitled, shall forthwith return the cheque or the amount of the benefit payment, or the excess amount, as the case may be.

(2) Recovery of amount of payment — If a person has received or obtained a benefit payment to which the person is not entitled, or a benefit payment in excess of the amount of the benefit payment to which the person is entitled, the amount of the benefit payment or the excess amount, as the case may be, constitutes a debt due to Her Majesty and is recoverable at any time in the Federal Court or any other court of competent jurisdiction or in any other manner provided by this Act.

(2.01) Recovery of amount of interest — Interest payable under this Part constitutes a debt due to Her Majesty and is recoverable at any time in the Federal Court or any other court of competent jurisdiction or in any other manner provided by this Act.

(2.02) Recovery of amount of penalty — The amount of a penalty imposed on a person under section 90.1 constitutes a debt due to Her Majesty and is recoverable at any time in the Federal Court or any other court of competent jurisdiction or in any other manner provided by this Act.

(2.1) Set-off — Where any amount is or becomes payable to the person or the person's estate or succession under this Act or any other Act or program administered by the Minister, that indebtedness may, in the prescribed manner, be deducted and retained out of the amount payable.

(2.2) Certificates — All or part of the amount of that indebtedness that has not been recovered may be certified by the Minister

- (a) without delay, if in the Minister's opinion the person liable to pay the amount is attempting to avoid payment; and
- (b) in any other case, on the expiration of 30 days after the default.

(2.3) Judgment — On production to the Federal Court, the certificate shall be registered in the Court. When it is registered, it has the same force and effect, and all proceedings may be taken, as if the certificate were a judgment obtained in the Court for a debt of the amount specified in the certificate.

(2.4) Judgment — A certificate registered under subsection (2.3) may also be registered in the superior court of a province as if it were a document evidencing a judgment of that court.

(2.5) Costs — All reasonable costs and charges for the registration of the certificate are recoverable in the same way as if they had been certified and the certificate registered under this section.

(2.6) Charge on land — A document issued by the Federal Court or by a superior court of a province evidencing a certificate in respect of a debtor registered under subsection (2.3) or (2.4) may be recorded for the purpose of creating security, or a charge, lien or legal hypothec, on land in a province, or on an interest in land in a province, held or owned by the debtor, in the same manner as a document evidencing a judgment of the superior court of the province against a person for a debt owing by the person may be recorded in accordance

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with the law of the province to create security, or a charge, lien or legal hypothec, on land, or an interest in land, held or owned by the person.

(2.7) Garnishment — If the Minister knows or suspects that a person is or is about to become indebted or liable to make a payment to a person liable to make a payment to Her Majesty under this Part, the Minister may, by a notice served personally or by confirmed delivery service, require the first person to pay the money otherwise payable to the second person in whole or in part to the Receiver General on account of the second person's liability.

(2.8) Debt due to the Crown — An amount not paid as required by a notice under subsection (2.7) is a debt due to Her Majesty.

(2.9) Proof of personal service — If provision is made by this Act or the regulations for personal service of a request for information or a notice or demand, an affidavit of the person effecting service stating that

- (a) the person has charge of the appropriate records and has knowledge of the facts in the particular case,
- (b) such a request, notice or demand was served personally on a named day on the person to whom it was directed, and
- (c) the person identifies as an exhibit attached to the affidavit a true copy of the request, notice or demand,

is evidence of the personal service and of the request, notice or demand.

(3) Remission of amount owing — Notwithstanding paragraph 61(2)(b) and subsections (1) and (2) of this section, where a person has received or obtained a benefit payment to which he is not entitled, or a benefit payment in excess of the amount of the benefit payment to which he is entitled, and the Minister is satisfied that

- (a) the amount or excess of the benefit payment cannot be collected within the reasonably foreseeable future,
- (b) the administrative costs of collecting the amount or excess of the benefit payment are likely to equal or exceed the amount to be collected,
- (c) repayment of the amount or excess of the benefit payment would cause undue hardship to the debtor, or
- (d) the amount or excess of the benefit payment is the result of erroneous advice or administrative error on the part of the Minister or an official of the Department of Employment and Social Development acting in an official capacity in the administration of this Act,

the Minister may, unless that person has been convicted of an offence under any provision of this Act or of the *Criminal Code* in connection with the obtaining of the benefit payment, remit all or any portion of the amount or excess of the benefit payment.

(4) Where person denied benefit due to departmental error, etc. — Where the Minister is satisfied that, as a result of erroneous advice or administrative error in the administration of this Act, any person has been denied

- (a) a benefit, or portion thereof, to which that person would have been entitled under this Act,
- (b) a division of unadjusted pensionable earnings under section 55 or 55.1, or
- (c) an assignment of a retirement pension under section 65.1,

the Minister shall take such remedial action as the Minister considers appropriate to place the person in the position that the person would be in under this Act had the erroneous advice not been given or the administrative error not been made.

(5) When person denied division — Where the Minister is satisfied that a person has been denied a division of unadjusted pensionable earnings under section 55 or 55.1 as a result of the provisions of a written agreement entered into or a court order made before June 4, 1986, the Minister shall take such remedial action as the Minister considers appropriate to place the person in the position that the person would be in under this Act had the division been approved, including attributing to that person the earnings that would have been attributed had the division been approved, if

- (a) the agreement or order does not indicate that there be no division of unadjusted pensionable earnings under this Act; and
- (b) all other criteria specified by or under this Act respecting divisions are met.

(6) Exclusion of *Financial Administration Act* — Section 155.1 of the *Financial Administration Act* does not apply in relation to amounts owing to Her Majesty under this Part.

R.S.C. 1985, c. 30 (2nd Supp.), s. 34; 1991, c. 14, s. 1; 1991, c. 44, s. 17; 1995, c. 33, s. 31; 1996, c. 11, s. 97; 1997, c. 40, s. 80; 2000, c. 12, s. 53; 2001, c. 4, s. 67; 2005, c. 35, s. 66(a)(i); 2007, c. 11, s. 4(1), (2), (4), (5); 2012, c. 19, s. 695(1)(a)(i); 2013, c. 40, s. 237(1)(b)(i)

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DIVISION D — PAYMENT OF BENEFITS: SPECIAL RULES APPLICABLE

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Disability Pension and Post-retirement Disability Benefit

[Heading amended 2018, c. 12, s. 388.]

69. Commencement of pension — Subject to section 62, where payment of a disability pension is approved, the pension is payable for each month commencing with the fourth month following the month in which the applicant became disabled, except that where the applicant was, at any time during the five year period next before the month in which the applicant became disabled as a result of which the payment is approved, in receipt of a disability pension payable under this Act or under a provincial pension plan,

- (a) the pension is payable for each month commencing with the month next following the month in which the applicant became disabled as a result of which the payment is approved; and
- (b) the reference to “fifteen months” in paragraph 42(2)(b) shall be read as a reference to “twelve months”.

R.S.C. 1985, c. 30 (2nd Supp.), s. 38

70. (1) When pension ceases to be payable — A disability pension ceases to be payable with the payment

- (a) for the month in which the beneficiary ceases to be disabled;
- (b) for the month immediately preceding the month in which the beneficiary commences to receive a retirement pension under this Act or under a provincial pension plan;
- (c) for the month in which the beneficiary reaches sixty-five years of age; or

(d) for the month in which the beneficiary dies.

(2) Application for retirement pension deemed to have been made — Where a disability pension ceases to be payable to a person by reason of his having reached sixty-five years of age, an application under section 60 shall be deemed to have been made by and received from that person, in the month in which he reached that age, for a retirement pension to commence with the month following that month.

(3) Effect of receiving a retirement pension — A person who commences to receive a retirement pension under this Act or under a provincial pension plan is thereafter ineligible to apply or re-apply, at any time, for a disability pension under this Act, except as provided in section 66.1 or in a substantially similar provision of a provincial pension plan, as the case may be.

R.S.C. 1985, c. 30 (2nd Supp.), s. 39

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70.1 (1) Reinstatement of disability pension or post-retirement disability benefit — Subject to this section, a person who has ceased to receive a disability pension or a post-retirement disability benefit because they have returned to work is entitled to have that pension or benefit reinstated if, within two years after the month in which they ceased to receive it, they become incapable again of working.

(2) Request for reinstatement — A request by a person for reinstatement of a disability pension or a post-retirement disability benefit shall be made to the Minister in accordance with the regulations. Subsections 60(2), (4), (5) and (8) to (12) apply to the request, with any modifications that the circumstances require.

(3) Consideration and approval of request by Minister — The Minister shall approve a request made by a person under subsection (2) if the Minister is satisfied that

(a) the person has a severe and prolonged mental or physical disability that is the same as, or is related to, the disability that entitled the person to receive the disability pension or post-retirement disability benefit that is the subject of the request;

(b) not more than two years have elapsed from the month in which the person ceased to receive the disability pension or post-retirement disability benefit to the month when they became incapable again of working; and

(c) the person had not reached 65 years of age and, if the request is for reinstatement of a disability pension, was not receiving a retirement pension in the month in which they became incapable again of working.

(4) Reinstatement of disabled contributor's child benefit — On reinstatement of a pension or benefit under subsection (3), the Minister shall approve the reinstatement of a disabled contributor's child benefit that had been payable to the child of the person whose pension or benefit is reinstated if the Minister is satisfied that the child meets the requirements under this Act for payment of a disabled contributor's child benefit.

(5) Notification of decision — disability pension or post-retirement disability benefit — The Minister shall in writing inform a person who makes the request for reinstatement of a pension or benefit of the Minister's decision whether or not to approve the request.

(6) Notification of decision — disabled contributor's child benefit — The Minister shall in writing inform the person who has made the request for reinstatement of a pension or

benefit, a child of that person or, in relation to that child, a person or agency referred to in section 75 of the Minister's decision whether or not to approve a disabled contributor's child benefit.

(7) Application of provisions — reinstated pension or benefit — The provisions of this Act that apply to a disability pension or a post-retirement disability benefit, as the case may be, except paragraphs 42(2)(b), 44(1)(b) and (h) and (2)(a) and subsection 44(4) and sections 69 and 70.01, apply to a pension or benefit that is reinstated under this section, with any modifications that the circumstances require.

(8) Application of provisions — disabled contributor's child benefit — The provisions of this Act that apply to a disabled contributor's child benefit, except paragraphs 44(1)(e) and 44(2)(a) and subsections 44(4) and 74(2), apply to a disabled contributor's child benefit that is reinstated under this section, with such modifications as the circumstances require.

(9) Amount of disability pension and survivor's pension — Despite subsection (7) and subject to any division of unadjusted pensionable earnings under sections 55 to 55.3, the basic monthly amount of a disability pension that is reinstated, and the monthly amount of any survivor's pension under this Act that is payable to the person whose disability pension is reinstated, shall not be less than the amount that was payable for the month immediately preceding the month in which the pension ceased to be payable, adjusted annually in accordance with subsection 45(2).

(10) Commencement of payments — A disability pension, post-retirement disability benefit or disabled contributor's child benefit that is reinstated pursuant to a request under this section is payable commencing with the month following the month in which the person who made the request under this section became incapable again of working.

2004, c. 22, s. 20; 2018, c. 12, s. 390

Death Benefit

71. (1) Payable to estate — Where payment of a death benefit is approved, the Minister shall, except as provided in subsections (2) and (3), pay the death benefit to the estate of the contributor.

(2) Exceptions — The Minister may direct payment of a death benefit in whole or in part to such person or body as is prescribed where

- (a) he is satisfied, after making reasonable inquiries, that there is no estate;
- (b) the estate has not applied for the death benefit within the prescribed time interval following the contributor's death; or
- (c) if the contributor's death occurs before January 1, 2019, the amount of the death benefit is less than the prescribed amount.

(3) No double payment — Where a payment has been made pursuant to subsection (2), the Minister is not liable to make that payment to any subsequent applicant.

R.S.C. 1985, c. 30 (2nd Supp.), s. 40; 2018, c. 12, s. 391

Survivor's Pension

72. Commencement of pension — Subject to section 62, if payment of a survivor's pension is approved, the pension is payable for each month commencing with,

- (a) if subparagraph 44(1)(d)(i) applies, the month following the month in which
 - (i) the contributor died, in the case of a survivor who at the time of the death of the contributor had reached 35 years of age or was a survivor with dependent children,
 - (ii) the survivor became a survivor who, not having reached 65 years of age, is disabled, in the case of a survivor other than a survivor described in subparagraph (i), or
 - (iii) the survivor reached 65 years of age, in the case of a survivor other than a survivor described in subparagraph (i) or (ii); or
- (b) if subparagraph 44(1)(d)(ii) applies, the month following the month in which the contributor died.

However, in no case is the pension payable earlier than for the twelfth-month preceding the month following the month in which the application was received.

2000, c. 12, ss. 54, 64(j); 2018, c. 12, s. 392

73. (1) Duration of payment — Subject to this Act, a survivor's pension shall continue to be paid during the lifetime of the beneficiary, and shall cease with the payment for the month in which the beneficiary dies.

(2) Special case — If

- (a) a contributor died on or after January 1, 1998 but before the coming into force of this subsection, and
- (b) a survivor's pension was, immediately before that coming into force, payable to a survivor who had been married to the contributor at the time of the contributor's death, the approval of payment of a survivor's pension, in respect of that contributor's death, to a survivor who was the contributor's common-law partner at the time of the contributor's death and was not a person described in subparagraph (a)(ii) of the definition "spouse" in subsection 2(1) as that definition read at that time, does not affect the right of the survivor referred to in paragraph (b) to continue to receive the survivor's pension in accordance with subsection (1).

2000, c. 12, s. 55

Disabled Contributor's Child's Benefit and Orphan's Benefit

74. (1) Persons by whom application may be made — An application for a disabled contributor's child's benefit or orphan's benefit may be made on behalf of a disabled contributor's child or orphan by the child or orphan or by any other person or agency to whom the benefit would, if the application were approved, be payable under this Part.

(2) Commencement of payment of benefit — Subject to section 62, where payment of a disabled contributor's child's benefit or orphan's benefit in respect of a contributor is approved, the benefit is payable for each month commencing with,

- (a) in the case of a disabled contributor's child's benefit, the later of
 - (i) the month commencing with which a disability pension is payable to the contributor under this Act or under a provincial pension plan or a post-retirement disability benefit is payable under this Act, and
 - (ii) the month next following the month in which the child was born or otherwise became a child of the contributor, and
- (b) in the case of an orphan's benefit, the later of
 - (i) the month following the month in which the contributor died, and
 - (ii) the month next following the month in which the child was born,

but in no case earlier than the twelfth month preceding the month following the month in which the application was received.

(3) No benefit in respect of more than two contributors — Where a disabled contributor's child's benefit has become payable to a child under this Act or under a provincial pension plan in respect of any contributor thereunder or an orphan's benefit has become payable to an orphan under this Act or under a provincial pension plan in respect of any contributor thereunder, no disabled contributor's child's benefit or orphan's benefit is payable to that person under this Act in respect of any other such contributor except another parent of that person, and in no case shall such a benefit be paid to that person in respect of more than two contributors.

(3.1) Meaning of "parent" — In subsection (3), "parent" has the reciprocal meaning to that of "child".

(4) [Repealed 1991, c. 44, s. 18.]

R.S.C. 1985, c. 30 (2nd Supp.), s. 41; 1991, c. 44, s. 18; 2018, c. 12, s. 393

75. Payment of benefit — Where a disabled contributor's child's benefit is payable to a child of a disabled contributor or an orphan's benefit is payable to an orphan of a contributor, payment thereof shall, if the child or orphan has not reached eighteen years of age, be made to the person or agency having custody and control of the child or orphan, or, where there is no person or agency having custody and control of the child or orphan, to such person or agency as the Minister may direct, and for the purposes of this Part,

- (a) the contributor, in relation to a disabled contributor's child, except where the child is living apart from the contributor, and
- (b) the survivor, if any, of the contributor, in relation to an orphan, except where the orphan is living apart from the survivor,

shall be presumed, in the absence of any evidence to the contrary, to be the person having custody and control of the child or orphan.

2000, c. 12, s. 56

76. (1) When disabled contributor's child's benefit ceases to be payable — A disabled contributor's child's benefit ceases to be payable with the payment for the month in which

- (a) the child ceases to be a dependent child;

S. 76(1)(b)

Canada Pension Plan, Part II

- (b) the child dies;
- (c) the contributor's disability pension or post-retirement disability benefit ceases to be payable;
- (d) the child is adopted legally or in fact by someone other than the disabled contributor or the disabled contributor's spouse or common-law partner, unless the disabled contributor is maintaining the child, as defined by regulation; or
- (e) the disabled contributor ceases to have custody and control of the child, where the child is a child as defined in subsection 42(1) by reason of the disabled contributor having had such custody and control.

(2) When orphan's benefit ceases to be payable — An orphan's benefit ceases to be payable with the payment for the month in which the child ceases to be a dependent child or dies.

(3) Exception — Where, by reason of the death of a contributor, a disabled contributor's child's benefit ceases to be payable to a person who is 18 years of age or older at the time of that death, an application under section 60 for an orphan's benefit shall be deemed to have been made by that person in the month in which the contributor died.

R.S.C. 1985, c. 30 (2nd Supp.), s. 42; 1991, c. 44, s. 19; 2000, c. 12, s. 57; 2018, c. 12, s. 394

Post-retirement Benefit

[Heading added 2009, c. 31, s. 40.]

76.1 Commencement of benefit — Subject to section 62, a post-retirement benefit is payable to a beneficiary of a retirement pension for each month commencing with January 1 of the year following the year of a contributor's earnings if

- (a) a contribution has been made in respect of those earnings;
- (b) those earnings exceed the contributor's basic exemption; and
- (c) those earnings are for a period that
 - (i) begins after 2011 and after the contributory period ends under subparagraph 49(b)(iii), and
 - (ii) ends with the month preceding the month in which the contributor reaches seventy years of age.

2009, c. 31, s. 40

76.2 Duration of payment — Subject to this Act, a post-retirement benefit shall continue to be paid during the lifetime of the beneficiary and shall cease with the payment for the month in which the beneficiary dies.

2009, c. 31, s. 40

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DIVISION G — GENERAL

87. Census information — Subject to such conditions as may be prescribed, for the purpose of ascertaining the age of any applicant or beneficiary, or of an applicant's or a beneficiary's spouse or common-law partner or former spouse or former common-law partner, the Minister is entitled to obtain from Statistics Canada, on request, any information respecting

that person's age that is contained in the returns of any census taken more than thirty years before the date of the request.

R.S.C. 1985, c. 30 (2nd Supp.), s. 47; 2000, c. 12, s. 62

88. (1) Presumption as to death — Where a contributor or beneficiary, or a contributor's or beneficiary's spouse or common-law partner or former spouse or former common-law partner has, either before or after the coming into force of this section, disappeared under circumstances that, in the opinion of the Minister, raise beyond a reasonable doubt a presumption that the person is dead, the Minister may determine the date for the purposes of this Act on which that person's death is presumed to have occurred, and thereupon that person shall be deemed for all purposes of this Act to have died on that date.

(2) Change of date — If, after having determined the date of a person's death pursuant to subsection (1), the Minister is satisfied from new information or evidence that the date of death is different from that determined, the Minister may determine a different date of death, in which case the person shall be deemed for all purposes of this Act to have died on that different date and the Minister shall forthwith cause to be paid any benefit that would have been payable if the determination of death had not been made.

(3) Where person appears — If, after having determined the date of a person's death pursuant to subsection (1), the Minister is satisfied from new information or evidence that the person is alive, the Minister shall forthwith cause to be paid any benefit that would have been payable in respect of the person had that determination not been made.

(4) Benefits cease — Where any benefit has been paid to any person as a result of the determination of another person's death pursuant to this section and the Minister is satisfied from new information or evidence that that other person is alive, the benefit shall forthwith cease to be payable and any such benefit paid prior to the Minister's being satisfied that the person is alive shall be deemed to have been validly paid.

(5) Death certificates issued by other authorities — For the purposes of this section, the Minister is not bound by the issuance or revocation of a death certificate by any other authority.

R.S.C. 1985, c. 30 (2nd Supp.), s. 48; 2000, c. 12, s. 63

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Transitional Provisions

— 2004, c. 22, s. 23:

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— 2007, c. 11, s. 36:

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— 2012, c. 19, ss. 251–262:

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— 2016, c. 14, ss. 62–64:

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CAN. REG. 385 — CANADA PENSION PLAN REGULATIONS

made under the Canada Pension Plan Regulations respecting the administration of the Canada Pen- sion Plan

C.R.C. 1978, c. 385, as am. SOR/78-142; SOR/78-591; SOR/78-935; SOR/79-141; SOR/79-286; SOR/79-402; SOR/79-751; SOR/79-957; SOR/80-133; SOR/80-320; SOR/80-757; SOR/80-813; SOR/80-877; SOR/80-930; SOR/81-99; SOR/81-197; SOR/81-448; SOR/81-733; SOR/81-1029; SOR/82-290; SOR/82-321; SOR/82-597; SOR/82-784; SOR/82-1096; SOR/83-238; SOR/83-270; SOR/84-50; SOR/84-115; SOR/84-459; SOR/85-39; SOR/85-1087; SOR/85-1164; SOR/86-1133; SOR/86-1134; SOR/87-714; SOR/87-719; SOR/87-721; SOR/88-239; SOR/88-628; SOR/88-631; SOR/88-638; SOR/88-639; SOR/89-304; SOR/89-345; SOR/89-467; SOR/89-580; SOR/90-47; SOR/90-687; SOR/90-829; SOR/90-832; SOR/91-682 (Fr.); SOR/92-17; SOR/92-36; SOR/92-736; SOR/93-11; SOR/93-94; SOR/93-290; SOR/93-398; SOR/93-533; SOR/94-173; SOR/95-156; SOR/95-287; SOR/96-161; SOR/96-262; SOR/96-522; SOR/97-34; SOR/97-384; SOR/97-472; SOR/97-557; SOR/98-258; SOR/99-23; SOR/99-60; SOR/99-192; SOR/99-389; SOR/2000-61; SOR/2000-133, ss. 1–3, 4 (Fr.); SOR/2000-411 [ss. 8(2), (4), (5), (7), 9(2), 13(1), (3), (4): (Fr.)] [Corrected Gazette 25/4/01 Vol. 135-9.]; SOR/2001-135; SOR/2002-221, ss. 1, 2 (Fr.), 3, 4; SOR/2002-245; SOR/2004-223 (Fr.); SOR/2004-249, ss. 1–4; SOR/2005-38; SOR/2007-55; S.C. 2007, c. 35, s. 90; SOR/2010-45, ss. 1–13; 2010, c. 12, s. 34; SOR/2010-300; SOR/2011-299; SOR/2013-20, ss. 1–3; SOR/2013-61, ss. 1–5; SOR/2013-83; SOR/2013-208, ss. 1(1) (Fr.), (2), 2–7, 8 (Fr.); SOR/2013-233; 2013, c. 40, ss. 236(3)(a), 237(3)(a); SOR/2014-135; 2014, c. 20, s. 38; SOR/2015-79; 2015, c. 36, s. 27; SOR/2015-158, ss. 1, 2 (Fr.), 3, 4; 2016, c. 12, ss. 85, 87(1); SOR/2017-120, s. 1; SOR/2018-281; SOR/2019-41, ss. 1–8, 9(1), (2) (Fr.), 10–12, 13 (Fr.), 14 (Fr.); SOR/2020-206.

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PART II — INFORMATION RETURNS

Legal Representatives and Others

12. (1) When a person who is required to make a return under this Part for a year dies before having made the return, the return shall be filed by his legal representatives within 90 days of his death and shall be in respect of that year or, if the return is required in respect of the year in which he dies, in respect of that part thereof prior to his death.

(2) Every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding-up, controlling or other-

wise dealing with the property, business or estate of a person who has not filed a return for a year as required by this Part shall file such return on that person's behalf.

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PART V — PENSIONS AND SUPPLEMENTARY BENEFITS

Interpretation

37. (1) In this Part,

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“**personal representative**” means the executor, administrator, heir or other person having the ownership or control of property comprised in the estate of a deceased person or, where there is no estate, the survivor of the deceased person or, where there is no such survivor, the next of kin of the deceased person.

(2) For the purposes of subsection 60(2) of the Act, a person entitled to make an application includes a person or agency authorized to receive a benefit under section 57 of these Regulations.

(3) For the purposes of subsection 60(4) of the Act, a person entitled to receive benefits includes a person or agency authorized to receive a benefit under section 57 of these Regulations.

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SOR/86-1133, s. 1; SOR/89-345, s. 1; SOR/90-829, s. 10; SOR/92-17, s. 2; SOR/93-11, s. 1; SOR/96-522, s. 3; SOR/99-192, s. 1; SOR/2000-411, s. 2; 2016, c. 12, s. 85(1), (2)

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Recovery by Deductions of Amounts to Which Recipient not Entitled

42. For the purpose of subsection 66(2.1) of the Act, an amount of indebtedness that is owing may be deducted and retained out of the whole or any portion of a benefit that is payable to the person or the person's estate or succession, under this Act or any other Act or program administered by the Minister, that will recover the overpayment in a single payment or in instalments, in any amount that does not cause undue hardship to the person or the person's estate or succession.

SOR/90-829, s. 13; SOR/96-522, s. 6; SOR/99-192, s. 2

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Evidence of Age and Identity

[Heading amended SOR/2004-249, s. 4.]

47. (1) Subject to sections 49 and 50, the Minister shall determine the age and identity of a person for the purposes of the Act in accordance with whichever of subsections (2) to (4) is applicable.

(2) The Minister shall determine the age and identity of a person on the basis of any information provided to the Minister by the Canada Employment Insurance Commission under subsection 28.2(5) of the *Department of Employment and Social Development Act*.

(3) The Minister shall determine the age and identity of a person on the basis of a birth certificate or a certified copy of one.

(4) If there is sufficient reason to believe that a birth certificate is not available, the Minister shall determine the age and identity of a person on the basis of any other evidence and information with respect to the age and identity of the person that is available from any source.

(5) If the Minister is unable to determine the age and identity of a person under any of subsections (2) to (4), the Minister shall, if it is possible to do so, determine the age and identity of the person on the basis of information obtained from Statistics Canada in accordance with section 87 of the Act.

SOR/86-1133, s. 7; SOR/90-829, s. 20; SOR/96-522, s. 23; SOR/2004-249, s. 4; SOR/2013-20, s. 1; 2013, c. 40, s. 236(3)(a)

48. [Revoked SOR/86-1133, s. 8.]

49. Where the age of a person has been determined under the *Old Age Security Act* or a provincial pension plan, that determination shall be accepted by the Minister for the purposes of the Act.

SOR/96-522, s. 10

50. At any time after the age of a person has been determined pursuant to these Regulations, the Minister may, where facts not previously taken into account in determining the age of the person come to his attention, make a new determination of the age of the person.

SOR/96-522, s. 23

51. For the purposes of section 87 of the Act, the following are prescribed as the conditions subject to which any information specified in that section respecting the age of any applicant or beneficiary or the applicant's or beneficiary's spouse, former spouse, common-law partner or former common-law partner is obtainable from Statistics Canada on request and for the purpose specified in that section:

(a) the request to Statistics Canada for such information shall

- (i) be made in a form prescribed by the Chief Statistician,
- (ii) bear the signed consent of the applicant, beneficiary, spouse, former spouse, common-law partner or former common-law partner or of the person or agency that made the application on their behalf or, where there is no such person or agency who would have been entitled to make the application on their behalf, and
- (iii) provide such information as may be necessary to enable a proper search to be made of the census records for the purpose of obtaining the information requested; and

(b) information obtained pursuant to section 87 of the Act shall not be disclosed to any person except to an officer, clerk or employee of the Department of Human Resources Development or except as required by an agreement entered into under section 105 of the Act with the government of a province providing a comprehensive pension plan.

SOR/86-1133, s. 9; SOR/90-829, s. 21; SOR/96-522, s. 24; SOR/2000-411, s. 6

Information and Evidence Required to be Furnished by an Applicant or Beneficiary

52. For the purposes of determining the eligibility of an applicant for a benefit, the amount that an applicant or beneficiary is entitled to receive as a benefit or the eligibility of a beneficiary to continue to receive a benefit, the applicant, the person applying on his behalf, or the beneficiary, as the case may be, shall, in the application, or thereafter in writing when requested to do so by the Minister, set out or furnish the Minister with the following applicable information or evidence:

- (a) the name at birth and present name, sex, address and Social Insurance Number of
 - (i) the applicant or beneficiary,
 - (ii) the disabled or deceased contributor,
 - (iii) the spouse or common-law partner of the disabled contributor or the survivor of the deceased contributor,
 - (iv) each dependent child of the disabled or deceased contributor, and
 - (v) any former spouse or former common-law partner, where known to the applicant;
- (b) the date and place of birth of
 - (i) the applicant or beneficiary,
 - (ii) the disabled or deceased contributor,
 - (iii) the survivor of the deceased contributor, and
 - (iv) each dependent child of the disabled or deceased contributor;
- (c) the date and place of death of the contributor;
- (d) whether a dependent child of the contributor has died since
 - (i) the date on which the contributor claims to have become disabled, or
 - (ii) the death of the contributor;
- (e) [Repealed SOR/86-1133, s. 10.]
- (f) whether the deceased contributor was married at the time of his death and, if so, to whom, and the date and place of the marriage;
- (g) whether the deceased contributor was separated or divorced at the time of his death;
- (h) whether there is a personal representative of the estate of the deceased contributor, and the name and address of any such personal representative;
- (i) whether a dependent child of the disabled or deceased contributor
 - (i) is his child,
 - (ii) is his legally adopted child or was adopted in fact by him or is a legally adopted child of another person,
 - (iii) was legally or in fact in his custody and control,
 - (iv) is in the custody and control of the disabled contributor, the survivor of the contributor or another person or agency,
 - (v) is living apart from the disabled contributor or the surviving spouse, or
 - (vi) is or was maintained by the disabled contributor;

- (j) where a dependent child of the disabled or deceased contributor is 18 or more years of age, whether that child is and has been in full-time attendance at a school or university;
- (k) whether the applicant or beneficiary who is the survivor of a contributor maintains wholly or substantially one or more dependent children of the deceased contributor;
- (k.1) [Repealed SOR/2013-83, s. 2.]
- (l) a statement evidencing the amount of the contributory salary and wages and of the contributory self-employed earnings of a disabled or deceased contributor for the year in which the contributor became disabled or died and for any preceding year;
- (m) whether the applicant, beneficiary or deceased contributor is or was in receipt of or has applied for a benefit under the Act or under a provincial pension plan or a pension under the *Old Age Security Act*; and
- (n) such additional documents, statements or records that are in the possession of the applicant or beneficiary or are obtainable by him that will assist the Minister in ascertaining the accuracy of the information and evidence referred to in paragraphs (a) to (m).

SOR/86-1133, s. 10; SOR/89-345, s. 5; SOR/96-522, s. 23; SOR/2000-411, ss. 7, 18(a)–(c);
SOR/2013-83, s. 2

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Payment of Benefits to Persons on Behalf of Beneficiaries

- 55.** (1) Where the Minister is satisfied, on such information or evidence as is presented to him or as he may require, that a beneficiary, by reason of infirmity, illness, insanity or other cause, is incapable of managing his own affairs, the Minister may direct that the benefit be paid on behalf of such beneficiary to any person or agency that the Minister is satisfied is authorized by or pursuant to any law of Canada or of a province to manage that beneficiary's affairs or, where it appears to the Minister that there is no person or agency so authorized, to a person or agency approved by the Minister.
- (2) Where the Minister directs, pursuant to subsection (1), that a benefit be paid on behalf of a beneficiary to a person or agency referred to in that subsection, no such benefit shall be paid to such person or agency until the person or agency, as the case may be, has undertaken in an agreement with the Minister
- (a) to administer and expend the benefit on behalf of the beneficiary in accordance with the terms of the agreement; and
 - (b) to furnish any information or evidence and to do anything that the Act or these Regulations require the beneficiary to furnish or do.
- (3) Any person or agency to whom a benefit is paid pursuant to this section on behalf of a beneficiary shall account, in a form approved by the Minister and at such time or times as he directs, to the Minister for the benefit payments received and the disbursements made of the payments.

SOR/89-345, s. 6; SOR/96-522, s. 23

Payment of Benefits Unpaid at Death

57. A benefit payment may be paid to the estate of a deceased beneficiary, or if there is no estate, to a person or agency designated by the Minister, where

- (a) an amount is payable as a benefit to the deceased beneficiary; or
- (b) a benefit payment made to the beneficiary or made on behalf of the beneficiary by cheque or otherwise is returned to the Minister after the beneficiary's death.

SOR/96-522, s. 12

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Payment of Death Benefit to Other than Estates

64. (1) If paragraph 71(2)(a) of the Act applies or the estate of a deceased contributor has not applied for the death benefit within 60 days after the contributor's death, or if the amount of the death benefit is less than two thirds of 10% of the Year's Maximum Pensionable Earnings for the year in which the contributor died, in the case of a death that occurred before January 1, 1998, or less than \$2,387, in the case of a death that occurred after December 31, 1997 and before January 1, 2019, a direction under subsection 71(2) of the Act may, subject to subsections (2) and (3), be given for payment of the death benefit

- (a) to the individual or institution who has paid or is responsible for the payment of the deceased contributor's funeral expenses;
- (b) in the absence of an individual or institution described in paragraph (a), to the survivor of the deceased contributor; or
- (c) in the absence of an individual or institution referred to in paragraph (a) and a survivor referred to in paragraph (b), to the next of kin of the deceased contributor.

(2) No amount in excess of the actual funeral expenses shall be paid pursuant to paragraph (1)(a).

(3) Where, by virtue of subsection (2), an amount paid pursuant to paragraph (1)(a) is less than the amount of the death benefit, a direction pursuant to subsection (1), in so far as it relates to the remainder of the death benefit, may be given as if in the absence of an individual or institution described in that paragraph.

SOR/86-1133, s. 14; SOR/90-829, s. 27; SOR/96-522, s. 15; SOR/99-192, s. 6; SOR/2000-411, ss. 11, 18(d); SOR/2018-281, s. 4

Whole or Substantial Maintenance

65. For the purposes of subsection 42(1) of the Act, “**wholly or substantially**” with reference to the maintenance of one or more dependent children of a deceased contributor, means that the survivor of that contributor provided more than 50 per cent of the maintenance provides for such children by all persons other than such children or any other dependent child of that contributor.

SOR/90-829, s. 28; SOR/2000-411, s. 18(e)

Maintenance of Child

65.1 For the purposes of subsection 42(1) and paragraph 76(1)(d) of the Act, “**maintaining the child**”

- (a) with reference to the child of a deceased contributor, means making periodically, for the child, until the contributor’s death, financial provision amounting to not less than the orphan’s benefit payable under the Act; and
- (b) with reference to the child of a disabled contributor, means making periodically, for the child, financial provision amounting to not less than the disabled contributor’s child’s benefit payable under the Act.

SOR/86-113, s. 15; SOR/90-829, s. 29

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CHARITIES ACCOUNTING ACT

R.S.O. 1990, c. C.10, as am. S.O. 1996, c. 25, s. 2; 1997, c. 23, s. 3; 1999, c. 12, Sched. B, s. 1; 2000, c. 26, Sched. A, s. 2; 2001, c. 9, Sched. B, s. 3; 2002, c. 17, Sched. F; 2002, c. 18, Sched. A, s. 2; 2009, c. 33, Sched. 2, s. 11, Sched. 6, s. 44; 2017, c. 20, Sched. 2, ss. 1, 2.

1. (1) Notice of donation to be given to Public Guardian and Trustee — Where, under the terms of a will or other instrument in writing, real or personal property or any right or interest in it or proceeds from it are given to or vested in a person as executor or trustee for a religious, educational, charitable or public purpose, or are to be applied by the person for any such purpose, the person shall give written notice to,

- (a) the person, if any, designated in the will or other instrument as the beneficiary or as the person to receive the gift from the executor or trustee; and
- (b) the Public Guardian and Trustee, in the case of an instrument other than a will.

(2) Charitable corporations, etc., brought within Act — Any corporation incorporated for a religious, educational, charitable or public purpose shall be deemed to be a trustee within the meaning of this Act, its instrument of incorporation shall be deemed to be an instrument in writing within the meaning of this Act, and any real or personal property acquired by it shall be deemed to be property within the meaning of this Act.

(3) Time for giving notice — The notice shall be given, in the case of an instrument other than a will, within one month after it has been executed, and, in the case of a will, within the same period after the death of the testator.

(4) Where notice not necessary — No notice is necessary where the trust was completely executed before the 31st day of March, 1914, but the remaining sections of this Act nevertheless apply to every such trust.

(5) Contents of notice — The notice shall state the nature of the property coming into the possession or under the control of the executor or trustee.

(6) Copy of instrument — The notice shall be accompanied by a copy of the will or other instrument; in the case of a notice under clause (1)(b), the Public Guardian and Trustee may require a notarial copy.

1997, c. 23, s. 3(2); 2000, c. 26, Sched. A, s. 2(1), (2)

1.1 [Repealed 2009, c. 33, Sched. 2, s. 11(1).]

2. Executor or trustee to provide information — An executor or trustee to whom section 1 applies shall, if requested by the Public Guardian and Trustee, provide to the Public Guardian and Trustee particulars in writing respecting,

- (a) the name and address of each executor or trustee of the estate or trust;
- (b) the condition, disposition or other such particulars as requested of the property devised, bequeathed or given or which is in any way held by the executor or trustee; and

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- (c) any other matter relating to the administration or management of the estate or trust or any other property held by the executor or trustee, as requested.

1999, c. 12, Sched. B, s. 1(1); 2000, c. 26, Sched. A, s. 2(4), item 1; 2009, c. 33, Sched. 2, s. 11(2)

3. Auditing accounts as to charitable legacies or grants — Whenever required so to do by the Public Guardian and Trustee, an executor or trustee shall submit the accounts of dealings with the property coming into the hands, or under the control of the executor or trustee under the terms of the bequest or gift, to be passed and examined and audited by a judge of the Superior Court of Justice.

1999, c. 12, Sched. B, s. 1(1); 2000, c. 26, Sched. A, s. 2(4), item 2

4. Application to court where executor or trustee in default — If any such executor or trustee,

(a) refuses or neglects to comply with section 1, 2 or 3, or with any of the regulations made under this Act;

(b) is found to have misapplied or misappropriated any property or fund coming into the executor's or trustee's hands;

(c) has made any improper or unauthorized investment of any money forming part of the proceeds of any such property or fund; or

(d) is not applying any property, fund or money in the manner directed by the will or instrument,

a judge of the Superior Court of Justice upon the application of the Public Guardian and Trustee, may make an order,

(e) directing the executor or trustee to do forthwith or within the time stated in the order anything that the executor or trustee has refused or neglected to do in compliance with section 1, 2 or 3, or with the regulations made under this Act;

(f) requiring the executor or trustee to pay into court any funds in the executor's or trustee's hands and to assign and transfer to the Accountant of the Superior Court of Justice, or to a new trustee appointed under clause (g), any property or securities in the hands or under the control of the executor or trustee;

(g) removing such executor or trustee and appointing some other person to act in the executor's or trustee's stead;

(h) directing the issue of an attachment against the executor or trustee to the amount of any property or funds as to which the executor or trustee is in default;

(i) fixing the costs of the application and directing how and by whom they shall be payable;

(j) giving such directions as to the future investment, disposition and application of any such property, funds or money as the judge considers just and best calculated to carry out the intentions of the testator or donor;

(k) imposing a penalty by way of fine or imprisonment not exceeding twelve months upon the executor or trustee for any such default or misconduct or for disobedience to any order made under this section;

(l) appointing an executor or trustee in place of an executor or trustee who has died, or has ceased to act, or has been removed, or has gone out of Ontario, even if the will or other instrument creating the trust confers the power to make such an appointment upon another executor or trustee or upon any other person.

1999, c. 12, Sched. B, s. 1(1), (2); 2000, c. 26, Sched. A, s. 2(4), item 3

4.1 (1) Information, documents respecting entities — If an executor or trustee to whom section 1 applies holds a substantial interest in an entity within the meaning of subsection (3), the Public Guardian and Trustee may inquire into the management or operation of the entity and into its relationship to the executor or trustee, and the entity or any director, officer, manager or trustee of the entity shall, if requested by the Public Guardian and Trustee, provide to the Public Guardian and Trustee such information or documents respecting the entity as the Public Guardian and Trustee specifies.

(2) Same — Without limiting the generality of subsection (1), the Public Guardian and Trustee may make a request under that subsection for,

- (a) business records of the entity;
- (b) information respecting the assets and liabilities of the entity;
- (c) accounts of income and expenses for the entity;
- (d) financial statements of the entity, including any statements made by an auditor with respect to the financial statements; and
- (e) the particulars of any fees, salary or other remuneration paid to any person by the entity.

(3) Substantial interest — An executor or trustee holds a substantial interest in an entity if the following criteria are met:

1. In the case of an entity that is a corporation with share capital, the executor or trustee beneficially owns, controls or has direction over one of the following:
 - i. Shares of any class or series of voting shares of the corporation carrying more than 20 per cent of the voting rights attached to all of the outstanding voting shares of the corporation.
 - ii. Shares of the corporation representing more than 20 per cent of the shareholders' equity of the corporation.
2. In the case of an entity that is a corporation without share capital, the executor or trustee beneficially owns, controls or has direction over membership in a class of membership of the corporation carrying more than 20 per cent of the voting rights attached to all of the outstanding voting membership interests of the corporation.
3. In the case of an entity that is a partnership, the executor or trustee beneficially owns, controls or has direction over a right to one of the following:
 - i. At least 20 per cent of the profits of the partnership.
 - ii. At least 20 per cent of the assets of the partnership on its dissolution.
4. In the case of an entity that is a trust, the executor or trustee beneficially holds an interest in the trust.
5. In the case of any other entity, the aggregate of any ownership interests into which the entity is divided, however designated, that are beneficially owned or controlled by the executor or trustee, or over which the executor or trustee exercises direction, exceeds 20 per cent of all the ownership interests into which the entity is divided.

(4) Same — For the purposes of subsection (3), the ownership, control or direction over a thing by the executor or trustee may be,

- (a) direct or indirect; or
- (b) alone or through one or more persons, entities or both.

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(5) Application to court — On application by the Public Guardian and Trustee, a judge of the Superior Court of Justice may,

- (a) make any order that the judge considers necessary or proper to compel the provision of information or documents required to be provided to the Public Guardian and Trustee under subsection (1);
- (b) fix the costs of the application and direct how and by whom they shall be payable;
- (c) make any order relating to the management, operation, ownership or control of the entity that is in the best interest of the purpose for which the estate or trust is held, including an order,
 - (i) determining who owns, controls or has direction over the entity,
 - (ii) determining who controls the election of the directors of the entity,
 - (iii) ensuring that the ownership, control or direction of the entity is in the best interest of the purpose for which the estate or trust is held, including, if appropriate, requiring the executor or trustee to sell all or some of his or her interest in the entity,
 - (iv) ensuring the proper operation and management of the entity and its assets,
 - (v) protecting or preserving the assets or financial stability of the entity and the assets held by the executor or trustee relating to the entity,
 - (vi) selling some or all of the assets of the entity, or
 - (vii) distributing some or all of the profits of the entity.

(6) Notice — An application under subsection (5) shall be on notice to the entity, to the executor or trustee and to any other person that a judge directs.

(7) No obstruction — No person shall obstruct, hinder or interfere with an inquiry conducted under subsection (1), or withhold, conceal or destroy information or documents required to be provided to the Public Guardian and Trustee under that subsection.

(8) Offence and penalty — Every person who contravenes subsection (7) is guilty of an offence and on conviction is liable to a fine not exceeding \$25,000.

2009, c. 33, Sched. 2, s. 11(3)

5. (1) Regulations — The Attorney General, on the advice of the Public Guardian and Trustee, may make regulations.

- (a) prescribing forms of notices and returns to be made under this Act;
- (b) respecting the practice and procedure upon passing the accounts of an executor or trustee under this Act and the tariff of fees and costs to be applicable thereto;
- (c) requiring returns to be made by any such executor or trustee to any ministry of the Government and the form of such returns;
- (d) regulating the practice and procedure upon applications under section 4.

(2) Practice — Except as otherwise provided by the regulations, the practice and procedure of the Superior Court of Justice apply to proceedings under this Act.

(3) [Repealed 1997, c. 23, s. 3(3).]

(4) Notice of action to set aside will to be served on Public Guardian and Trustee — Where an action or other proceeding is brought to set aside, vary or construe a will or other instrument described in subsection 1(1), written notice hereof shall be served upon the

Public Guardian and Trustee, and if no one appears as representing the religious, educational, charitable or public institution or if there is no named beneficiary, the Public Guardian and Trustee may intervene in the action or other proceeding and has the right to object or consent and to be heard upon any argument as a party to the action or other proceeding.

1996, c. 25, s. 2; 1999, c. 12, Sched. B, s. 1(3); 2000, c. 26, Sched. A, s. 2(4), item 4; 2009, c. 33, Sched. 2, s. 11(4)

5.1 (1) Regulations — The Attorney General, on the advice of the Public Guardian and Trustee, may make regulations,

- (a) providing that acts or omissions that would otherwise require the approval of the Superior Court of Justice in the exercise of its inherent jurisdiction in charitable matters shall be treated, for all purposes, as though they had been so approved;
- (b) requiring the making and keeping of records relating to charitable property and respecting the making, keeping, transfer and disposal of such records.

(2) Limitation — Regulations under clause (1)(a) may be made only in relation to,

- (a) the giving of benefits from charitable property to,
 - (i) executors and trustees referred to in subsection 1(1).
 - (ii) corporations deemed by subsection 1(2) to be trustees within the meaning of this Act,
 - (iii) directors of corporations described in subclause (ii) or of persons described in subclause (i) who are corporations, or
 - (iv) persons who, because of their relationship or connection to a person, corporation or director described in subclause (i), (ii) or (iii), cannot be given such benefits without court approval; and
- (b) the administration and management of charitable property that is held for restricted or special purposes.

(3) Governing instrument — Regulations made under clause (1)(a) do not apply to an act or omission that conflicts with the will or instrument referred to in subsection 1(1) or with the instrument deemed by subsection 1(2) to be an instrument in writing under this Act.

(4) General or particular — Regulations made under this section may be general or particular in their application and, without limiting the generality of the foregoing, may be subject to the conditions set out in the regulations.

(5) Definition — In this section,

“charitable property” means property that is within the inherent jurisdiction of the court in charitable matters.

1996, c. 25, s. 2(2); 1999, c. 12, Sched. B, s. 1(4); 2000, c. 26, Sched. A, s. 2(3)

6. (1) Collection of funds from the public, right of complaint — Any person may complain as to the manner in which a person or organization has solicited or procured funds by way of contribution or gift from the public for any purpose, or as to the manner in which any such funds have been dealt with or disposed of.

(2) Form of complaint — Every such complaint shall be in writing and delivered by the complainant to a judge of Superior Court of Justice.

S. 6(3)

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(3) Order for investigation — Wherever the judge is of opinion that the public interest can be served by an investigation of the matter complained of, he or she may make an order directing the Public Guardian and Trustee to make such investigation as the Public Guardian and Trustee considers proper in the circumstances.

(4) Application of *Public Inquiries Act, 2009* — Section 33 of the *Public Inquiries Act, 2009* applies to an investigation directed under subsection (3).

(5) Cost of investigation — The cost of any such investigation, when approved by the Attorney General, forms part of the expenses of the administration of justice in Ontario.

(6) Report of investigation — As soon as the Public Guardian and Trustee has completed the investigation, he or she shall report in writing thereon to the Attorney General and to the judge who ordered the investigation.

(7) Order for audit — Upon receipt of the report, the judge may order a passing of the accounts in question, in which case section 23 of the *Trustee Act* applies, and the judge may make such order as to the costs of the Public Guardian and Trustee thereon as he or she considers proper.

(8) Where section not to apply — Nothing in this section applies to any religious or fraternal organization or to any person who solicited or procured any funds of any religious or fraternal organization.

1999, c. 12, Sched. B, s. 1(5); 2000, c. 26, Sched. A, s. 2(4), item 5; 2009, c. 33, Sched. 6, s. 44(1)

7. Definitions — In sections 8, 9 and 10,

“charitable purpose” means

- (a) the relief of poverty,
- (b) education,
- (c) the advancement of religion, and
- (d) any purpose beneficial to the community, not falling under clause (a), (b) or (c);

“land” [Repealed 2009, c. 33, Sched. 2, s. 11(5).]

2009, c. 33, Sched. 2, s. 11(5)

8. Limitation on use of property — A person who holds an interest in real or personal property for a charitable purpose shall use the property for the charitable purpose.

1999, c. 12, Sched. B, s. 1(5); 2000, c. 26, Sched. A, s. 2(4), item 6; 2009, c. 33, Sched. 2, s. 11(6)

9. (1) Authority for certain public bodies to receive property for charitable purposes — Subject to section 8, a municipal corporation or local board thereof, a university or a public hospital may receive, hold and enjoy real or personal property devised, bequeathed or granted to it for a charitable purpose, upon the terms expressed in the devise, bequest or grant.

(2) Agreement re administration — A municipal corporation or local board thereof, university or public hospital holding property under subsection (1) may enter into an agreement with the person devising, bequeathing or granting the property for the holding, management, administration or disposition of the property.

(3) Application of section — This section applies even if the devise, bequest or grant was made before it was authorized by this section.

(4) Definition — In this section,

“**local board**” includes a school board and a conservation authority.

2002, c. 17, Sched. F

10. (1) Application for order re carrying out trust — Where any two or more persons allege a breach of a trust created for a charitable purpose or seek the direction of the court for the administration of a trust for a charitable purpose, they may apply to the Superior Court of Justice and the court may hear the application and make such order as it considers just for the carrying out of the trust under the law.

(2) Notice to Public Guardian and Trustee — An application under subsection (1) shall be upon notice to the Public Guardian and Trustee who may appear and be represented by counsel at the hearing.

(3) Investigation by Public Guardian and Trustee — Where the court is of the opinion that the public interest can be served by an investigation of the matter alleged in the application, the court may make an order directing the Public Guardian and Trustee to make such investigation as the Public Guardian and Trustee considers proper in the circumstances and report in writing thereon to the court and the Attorney General.

(4) Application of *Public Inquiries Act, 2009* — Section 33 of the *Public Inquiries Act, 2009* applies to an investigation directed under subsection (3).

1999, c. 12, Sched. B, s. 1(5); 2000, c. 26, Sched. A, s. 2(4), item 7; 2009, c. 33, Sched. 6, s. 44(2)

10.1 Application of *Trustee Act* — Except as provided under subsection 10.3(3), sections 27 to 31 of the *Trustee Act* apply to,

- (a) an executor or trustee referred to in subsection 1(1);
- (b) a corporation that is deemed to be a trustee under subsection 1(2); and
- (c) a person referred to in section 8 who is not a person referred to in clause (a) or (b).

2009, c. 33, Sched. 2, s. 11(7); 2017, c. 20, Sched. 2, s. 1

10.2 (1) Social investments — This section applies for the purposes of sections 10.3 and 10.4.

(2) Interpretation, social investment — A social investment is made when a trustee applies or uses trust property in order to,

- (a) directly further the purposes of the trust; and
- (b) achieve a financial return, within the meaning of subsection (3), for the trust.

(3) Interpretation, achieving a financial return — The application or use of trust property shall be considered as achieving a financial return if the outcome in respect of the trust property is better for the trust in financial terms than expending all the property.

(4) Additional results — The fact that the application or use of trust property may have other results in addition to the results referred to in clauses (2)(a) and (b) does not prevent it from being regarded as the making of a social investment.

(5) Nature of social investment — A social investment for the purposes of sections 10.3 and 10.4 is not, for that reason alone, an investment for any other purpose.

S. 10.2(6)

Charities Accounting Act

(6) Terms of corporate trust — For the purposes of sections 10.3 and 10.4, the constituting documents of a corporation that is deemed to be a trustee under subsection 1(2) form part of the terms of the trust.

(7) Protection from liability — A trustee is not liable for loss to the trust arising from the making of a social investment if, in doing so, the trustee acted honestly and in good faith in accordance with the duties, restrictions and limitations that apply under this Act and the terms of the trust.

2017, c. 20, Sched. 2, s. 2

10.3 (1) Power to make social investments — A trustee may make social investments, subject to subsection (2).

(2) Limitation — A social investment may not be made in relation to trust property that is subject to a limitation on capital being expended for the purposes of the trust, unless the trustee expects that making the social investment will not contravene the limitation or the terms of the trust allow for such an investment.

(3) Application of certain investment rules — Subsections 27(3) and (4) of the *Trustee Act* apply with necessary modifications with respect to the making of social investments; otherwise, sections 27 to 29 of that Act do not apply to the making of social investments.

(4) Powers may be restricted, excluded — The power conferred by this section may be restricted or excluded by the terms of the trust.

2017, c. 20, Sched. 2, s. 2

10.4 (1) Trustee duties re social investments — Before making a social investment, a trustee shall,

- (a) determine whether, in the circumstances, advice should be obtained respecting the proposed social investment and, if so, obtain and consider the advice; and
- (b) satisfy him, her or itself that it is in the interests of the trust to make the social investment, having regard to the benefit expected to be achieved for the trust.

(2) On-going review — A trustee shall, from time to time, review the social investments of the trust property.

(3) Same, advice — In undertaking a review under subsection (2), a trustee shall determine whether, in the circumstances, advice should be obtained respecting a social investment and, if so, obtain and consider the advice.

(4) Reliance on advice — It is not a breach of trust for a trustee to rely on advice obtained under clause (1)(a) or subsection (3).

(5) Duties may not be restricted, excluded — The duties under this section may not be restricted or excluded by the terms of the trust.

2017, c. 20, Sched. 2, s. 2

11. Application of Act — This Act applies despite any provision in any will or other instrument excluding its application or giving to an executor or trustee any discretion as to the application of property, funds or the proceeds thereof to religious, educational, charitable or public purposes.

12. Other rights and remedies not affected — This Act does not apply to or affect or in any way interfere with any right or remedy that any person may have under any other Act or in equity or at common law or otherwise.

13. (1) Consent orders and judgments in charitable matters — A draft order or judgment that could have been made by the Superior Court of Justice under this Act, under any other Act dealing with charitable matters, or in the exercise of its inherent jurisdiction in charitable matters, shall be deemed to be an order or judgment of that court if the following persons give a written consent to its terms:

1. The Public Guardian and Trustee.
2. Every other person who would have been required to be served in a proceeding to obtain the order or judgment.

(2) PGT's seal — In the case of the Public Guardian and Trustee, the consent shall be sealed.

(3) Effective date — The terms of the draft order or judgment take effect when it is filed with the Superior Court of Justice.

1997, c. 23, s. 3(4); 1999, c. 12, Sched. B, s. 1(5)

14. Charitable Gifts Act — (1) Definition — In this section,

“**interest in a business**” means an interest in a business within the meaning of the *Charitable Gifts Act*, as it read immediately before its repeal.

(2) Obligation to dispose of business interest extinguished — Despite clause 51(1)(b) of the *Legislation Act, 2006*, the repeal of the *Charitable Gifts Act* extinguishes all obligations under the *Charitable Gifts Act* to dispose of any interest in a business that are still in existence at the time of the repeal.

(3) Same — Subsection (2) applies in respect of obligations that came into existence under the *Charitable Gifts Act* at any time before its repeal.

(4) Right to application extinguished — Despite subclause 51(1)(d)(i) and subsection 51(2) of the *Legislation Act, 2006*, the repeal of the *Charitable Gifts Act* extinguishes all rights to bring an application under that Act in relation to the obligations to which subsection (2) applies.

(5) Non-application — Subsection (4) does not apply in respect of an application relating to an order made under subsection 3(3) of the *Charitable Gifts Act*, as it read immediately before its repeal.

2009, c. 33, Sched. 2, s. 11(8)

ONT. REG. 4/01 — APPROVED ACTS OF EXECUTORS AND TRUSTEES

made under the *Charities Accounting Act*

O. Reg. 4/01, as am. O. Reg. 112/18.

1. Approval of Specified Acts — (1) The acts authorized by this Regulation that would otherwise require the approval of the Superior Court of Justice in the exercise of its inherent jurisdiction in charitable matters shall be treated, for all purposes, as though they had been so approved.

(2) Subsection (1) does not constitute authorization of an act that conflicts with one of the following in a particular case:

1. The will or the instrument in writing relating to the property.
2. A court order relating to the will or instrument or relating to the property.

(3) An executor or trustee must maintain records demonstrating that he, she or it has complied with the requirements of this Regulation when engaging in an act that is authorized under subsection (1).

(4) An executor or trustee is not required by virtue of this Regulation to give any indemnity or to make any payment.

2. Authorization to Indemnify — (1) In the circumstances and subject to the restrictions set out in this section, an executor or trustee and, if the executor or trustee is a corporation, each director or officer of the corporation may be indemnified for personal liability arising from their acts or omissions in performing their duties as executor, trustee, director or officer.

(2) An executor, trustee, director or officer cannot be indemnified for liability that relates to their failure to act honestly and in good faith in performing their duties.

(3) In the circumstances and subject to the restrictions set out in this section, insurance may be purchased to indemnify the executor, trustee, director or officer for the personal liability described in subsection (1).

(4) The terms of the indemnity or insurance policy must not impair a person's right to bring an action against the executor, trustee, director or officer.

(5) The executor or trustee or, if the executor or trustee is a corporation, the board of directors of the corporation shall consider the following factors before giving an indemnity or purchasing insurance:

1. The degree of risk to which the executor, trustee, director or officer is or may be exposed.
2. Whether, in practice, the risk cannot be eliminated or significantly reduced by means other than the indemnity or insurance.

3. Whether the amount or cost of the insurance is reasonable in relation to the risk.
4. Whether the cost of the insurance is reasonable in relation to the revenue available to the executor or trustee.
5. Whether it advances the administration and management of the property to give the indemnity or purchase the insurance.

(6) The purchase of insurance must not, at the time of the purchase, unduly impair the carrying out of the religious, educational, charitable or public purpose for which the executor or trustee holds the property.

(7) No indemnity shall be paid or insurance purchased if doing so would result in the amount of the debts and liabilities exceeding the value of the property or, if the executor or trustee is a corporation, render the corporation insolvent.

(8) The indemnity may be paid or the insurance purchased from the property to which the personal liability relates and not from any other charitable property.

(9) If the executor, trustee, director or officer is deceased, the indemnity or the proceeds of the insurance may be paid to his or her estate.

AUTHORIZATION TO PAY

[Heading added O. Reg. 112/18, s. 1.]

2.1 (1) In this section,

“corporate trustee” means a corporation deemed by subsection 1(2) of the Act to be a trustee within the meaning of the Act;

“person connected to a director” means a person determined in accordance with subsection (3).

(2) A corporate trustee may, in the circumstances and subject to the restrictions set out in this section, make payments from the charitable property acquired by it to any of the following persons, for goods, services or facilities provided to it by the person:

1. A director of the corporate trustee.
2. A person connected to a director of the corporate trustee.

(3) The following are persons connected to a director of the corporate trustee for the purposes of this section, but do not include the corporate trustee itself:

1. A spouse, child, parent, grandparent or sibling of the director.
2. The employer of the director or of a person described in paragraph 1.
3. A corporation with share capital, if, singly or jointly, the director or a person described in paragraph 1 beneficially owns, controls or has direction over more than 5 per cent of the corporation’s shares.
4. A corporation without share capital, if, singly or jointly, the director or a person described in paragraph 1 beneficially owns, controls or has direction over more than 20 per cent of the outstanding voting membership interests of the corporation.
5. A corporation with or without share capital for which the director or a person described in paragraph 1 acts as director or officer.

6. A partnership in which the director or a person described in paragraph 1 is a partner, or in which a corporation described in paragraph 3, 4 or 5 is a partner.

7. A partner in a partnership described in paragraph 6.

(4) This section does not authorize any of the following:

1. Remuneration or other direct or indirect payment for services provided by a director as a director or employee of the corporate trustee, as the case may be, in that capacity.
2. Direct or indirect payment for providing fundraising services or for selling goods or services for fundraising purposes.
3. Direct or indirect payment made in connection to the purchase or sale of real property.

(5) Payments made under this section,

- (a) must be made with a view to the corporate trustee's best interests;
- (b) must be in an amount that is reasonable for the corporate trustee to pay for the goods, services or facilities that are provided;
- (c) must not result in the amount of the corporate trustee's debts and liabilities exceeding the charitable property's value, or render the corporate trustee insolvent; and
- (d) must not exceed the amount set out in the agreement referred to in clause (a) of subsection (6) for the goods, services or facilities to be provided.

(6) Before a corporate trustee's board of directors may authorize payment for goods, services or facilities under this section,

- (a) every director of the corporate trustee must agree in writing to a maximum amount that can be paid by the corporate trustee for the goods, services or facilities and, if the goods, services or facilities are to be provided by a person connected to a director, that person must also agree in writing to the maximum amount;
- (b) every director of the corporate trustee, other than the director providing the goods, services or facilities or the director to whom the person providing the goods, services or facilities is connected, as the case may be, must agree in writing that he or she is satisfied that the payment is being made in accordance with the requirements, and within the restrictions, of this section; and
- (c) the board of directors must consider any guidance respecting payments made under this section that is issued by the Public Guardian and Trustee and published on a Government of Ontario website.

(7) In order for a corporate trustee's board of directors to authorize payment under this section, there must be at least four voting directors on the board, not including the director providing the goods, services or facilities or the director to whom the person providing the goods, services or facilities is connected, as the case may be.

(8) Regardless of whether goods, services or facilities are provided by a director of the corporate trustee or by a person connected to a director of the corporate trustee, neither the director nor any person connected to him or her shall attend any part of a board meeting during which the decision to authorize the payment is discussed, nor vote on the matter.

(9) The total number of persons receiving payment under this section must not exceed 20 per cent of the number of voting directors on the board.

S. 2.1(10) Ont. Reg. 4/01 — Approved Acts of Executors and Trustees

(10) The directors of the corporate trustee shall ensure that information respecting payments made under this section in a given year is noted in the corporate trustee's financial statements for that year, and placed before its members at an annual meeting of the members.

(11) Clauses (5)(c) and (d) and subsections (6) to (10) do not apply with respect to a payment made under this section to a corporation described in paragraph 5 of subsection (3), if neither the director nor a person connected to the director, other than the corporation itself, would receive any benefit from the payment and,

- (a) the corporation is a corporation without share capital; or
- (b) all of the corporation's shares are owned by the corporate trustee.

O. Reg. 112/18, s. 1

3. Combining Property Held for Restricted or Special Purposes — **(1)** In this section,

"contributed property" means, in respect of an individual property, additional property that is added to, and forms part of, a pre-existing individual property.

(2) In the circumstances and subject to the restrictions described in this section, an executor or trustee may combine property received by the executor or trustee for a restricted or special purpose with other property received by the executor or trustee for another restricted or special purpose and may hold the combined property in one account in a financial institution or invest it as if it were a single property.

(3) The property may be combined only if it advances the administration and management of each of the individual properties to do so.

(4) All gains, losses, income and expenses must be allocated rateably, on a fair and reasonable basis, to the individual properties in accordance with generally accepted accounting principles.

(5) The executor or trustee must maintain the following records for each of the individual properties, in addition to such other records as may be required by law:

1. The value of the individual property immediately before it becomes part of the combined property, and the date on which it becomes part of the combined property.
2. The value of any portion of the individual property that does not become part of the combined property.
3. The source and the value of contributed property relating to an individual property, and the date on which the contributed property is received.
4. The value of the contributed property immediately before it becomes part of the combined property, and the date on which it becomes part of the combined property.
5. The amount of the revenue received by the combined property that is allocated to the individual property, and the date of each allocation.
6. The amount of the expenses paid from the combined property that are allocated to the individual property, and the date of each allocation.
7. The value of all distributions from the combined property made for the purposes of the individual property, and the purpose and date of each distribution.

(6) The executor or trustee must maintain the following records for the combined property, in addition to such other records as may be required by law:

1. The value of each individual property that becomes part of the combined property, and the date on which it becomes part of the combined property.
2. The value of contributed property that becomes part of the combined property, the date on which it becomes part of the combined property, and details of the individual property to which the contributed property relates.
3. The amount of the revenue received by the combined property, the amount allocated to each individual property and the date of each allocation.
4. The amount of the expenses paid from the combined property, the amount allocated to each individual property and the date of each allocation.
5. The value of all distributions from the combined property made for the purposes of an individual property and the purpose and date of each distribution.

CHILDREN'S LAW REFORM ACT

R.S.O. 1990, c. C.12 [s. 78 repealed 2006, c. 1, s. 3(2); ss. 77, 79–83 repealed 2006, c. 21, Sched. F, s. 10.1(1); s. 84 cannot be applied.], as am. R.S.O. 1990, c. C.12, ss. 77–84 [s. 78 repealed 2006, c. 1, s. 3(2).] [ss. 77, 79–83 repealed 2006, c. 21, Sched. F, s. 10.1(1).] [s. 84 cannot be applied.]; S.O. 1992, c. 32, s. 4; 1993, c. 27, Sched.; 1996, c. 2, s. 63; 1996, c. 25, s. 3; 1998, c. 26, s. 101; 1999, c. 6, s. 7; 2000, c. 33, s. 21 [Repealed 2009, c. 11, s. 21.]; 2001, c. 9, Sched. B, s. 4; 2005, c. 5, s. 8; 2006, c. 1, s. 3; 2006, c. 5, s. 51; 2006, c. 19, Sched. B, s. 4; 2006, c. 21, Sched. F, s. 10.1(1); 2009, c. 11, ss. 4–15, 16 (Fr.), 17, 18; 2009, c. 33, Sched. 2, s. 12(1)–(4), (5) (Fr.); 2012, c. 8, Sched. 7 [Repealed 2016, c. 23, s. 75.]; 2014, c. 7, Sched. 4; 2016, c. 5, Sched. 33, s. 8 [Repealed 2016, c. 23, s. 74(4).]; 2016, c. 23, ss. 1, 2(1), (2)–(4) (Fr.), 3–6 (Fr.), 7(1), (2) (Fr.), (3) (Fr.), 8–13 (Fr.), 14, 15 (Fr.); 2016, c. 28; 2017, c. 14, Sched. 4, s. 4; 2018, c. 3, Sched. 5, s. 6 [Not in force at date of publication. Repealed 2019, c. 1, Sched. 3, s. 5.]; 2019, c. 1, Sched. 4, s. 5 [Not in force at date of publication.]; 2020, c. 11, Sched. 15, s. 52 [Not in force at date of publication.]; 2020, c. 25, Sched. 1, ss. 1–25, Sched. 2, s. 6.

PART I — PARENTAGE (SS. 1, 2)

[Heading amended 2016, c. 23, s. 1(1).]

Interpretation and Application

[Heading added 2016, c. 23, s. 1(1).]

- 1. Definitions and interpretation, Part I — (1) Definitions** — In this Part,
 - “assisted reproduction” means a method of conceiving other than by sexual intercourse;
 - “birth” means birth as defined in the *Vital Statistics Act* and includes a still-birth as defined in that Act;
 - “birth parent” means, in relation to a child, the person who gives birth to the child;
 - “court” means the Family Court or the Superior Court of Justice;
 - “embryo” means embryo as defined in the *Assisted Human Reproduction Act (Canada)*;
 - “insemination by a sperm donor” means an attempt to conceive a child through sexual intercourse in the circumstances described in subsection 7(4);
 - “reproductive material” means all or any part of a sperm, ovum or other human cell or a human gene;
 - “spouse” means the person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage;
 - “surrogate” means a person who agrees to carry a child conceived through assisted reproduction if, at the time of conception, the person intends to relinquish entitlement to parentage of the child, once born, to one or more persons.

S. 1(2)

Children's Law Reform Act

(2) If marriage is void — For the purposes of the definition of “spouse” in subsection (1), two persons who, in good faith, go through a form of marriage with each other that is void but who live in a conjugal relationship are deemed to be married during the time they live in a conjugal relationship, and the marriage is deemed to be terminated when they cease to do so.

(3) Interpretation, conception through assisted reproduction — For the purposes of this Part, a child conceived through assisted reproduction is deemed to have been conceived on the day the reproductive material or embryo used in the assisted reproduction is implanted in the birth parent.

(4) [Repealed 2016, c. 23, s. 1(1).]

2016, c. 23, s. 1(1)

2. Rules of construction — (1) Relationship by blood or marriage — For the purposes of construing any Act, regulation or, subject to subsection (3), instrument, unless a contrary intention appears, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person,

(a) includes a person who comes within that description by reason of the relationship of parent and child set out in this Part; and

(b) in respect of a child conceived through assisted reproduction or through insemination by a sperm donor, does not include,

(i) a person who provided reproductive material or an embryo for use in the conception if that person is not a parent of the child, or

(ii) a person related to a person referred to in subclause (i).

(2) Application to Acts, statutory instruments — Subsection (1) applies to an Act, regulation or other instrument made under an Act, regardless of when it was enacted or made.

(3) Application to other instruments — In the case of an instrument that is not made under an Act,

(a) subsection (1) applies to the instrument if it was made on or after the day subsection 1(1) of the *All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment), 2016* came into force;

(b) subsection (1) as it read immediately before the day subsection 1(1) of the *All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment), 2016* came into force continues to apply to an instrument made before that day, if it was made on or after March 31, 1978.

(4) References assuming two parents — If, under this Part, a child has more than two parents, a reference in any Act or regulation to the parents of the child that is not intended to exclude a parent shall, unless a contrary intention appears, be read as a reference to all of the child’s parents, even if the terminology used assumes that a child would have no more than two parents.

(5) References to “le père ou la mère”, “le père et la mère”, etc. — For the purposes of construing the French version of any Act or regulation, unless a contrary intention appears, the terms “père” and “mère” used together, conjunctively or disjunctively, in rela-

tion to a child, shall be construed as referring to a parent or parents of the child as set out in this Part.

2016, c. 23, s. 1(1)

PART II — (SS. 3–17.6)

[Heading repealed 2016, c. 23, s. 1(1).]

3. Application — This Part governs the determination of parentage for all purposes of the law of Ontario.

1996, c. 25, s. 3(1); 2001, c. 9, Sched. B, s. 4(7); 2016, c. 23, s. 1(1)

Rules of Parentage

[Heading added 2016, c. 23, s. 1(1).]

4. (1) Person is child of parents — A person is the child of his or her parents.

(2) Determining parent of a child — A parent of a child is,

(a) a person who is a parent of the child under sections 6 to 13, except in the case of an adopted child;

(b) in the case of an adopted child, a parent of the child as provided for under section 217 or 218 of the *Child, Youth and Family Services Act, 2017*.

(3) Kindred relationships — The relationship of parent and child set out in subsections (1) and (2) shall be followed in determining the kindred relationships that flow from it.

(4) For all purposes of Ontario law — For greater certainty, this section applies for all purposes of the law of Ontario.

2016, c. 23, s. 1(1); 2017, c. 14, Sched. 4, s. 4(1)

5. Provision of reproductive material, embryo not determinative — A person who provides reproductive material or an embryo for use in the conception of a child through assisted reproduction is not, and shall not be recognized in law to be, a parent of the child unless he or she is a parent of the child under this Part.

2016, c. 23, s. 1(1)

6. (1) Birth parent — The birth parent of a child is, and shall be recognized in law to be, a parent of the child.

(2) Exception, surrogacy — Subsection (1) is subject to the relinquishment of an entitlement to parentage by a surrogate under section 10, or to a declaration by a court to that effect under section 10 or 11.

2016, c. 23, s. 1(1)

6.1 [Repealed 2016, c. 23, s. 1(1).]

7. (1) Other biological parent, if sexual intercourse — The person whose sperm resulted in the conception of a child conceived through sexual intercourse is, and shall be recognized in law to be, a parent of the child.

S. 7(2)

Children's Law Reform Act

(2) Presumption — Unless the contrary is proven on a balance of probabilities, there is a presumption in respect of a child conceived through sexual intercourse that a person is, and shall be recognized in law to be, the parent referred to in subsection (1) if any of the following circumstances applies:

1. The person was the birth parent's spouse at the time of the child's birth.
2. The person was married to the child's birth parent by a marriage that was terminated by death or judgment of nullity within 300 days before the child's birth or by divorce where the judgment of divorce was granted within 300 days before the child's birth.
3. The person was living in a conjugal relationship with the child's birth parent before the child's birth and the child is born within 300 days after they cease to live in a conjugal relationship.
4. The person has certified the child's birth, as a parent of the child, under the *Vital Statistics Act* or a similar Act in another jurisdiction in Canada.
5. The person has been found or recognized by a court of competent jurisdiction outside Ontario to be a parent of the child.

(3) Conflicting presumptions — If circumstances exist that give rise to a presumption by more than one person under subsection (2), no presumption shall be made under that subsection.

(4) Non-application, insemination by a sperm donor — This section is deemed not to apply to a person whose sperm is used to conceive a child through sexual intercourse if, before the child is conceived, the person and the intended birth parent agree in writing that the person does not intend to be a parent of the child.

(5) Same, sperm donor not a parent — A person to whom subsection (4) applies is not, and shall not be recognized in law to be, a parent of a child conceived in the circumstances set out in that subsection.

2009, c. 11, s. 5; 2016, c. 23, s. 1(1)

8. Birth parent's spouse, if assisted reproduction or insemination by sperm donor — **(1) Assisted reproduction** — If the birth parent of a child conceived through assisted reproduction had a spouse at the time of the child's conception, the spouse is, and shall be recognized in law to be, a parent of the child.

(2) Insemination by a sperm donor — If the birth parent of a child conceived through insemination by a sperm donor had a spouse at the time of the child's conception, the spouse is, and shall be recognized in law to be, a parent of the child.

(3) Non-application, lack of consent — This section does not apply if, before the child's conception,

- (a) the spouse did not consent to be a parent of the child; or
- (b) the spouse consented to be a parent of the child but withdrew the consent.

(4) Non-application, surrogacy or posthumous conception — This section does not apply if the birth parent is a surrogate or if the child is conceived after the death of a person declared under section 12 to be his or her parent.

2016, c. 23, s. 1(1)

9. Parents under pre-conception parentage agreements — **(1) Definition** — In this section,

“**pre-conception parentage agreement**” means a written agreement between two or more parties in which they agree to be, together, the parents of a child yet to be conceived.

(2) Application — This section applies with respect to a pre-conception parentage agreement only if,

- (a) there are no more than four parties to the agreement;
- (b) the intended birth parent is not a surrogate, and is a party to the agreement;
- (c) if the child is to be conceived through sexual intercourse but not through insemination by a sperm donor, the person whose sperm is to be used for the purpose of conception is a party to the agreement; and
- (d) if the child is to be conceived through assisted reproduction or through insemination by a sperm donor, the spouse, if any, of the person who intends to be the birth parent is a party to the agreement, subject to subsection (3).

(3) If spouse intends to not be a parent — Clause (2)(d) does not apply if, before the child is conceived, the birth parent’s spouse provides written confirmation that he or she does not consent to be a parent of the child and does not withdraw the confirmation.

(4) Recognition of parentage — On the birth of a child contemplated by a pre-conception parentage agreement, together with every party to a pre-conception parentage agreement who is a parent of the child under section 6 (birth parent), 7 (other biological parent) or 8 (birth parent’s spouse), the other parties to the agreement are, and shall be recognized in law to be, parents of the child.

2016, c. 23, s. 1(1)

10. Surrogacy, up to four intended parents — **(1) Definitions** — In this section and in section 11,

“**intended parent**” means a party to a surrogacy agreement, other than the surrogate;

“**surrogacy agreement**” means a written agreement between a surrogate and one or more persons respecting a child to be carried by the surrogate, in which,

- (a) the surrogate agrees to not be a parent of the child, and
- (b) each of the other parties to the agreement agrees to be a parent of the child.

(2) Application — This section applies only if the following conditions are met:

1. The surrogate and one or more persons enter into a surrogacy agreement before the child to be carried by the surrogate is conceived.
2. The surrogate and the intended parent or parents each received independent legal advice before entering into the agreement.
3. Of the parties to the agreement, there are no more than four intended parents.
4. The child is conceived through assisted reproduction.

(3) Recognition of parentage — Subject to subsection (4), on the surrogate providing to the intended parent or parents consent in writing relinquishing the surrogate’s entitlement to parentage of the child,

- (a) the child becomes the child of each intended parent and each intended parent becomes, and shall be recognized in law to be, a parent of the child; and
- (b) the child ceases to be the child of the surrogate and the surrogate ceases to be a parent of the child.

S. 10(4)

Children's Law Reform Act

(4) Limitation — The consent referred to in subsection (3) must not be provided before the child is seven days old.

(5) Parental rights and responsibilities — Unless the surrogacy agreement provides otherwise, the surrogate and the intended parent or parents share the rights and responsibilities of a parent in respect of the child from the time of the child's birth until the child is seven days old, but any provision of the surrogacy agreement respecting parental rights and responsibilities after that period is of no effect.

(6) Failure to give consent — Any party to a surrogacy agreement may apply to the court for a declaration of parentage with respect to the child if the consent referred to in subsection (3) is not provided by the surrogate because,

- (a) the surrogate is deceased or otherwise incapable of providing the consent;
- (b) the surrogate cannot be located after reasonable efforts have been made to do so; or
- (c) the surrogate refuses to provide the consent.

(7) Declaration — If an application is made under subsection (6), the court may,

- (a) grant the declaration that is sought; or
- (b) make any other declaration respecting the parentage of a child born to the surrogate as the court sees fit.

(8) Child's best interests — The paramount consideration by the court in making a declaration under subsection (7) shall be the best interests of the child.

(9) Effect of surrogacy agreement — A surrogacy agreement is unenforceable in law, but may be used as evidence of,

- (a) an intended parent's intention to be a parent of a child contemplated by the agreement; and
 - (b) a surrogate's intention to not be a parent of a child contemplated by the agreement.
- 1992, c. 32, s. 4; 1996, c. 2, s. 63; 2006, c. 19, Sched. B, s. 4; 2016, c. 23, s. 1(1)

11. (1) Surrogacy, more than four intended parents — If the conditions set out in subsection 10(2) are met other than the condition set out in paragraph 3 of that subsection, any party to the surrogacy agreement may apply to the court for a declaration of parentage respecting a child contemplated by the agreement.

(2) Time limit — An application under subsection (1) may not be made,

- (a) until the child is born; and
- (b) unless the court orders otherwise, after the first anniversary of the child's birth.

(3) Parental rights and responsibilities — Unless the surrogacy agreement provides otherwise, the surrogate and the intended parents share the rights and responsibilities of a parent in respect of the child from the time of the child's birth until the court makes a declaration of parentage respecting the child.

(4) Declaration — If an application is made under subsection (1), the court may make any declaration that the court may make under section 10 and, for the purpose, subsections 10(8) and (9) apply with necessary modifications.

(5) Post-birth consent of surrogate — A declaration naming one or more intended parents as a parent of the child and determining that the surrogate is not a parent of the child shall not be made under subsection (4) unless, after the child's birth, the surrogate provides

to the intended parents consent in writing relinquishing the surrogate's entitlement to parentage of the child.

(6) Waiver — Despite subsection (5), the court may waive the consent if any of the circumstances set out in subsection 10(6) apply.

2006, c. 19, Sched. B, s. 4; 2016, c. 23, s. 1(1)

12. (1) Posthumous conception — A person who, at the time of a deceased person's death, was his or her spouse, may apply to the court for a declaration that the deceased person is a parent of a child conceived after his or her death through assisted reproduction.

(2) Time limit — An application under subsection (1) may not be made,

(a) until the child is born; and

(b) unless the court orders otherwise, later than 90 days after the child's birth.

(3) Declaration — The court may grant the declaration if the following conditions are met:

1. The deceased person consented in writing to be, together with the applicant, the parents of a child conceived posthumously through assisted reproduction, and did not withdraw the consent before his or her death.

2. If the child was born to a surrogate, the applicant is a parent of the child under section 10, and there is no other parent of the child.

2009, c. 33, Sched. 2, s. 12(1), (2); 2016, c. 23, s. 1(1)

13. (1) Declaration of parentage, general — At any time after a child is born, any person having an interest may apply to the court for a declaration that a person is or is not a parent of the child.

(2) Exception, adopted child — Subsection (1) does not apply if the child is adopted.

(3) Declaration — If the court finds on the balance of probabilities that a person is or is not a parent of a child, the court may make a declaration to that effect.

(4) Restriction — Despite subsection (3), the court shall not make any of the following declarations of parentage respecting a child under that subsection unless the conditions set out in subsection (5) are met:

1. A declaration of parentage that results in the child having more than two parents.

2. A declaration of parentage that results in the child having as a parent one other person, in addition to his or her birth parent, if that person is not a parent of the child under section 7, 8 or 9.

(5) Conditions — The following conditions apply for the purposes of subsection (4):

1. The application for the declaration is made on or before the first anniversary of the child's birth, unless the court orders otherwise.

2. Every other person who is a parent of the child is a party to the application.

3. There is evidence that, before the child was conceived, every parent of the child and every person in respect of whom a declaration of parentage respecting that child is sought under the application intended to be, together, parents of the child.

4. The declaration is in the best interests of the child.

2016, c. 23, s. 1(1)

S. 14(1)

Children's Law Reform Act

14. (1) Reopening on new evidence — If a declaration is made by the court under this Part and evidence becomes available that was not available at the hearing of the application, the court may, on application, set aside or vary the order and make any other orders or give any directions that the court considers necessary.

(2) No effect on rights, property interests — Setting aside an order under subsection (1) does not affect rights and duties that were exercised or performed, or interests in property that were distributed, before the order was set aside.

1993, c. 27, Sched.; 2009, c. 33, Sched. 2, s. 12(3); 2016, c. 23, s. 1(1)

15. (1) Effect of declaration — A declaration made under this Part shall be recognized for all purposes.

(2) Deemed effective from birth — A declaration made under this Part is deemed to have been effective from the child's birth.

2016, c. 23, s. 1(1)

Extra-Provincial Declaratory Orders

[Heading added 2016, c. 23, s. 1(1).]

16. (1) Extra-provincial declaratory orders — In this section,

“extra-provincial declaratory order” means an order, or part of an order, that makes a declaration of parentage similar to a declaration that may be made under section 13, if it is made by a court or tribunal outside Ontario that has jurisdiction to make such an order.

(2) Recognition of Canadian orders — Subject to subsection (3), a court shall recognize an extra-provincial declaratory order made in another jurisdiction in Canada.

(3) Exception — A court may decline to recognize an extra-provincial declaratory order made in another jurisdiction in Canada if,

(a) evidence becomes available that was not available during the proceeding that led to the making of the extra-provincial declaratory order; or

(b) the court is satisfied that the extra-provincial declaratory order was obtained by fraud or duress.

(4) Recognition of non-Canadian orders — Subject to subsection (5), a court shall recognize an extra-provincial declaratory order that was made in a jurisdiction outside Canada if,

(a) the child or at least one parent of the child was habitually resident in the jurisdiction of the court or tribunal that made the extra-provincial declaratory order at the time the proceeding that led to its making was commenced or at the time the extra-provincial declaratory order was made; or

(b) the child or at least one parent of the child had a real and substantial connection with the jurisdiction of the court or tribunal that made the extra-provincial declaratory order at the time the proceeding that led to its making was commenced or at the time the extra-provincial declaratory order was made.

(5) Exception — A court may decline to recognize an extra-provincial declaratory order made in a jurisdiction outside Canada,

(a) in the circumstances described in clause (3)(a) or (b); or

Part III — Decision-Making Responsibility, Parenting Time, Contact and 18(1) dec

(b) if the extra-provincial declaratory order is contrary to public policy in Ontario.

(6) Effect of recognition of order — An extra-provincial declaratory order that is recognized by the court shall be deemed to be an order of the court under section 13, and shall be treated for all purposes as if it were an order made under that section.

2016, c. 23, s. 1(1)

Other Matters

[Heading added 2016, c. 23, s. 1(1).]

17. (1) Corresponding change of surname — Any person declared under section 10, 11 or 13 to be a parent of a child may apply to the court for an order that the child's surname be changed to any surname that the child could have been given under subsection 10(3) or (3.1) of the *Vital Statistics Act* if the child had been born at the time of the declaration.

(2) Same — An application under subsection (1) to change a child's surname may be made at the same time as an application for a declaration under section 10, 11 or 13.

(3) Best interests of the child — An order under subsection (1) changing a child's surname may be made only if it is in the best interests of the child.

2009, c. 33, Sched. 2, s. 12(4); 2016, c. 23, s. 1

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PART III — DECISION-MAKING RESPONSIBILITY, PARENTING TIME, CONTACT AND GUARDIANSHIP (SS. 18–76)

[Heading amended 2020, c. 25, Sched. 1, s. 1.]

Interpretation and Purposes

[Heading amended 2020, c. 25, Sched. 1, s. 2.]

18. (1) Definitions and interpretation, Part III — In this Part,

“**contact**” means the time a child spends in the care of a person other than the child’s parent, whether or not the child is physically with the person during that time;

“**contact order**” means an order made under section 28 respecting contact with respect to a child;

“**court**” means the Ontario Court of Justice, the Family Court or the Superior Court of Justice;

“**decision-making responsibility**” means responsibility for making significant decisions about a child’s well-being, including with respect to,

- (a) health,
- (b) education,
- (c) culture, language, religion and spirituality, and
- (d) significant extra-curricular activities;

S. 18(1) ext

Children's Law Reform Act

“extra-provincial order” means an order of an extra-provincial tribunal, and includes part of an order;

“extra-provincial tribunal” means a court or tribunal outside Ontario that has jurisdiction to make orders respecting decision-making responsibility, parenting time or contact with respect to a child;

“family member” includes a member of a household of a child or of a parent, as well as a dating partner of a parent who participates in the activities of the household;

“family violence” means any conduct by a family member towards another family member that is violent or threatening, that constitutes a pattern of coercive and controlling behaviour, or that causes the other family member to fear for their own safety or for that of another person, and, in the case of a child, includes direct or indirect exposure to such conduct;

“parenting order” means an order made under section 28 respecting decision-making responsibility or parenting time with respect to a child;

“parenting time” means the time a child spends in the care of a parent of the child, whether or not the child is physically with the parent during that time;

“relocation” means a change in residence of a child, or of a person who has decision-making responsibility or parenting time with respect to the child or is an applicant for a parenting order in respect of the child, that is likely to have a significant impact on the child’s relationship with,

- (a) another person who has decision-making responsibility or parenting time with respect to the child or is an applicant for a parenting order in respect of the child, or
- (b) a person who has contact with respect to the child under a contact order;

“separation agreement” means an agreement that is a valid separation agreement under Part IV of the *Family Law Act*.

(2) “Family violence” — For the purposes of the definition of “family violence” in subsection (1), the conduct need not constitute a criminal offence, and includes,

- (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect oneself or another person;
- (b) sexual abuse;
- (c) threats to kill or cause bodily harm to any person;
- (d) harassment, including stalking;
- (e) the failure to provide the necessities of life;
- (f) psychological abuse;
- (g) financial abuse;
- (h) threats to kill or harm an animal or damage property; and
- (i) the killing or harming of an animal or the damaging of property.

(3) Child — A reference in this Part to a child is a reference to the child while a minor.

(4) Not material change in circumstances — The enactment or coming into force of any provision of Schedule 1 to the *Moving Ontario Family Law Forward Act, 2020* does not in itself constitute a material change in circumstances under this Part.



Part III — Decision-Making Responsibility, Parenting Time, Contact and ...**S. 48(3)**

(5) References to custody, etc. — Unless the context requires otherwise, a reference in an Act or regulation to custody of a child, including lawful custody or legal custody of a child, includes reference to decision-making responsibility with respect to the child under this Act.

(6) References to access, etc. — Unless the context requires otherwise, a reference in an Act or regulation to access to a child, including a right of access, a legal right of access, a lawful right of access or a lawful entitlement to access to a child, includes reference to parenting time or contact, as the case may be, with respect to the child under this Act.

1996, c. 25, s. 3(2); 2001, c. 9, Sched. B, s. 4(7), (8); 2020, c. 25, Sched. 1, s. 2

19. Purposes, Part III — The purposes of this Part are,

- (a) to ensure that applications to the courts respecting decision-making responsibility, parenting time, contact and guardianship with respect to children will be determined on the basis of the best interests of the children;
- (b) to recognize that the concurrent exercise of jurisdiction by judicial tribunals of more than one province, territory or state in relation to the determination of decision-making responsibility with respect to the same child ought to be avoided, and to make provision so that the courts of Ontario will, unless there are exceptional circumstances, refrain from exercising or decline jurisdiction in cases where it is more appropriate for the matter to be determined by a tribunal having jurisdiction in another place with which the child has a closer connection;
- (c) to discourage the abduction of children as an alternative to the determination of decision-making responsibility by due process; and
- (d) to provide for the more effective enforcement of parenting orders and contact orders, and for the recognition and enforcement of orders made outside Ontario that grant decision-making responsibility, parenting time or contact with respect to a child.

2020, c. 25, Sched. 1, s. 2

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Guardianship

47. (1) Appointment of guardian — Upon application by a child's parent or by any other person, on notice to the Children's Lawyer, a court may appoint a guardian of the child's property.

(2) Responsibility of guardian — A guardian of the property of a child has charge of and is responsible for the care and management of the property of the child.

2001, c. 9, Sched. B, s. 4(1)

48. (1) Parents as guardians — As between themselves and subject to any court order or any agreement between them, the parents of a child are equally entitled to be appointed by a court as guardians of the property of the child.

(2) Parent and other person — As between a parent of a child and a person who is not a parent of the child, the parent has a preferential entitlement to be appointed by a court as a guardian of the property of the child.

(3) More than one guardian — A court may appoint more than one guardian of the property of a child.

S. 48(4)

Children's Law Reform Act

(4) Guardians jointly responsible — Where more than one guardian is appointed of the property of a child, the guardians are jointly responsible for the care and management of the property of the child.

49. Criteria — In deciding an application for the appointment of a guardian of the property of a child, the court shall consider all the circumstances, including,

- (a) the ability of the applicant to manage the property of the child;
- (b) the merits of the plan proposed by the applicant for the care and management of the property of the child; and
- (c) the views and preferences of the child, where such views and preferences can reasonably be ascertained.

2001, c. 9, Sched. B, s. 4(2)

50. Effect of appointment — The appointment of a guardian by a court under this Part has effect in all parts of Ontario.

51. (1) Payment of debt due to child if no guardian — If no guardian of a child's property has been appointed, a person who is under a duty to pay money or deliver personal property to the child discharges that duty, to the extent of the amount paid or the value of the personal property delivered, subject to subsection (1.1), by paying money or delivering personal property to,

- (a) the child, if the child has a legal obligation to support another person;
- (b) a parent with whom the child resides; or
- (c) a person who has lawful custody of the child.

(1.1) Same — The total of the amount of money paid and the value of personal property delivered under subsection (1) shall not exceed the prescribed amount or, if no amount is prescribed, \$10,000.

(2) Money payable under judgment — Subsection (1) does not apply in respect of money payable under a judgment or order of a court.

(3) Receipt for payment — A receipt or discharge for money or personal property not in excess of the amount or value set out in subsection (1) received for a child by a parent with whom the child resides or a person who has lawful custody of the child has the same validity as if a court had appointed the parent or the person as a guardian of the property of the child.

(4) Responsibility for money or property — A parent with whom a child resides or a person who has lawful custody of a child who receives and holds money or personal property referred to in subsection (1) has the responsibility of a guardian for the care and management of the money or personal property.

(5) Regulations — The Lieutenant Governor in Council may, by regulation, prescribe an amount for the purpose of subsection (1.1).

2001, c. 9, Sched. B, s. 4(3), (4)

52. Accounts — A guardian of the property of a child may be required to account or may voluntarily pass the accounts in respect of the care and management of the property of the child in the same manner as a trustee under a will may be required to account or may pass the accounts in respect of the trusteeship.

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Part III — Decision-Making Responsibility, Parenting Time, Contact and ...**S. 59(3)**

53. Transfer of property to child — A guardian of the property of a child shall transfer to the child all property of the child in the care of the guardian when the child attains the age of eighteen years.

54. Management fees and expenses — A guardian of the property of a child is entitled to payment of a reasonable amount for fees for and expenses of management of the property of the child.

55. (1) Bond by guardian — A court that appoints a guardian of the property of a child shall require the guardian to post a bond, with or without sureties, payable to the child in such amount as the court considers appropriate in respect of the care and management of the property of the child.

(2) Where parent appointed guardian — Subsection (1) does not apply where the court appoints a parent of a child as guardian of the property of the child and the court is of the opinion that it is appropriate not to require the parent to post a bond.

56. Where child has support obligation — Upon application by a child who has a legal obligation to support another person, the court that appointed a guardian of the property of the child or a co-ordinate court by order shall end the guardianship for the child.

57. (1) Removal of guardian — A guardian of the property of a child may be removed by a court for the same reasons for which a trustee may be removed.

(2) Resignation of guardian — A guardian of the property of a child, with the permission of a court, may resign as guardian upon such conditions as the court considers appropriate.

58. Notice to Estate Registrar for Ontario — A notice of every application to a court for appointment of a guardian of the property of a child shall be transmitted by the clerk of the court to the Estate Registrar for Ontario.

1993, c. 27, Sched.; 2009, c. 11, s. 17

Disposition of Property

59. (1) Court order re property of child — Upon application by a child's parent or by any other person, on notice to the Children's Lawyer, the Superior Court of Justice by order may require or approve, or both,

- (a) the disposition or encumbrance of all or part of the interest of the child in land;
- (b) the sale of the interest of the child in personal property; or
- (c) the payment of all or part of any money belonging to the child or of the income from any property belonging to the child, or both.

(2) Criteria — An order shall be made under subsection (1) only where the Court is of the opinion that the disposition, encumbrance, sale or payment is necessary or proper for the support or education of the child or will substantially benefit the child.

(3) Conditions — An order under subsection (1) may be made subject to such conditions as the Court considers appropriate.

S. 59(4)

Children's Law Reform Act

(4) Limitation — The Court shall not require or approve a disposition or encumbrance of the interest of a child in land contrary to a term of the instrument by which the child acquired the interest.

(5) Execution of documents — The Court, where it makes an order under subsection (1), may order that the child or another person named in the order execute any documents necessary to carry out the disposition, encumbrance, sale or payment.

(6) Directions — The Court by order may give such directions as it considers necessary for the carrying out of an order made under subsection (1).

(7) Validity of documents — Every document executed in accordance with an order under this section is as effectual as if the child by whom it was executed was eighteen years of age or, if executed by another person in accordance with the order, as if the child had executed it and had been eighteen years of age at the time.

(8) Liability — No person incurs or shall be deemed to incur liability by making a payment in accordance with an order under clause (1)(c).

2001, c. 9, Sched. B, s. 4(5)

60. (1) Order for maintenance where power of appointment in favour of children — Upon application by or with the consent of a person who has an estate for life in property with power to devise or appoint the property to one or more of his or her children, the Superior Court of Justice may order that such part of the proceeds of the property as the Court considers proper be used for the support, education or benefit of one or more of the children.

(2) Idem — An order may be made under subsection (1) whether or not,

- (a) there is a gift over in the event that there are no children to take under the power; or
- (b) any person could dispose of the property in the event that there are no children to take under the power.

2001, c. 9, Sched. B, s. 4(7)

Testamentary Decision-Making Responsibility and Guardianship

[Heading amended 2020, c. 25, Sched. 1, s. 21.]

61. Appointments by will — (1) Disposition of decision-making responsibility — A person entitled to decision-making responsibility with respect to a child may appoint by will one or more persons to have decision-making responsibility with respect to the child after the death of the appointor.

(2) Guardianship, appointment by will — A guardian of the property of a child may appoint by will one or more persons to be guardians of the property of the child after the death of the appointor.

(3) Appointment by minor — An unmarried parent who is a minor may make an appointment mentioned in subsection (1) or (2) by a written appointment signed by the parent.

S.62(3)(c)

Part III — Decision-Making Responsibility, Parenting Time, Contact and S.62(3)(c)

- (4) **Limitation** — An appointment under subsection (1), (2) or (3) is effective only,
- (a) if the appointor is the only person entitled to decision-making responsibility with respect to the child or who is the guardian of the property of the child, as the case requires, on the day immediately before the appointment is to take effect; or
 - (b) if the appointor and any other person entitled to decision-making responsibility with respect to the child or who is the guardian of the property of the child, as the case requires, die at the same time or in circumstances that render it uncertain which survived the other.
- (5) **Where more than one appointment** — Where two or more persons are appointed to have decision-making responsibility with respect to a child or to be guardians of the property of a child by appointors who die as mentioned in clause (4)(b), only the appointments of the persons appointed by both or all of the appointors are effective.
- (6) **Consent of appointee** — No appointment under subsection (1), (2) or (3) is effective without the consent of the person appointed.
- (7) **Expiration of appointment** — An appointment under subsection (1), (2) or (3) for decision-making responsibility with respect to a child or guardianship of the property of a child expires ninety days after the appointment becomes effective or, where the appointee applies under this Part for decision-making responsibility with respect to the child or guardianship of the property of the child within the ninety-day period, when the application is disposed of.
- (8) **Application or order under ss. 21, 47** — An appointment under this section does not apply to prevent an application for or the making of an order under section 21 or 47.
- (9) **Application** — This section applies in respect of,
- (a) any will made on or after the 1st day of October, 1982; and
 - (b) any will made before the 1st day of October, 1982, if the testator is living on that day.

2020, c. 25, Sched. 1, s. 22

Procedure

- 62. Procedure, general** — (1) **Joinder of proceedings** — An application under this Part may be made in the same proceeding and in the same manner as an application under the *Family Law Act*, or in another proceeding.
- (2) **Nature of order** — An application under this Part may be an original application or for the variance of an order previously given or to supersede an order of an extra-provincial tribunal.
- (3) **Parties** — The parties to an application under this Part in respect of a child shall include,
- (a) the child's parents;
 - (b) a person who has demonstrated a settled intention to treat the child as a child of his or her family;
 - (c) a person who had the actual care and upbringing of the child immediately before the application; and

S. 62(3)(d)

Children's Law Reform Act

(d) any other person whose presence as a party is necessary to determine the matters in issue.

(4) Combining of applications — Where, in an application under this Part, it appears to the court that it is necessary or desirable in the best interests of the child to have other matters first or simultaneously determined, the court may direct that the application stand over until such other proceedings are brought or determined as the court considers appropriate, subject to section 26.

(5) If identity of other biological parent not known — Where, in respect of a child conceived through sexual intercourse but not through insemination by a sperm donor, there is no presumption of parentage and the identity of the person whose sperm resulted in the conception of the child is not known or is not reasonably capable of being ascertained, the court may order substituted service or may dispense with service of documents on the person whose sperm resulted in the conception of the child in the proceeding.

2016, c. 23, s. 14; 2020, c. 25, Sched. 1, s. 23

63. (1) Application or response by minor — A minor who is a parent may make an application under this Part without a next friend and may respond without a litigation guardian.

(2) Consent by minor — A consent in respect of a matter provided for by this Part is not invalid by reason only that the person giving the consent is a minor.

64. (1) Child entitled to be heard — In considering an application under this Part, a court where possible shall take into consideration the views and preferences of the child to the extent that the child is able to express them.

(2) Interview by court — The court may interview the child to determine the views and preferences of the child.

(3) Recording — The interview shall be recorded.

(4) Counsel — The child is entitled to be advised by and to have his or her counsel, if any, present during the interview.

65. Where child is sixteen or more years old — Nothing in this Part abrogates the right of a child of sixteen or more years of age to withdraw from parental control.

66. All proceedings in one court — Except as otherwise provided, where an application is made to a court under this Part, no person who is a party to the proceeding shall make an application under this Part to any other court in respect of a matter in issue in the proceeding, but the court may order that the proceeding be transferred to a court having other jurisdiction where, in the opinion of the court, the court having other jurisdiction is more appropriate to determine the matters in issue that should be determined at the same time.

67. Consent and domestic contracts — **(1) Consent orders** — Upon the consent of the parties in an application under this Part, the court may make any order that the court is otherwise empowered to make by this Part, subject to the duty of the court to have regard to the best interests of the child.

(2) Incorporation of contract in order — Any matter provided for in this Part and in a domestic contract as defined in the *Family Law Act* may be incorporated in an order made under this Part.

68. Part subject to contracts — Where a domestic contract as defined in the *Family Law Act* makes provision in respect of a matter that is provided for in this Part, the contract prevails except as otherwise provided in Part IV of the *Family Law Act*.

69. Jurisdiction of Superior Court of Justice — This Part does not deprive the Superior Court of Justice of its *parens patriae* jurisdiction.

2001, c. 9, Sched. B, s. 4(7)

70. (1) Confidentiality — Where a proceeding includes an application under this Part, the court shall consider whether it is appropriate to order,

- (a) that access to all or part of the court file be limited to,
 - (i) the court and authorized court employees,
 - (ii) the parties and their counsel,
 - (iii) counsel, if any, representing the child who is the subject of the application, and
 - (iv) any other person that the court may specify; or
- (b) that no person shall publish or make public information that has the effect of identifying any person referred to in any document relating to the application that appears in the court file.

(2) Considerations — In determining whether to make an order under subsection (1), the court shall consider,

- (a) the nature and sensitivity of the information contained in the documents relating to the application under this Part that appear in the court file; and
- (b) whether not making the order could cause physical, mental or emotional harm to any person referred to in those documents.

(3) Order on application — Any interested person may make an application for an order under subsection (1).

(4) Varying or discharging order — The court may vary or discharge an order made under subsection (1).

2001, c. 9, Sched. B, s. 4(6); 2009, c. 11, s. 18

71. Where to apply for interim orders and variations — (1) Place of application for interim order — An application for an interim order shall be made to the court in which the original proceeding was taken.

(2) Place of application to vary order — An application under this Part to vary an order may be made to the court in which the original proceeding was taken or to a co-ordinate court in another part of Ontario.

72. Interim order — In a proceeding under this Part, the court may make such interim order as the court considers appropriate.

S. 73(1)

Children's Law Reform Act

73. (1) Appeal — Subject to subsection (2),

- (a) an appeal from an order of the Ontario Court of Justice under this Part lies to the Superior Court of Justice;
- (b) an appeal from an order of the Family Court under this Part lies to the Divisional Court; and
- (c) an appeal from an order of the Superior Court of Justice under this Part, other than an order of the Family Court, lies to the proper appellate court as determined under the *Courts of Justice Act*.

(2) Matters that must be appealed to the Court of Appeal — An appeal from an order made in accordance with section 22, 41, 42 or 43, or made in accordance with the Schedule to section 46, lies to the Court of Appeal.

(3) Transition — This section, as it read immediately before the day section 6 of Schedule 2 to the *Moving Ontario Family Law Forward Act, 2020* came into force, continues to apply to,

- (a) any case in which a notice of appeal was filed before that day; and
- (b) any further appeals or proceedings arising from a case described in clause (a).

2001, c. 9, Sched. B, s. 4(7), (8); 2020, c. 25, Sched. 2, s. 6

74. Order effective pending appeal — An order under this Part is effective even if an appeal is taken from the order, unless the court that made the order or the court to which the appeal is taken orders otherwise.

75. (1) Rule of construction — For the purposes of construing any instrument, Act or regulation, unless the contrary intention appears, a reference to a guardian with respect to the person of a child shall be construed to refer to decision-making responsibility with respect to the child and a reference to a guardian with respect to property of a child shall be construed to refer to guardianship of the property of the child.

(2) Application — Subsection (1) applies to any instrument, any Act of the Legislature or any regulation, order or by-law made under an Act of the Legislature enacted or made before, on or after the 1st day of October, 1982.

2020, c. 25, Sched. 1, s. 24

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CONVEYANCING AND LAW OF PROPERTY ACT

R.S.O. 1990, c. C.34, as am. S.O. 1992, c. 32, s. 5; 1994, c. 27, s. 6; 1999, c. 6, s. 13; 2002, c. 17, Sched. F, s. 1; 2005, c. 5, s. 13; 2006, c. 19, Sched. C, s. 1(1); 2006, c. 23, s. 31; 2006, c. 32, Sched. C, s. 10, Sched. E, s. 3; 2009, c. 33, Sched. 11, s. 3; 2020, c. 16, Sched. 3, s. 13 [Not in force at date of publication.].

1. (1) Definitions — In this Act,

“**conveyance**” includes an assignment, appointment, lease, settlement, and other assurance, made by deed, on a sale, mortgage, demise, or settlement of any property or on any other dealing with or for any property, and “**convey**” has a meaning corresponding with that of conveyance; (“*acte translatif de propriété*”), (“*transport*”), (“*transporter*”)

“**land**” includes messuages, tenements, hereditaments, whether corporeal or incorporeal, and any undivided share in land; (“*bien-fonds*”)

“**mortgage**” includes a charge on property for securing money or money’s worth; (“*hypothèque*”)

“**mortgage money**” means money or money’s worth secured by a mortgage; (“*créance hypothécaire*”)

“**mortgagee**” includes a person from time to time deriving title under the original mortgagor; (“*créancier hypothécaire*”)

“**mortgagor**” includes a person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to the original mortgagor’s estate, interest or right in the mortgaged property; (“*débiteur hypothécaire*”)

“**property**” includes real and personal property, a debt, a thing in action, and any other right or interest; (“*bien*”)

“**puffer**” means a person appointed to bid on the part of the seller; (“*faux enchérisseur*”)

“**purchaser**” includes a lessee, a mortgagee and an intending purchaser, lessee or mortgagee, or other person, who, for valuable consideration, takes or deals for any property, and “**purchase**” has a meaning corresponding with that of purchaser; but “**sale**” means only a sale properly so called. (“*acquéreur*”), (“*acquisition*”), (“*vente*”)

(2) Free and common socage, fief, seignory, etc. — Despite their repeal, section 43 of *The Clergy Endowments (Canada) Act, 1791* (Imperial) and sections 31 and 32 of *The British North America (Trade and Lands) Act, 1822* (Imperial), as they applied in Ontario immediately before their repeal, continue in effect in Ontario.

2. Conveyance of corporeal tenements — All corporeal tenements and hereditaments, as regards the conveyance of the immediate freehold thereof, lie in grant as well as in livery.

3. Form and operation of feoffments — A feoffment, otherwise than by deed, is void and no feoffment shall have any tortious operation.

4. Estate tail to be construed as fee simple — A limitation in a conveyance or will that before the 27th day of May, 1956, would have created an estate tail shall be construed as an estate in fee simple or the greatest estate that the grantor or testator had in the land.

5. (1) Limitation — In a conveyance, it is not necessary, in the limitation of an estate in fee simple, to use the word “heirs”.

(2) Idem — For the purpose of such limitation, it is sufficient in a conveyance to use the words “in fee simple” or any other words sufficiently indicating the limitation intended.

(3) Effect of conveyance without words of limitation — Where no words of limitation are used, the conveyance passes all the estate, right, title, interest, claim and demand that the conveying parties have in, to, or on the property conveyed, or expressed or intended so to be, or that they have power to convey in, to, or on the same.

(4) Saving — Subsection (3) applies only if and as far as a contrary intention does not appear from the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained.

(5) Operation of section — This section applies only to conveyances made after the 1st day of July, 1886.

6. Statement of consideration — A statement of consideration money or other consideration in the body of a conveyance is a sufficient discharge to the person paying or delivering the conveyance without any receipt being endorsed on it.

7. Statement as evidence for subsequent purchaser — A statement of consideration money or other consideration in the body of a conveyance or endorsed thereon is, in favour of a subsequent purchaser not having notice that the money or other consideration was not in fact paid or given wholly or in part, sufficient evidence of the payment or giving of the whole amount thereof.

8. Rights of purchaser as to execution — A purchaser may not require that the conveyance be executed in the purchaser’s presence or in presence of the purchaser’s solicitor but the purchaser may require that it be attested by a person appointed by the purchaser and the purchaser’s solicitor may be appointed for that purpose.

9. Requirement of deed for certain interests — A partition of land, an exchange of land, an assignment of a chattel interest in land, and a surrender in writing of land not being an interest that might by law have been created without writing, are void at law, unless made by deed.

10. Disposal of certain interests in land by deed — A contingent, an executory, and a future interest, and a possibility coupled with an interest in land, whether the object of the gift or limitation of such interest or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent, into or upon land, may be disposed of by deed, but no such disposition, by force only of this Act, defeats or enlarges an estate tail.

11. Exchange or partition, “give” or “grant” — An exchange or a partition of any tenements or hereditaments does not imply any condition in law, and the word “give” or the

word “grant” in a conveyance does not imply any covenant in law, except so far as the word “give” or the word “grant” may, by force of any Act in force in Ontario, imply a covenant.

12. Application of ss. 9–11 — Sections 9, 10 and 11 do not extend to any deed, act or thing executed or done, or to any estate, right or interest created before the 1st day of January, 1850.

13. (1) Effect of grants, devises, etc., to two or more — Where by any letters patent, assurance or will, made and executed after the 1st day of July, 1834, land has been or is granted, conveyed or devised to two or more persons, other than executors or trustees, in fee simple or for any less estate, it shall be considered that such persons took or take as tenants in common and not as joint tenants, unless an intention sufficiently appears on the face of the letters patent, assurance or will, that they are to take as joint tenants.

(2) Spouses — This section applies notwithstanding that one of such persons is the spouse of another of them.

(3) Definitions — In subsection (2),

“same-sex partner” [Repealed 2005, c. 5, s. 13(2).]

“spouse” means,

- (a) a spouse as defined in section 1 of the *Family Law Act*, or
- (b) either of two persons who live together in a conjugal relationship outside marriage.

(“*conjoint*”)

1999, c. 6, s. 13(1), (2); 2005, c. 5, s. 13

14. Land acquired by possession by two or more — Where two or more persons acquire land by length of possession, they shall be considered to hold as tenants in common and not as joint tenants.

15. (1) What included in conveyance — Every conveyance of land, unless an exception is specially made therein, includes all houses, outhouses, edifices, barns, stables, yards, gardens, orchards, commons, trees, woods, underwoods, mounds, fences, hedges, ditches, ways, waters, watercourses, lights, liberties, privileges, easements, profits, commodities, emoluments, hereditaments and appurtenances whatsoever to such land belonging or in anywise appertaining, or with such land demised, held, used, occupied and enjoyed or taken or known as part or parcel thereof, and, if the conveyance purports to convey an estate in fee simple, also the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits of the same land and of every part and parcel thereof, and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim and demand whatsoever of the grantor into, out of or upon the same land, and every part and parcel thereof, with their and every of their appurtenances.

(2) Application of section — Except as to conveyances under former Acts relating to short forms of conveyances, this section applies only to conveyances made after the 1st day of July, 1886.

16. Meaning of “mining rights” — Unless the contrary appears to be the intent of the instrument, where in a conveyance the “mining rights” in respect of any land are granted or reserved, the grant or reservation shall be construed to convey or reserve the ores, mines and

minerals on or under the land, together with such right of access for the purpose of winning the ores, mines and minerals as is incidental to a grant of ores, mines and minerals.

17. Meaning of “surface rights” — Unless the contrary appears to be the intent of the instrument, where in a conveyance the “**surface rights**” in respect of any land are granted or reserved, the grant or reservation shall be construed to convey or reserve the land therein described with the exception of the ores, mines and minerals on or under the land and such right of access for the purpose of winning the ores, mines and minerals as is incidental to a grant of ores, mines and minerals.

18. Application — In an instrument purporting to deal with “**mining rights**” or “**surface rights**” these expressions respectively have the meaning given them by sections 16 and 17.

19. Operation of ss. 16–18 — Sections 16, 17 and 18 have effect only as to conveyances or instruments executed on or after the 1st day of July, 1914, and do not apply to conveyances by the Crown.

20. How corporations may convey — Any corporation capable of taking and conveying land in Ontario shall be deemed to have been and to be capable of taking and conveying land by deed of bargain and sale in like manner as a person in his natural capacity, subject to any general limitations or restrictions and to any special provisions as to holding or conveying land that are applicable to the corporation.

21. (1) Provision for sales free from encumbrances — Where land subject to an encumbrance, whether immediately payable or not, is sold by a court or out of court, the court in which the sale takes place or the Superior Court of Justice may, on the application of a party to the sale, direct or allow payment into court, in the case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, having regard to the interest that it will earn, the court considers will be sufficient by means of the income thereof to keep down or otherwise provide for that charge, and, in any other case of capital money charged on the land, of an amount sufficient to meet the encumbrance and any interest due thereon, but in either case there shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, not exceeding one-tenth of the original amount to be paid in, unless the court for special reasons thinks fit to require a larger additional amount.

(2) Conveyance or vesting order — The court may thereupon, either after or without notice to the encumbrancer, declare the land to be freed from the encumbrance, and may make any order for conveyance or vesting order proper for giving effect to the sale.

(3) Directions — After notice served on the persons interested in or entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(4) Effect of payment into court — Payment of money into court effectually exonerates therefrom the person making the payment and frees the land from the charge or encumbrance.

2006, c. 19, Sched. C, s. 1(1)

22. Covenants to restrict use of land because of race, creed, etc. — Every covenant made after the 24th day of March, 1950, that but for this section would be annexed to and run with land and that restricts the sale, ownership, occupation or use of land because of the race, creed, colour, nationality, ancestry or place of origin of any person is void and of no effect.

23. (1) Covenants to be implied — In a conveyance made on or after the 1st day of July, 1886, there shall, in the cases in this section mentioned, be deemed to be included, and there shall in those cases be implied, covenants to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share thereof expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common:

1. **On conveyance for value by beneficial owner** — In a conveyance for valuable consideration, other than a mortgage, the following covenants by the person who conveys, and is expressed to convey as beneficial owner, namely, covenants for,
 - i. right to convey,
 - ii. quiet enjoyment,
 - iii. freedom from encumbrances, and
 - iv. further assurance,

according to the forms of covenants for such purposes set forth in Schedule B to the *Short Forms of Conveyances Act*, being chapter 472 of the Revised Statutes of Ontario, 1980, and therein numbered 2, 3, 4 and 5, subject to that Act.

2. **On conveyance of leaseholds for value by beneficial owner** — In a conveyance of leasehold land for valuable consideration, other than a mortgage, the following further covenant, by the person who conveys and is expressed to convey as beneficial owner:

That, notwithstanding anything by the person who so conveys, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by and all the covenants, conditions and agreements contained in the lease or grant, and on the part of the lessee or grantee, and the persons deriving title under the lessee or grantee to be paid, observed and performed, have been paid, observed and performed, up to the time of conveyance.

3. **On conveyance by trustee, etc.** — In a conveyance the following covenant by every person who conveys, and is expressed to convey, as trustee or mortgagee, or as personal representative of a deceased person, or as guardian of property, or under an order of the court, which covenant shall be deemed to extend to every such person's own acts only, namely:

That the person so conveying has not executed, or done, or knowingly suffered, or been party or privy to any deed, act, matter or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof is or may be impeached, charged, affected, or encumbered in title, estate or other-

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wise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying such subject-matter or any part thereof, in the manner in which it is expressed to be conveyed.

4. On settlement for further assurance, limited — In a conveyance by way of settlement the following covenant by a person who conveys and is expressed to convey as settlor, namely:

That the settlor, and every person deriving title under the settlor by deed or act or operation of law in the settlor's lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on the settlor's death will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made, and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required.

(2) On conveyance by direction of beneficial owner — Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, the person giving the direction, whether or not the person conveys and is expressed to convey, as beneficial owner, shall be deemed to convey, and to be expressed to convey as beneficial owner the subject-matter so conveyed by the person's direction, and the covenants on the person's part mentioned in paragraph 1 of subsection (1) shall be implied accordingly.

(3) Enforcing covenants — The benefit of a covenant so implied is annexed and incident to and goes with the estate or interest of the implied covenantee, and is capable of being enforced by every person in whom that estate or interest is for the whole or any part thereof from time to time vested.

(4) Variation of covenants — A covenant so implied may be varied or extended and as so varied or extended operates, as far as may be, in the like manner and with all the like incidents, effects and consequences as if such variations or extensions were directed in this section to be implied.

(5) Exception — Subsections (1), (2), (3) and (4) do not apply to conveyances of land in the parts of Ontario designated under Part I of the *Land Registration Reform Act*, that are executed on or after the day on which the land is designated under clause 14(a) of that Act.

1992, c. 32, s. 5

24. (1) Operation of covenants, inheritance — A covenant relating to land of inheritance or to land held for the life of another shall be deemed to be made with the covenantee, and the covenantee's heirs and assigns, and has effect as if heirs and assigns were expressed.

(2) Idem, not of inheritance — A covenant relating to land not of inheritance or to land not held for the life of another shall be deemed to be made with the covenantee, and the covenantee's executors, administrators and assigns, and has effect as if executors, administrators and assigns were expressed.

25. (1) Mode of executing powers — A deed executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested is,

so far as respects the execution and attestation thereof, a valid execution of a power of appointment by deed or by an instrument in writing, not testamentary, notwithstanding that it is especially required that a deed or instrument in writing, made in exercise of such power, be executed or attested with some additional or other form of execution or attestation or solemnity.

(2) Saving of other requirements — This section does not operate to defeat any direction in the deed or instrument creating the power that the consent of a particular person is necessary to a valid execution, or that any act is performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the deed or instrument.

(3) Power may be observed — Nothing in this section prevents the donee of a power from executing it conformably to the power.

26. (1) Disclaimer of power by donee — A person to whom a power, whether coupled with an interest or not, is given may by deed disclaim or release or contract not to exercise the power.

(2) Disclaimers of power — A person disclaiming is not afterwards capable of exercising or joining in the exercise of the power, and on such disclaimer the power may be exercised by the other or others or the survivor or survivors of the others of the persons to whom the power was given, unless the contrary is expressed in the instrument creating the power.

27. Validity of sale under power although mistaken payment to tenant for life — Where under a power of sale a sale in good faith is made of an estate with the timber thereon or with any articles attached thereto, and the tenant for life or any other party to the transaction is by mistake allowed to receive for their own benefit a part of the purchase money or value of the timber or article, the Superior Court of Justice, upon an action brought or upon application made, may declare that upon payment by the purchaser or the claimant under the purchaser of the full value of the timber or article at the time of the sale, with such interest thereon as the court directs, and the settlement of the principal money and interest under the direction of the court, upon such person as in the opinion of the court is entitled thereto, the sale ought to be established, and upon payment and settlement being made accordingly, the court may declare the sale valid, and thereupon the legal estate vests and goes in like manner as if the power had been duly executed, and the costs of the application, as between solicitor and client, shall be paid by the purchaser or the claimant under the purchaser.

2006, c. 19, Sched. C, s. 1(1)

28. (1) Illusory appointments — No appointment made in exercise of a power or authority to appoint any property, real or personal, among several objects, is invalid or shall be impeached on the ground that an unsubstantial, illusory or nominal share only is thereby appointed to, or left unappointed to devolve upon, any one or more of the objects of such power, or upon the ground that any object of such power has been altogether excluded, but every such appointment is valid and effectual, notwithstanding that any one or more of the objects shall not thereunder, or in default of such appointment, take more than an unsubstantial, illusory, or take no share thereof, or nominal share of the property subject to such power.

(2) Saving of positive requirements in constating instrument — Nothing in this section prejudices or affects any provision in a deed, will or other instrument creating any such power that declares the amount of the share or shares from which no object of the

power shall be excluded or that some one or more object or objects of the power shall not be excluded or give any validity, force or effect to any appointment, other than such appointment would have had if a substantial share of the property affected by the power had been thereby appointed to, or left unappointed, to devolve upon any object of such power.

29. Waste by dowress, etc. — A dowress, a tenant for life or for years, and the guardian of the estate of a minor, are impeachable for waste and liable in damages to the person injured.

30. Waste by tenant for life without impeachment of waste — An estate for life without impeachment of waste does not confer upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer the right expressly appears by the instrument creating the estate.

31. Waste between joint tenants and tenants in common — Tenants in common and joint tenants are liable to their co-tenants for waste, or, in the event of a partition, the part wasted may be assigned to the tenant committing the waste at the value thereof to be estimated as if no waste had been committed.

32. Waste by lessees — Lessees making or suffering waste on the demised premises without licence of the lessors are liable for the full damage so occasioned.

33. Release of part of land from rent-charge — The release from a rent-charge of part of the land charged therewith does not extinguish the whole rent-charge, but operates only to bar the right to recover any part of it out of the land released without prejudice to the rights of all persons interested in the land remaining unreleased and not concurring in or confirming the release.

34. Abrogation of doctrine of scintilla juris — Where by a deed, will or other instrument land is limited to uses, all uses thereunder, whether expressed or implied by law and whether immediate or future or contingent or executory or to be declared under any power therein contained, take effect when and as they arise by force of and by relation to the estate and seisin originally vested in the person seised to the uses, and the continued existence in the person or elsewhere of any seisin to uses or *scintilla juris* are not necessary for the support of, or to give effect to, future or contingent or executory uses, nor shall any such seisin to uses or *scintilla juris* be deemed to be suspended or to remain or to subsist in the person or elsewhere.

35. Contingent remainders — Every contingent remainder is capable of taking effect notwithstanding the determination by forfeiture, surrender or merger of any preceding estate of freehold.

36. (1) No merger of estate by operation of law — There shall not be any merger by operation of law only of any estate, the beneficial interest in which, prior to *The Ontario Judicature Act, 1881*, would not have been deemed merged or extinguished in equity.

(2) Merger of leasehold in freehold — Where a person who has a leasehold estate in land under a lease,

(a) from Ontario Mortgage and Housing Corporation or Ontario Land Corporation; or

Proposed Amendment — 36(2)(a)

(a) originally from the Ontario Housing Corporation or the Ontario Mortgage and Housing Corporation;

2020, c. 16, Sched. 3, s. 13 [Not in force at date of publication.]

Proposed Addition — 36(2)(a.1)

(a.1) from the Ontario Land Corporation; or

2020, c. 16, Sched. 3, s. 13 [Not in force at date of publication.]

(b) from the Crown under the *Mining Act* or the *Public Lands Act*,

acquires the freehold estate in the land, the leasehold estate merges in the freehold estate and upon the merging the freehold estate becomes subject to any interest to which the leasehold estate was subject immediately before the merging in the same ranking as to priorities as were then held.

2006, c. 32, Sched. E, s. 3

37. (1) Lien on lands for improvements under mistake of title — Where a person makes lasting improvements on land under the belief that it is the person's own, the person or the person's assigns are entitled to a lien upon it to the extent of the amount by which its value is enhanced by the improvements, or are entitled or may be required to retain the land if the Superior Court of Justice is of opinion or requires that this should be done, according as may under all circumstances of the case be most just, making compensation for the land, if retained, as the court directs.

(2) Appeal — An appeal lies to the Divisional Court from any order made under this section.

2006, c. 19, Sched. C, s. 1(1)

38. Rule as to purchase of reversions — No purchase made in good faith and without fraud of any reversionary interest in property shall be opened or set aside on the ground of undervalue.

39. Onus of proof — It is not necessary, in order to maintain the defence of a purchase for value without notice, to prove payment of the mortgage money or purchase money or any part thereof.

40. Assignment of property to self and others — Any property may be conveyed by a person to the person jointly with another person by the like means by which it might be conveyed by the person to another person.

41. Conveyance of property to self — A person may convey property to or vest property in the person in like manner as the person could have conveyed the property to or vested the property in another person.

42. Two or more persons may convey to any one or more of themselves — Two or more persons, whether or not they are trustees or personal representatives, may convey and shall be deemed always to have been capable of conveying property vested in them to any one or more of themselves in like manner as they could have conveyed the property to a third party, but, if the persons in whose favour the conveyance is made are, by reason of any

fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the conveyance is liable to be set aside.

43. (1) Joint tenancy of corporation and an individual — A corporation is and has been capable of acquiring and holding real or personal property in joint tenancy in the same manner as if it were an individual, and, where a corporation and an individual, or two or more corporations, became or become entitled to any such property under circumstances or by virtue of any instrument that would, if the corporation had been an individual, have created a joint tenancy, they are and have been entitled to the property as joint tenants, but the acquisition and holding of property by a corporation in joint tenancy has been and is subject to the like conditions and restrictions as attach to the acquisition and holding of property by a corporation in severalty.

(2) Devolution on dissolution of corporate joint tenant — Where a corporation is joint tenant of property and the corporation dissolves, the property devolves on the other joint tenant.

44. Effect of reservation of right of way or other easement — Where by the terms of a conveyance of land a right of way or easement is reserved or excepted from the land thereby transferred or charged, such reservation or exception is effectual and shall be deemed always to have been effectual to vest the right of way or easement in the transferor or chargor of the land notwithstanding that the transferee or chargee does not execute the instrument.

45. Capacity of posthumous children to take in remainder — Where an estate is, by a marriage or other settlement, limited in remainder to, or to the use of, the first or other son or sons of the body of a person lawfully begotten, with any remainder over to, or to the use of, any other person or in remainder to, or to the use of, a daughter lawfully begotten, with any remainder to any other person, any son or daughter of such person lawfully begotten or to be begotten who is born after the decease of his or her father shall, by virtue of such settlement, take such estate so limited to the first and other son or daughter in the same manner as if born in the lifetime of his or her father, although there may be no estate limited to trustees, after the decease of the father, to preserve the contingent remainder to such afterborn son or daughter, until he or she come *in esse*, or is born, to take the same.

46. Life estates when death of presumed — If a person for whose life an estate is granted remains out of Ontario or absents himself or herself therefrom for the space of seven years together so that it cannot be ascertained whether he or she is alive or dead and no sufficient proof is made of the life of such person in any action commenced for recovery of such estate by the lessor or reversioner, the person upon whose life such estate depended shall be accounted as naturally dead, and in every action brought for the recovery of the estate by the lessor or reversioner or his or her heirs or assigns, judgment shall be given accordingly.

47. Right of tenant when life tenant proved to be living — If a person is evicted out of land by virtue of section 46, and if afterwards the person upon whose life such estate depends returns to Ontario, or in any action to be brought for recovery of the same, is shown to be living or to have been living at the time of the eviction, the tenant or lessee who was ousted or his or her executors, administrators or assigns, may re-enter, repossess, have, hold and enjoy the land in his or her former estate, for and during the life, or so long a term as the

person upon whose life the estate depends is living, and also shall, upon action to be brought by him or her against the lessor, reversioner, tenant in possession or other person, who, since the time of the eviction, received the profits of the land, recover for damages the full profits thereof, with lawful interest for, and from, the time that he or she was ousted and kept or held out of the land by such lessor, reversioner, tenant in possession or other person, whether the person upon whose life such estate depends is living or dead at the time of bringing the action.

48. (1) Order for production of person at instance of reversioner, etc. — The Superior Court of Justice may, on the application of a person who has a claim or demand in, or to, any remainder, reversion, or expectancy, in, or to, any estate in land, after the death of a person within age, or any other person whomsoever, upon affidavit made by the person so claiming such estate of his or her title, and that he or she has cause to believe that such minor or other person is dead, and that his or her death is concealed by the guardian, trustee or other person, which application may be made once a year if the person aggrieved thinks fit, order that such guardian, trustee or other person concealing, or suspected to conceal, such person, do, at such time and place as the court directs, on personal or other due service of such order, produce and show to such person and persons, not exceeding two, as shall in such order be named by the party prosecuting such order, such minor or other person.

(2) Order for production of person before commissioner — If such guardian, trustee or other person refuses or neglects to produce or show such minor or other person on whose life any such estate depends according to the directions of the order, the court is hereby authorized and required to order such guardian, trustee or other person to produce such minor or other person concealed, in the court or otherwise before commissioners to be appointed by the court at such time and place as the court directs, two of which commissioners shall be nominated by the party prosecuting such order, at the party's costs and charges.

(3) Presumption on failure to produce — If such guardian, trustee or other person refuses or neglects to produce such minor or other person so concealed, in court or before such commissioners, whereof return shall be made by such commissioners and filed in an office of the Superior Court of Justice, in either, or any, of such cases, such minor or other person shall be taken to be dead, and it is lawful for any person claiming any right, title, or interest, in remainder or reversion, or otherwise, after the death of such minor or other person to enter upon such land as if such minor or other person were actually dead.

2006, c. 19, Sched. C, s. 1(1)

49. Where person required to be produced is out of Ontario — If it appears to the court by affidavit that such minor or other person is, or lately was, at some certain place out of Ontario in the affidavit mentioned, the party prosecuting such order, at the party's costs and charges, may send over one or both of the persons appointed by the order to view such minor or other person, and if such guardian, trustee or other person, concealing, or suspected to conceal, such person, refuses or neglects to produce, or procure to be produced to such person or persons a personal view of such minor or other person, then such person or persons shall make a true return of such refusal or neglect to the court, which shall be filed in an office of the Superior Court of Justice and thereupon such minor or other person shall be taken to be dead, and any person claiming any right, title or interest in remainder, reversion or otherwise, after the death of such minor or other person, may enter upon such land as if such minor or other person were actually dead.

2006, c. 19, Sched. C, s. 1(1)

50. When it appears that person required to be produced was alive — If it afterwards appears, upon proof in an action to be brought, that such minor or other person was alive at the time such order was made, such minor, guardian, trustee or other person having any estate or interest determinable upon such life may re-enter upon the land and may maintain an action against those who, since the order, received the profits thereof, or their executors or administrators, and recover full damages for the profits of the same received from the time that such minor or other person having an estate or interest determinable upon such life was ousted of the possession of such land.

51. When it appears that guardian, etc., cannot produce person who is alive — If any such guardian, trustee or other person holding or having any estate or interest determinable upon the life of any other person shows to the satisfaction of the court that they have used their utmost endeavour to procure such minor or other person on whose life such estate or interest depends to appear in court or elsewhere according to the order, and that they cannot procure or compel such appearance, and that such minor or other person is living or was living at the time such return was made and filed, the court may order that such person may continue in the possession of such estate and receive the rents and profits thereof during the minority of such minor and the life of any other person on whose life such estate or interest next depends as fully as they might have done if this section and sections 48, 49 and 50 had not been enacted.

52. Guardians, trustees, etc., holding over without consent of remainderman, etc., deemed trespassers — Every person having an estate or interest in land determinable upon a life and the guardian or trustee for a minor having such an estate who, after the determination of such particular estate or interest, without the express consent of the person who is next and immediately entitled upon and after the determination of such particular estate or interest, holds over and continues in possession of any land, shall be deemed a trespasser, and every person entitled to any such land upon and after the determination of such particular estate or interest may recover in damages against every such person so holding over the full value of the profits received during such wrongful possession.

53. (1) Assignments of debts and choses in action — Any absolute assignment made on or after the 31st day of December, 1897, by writing under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal chose in action of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action is effectual in law, subject to all equities that would have been entitled to priority over the right of the assignee if this section had not been enacted, to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same without the concurrence of the assignor.

(2) Where several claimants under assignment — In the case of an assignment of a debt or other chose in action, if the debtor, trustee or other person liable in respect of the debt or chose in action has had notice that such assignment is disputed by the assignor or any one claiming under the assignor, or of any other opposing or conflicting claims to such debt or chose in action, the debtor, trustee or other person may call upon the several persons making claim thereto to interplead concerning the same, or may pay the same into the Superior Court of Justice under and in conformity with the provisions of law for the relief of trustees.

2006, c. 19, Sched. C, s. 1(1)

54. (1) Bonds and debentures of corporations — The bonds or debentures of a corporation made payable to bearer, or to a person named therein or bearer, may be transferred by delivery, and if payable to a person or order, after general endorsement thereof by such person, are transferable by delivery.

(2) Rights of holder — Any such transfer vests the property in the bond or debenture in the holder thereof and enables the holder to maintain an action thereon in the holder's own name.

55. Auctions of estates when sale deemed without reserve — Unless in the particulars or conditions of sale by auction of land it is stated that the land will be sold subject to a reserved price or to a right of the seller to bid, the sale shall be deemed to be without reserve.

56. Prohibition against seller bidding — Upon a sale of land by auction, without reserve, it is not lawful for a seller or for a puffer to bid at the sale, or for the auctioneer to take, knowingly, any bidding from the seller or from a puffer.

57. When seller may bid — Upon a sale of land by auction, subject to a right of the seller to bid, it is lawful for the seller or any one puffer to bid at the auction in such manner as the seller thinks proper.

58. Seller not authorized to purchase — Nothing in sections 55, 56 and 57 authorizes a seller to become the purchaser at the sale.

59. Liability of vendor or mortgagor for fraudulent concealment of deeds, etc., or falsifying pedigree — If a seller or mortgagor of property or the solicitor or agent of either conceals any settlement, deed, will or other instrument material to the title, or any encumbrance, from the purchaser or mortgagee, or falsifies any pedigree upon which the title depends or may depend, in order to induce the acceptance of the title offered or produced, with intent to defraud, such seller, mortgagor, solicitor or agent, irrespective of any criminal liability, is liable at the suit of the purchaser or mortgagee or those claiming under either of them for any loss sustained by any of them in consequence of the settlement, deed, will or other instrument or encumbrance so concealed, or of any claim made by any person under such pedigree whose right was so concealed by the falsification of such pedigree, and, in the case of land, in estimating such damages where the property is recovered from such purchaser or mortgagee or from those claiming under either of them, regard shall be had to any expenditure by any of them, in improvements on the land.

60. Orders of court, effect — An order of the court under any statutory or other jurisdiction shall not, as against a purchaser, whether with or without notice, be invalidated on the ground of want of jurisdiction or of want of any concurrence, consent, notice or service.

61. (1) Restrictive covenants, modification or discharge of — Where there is annexed to land a condition or covenant that the land or a specified part of it is not to be built on or is to be or not to be used in a particular manner, or any other condition or covenant running with or capable of being legally annexed to land, any such condition or covenant may be modified or discharged by order of the Superior Court of Justice.

(2) Appeal — An appeal lies to the Divisional Court from a decision under this section.

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(3) Exception — Nothing in this section applies to building restrictions imposed by a by-law passed under the *Municipal Act, 2001*, the *City of Toronto Act, 2006* or the *Planning Act*.

(4) Same — Nothing in this section applies to covenants and easements,

- (a) established under the *Agricultural Research Institute of Ontario Act*;
- (b) entered into or granted under the *Conservation Land Act*; or
- (c) entered into under clause 10(1)(c) or section 37 of the *Ontario Heritage Act*.

1994, c. 27, s. 6; 2002, c. 17, Sched. F, s. 1; 2006, c. 19, Sched. C, s. 1(1); 2006, c. 23, s. 31; 2006, c. 32, Sched. C, s. 10; 2009, c. 33, Sched. 11, s. 3

CROWN ADMINISTRATION OF ESTATES ACT

R.S.O. 1990, c. C.47, as am. S.O. 1997, c. 23, s. 6; 2001, c. 9, Sched. B, s. 7; 2002, c. 18, Sched. A, s. 5; 2009, c. 33, Sched. 2, s. 22; 2015, c. 38, Sched. 4, s. 27.

1. (1) PGT may administer certain estates — The Superior Court of Justice may, on the Public Guardian and Trustee's application, grant to the Public Guardian and Trustee letters of administration or letters probate with respect to a person's estate, if the following conditions are satisfied:

1. The person dies in Ontario, or is a resident of Ontario but dies elsewhere.
2. The person dies intestate as to some or all of his or her property, or dies leaving a will without naming an executor or estate trustee who is willing and able to administer the estate.
3. There are no known next of kin who are residents of Ontario and are willing and able to administer the estate, or the only known next of kin are minors and there is no other near relative who is a resident of Ontario and is willing and able to administer the estate or to nominate another person to do so.

(2) Same — When letters of administration or letters probate are granted under subsection (1), the Public Guardian and Trustee shall administer the person's estate for the use and benefit of all the lawful heirs and, if there are no lawful heirs, for the use and benefit of the Crown.

2001, c. 9, Sched. B, s. 7(3), item 1, 7(4), item 1; 2002, c. 18, Sched. A, s. 5(1)

2. (1) Power to safeguard estate, etc. — While the Public Guardian and Trustee is conducting an investigation to determine whether the conditions set out in subsection 1(1) are satisfied, and until letters of administration or letters probate are granted, the Public Guardian and Trustee may,

- (a) arrange the person's funeral;
- (b) make an inventory of, take possession of, safeguard and dispose of the person's property; and
- (c) exercise all the powers of a personal representative with respect to the person's property.

(2) Saving — For greater certainty, subsection (1) does not affect the obligation of the Public Guardian and Trustee to apply for letters of administration or letters probate.

1997, c. 23, s. 6; 2001, c. 9, Sched. B, s. 7(4), item 2; 2002, c. 18, Sched. A, s. 5(1)

2.1 (1) Access to and use of information — The Public Guardian and Trustee may collect, use, retain and disclose information related to an estate, including personal information, for the following purposes:

1. Determining whether subsection 1(1) applies.
2. Valuing the estate assets for the purpose of an application for letters of administration or letters probate.

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3. Taking any action on behalf of the estate under subsection 2(1) before letters of administration or letters probate are granted.
4. Administering the estate.

(2) Identifying and locating persons and assets — Without limiting the generality of subsection (1), the Public Guardian and Trustee is authorized to,

- (a) identify and locate,
 - (i) persons who may have an interest in the estate, and
 - (ii) other persons, but only for the purpose of locating persons who may have an interest in the estate; and
- (b) identify the estate's assets.

(3) Institution, mandatory disclosure — Every institution shall disclose to the Public Guardian and Trustee information requested under subsection (1).

(4) Exception, Ministry of Health and Long-Term Care and related institutions — Subsection (3) does not apply to the Ministry of Health and Long-Term Care or to any other institution of which the Minister of Health and Long-Term Care is the head.

(5) Saving — For greater certainty, subsection (4) does not affect the ability to disclose or transmit information under section 35 of the *Mental Health Act*.

(6) Others, optional disclosure — A person other than an institution may disclose to the Public Guardian and Trustee information requested under subsection (1).

(7) Application of subs. (6) — Subsection (6) also applies to unincorporated associations and any other public and private entities.

(8) Definitions — In this section,

“**head**” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;

“**institution**” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;

“**personal information**” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*.

2002, c. 18, Sched. A, s. 5(1)

2.2 (1) Conflict — Section 2.1 applies despite anything in the *Freedom of Information and Protection of Privacy Act* or in any other Act or regulation.

(2) Same — Subsection 39(2) of the *Freedom of Information and Protection of Privacy Act* does not apply when information is collected under section 2.1.

2002, c. 18, Sched. A, s. 5(1)

3. (1) Notice to Public Guardian and Trustee — Notice of every application for letters of administration of the estate of a person who had died in Ontario intestate and without leaving any known adult next of kin living in Ontario shall be given by the local registrar of the Superior Court of Justice to the Public Guardian and Trustee before the issue of letters of administration to any other person, and the Public Guardian and Trustee may, within thirty

days after the receipt of the notice, apply for a grant of letters of administration as provided in subsection 1(1).

(2) Letters of administration within 30 days — Where the Public Guardian and Trustee consents, letters of administration may issue to the applicant without waiting for the expiry of thirty days.

2001, c. 9, Sched. B, s. 7(3), item 2, 7(4), item 3; 2002, c. 18, Sched. A, s. 5(2)

4. Security dispensed with — It is not necessary for the Public Guardian and Trustee to give security for the due administration of the estate, but the Public Guardian and Trustee has all the rights and powers of and is subject to all the liabilities and duties imposed on an administrator.

2001, c. 9, Sched. B, s. 7(3), item 3

5. (1) Transfer, assignment or discharge of interest in real property — As administrator appointed under this Act, the Public Guardian and Trustee may transfer, assign or discharge all or part of any interest in real property to which the intestate person was entitled at his or her death.

(2) Effect of conveyance — The Public Guardian and Trustee's conveyance under subsection (1) has the same effect as if the intestate person,

- (a) had been alive and unmarried on the day it was executed; and
- (b) had executed the conveyance himself or herself.

1997, c. 23, s. 6(2)

5.1 Compensation agreements — (1) Definitions — In this section,

“compensation” means compensation for services provided under a compensation agreement or the payment of fees and expenses relating to those services, but does not include any amounts that are payable for the provision of legal services within the meaning of the *Law Society Act*;

“compensation agreement” means an agreement with an heir of an estate to which this section applies that provides for compensation, directly or indirectly, to one or more persons or entities on the location, recovery or distribution of any interest in the estate to which the heir is or may be entitled, but does not include an agreement to provide legal services, within the meaning of the *Law Society Act*, to the heir in respect of the estate;

“heir” includes,

- (a) a person purporting to be an heir, and
- (b) a personal representative or beneficiary of an heir.

(2) Application of section — This section applies in respect of an estate if the Public Guardian and Trustee,

- (a) is conducting an investigation respecting the estate to determine whether the conditions set out in subsection 1(1) are satisfied;
- (b) has applied for letters of administration or letters probate with respect to the estate; or
- (c) has been granted letters of administration or letters probate with respect to the estate.

(3) Compensation agreement to be given to PGT — A person who wishes to rely on a compensation agreement for the purposes of this Act shall give the original agreement to the Public Guardian and Trustee.

(4) Translation — A compensation agreement that is written in a language other than English or French shall be accompanied by a certified translation into English or French.

(5) Requirements — A compensation agreement is not enforceable unless,

- (a) it is typed in 10 point or larger font;
- (b) it is signed by the heir, as well as by a person, other than a representative or agent of either party to the compensation agreement, who witnessed the signing by the heir;
- (c) it sets out,
 - (i) the legal name and residential address of the heir and of the witness,
 - (ii) the date on which and the place where the compensation agreement was entered into,
 - (iii) the name of the estate and the estimated value of the interest in the estate to which the heir is or may be entitled, and
 - (iv) the services to be provided to or on behalf of the heir under the compensation agreement;
- (d) it contains the statements referred to in subsection (6);
- (e) it provides for compensation of not more than 10 per cent of the value of the interest in the estate to which the heir is or may be entitled;
- (f) it provides that, within 60 days after the day on which a payment is made by the Public Guardian and Trustee of all or part of the interest in the estate to which the heir was determined to be entitled, an accounting acceptable to the Public Guardian and Trustee and containing the information and documents referred to in subsection (9) will be given to the Public Guardian and Trustee and to the heir; and
- (g) it meets any other requirements prescribed by regulation made under this Act.

(6) Statements — For the purposes of clause (5)(d), a compensation agreement shall include the following statements, in a form acceptable to the Public Guardian and Trustee:

1. That the property in respect of which the compensation agreement was entered into is an interest in an estate.
2. That the Public Guardian and Trustee is administering or considering administering the estate named in the compensation agreement.
3. That the heir does not need to sign the compensation agreement in order to claim his or her interest in the estate from the Public Guardian and Trustee.
4. That the heir may contact the Public Guardian and Trustee directly regarding the estate or the heir's interest in it.
5. That the heir may wish to obtain independent legal advice before signing the compensation agreement.
6. That the heir has not entered into any other compensation agreement or any other arrangement for compensation with respect to the estate or any interest in it.
7. That the estate shall be distributed only to lawful heirs, as determined by Ontario law.

8. Any other statement that, on the date on which the compensation agreement was entered into, was required by the Public Guardian and Trustee to be included in a compensation agreement.

(7) Same, contact information — The statement referred to in paragraph 4 of subsection (6) shall include the Public Guardian and Trustee's current contact information, including a full address and telephone and fax numbers.

(8) Same, additional statements — A statement required to be included in a compensation agreement under paragraph 8 of subsection (6) shall be published by the Public Guardian and Trustee on the website of the Ministry of the Attorney General.

(9) Accounting — An accounting shall include,

- (a) the value of the interest in the estate to which the heir was determined by the Public Guardian and Trustee to be entitled;
- (b) the compensation paid under the compensation agreement from the payment of the interest in the estate by the Public Guardian and Trustee, for each person to whom it was paid;
- (c) the amount distributed to the heir from the payment of the interest in the estate by the Public Guardian and Trustee; and
- (d) proof of every payment and distribution made under the compensation agreement.

(10) Same, additional documents — If the Public Guardian and Trustee determines that an accounting is not acceptable, the Public Guardian and Trustee may require such additional documents as he or she may specify to be given to the Public Guardian and Trustee and to the heir, within such time as the Public Guardian and Trustee may specify.

(11) Translation — If an accounting or the documents given under subsection (10) are written in a language other than English or French, the copy of the accounting or documents given to the Public Guardian and Trustee shall be accompanied by a certified translation into English or French.

(12) Copies to heir — The Public Guardian and Trustee may give to an heir who is a party to a compensation agreement that is in the possession of the Public Guardian and Trustee,

- (a) a copy of the compensation agreement; and
- (b) a copy of an accounting and of any additional documents given under subsection (10) in relation to the accounting.

(13) Direct payment to heir — Despite the existence of a compensation agreement or a power of attorney or direction for payment relating to the compensation agreement, the Public Guardian and Trustee may pay all or any part of the interest in the estate to which the heir was determined by the Public Guardian and Trustee to be entitled directly to the heir, if,

- (a) the compensation agreement is not given to the Public Guardian and Trustee as required by subsection (3), together with a translation, if one is required by subsection (4);
- (b) the compensation agreement does not meet the requirements for enforceability set out in subsection (5);
- (c) the Public Guardian and Trustee receives information indicating that a term or condition set out in a compensation agreement has been breached; or

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(d) additional documents required under subsection (10) to be given are not given to the Public Guardian and Trustee, together with a translation, if one is required by subsection (11), within the time specified by the Public Guardian and Trustee.

(14) Application to court — The Public Guardian and Trustee or a party to a compensation agreement may apply to the Superior Court of Justice for a determination of any question or dispute arising from the operation of this section in relation to the compensation agreement, and the court may make such orders or give such directions as it considers just.

(15) Rights unaffected — Nothing in this section prevents an heir from asserting at any time that the compensation payable under a compensation agreement to which he or she is party is excessive or unjust.

(16) Transition — This section does not apply in respect of a compensation agreement unless it was entered into on or after the day on which section 22 of Schedule 2 to the *Good Government Act, 2009* comes into force.

(17) Regulations — The Attorney General may make regulations prescribing additional requirements for the purposes of clause (5)(g).

2009, c. 33, Sched. 2, s. 22

6. (1) PGT's right to act until grant revoked — If, after the Public Guardian and Trustee is appointed administrator under this Act, it is alleged or ascertained that paragraph 2 or 3 of subsection 1(1) did not in fact apply, the Public Guardian and Trustee retains all the powers of an administrator until the Superior Court of Justice revokes the grant and appoints another person to deal with the estate.

(2) Right to complete sales — Even after the grant has been revoked and another person has been appointed to deal with the estate, the Public Guardian and Trustee retains power to execute a transfer of real property under an agreement made before the revocation.

1997, c. 23, s. 6(2); 2001, c. 9, Sched. B, s. 7(4), item 4; 2002, c. 18, Sched. A, s. 5(3)

7. Inquiry as to the rights of Her Majesty — Where administration is granted under this Act, the Public Guardian and Trustee may apply to the Superior Court of Justice for an order for the making of the inquiries that are necessary to determine whether or not Her Majesty is entitled to any portion of the estate of the deceased by reason of the deceased having died intestate and without heirs or next of kin or otherwise, and any judgment pronounced upon the inquiry is, unless reversed on appeal or varied upon a substantive application to the court, final and conclusive.

2001, c. 9, Sched. B, s. 7(3), item 4, 7(4), item 5

8. Recovery by Crown of real estate of persons dying intestate and without heirs — Where a person dies in possession of or entitled to real estate in Ontario intestate as to that real estate without any known heirs, the Public Guardian and Trustee without obtaining letters of administration may take possession of the real estate, and if necessary may bring an action, either in his or her own name, on behalf of Her Majesty, or in the name of Her Majesty, to recover possession of the real estate and is entitled to judgment and to recover possession, unless the person claiming adversely shows that the deceased did not die intestate as to the real estate, or that he or she left heirs, or that the person claiming adversely or some other person is entitled to the real estate.

2001, c. 9, Sched. B, s. 7(3), item 5

9. Application by Public Guardian and Trustee to compel an account by administrator in certain cases — Where a person has died intestate in Ontario and administration has been granted to a person not one of the next of kin and it is doubtful whether the intestate left any next of kin surviving him or her or there are no known next of kin resident in Ontario, the Public Guardian and Trustee may apply to the Superior Court of Justice for an order requiring the administrator to account for the administrator's dealings with the estate, and may question in the proceedings the validity of any release or settlement with any alleged next of kin, and the Superior Court of Justice may revoke the administration and grant administration to the Public Guardian and Trustee.

2001, c. 9, Sched. B, s. 7(3), item 6, 7(4), item 6

10. Disposition of money — The Public Guardian and Trustee shall invest all money administered under this Act in accordance with the *Public Guardian and Trustee Act* and the regulations made under that Act.

2001, c. 9, Sched. B, s. 7(1)

11. (1) Unclaimed money — Money administered under this Act that has been unclaimed for 10 years after the intestate person's death shall be paid into the Consolidated Revenue Fund.

(2) [Repealed 2015, c. 38, Sched. 4, s. 27(1).]

2001, c. 9, Sched. B, s. 7(1); 2015, c. 38, Sched. 4, s. 27(1)

12. Remedy of persons having claims upon the estate — Any person claiming to be entitled to any such estate or to any interest therein or to any part of the proceeds thereof may apply to the Superior Court of Justice for an order declaring the person's rights with respect thereto, and the court may direct the inquiries that are necessary to determine the matter, and may finally adjudicate hereon, but no application under this section shall be entertained unless security for costs is given by the applicant if the Public Guardian and Trustee demands security.

2001, c. 9, Sched. B, s. 7(3), item 7, 7(4), item 7

13. PGT's fees and expenses — The Public Guardian and Trustee may deduct from the money received on account of an estate,

(a) all expenses incurred before taking out letters of administration, including expenses incurred in making inquiries in respect of the estate;

(b) all expenses otherwise incurred in respect of the estate; and

(c) any expenses allowed under the *Public Guardian and Trustee Act* and any fees allowed under that Act and approved by the Attorney General under subsection 8(2) of that Act.

2001, c. 9, Sched. B, s. 7(2)

14. (1) Distribution of assets by Public Guardian and Trustee — After having given the notice provided for by the *Trustee Act* and although the 10 years limited by subsection 11(1) have not elapsed, the Public Guardian and Trustee may pay any money remaining unclaimed in his or her hands into the Consolidated Revenue Fund, or may pay the money or any part thereof, or assign any personal property remaining in his or her hands, in accordance with this Act or the *Escheats Act, 2015*.

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(2) Non-liability of Her Majesty and the Province — No claim shall be maintained against Her Majesty or the Province in respect of any money or personal property paid over or assigned to any person under the *Escheats Act, 2015* or under this Act, but this does not prejudice the right of a creditor or claimant to follow the money, property or proceeds into the hands of the person who has received it.

2001, c. 9, Sched. B, s. 7(3), item 8; 2002, c. 18, Sched. A, s. 5(4); 2015, c. 38, Sched. 4, s. 27(2), (3)

15. (1) Legal claim — If the Public Guardian and Trustee pays money into the Consolidated Revenue Fund under section 11 or subsection 14(1) and a person later establishes, to the satisfaction of the Public Guardian and Trustee, a legal claim to all or part of the money, the person is entitled to receive it.

(2) Interest payable, limitation — No interest is payable to a claimant on money mentioned in subsection (1) for any period of time after the earlier of the following:

1. 10 years after the death of the intestate person.
2. The day the money is paid into the Consolidated Revenue Fund.

(3) Recovery from Consolidated Revenue Fund — If a person has established a legal claim to money under this section to the satisfaction of the Public Guardian and Trustee and the money has been paid into the Consolidated Revenue Fund, the money may be paid out of the Consolidated Revenue Fund to the Public Guardian and Trustee to be administered in accordance with this Act.

(4) Same — This section applies with respect to any claim made on or after the day the *Escheats Act, 2015* comes into force, regardless of when the money was paid into the Consolidated Revenue Fund.

2015, c. 38, Sched. 4, s. 27(4)

DECLARATIONS OF DEATH ACT, 2002

S.O. 2002, c. 14, Sched., as am. S.O. 2005, c. 5, s. 19.

1. Definition — In this Act,

“interested person” means any person who is or would be affected by an order declaring that an individual is dead, including,

- (a) a person named as executor or estate trustee in the individual’s will,
- (b) a person who may be entitled to apply to be appointed administrator of the individual’s estate on intestacy,
- (c) the individual’s spouse,
- (d) the individual’s next of kin,
- (e) the individual’s guardian or attorney for personal care or property under the *Substitute Decisions Act, 1992*,
- (f) a person who is in possession of property owned by the individual,
- (g) if there is a contract of life insurance or group insurance insuring the individual’s life,
 - (i) the insurer, and
 - (ii) any potential claimant under the contract, and
- (h) if the individual has been declared an absentee under the *Absentees Act*, the committee of his or her estate.

“spouse” means,

- (a) a spouse as defined in section 1 of the *Family Law Act*, or
- (b) either of two persons who live together in a conjugal relationship outside marriage.

(“conjoint”)

2005, c. 5, s. 19

2. (1) Order re declaration of death — An interested person may apply to the Superior Court of Justice, with notice to any other interested persons of whom the applicant is aware, for an order under subsection (3).

(2) Notice — Notice under subsection (1),

- (a) if given by or to an insurer, shall be given at least 30 days before the application to court is made;
- (b) if not given by or to an insurer, shall be given as provided by the rules of court.

(3) Power of court — The court may make an order declaring that an individual has died if the court is satisfied that either subsection (4) or (5) applies.

(4) Disappearance in circumstances of peril — This subsection applies if,

- (a) the individual has disappeared in circumstances of peril;

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- (b) the applicant has not heard of or from the individual since the disappearance;
- (c) to the applicant's knowledge, after making reasonable inquiries, no other person has heard of or from the individual since the disappearance;
- (d) the applicant has no reason to believe that the individual is alive; and
- (e) there is sufficient evidence to find that the individual is dead.

(5) Seven-year absence — This subsection applies if,

- (a) the individual has been absent for at least seven years;
- (b) the applicant has not heard of or from the individual during the seven-year period;
- (c) to the applicant's knowledge, after making reasonable inquiries, no other person has heard of or from the individual during the seven-year period;
- (d) the applicant has no reason to believe that the individual is alive; and
- (e) there is sufficient evidence to find that the individual is dead.

(6) Scope of order — The declaration of death applies for all purposes unless the court,

- (a) determines that it should apply only for certain purposes; and
- (b) specifies those purposes in the order.

(7) Same — The declaration of death is not binding on an interested person who did not have notice of the application.

(8) Date of death — The order shall state the date of death, which shall be,

- (a) the date upon which the evidence suggests the person died, if subsection (4) applies; or
- (b) the date of the application, if subsection (5) applies.

(9) Same — The order may state a date of death other than that required by subsection (8) if the court is of the opinion that it would be just to do so in the circumstances and that it would not cause inconvenience or hardship to any of the interested persons.

(10) Order as evidence — Despite any other Act, the order or a copy certified by the court is proof of the individual's death for the purposes for which it applies under subsection (6).

3. Order under Absentees Act — If, on an application under section 2, the court is not satisfied that there is sufficient evidence to justify an order declaring an individual to be dead, the court may make an order under the *Absentees Act*.

4. Motion to amend, confirm or revoke order — **(1)** An interested person may, with notice to any other interested persons of whom the person making the motion is aware, move for an order amending, confirming or revoking an order made under section 2 if the person making the motion did not have notice of the application to make the order.

(2) Same — An interested person may, with leave of the court and with notice to any other interested persons of whom the person making the motion is aware, move for an order amending, confirming or revoking an order made under section 2 if new evidence or a change in circumstances justify reconsidering the matter.

(3) Amendment re scope — An interested person may, with leave of the court and with notice to any other interested persons of whom the person making the motion is aware, move for an order modifying the scope of an order made under section 2.

(4) Motion re order under this section — An interested person may also make a motion under subsection (1), (2) or (3) in respect of an order previously made under this section.

(5) Notice — Notice under subsection (1), (2) or (3),

(a) if given by or to an insurer, shall be given at least 30 days before the motion is made;

(b) if not given by or to an insurer, shall be given as provided by the rules of court.

(6) Power of court — The court may make an order confirming, amending or revoking the order and subsections 2(3), (4), (5), (6), (7), (8), (9) and (10) and section 3 apply, with necessary modifications, to an order made under this section.

(7) Preservation or return of property — If the court amends or revokes the order, it may also make any order it considers appropriate for the preservation or return of property, including an order under subsection 6(3).

(8) References to s. 2 orders — A reference in another section of this Act or in any other Act to an order made under section 2 shall be deemed to include an order made under this section.

5. Duty of personal representative — If an order that applies for the purpose of dealing with an individual's estate has been made under section 2 but the individual's personal representative has reasonable grounds to believe that the individual is not in fact dead, the personal representative shall take no further steps to administer the estate unless the death is confirmed by an order made under section 4.

6. Effect of distribution if individual in fact alive — **(1)** Subject to subsections (2), (3), (5) and (6), if an order that applies for the purpose of dealing with an individual's estate has been made under section 2 and all or part of the estate has been distributed accordingly, the distribution is final even if the individual is afterwards discovered to be alive, and the individual is not entitled to recover the distributed property.

(2) Exception — Subsection (1) does not apply in respect of a distribution that is made when section 5 applies.

(3) Power of court — In the circumstances described in subsection (1), the court may, if it is of the opinion that it would be just to do so, make an order requiring a person to whom property was distributed to reconvey all or part of it to the individual or to pay a specified amount to the individual.

(4) Matters to be considered — In deciding whether to make an order under subsection (3), the court shall consider all the circumstances, including any inconvenience or hardship to the person subject to the order.

(5) Effect of reconveyance — Property that is reconveyed under an order made under subsection (3) shall be deemed not to have been distributed.

(6) Same, payment — Money that is paid under an order made under subsection (3) shall be deemed to have been the individual's property before the distribution.

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(7) Undistributed property — Property that has not been distributed when the individual is discovered to be alive,

- (a) remains the individual's property;
- (b) is held in trust under the *Trustee Act*; and
- (c) shall be returned as the court directs.

7. Payment, distribution under order discharges duty — A payment of money or distribution of property made pursuant to an order made under this Act discharges the person who made the payment or distribution to the extent of the amount paid or the value of the property distributed.

8. Appeals — Any interested person may appeal an order made under this Act to the Divisional Court.

9. Courts of Justice Act amended — Paragraph 1 of the Schedule to section 21.8 of the *Courts of Justice Act*, as enacted by the Statutes of Ontario, 1994, chapter 12, section 8 and amended by 1996, chapter 31, section 65 and 2000, chapter 33, section 20, is amended by striking out “*Marriage Act*, sections 6 and 9” and substituting “*Marriage Act*, section 6”.

10. Insurance Act amended — Section 203 of the *Insurance Act* is amended by adding the following subsections:

- (2) Order under *Declarations of Death Act, 2002* — Despite sections 208 and 209, an order made under the *Declarations of Death Act, 2002* that declares that an individual has died is sufficient evidence of death for the purpose of clause (1)(a) if the insurer had notice of the application.
- (3) Exception — Subsection (2) does not apply if the order is limited, under subsection 2(6) of the *Declarations of Death Act, 2002*, to specified purposes other than the payment of insurance money.

11. Marriage Act amended — Section 9 of the *Marriage Act*, as amended by the Statutes of Ontario, 2001, chapter 9, Schedule D, section 10, is repealed and the following substituted:

- 9. Order under *Declarations of Death Act, 2002* — (1) If an order has been made under the *Declarations of Death Act, 2002* declaring that a married person's spouse has died, the married person may, subject to the provisions of this Act, obtain a licence or be married under the authority of the publication of banns upon depositing a certified copy of the order with the person issuing the licence or solemnizing the marriage together with an affidavit in the required form.
- (2) Exception — Subsection (1) does not apply if the order is limited, under subsection 2(6) of the *Declarations of Death Act, 2002*, to specified purposes other than remarriage.

12. Registry Act amended — Subclause 53(1)(a)(iii) of the *Registry Act*, as re-enacted by the Statutes of Ontario, 1999, chapter 12, Schedule F, section 37 and amended by 2000, chapter 26, Schedule B, section 17, is amended by adding the following paragraphs:

4. An order made under the *Declarations of Death Act, 2002* that declares that the testator has died and that is not limited under subsection 2(6) of that Act to specified purposes other than dealing with the testator's estate.
5. A certified or notarial copy of an order described in paragraph 4;

13. Commencement — The Act set out in this Schedule comes into force on the day the *Emergency Readiness Act, 2002* receives Royal Assent.

14. Short title — The short title of the Act set out in this Schedule is the *Declarations of Death Act, 2002*.

ESCHEATS ACT, 2015

S.O. 2015, c. 38, Sched. 4, as am. S.O. 2019, c. 7, Sched. 17, s. 70; 2020, c. 36, Sched. 7, s. 309 [Not in force at date of publication.].

1. Interpretation and application — (1) Definitions — In this Act,

“charitable corporation” means a corporation that is incorporated for charitable purposes;

“charitable property” means,

- (a) any property held by a charitable corporation, and
- (b) any property held for charitable purposes by a corporation that is not a charitable corporation;

“charitable purposes” means,

- (a) the relief of poverty,
- (b) education,
- (c) the advancement of religion, and
- (d) any other purpose that is beneficial to the community;

“Minister” means the Attorney General or any other member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*;

“prescribed” means prescribed by the regulations;

“prior owner”, when used in reference to property, means the person who owned or was otherwise seised of or entitled to the property immediately before the property became property of which the Public Guardian and Trustee may take possession under section 2;

“regulations” means the regulations made under this Act.

(2) Prior owner — For greater certainty, the prior owner of property is,

- (a) in the circumstances described in paragraph 1 of subsection 2(1), the deceased individual; and
- (b) in the circumstances described in paragraph 2 of subsection 2(1), the dissolved corporation.

(3) Property — In this Act, a reference to property includes,

- (a) any right to or interest in the property; and
- (b) proceeds of disposition of the property.

(4) Property of which possession may be taken — A reference in this Act to property of which the Public Guardian and Trustee may take possession under section 2 or under a paragraph of subsection 2(1) includes property meeting the description set out in section 2 or the applicable paragraph of subsection 2(1), as the case may be, that met the description before the day this Act comes into force.

(5) Property of which possession has been taken — A reference in this Act to property of which the Public Guardian and Trustee has taken possession under section 2 or under a paragraph of subsection 2(1) includes property meeting the description set out in section 2 or the applicable paragraph of subsection 2(1), as the case may be, of which the Public Guardian and Trustee took possession before the day this Act comes into force, whether or not the property was paid into the Consolidated Revenue Fund before the day this Act comes into force.

2. (1) Possession, proceedings re property — Subject to subsection (2), the Public Guardian and Trustee may, without an inquisition first being made, take possession in the name of the Crown of any property if, in the opinion of the Public Guardian and Trustee, one of the following circumstances applies:

1. The property has become the property of the Crown because an individual died,
 - i. either intestate or partially intestate, if there are no lawful heirs, or
 - ii. testate, if some or all of the heirs, bequests or devises in the will have failed and there are no lawful heirs.
2. The property has become the property of the Crown as a result of the dissolution of a corporation.
3. Neither the circumstances described in paragraph 1 nor 2 apply and the property has become the property of the Crown by escheat or as *bona vacantia*.
4. The circumstances described in paragraph 2 do not apply and the property has become the property of the Crown because it forfeited to the Crown for any cause.

(2) Exceptions — Subsection (1) does not apply in respect of the following property:

1. Forfeited property, if another Act specifically excludes the operation of this Act with respect to the property.
2. Forfeited corporate property within the meaning of the *Forfeited Corporate Property Act, 2015*.
3. Unclaimed deposits held by the Minister of Finance under section 182 of the *Credit Unions and Caisses Populaires Act, 1994*.

Proposed Amendment — 2(2) para. 3

3. Transferred unclaimed amounts held by the Financial Services Regulatory Authority under the *Credit Unions and Caisses Populaires Act, 2020*.

2020, c. 36, Sched. 7, s. 309 [Not in force at date of publication.]

4. Mining lands as defined in the *Mining Act*.
5. Mining rights, as defined in the *Mining Act*, that are severed or held separate and apart from surface rights as defined in the *Mining Act*.
6. Property subject to subsection 53(1) of the *Mining Act*.

(3) Proceedings for recovery, declaration — If possession of property described in subsection (1) is withheld, the Public Guardian and Trustee may, without an inquisition first being made, cause a proceeding to be brought for the recovery of the property or for a declaration as to ownership of or any interest in the property.

(4) Practice — Proceedings under subsection (3) shall be in all respects similar to those in other proceedings for the recovery of property or for a declaration as to ownership of or an interest in property.

3. Grant, waiver or release — (1) Application — This section applies to property of which the Public Guardian and Trustee may take possession under paragraph 2, 3 or 4 of subsection 2(1), whether or not he or she has actually done so.

(2) Power to grant etc. — Unless property to which this section applies has been paid into the Consolidated Revenue Fund, the Public Guardian and Trustee may, as he or she considers to be proper,

(a) grant all or part of the property to any person for the purpose of transferring or restoring it to a person having a legal or moral claim upon the person to whom it belonged, or of carrying into effect any disposition of it that such person may have contemplated; or

(b) waive or release any right to which the Crown has become entitled so as to vest the property, either absolutely or otherwise, in the person who would have been entitled to it but for the property becoming property to which this section applies.

(3) Same — The grant, waiver or release may be either for valuable consideration or otherwise and may be upon such terms and conditions as the Public Guardian and Trustee considers to be proper.

(4) Consent of Minister of Finance — No grant, waiver or release shall be made under this section unless the petitioner has obtained the consent of the Minister of Finance.

(5) Limitation period, forfeited property — Subject to subsection (6), no petition for a grant, waiver or release under this section shall be made after the 10th anniversary of,

(a) the day this Act comes into force, if the property becomes property to which this section applies before the day this Act comes into force; or

(b) the day on which the property becomes property to which this section applies, in any other case.

(6) Extension — Unless the property has been paid into the Consolidated Revenue Fund, the Public Guardian and Trustee may extend the applicable period set out in subsection (5) if the petitioner satisfies the Public Guardian and Trustee that there were compelling reasons not to make the petition earlier.

(7) Right to follow property — A grant, waiver or release of property under this section does not prejudice the right of a creditor or claimant to follow the property into the hands of the person who has received it.

(8) Rights of grantees — A grant under this section may be made without actual entry or taking possession of the property or inquisition being first made, and, if possession of the property is withheld, the person to whom the grant is made may institute proceedings for the recovery of the property in a court of competent jurisdiction.

4. Return of property — (1) Application — This section applies to property of which the Public Guardian and Trustee has taken possession under paragraph 2 of subsection 2(1).

(2) Return — Unless property to which this section applies has been paid into the Consolidated Revenue Fund, the Public Guardian and Trustee may, upon the application of a prior owner that has been revived, transfer the property to the prior owner under this section.

(3) Exception — Subsection (2) does not apply if the statute that provides for the prior owner's revival provides for the property to remain forfeited to and vested in the Crown.

S. 4(4)

Escheats Act, 2015

(4) Same — Subsections 3(3), (4), (5), (6) and (7) apply, with necessary modifications, in respect of a return of property under this section.

5. Moral claim, property of deceased individual — (1) Application — This section applies to property of which the Public Guardian and Trustee may take possession under paragraph 1 of subsection 2(1), whether or not he or she has actually done so.

(2) Same — For greater certainty, property to which this section applies includes property that the Public Guardian and Trustee has administered under the *Crown Administration of Estates Act*.

(3) Grant — The Lieutenant Governor in Council may by order, as it considers to be proper and subject to any terms and conditions that it considers to be proper, grant all or part of property to which this section applies to any person for the purpose of transferring or restoring it to a person having a moral claim upon the person to whom it belonged or of carrying into effect any disposition of it that such person may have contemplated.

(4) Recovery from Consolidated Revenue Fund — If the Lieutenant Governor in Council makes a grant under this section and the property to be granted is money that has previously been paid into the Consolidated Revenue Fund, the money may be paid out of the Consolidated Revenue Fund to the Public Guardian and Trustee to be dealt with in accordance with the order.

(5) Right to follow property — A grant under this section does not prejudice the right of a creditor or claimant to follow the property into the hands of the person who has received it.

6. Legal claim, property of deceased individual — (1) Application — This section applies to property of which the Public Guardian and Trustee has taken possession under paragraph 1 of subsection 2(1).

(2) Entitlement — A person establishing a legal claim to property to which this section applies, to the satisfaction of the Public Guardian and Trustee, is entitled to receive it under this section.

(3) Interest — Interest as determined under the *Public Guardian and Trustee Act* is payable only with respect to any period during which property to which this section applies was money administered by the Public Guardian and Trustee, until the earlier of the following dates:

1. 10 years after the death of the prior owner.
2. The day the money is paid into the Consolidated Revenue Fund.

(4) Recovery from the Consolidated Revenue Fund — If a person has established a legal claim to property under this section to the satisfaction of the Public Guardian and Trustee and the property is money that has previously been paid into the Consolidated Revenue Fund, the money may be paid out of the Consolidated Revenue Fund to the Public Guardian and Trustee to be dealt with in accordance with this section.

(5) Right to follow property — A transfer or assignment by the Public Guardian and Trustee under this section to a person establishing a legal claim does not prejudice the right of a creditor or claimant to follow the property into the hands of the person who has received it.

7. Charitable property — (1) Application — This section applies to charitable property of which the Public Guardian and Trustee may take possession under paragraph 2 of subsection 2(1), whether or not he or she has actually done so.

(2) Transfer or assignment — The Public Guardian and Trustee may transfer or assign all or part of charitable property to which this section applies to a charity that he or she considers to be proper.

(3) Doctrine of *cy pres* — In determining which charity the Public Guardian and Trustee considers to be proper for the purposes of subsection (2), he or she shall apply the doctrine of *cy pres*.

(4) Revival of dissolved corporation — If the prior owner of charitable property to which this section applies is revived and the property is not restored to it under the statute that provides for the revival, the Public Guardian and Trustee may transfer or assign all or part of the charitable property to the prior owner.

(5) Terms and conditions — The Public Guardian and Trustee may make a transfer or assignment under this section subject to any terms and conditions, as he or she considers to be proper.

(6) Proceeds — After transferring, assigning or discharging charitable property to which this section applies for valuable consideration under this Act, the Public Guardian and Trustee may transfer the proceeds under subsection (2) or (4).

(7) Recovery from Consolidated Revenue Fund — If the Public Guardian and Trustee pays property that is money into the Consolidated Revenue Fund and he or she later determines that it was charitable property to which this section applies, the Lieutenant Governor in Council may by order authorize the Public Guardian and Trustee to transfer an amount up to the amount that was paid into the Consolidated Revenue Fund to a charity or to a prior owner to be used for charitable purposes.

(8) Same — If the Lieutenant Governor in Council has made an order under subsection (7), the money may be paid out of the Consolidated Revenue Fund to the Public Guardian and Trustee to be dealt with in accordance with the order.

8. (1) Transfer, assignment or discharge of land — Despite any other Act or law, the Public Guardian and Trustee may transfer, assign or discharge, at such price and on such terms as he or she considers to be proper, all or part of any land of which he or she has taken possession under section 2.

(2) Transfer, assignment, discharge or disposal of personal property — Despite any other Act or law, the Public Guardian and Trustee may transfer, assign or discharge, at such price and on such terms as he or she considers to be proper, or may otherwise dispose of in any manner as he or she considers to be proper, all or part of any personal property of which he or she has taken possession under section 2.

9. (1) No merger, Crown's interests — If property was subject to liens, rights or other interests in favour of the Crown before it became property of which the Public Guardian and Trustee may take possession under section 2, the liens, rights or other interests do not merge when the property becomes property of which the Public Guardian and Trustee may take possession under section 2, whether or not he or she has actually done so.

(2) Debts not passing to Crown — A prior owner's liabilities and obligations do not become the Crown's liabilities and obligations when the property becomes property of which the Public Guardian and Trustee may take possession under section 2, whether or not he or she has actually done so.

10. Obligations and immunities — **(1) No obligation** — The Public Guardian and Trustee is not required to secure, maintain or manage property of which the Public Guardian and Trustee may take possession under section 2, whether or not he or she has actually done so, or to take any other action in relation to the property.

(2) Immunities — No action or other proceeding shall be commenced and no order shall be made against the Crown, the Minister, the Deputy Minister, the Public Guardian and Trustee, any servant or agent of the Crown or any other official of or employee of the Crown,

(a) in respect of property of which the Public Guardian and Trustee may take possession under section 2, whether or not he or she has actually done so; or

(b) for any of the following:

(i) Any act, neglect, default or omission of a tenant or other person who is using, occupying or trespassing on property mentioned in clause (a) that occurs on or otherwise affects the property.

(ii) Any act, neglect, default or omission of any prior owner of property mentioned in clause (a).

(iii) Any act, neglect, default or omission of a person who holds any interest in property described in clause (a) that,

(A) relates to enforcement of the interest, or

(B) occurs on or otherwise affects the property.

(iv) Any act, neglect, default or omission of a director, officer, employee, agent, independent contractor, invitee, shareholder or member of a person mentioned in subclause (i), (ii) or (iii).

(3) Conflict — Subsections (1) and (2) apply despite any other Act or regulation.

(4) Same — No action or other proceeding shall be commenced and no order shall be made against the Minister, the Deputy Minister, the Public Guardian and Trustee, any servant or agent of the Crown or any other official of or employee of the Crown for any of the following:

1. Any act done or performed in good faith in the performance or intended performance of any duty or function or in the exercise or intended exercise of any power or authority under this Act.

2. Any neglect, default or omission in the performance or exercise in good faith of any duty, function, power or authority under this Act.

(5) Same — Despite subsection 8(3) of the *Crown Liability and Proceedings Act, 2019*, subsection (4) does not relieve the Crown of any liability to which it would otherwise be subject.

(6) Saving — For greater certainty, subsections (1), (2) and (4) do not,

(a) prevent the issuing of an order against the Crown in respect of the property if the order is authorized under another Act and the provisions of that Act authorizing the order bind the Crown; or

(b) impose any new obligations on the Crown in respect of the property.
2019, c. 7, Sched. 17, s. 70(1)

11. Public Guardian and Trustee's decisions final — A decision or order of the Public Guardian and Trustee under this Act is final and not subject to review for any reason, including for the reason that a person did not receive a notice under this Act.

12. (1) No entitlement to notice — A person is not entitled to receive a notice under this Act if,

- (a) the person expressly waives the entitlement to receive notice, either before or after the notice is given; or
- (b) after a reasonable search, the Public Guardian and Trustee is unable to find the person's address and the Public Guardian and Trustee is not otherwise aware of the address.

(2) Same, corporation dissolved for more than 20 years — If a prior owner that is a corporation has been dissolved for more than 20 years, the prior owner and its directors and officers are not entitled to receive a notice under this Act.

13. Interests purported to be created — **(1) Application** — Subject to subsection (2), this section applies in respect of any interest, including an ownership interest, that is purported to be created in property after the property becomes property of which the Public Guardian and Trustee may take possession under section 2, whether or not he or she has actually done so.

(2) Exception — This section does not apply in respect of an interest created by a person with legal authority to create the interest.

(3) Same — For greater certainty, the prior owner of property or any person purporting to act on the prior owner's behalf does not have legal authority to create any interest in the property.

(4) Cancellation — The Public Guardian and Trustee may make orders under this section cancelling interests to which this section applies.

(5) Same — An order cancelling an interest may include any of the following:

1. If the interest is registered on title to real property, direction to delete specified documents from the title.
2. If the interest is in personal property and a registration was made in respect of the interest in the registration system established under the *Personal Property Security Act*, direction to amend the information recorded in the central file of the registration system in a specified manner.
3. In the prescribed circumstances, direction to amend or delete information recorded in any other prescribed public registry.

(6) Interests not enforceable or valid — An interest to which this section applies is not enforceable or valid, as against property of which the Public Guardian and Trustee may take possession under section 2, whether or not he or she has actually done so and regardless of whether an order is made under this section.

(7) Order relating to real property — If the order relates to an interest registered on title to real property, the Public Guardian and Trustee shall register the order on title to the property, and the documents specified in the order shall be deleted from the title.

(8) Order relating to personal property — If the order relates to an interest in personal property and a registration was made in respect of it in the registration system established under the *Personal Property Security Act*, the Public Guardian and Trustee shall give a copy of the order to the registrar of personal property security, who shall amend the information recorded in the central file of the registration system, in accordance with the order, to indicate that the registration is discharged or partially discharged.

(9) Public Guardian and Trustee to give copy, publish order — Within 15 days after making an order under this section, the Public Guardian and Trustee shall give a copy of the order to any person who, in the opinion of the Public Guardian and Trustee, might be affected by the order and shall publish the order on a Government website or on another website available to the public.

(10) Request for copy of order — The Public Guardian and Trustee shall give a copy of the order to a person who requests a copy within 15 days after the later of the day the request is received and the day the order is made.

14. Application, clearing title etc. — The Public Guardian and Trustee may, at any time, apply to the Superior Court of Justice for an order clearing the title to any property of which the Public Guardian and Trustee may take possession under section 2, whether or not he or she has actually done so, and to extinguish any other person's claims and interests.

15. Administration of property by Public Guardian and Trustee — **(1) Property held in trust** — Despite Part I of the *Financial Administration Act*, if the Public Guardian and Trustee holds property under this Act, he or she shall hold it in trust for the benefit of the Crown until it is paid into the Consolidated Revenue Fund or otherwise dealt with.

(2) Investment — The Public Guardian and Trustee shall invest all money administered under this Act in accordance with the *Public Guardian and Trustee Act*.

(3) Payment into the Consolidated Revenue Fund — If the Public Guardian and Trustee has taken possession of property under section 2, he or she may pay the property, if it is money, into the Consolidated Revenue Fund at any time, subject to the following rules:

1. If the prior owner was an individual, the property shall be paid no later than the last day of the fiscal year in which the 10th anniversary of the individual's death occurs.
2. If the prior owner was a corporation, the property shall be paid no later than the last day of the fiscal year in which the 10th anniversary of the corporation's dissolution occurs.
3. If neither paragraph 1 nor 2 applies, the property shall be paid no later than the last day of the fiscal year in which the 10th anniversary of the Public Guardian and Trustee taking possession of the property occurs.

(4) Delayed payment — Despite subsection (3), the Public Guardian and Trustee may continue to hold the property that is the subject of a claim that has been made under this Act for such longer period of time as is required to administer the claim, if the administration is ongoing at the time when the payment into the Consolidated Revenue Fund would otherwise be required under this section.

(5) Taking possession after 10 years — Despite subsection (3), if the Public Guardian and Trustee takes possession of property under this Act within six months before or at any time after the applicable 10-year period mentioned in subsection (3) and the property is money or is converted into money, the Public Guardian and Trustee shall make the payment into the Consolidated Revenue Fund as soon as practicable.

(6) Exception, Treasury Board direction — Subsections (3), (4) and (5) do not apply if Treasury Board directs the Public Guardian and Trustee otherwise.

(7) Extinguishment of claims — Subject to subsections 5(4), 6(4) and 7(7), all interests in and claims to property are extinguished upon the payment into the Consolidated Revenue Fund, even if the payment was made into the Consolidated Revenue Fund before the day this Act comes into force.

(8) Interest or income not payable — Subject to subsection 6(3), no interest or income is payable by the Crown or by the Public Guardian and Trustee to any person with respect to property of which the Public Guardian and Trustee has taken possession under section 2, both before and after the property is paid into the Consolidated Revenue Fund.

(9) Not use for Crown purposes — Neither the holding of property under this Act by the Public Guardian and Trustee in trust for the benefit of the Crown nor the earning of interest or income on property under this Act by the Public Guardian and Trustee constitutes use of property for Crown purposes within the meaning of subsection 10(4) of the *Crown Liability and Proceedings Act, 2019*.

2019, c. 7, Sched. 17, s. 70(2)

16. (1) Amounts due to the Crown — The Public Guardian and Trustee may determine the following amounts in connection with property of which the Public Guardian and Trustee may take possession under section 2, whether or not he or she has actually done so, in accordance with the regulations, if any:

1. The amount of costs the Crown incurred, including,
 - i. costs incurred before the day this Act comes into force, and
 - ii. costs incurred in connection with the disposition of the property.
2. Reasonable amounts for time and resources expended by employees of the Crown.
3. Fees and expenses of the Public Guardian and Trustee referred to in subsections 8(1), (1.1) and (1.2) of the *Public Guardian and Trustee Act*.
4. Amounts the Crown may be obligated to pay under an agreement.

(2) Debt owing to Crown — Amounts determined under subsection (1) are a debt due to the Crown and may be recovered, among other ways,

- (a) out of all or any part of the property;
- (b) from any other property of the prior owner of the property; or
- (c) where the prior owner is a corporation, by obtaining an order under section 17 requiring a former officer or director of the prior owner to pay some or all of the amounts.

(3) Same, priority — If the Public Guardian and Trustee has taken possession of property under section 2 and amounts due to the Crown are determined under this section in connection with the property, those amounts have priority over every claim, privilege, encumbrance or other interest of every person in respect of the property.

(4) Deduction of amounts — Amounts mentioned in subsection (3) may be deducted by the Public Guardian and Trustee from any property of which the Public Guardian and Trustee has taken possession under section 2 that was owned by the prior owner or by a related dissolved corporation.

17. (1) Order against former officers and directors — If the Public Guardian and Trustee may take possession of property under paragraph 2 of subsection 2(1), whether or not he or she has actually done so, he or she may apply to the Superior Court of Justice for an order,

- (a) determining the individuals who were the officers or directors of the prior owner; and
- (b) requiring the individuals determined under clause (a) to pay some or all amounts determined under section 16.

(2) Same — For the purposes of an application under subsection (1), the Court shall determine the individuals who were the officers or directors in the two years before the dissolution of the prior owner.

(3) Same — If the Court determines that there were no individuals who were officers or directors in the two years before the dissolution of the prior owner, the Court may make the determination in respect of the most recent two years before the dissolution in which the Court determines there were individuals who were officers or directors.

(4) Exception, corporation without share capital — This section does not apply if the prior owner was a corporation without share capital that was carried on without the purpose of gain for its members.

(5) Exception, prescribed criteria — No individual who meets the prescribed criteria shall be determined to be an officer or director under this section.

(6) Exception, prescribed amounts — No application under this section shall be made in respect of amounts relating to prescribed matters.

18. (1) Annual report to Minister — The Public Guardian and Trustee shall provide an annual report to the Minister in respect of all grants, waivers, releases, transfers and assignments of property made under subsections 3(2), 7(2) and (4).

(2) Contents of report — The report shall contain the following information:

1. The name of the prior owner of each property that was granted, waived, released, transferred or assigned in the preceding year.
2. The name of each person to whom property was granted, waived, released, transferred or assigned.
3. A description of each property that was granted, waived, released, transferred or assigned.
4. The date on which each property was granted, waived, released, transferred or assigned.
5. Any prescribed information.

19. Information regarding grants, etc. — The Public Guardian and Trustee shall provide the following information to any person who requests it if, as part of the request, the

person identifies the prior owner of property that has been granted, waived, released, transferred or assigned by the Public Guardian and Trustee under subsection 3(2), 4(2), 7(2) or (4):

1. The name of each person to whom the property was granted, waived, released, transferred or assigned.
2. A description of the property that was granted, waived, released, transferred or assigned.
3. The date on which the property was granted, waived, released, transferred or assigned.
4. Any prescribed information.

20. (1) Personal information — The Public Guardian and Trustee is authorized to collect personal information under this Act for the following purposes:

1. Determining whether this Act applies to property.
2. Determining whether to take possession of property, conducting an investigation and valuing the property.
3. Administering property for the Crown.
4. Administering this Act, the *Forfeited Corporate Property Act, 2015* or any other Ontario law governing corporate dissolution or property of which the Public Guardian and Trustee may take possession under section 2.
5. Administering the *Crown Administration of Estates Act* or carrying out a duty of the Public Guardian and Trustee under any other Act.

(2) Direct or indirect collection — The collection authorized by subsection (1) may be done,

- (a) directly; or
- (b) indirectly, if indirect collection is reasonably required in the circumstances.

(3) General notice of collection — If the Public Guardian and Trustee collects personal information indirectly, he or she shall give a general notice of collection in one or both of the following ways:

1. Posting the notice on the relevant property.
2. Publishing the notice on a Government website or on another website available to the public.

(4) Contents — A notice under subsection (3) shall contain,

- (a) a description of the type of personal information that is collected;
- (b) a statement of the principal purpose for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of a public official who can answer questions about the collection.

(5) Deemed compliance with *Freedom of Information and Protection of Privacy Act, s. 39(2)* — Giving a notice under subsection (3) is deemed to be compliance with subsection 39(2) of the *Freedom of Information and Protection of Privacy Act*.

21. (1) Notice requiring provision of information — The Public Guardian and Trustee may give a notice requiring any person or entity to provide information that is in the person's or entity's possession or control and, in the opinion of the Public Guardian and Trustee, may relate to property or the prior owner of property of which the Public Guardian and Trustee may take possession under section 2, whether or not he or she has actually done so, including the following information:

1. Personal information, including contact information of a person or entity to whom the Public Guardian and Trustee intends to give a notice under this Act.
2. Information about property that is or that may be property of which the Public Guardian and Trustee may take possession under section 2, including records of a prior owner of the property and information about activities of any person or entity purporting to act in respect of the property.
3. Information about any interest held in property that existed before the property became property of which the Public Guardian and Trustee may take possession under section 2.

(2) Oath or affirmation — The notice may require that the information be provided on oath or affirmation.

(3) Form, manner and timing — The notice may,

- (a) specify the form and manner in which the information shall be provided; and
- (b) require that the information be provided before the date specified in the notice.

(4) Requirement to comply — A person or entity that receives a notice under this section shall comply with its terms, whether or not the Crown is registered on title as the owner of the relevant property or is otherwise understood by the person or entity to be in control of or to have authority over the property.

(5) Failure to comply — If a person or entity that receives a notice under this section fails to comply with its terms, the Public Guardian and Trustee may apply to the Superior Court of Justice for an order compelling the person or entity to comply.

(6) Offence — Any person that receives a notice under this section and fails to comply with its terms is guilty of an offence and on conviction is liable to a fine of not less than \$100 and not more than \$5,000 for each day during which the failure continues.

(7) Grounds for refusal to provide information — A person or entity is not required to provide information under this section if the record containing the information is subject to solicitor-client privilege, litigation privilege or settlement privilege.

22. Records — For greater certainty, sections 20 and 21 do not derogate from the Public Guardian and Trustee's authority to take possession of records that are property of which the Public Guardian and Trustee may take possession under section 2.

23. Use and disclosure of information — Information that is collected under this Act may be used and disclosed for the following purposes:

1. Determining whether this Act applies to property.
2. Determining whether to take possession of property, conducting an investigation and valuing the property.
3. Administering property for the Crown.

4. Administering this Act, the *Forfeited Corporate Property Act, 2015* or any other Ontario law governing corporate dissolution or property of which the Public Guardian and Trustee may take possession under section 2.
5. Administering the *Crown Administration of Estates Act* or carrying out a duty of the Public Guardian and Trustee under any other Act.

24. Legislation Act, 2006 — Part III (Regulations) of the *Legislation Act, 2006* does not apply with respect to orders issued by the Lieutenant Governor in Council under subsection 5(3) or 7(7) or by the Public Guardian and Trustee under section 13.

25. Regulations — The Lieutenant Governor in Council may make regulations,

- (a) prescribing steps the Public Guardian and Trustee is required to take with respect to an order that includes a direction described in paragraph 3 of subsection 13(5);
- (b) prescribing steps that a person responsible for a prescribed public registry is required to take in response to an order mentioned in clause (a);
- (c) governing the determination of amounts under section 16;
- (d) defining any word or expression used in this Act that has not already been expressly defined in this Act;
- (e) providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of this Act;
- (f) prescribing anything that, under this Act, may or must be prescribed or done by regulation.

COMPLEMENTARY AMENDMENTS AND REPEAL

26. Civil Remedies Act, 2001 — Subsection 15.4(2) of the *Civil Remedies Act, 2001* is repealed and the following substituted:

(2) *Escheats Act, 2015* does not apply — The *Escheats Act, 2015* does not apply to property that is forfeited to the Crown in right of Ontario under an order made under this Act.

27. Crown Administration of Estates Act — (1) Subsection 11(2) of the *Crown Administration of Estates Act* is repealed.

(2) Subsection 14(1) of the Act is amended by striking out “in accordance with any direction of the Lieutenant Governor in Council made under the *Escheats Act*” and substituting “in accordance with this Act or the *Escheats Act, 2015*”.

(3) Subsection 14(2) of the Act is repealed and the following substituted:

(2) Non-liability of Her Majesty and the Province — No claim shall be maintained against Her Majesty or the Province in respect of any money or personal property paid over or assigned to any person under the *Escheats Act, 2015* or under this Act, but this does not prejudice the right of a creditor or claimant to follow the money, property or proceeds into the hands of the person who has received it.

(4) The Act is amended by adding the following section:

15. (1) Legal claim — If the Public Guardian and Trustee pays money into the Consolidated Revenue Fund under section 11 or subsection 14(1) and a person later es-

S. 27(4)**Escheats Act, 2015**

tablishes, to the satisfaction of the Public Guardian and Trustee, a legal claim to all or part of the money, the person is entitled to receive it.

(2) **Interest payable, limitation** — No interest is payable to a claimant on money mentioned in subsection (1) for any period of time after the earlier of the following:

1. 10 years after the death of the intestate person.
2. The day the money is paid into the Consolidated Revenue Fund.

(3) **Recovery from Consolidated Revenue Fund** — If a person has established a legal claim to money under this section to the satisfaction of the Public Guardian and Trustee and the money has been paid into the Consolidated Revenue Fund, the money may be paid out of the Consolidated Revenue Fund to the Public Guardian and Trustee to be administered in accordance with this Act.

(4) **Same** — This section applies with respect to any claim made on or after the day the *Escheats Act, 2015* comes into force, regardless of when the money was paid into the Consolidated Revenue Fund.

28. Crown Attorneys Act — Subsection 14.4(2) of the *Crown Attorneys Act* is repealed and the following substituted:

(2) *Escheats Act, 2015* does not apply — The *Escheats Act, 2015* does not apply to property that is forfeited to the Crown in right of Ontario as described in clause 14.1(1)(c) or (d).

29. Prohibiting Profiting from Recounting Crimes Act, 2002 — Subsection 9.1(2) of the *Prohibiting Profiting from Recounting Crimes Act, 2002* is repealed and the following substituted:

(2) *Escheats Act, 2015* does not apply — The *Escheats Act, 2015* does not apply to property that is forfeited to the Crown in right of Ontario under an order made under this Act.

30. Succession Law Reform Act — Subsection 47(7) of the *Succession Law Reform Act* is repealed and the following substituted:

(7) **Crown** — Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew, niece or next of kin, the property becomes the property of the Crown, and the *Escheats Act, 2015* applies.

31. Repeal of Escheats Act — The *Escheats Act* is repealed.

COMMENCEMENT AND SHORT TITLE

32. Commencement — The Act set out in this Schedule comes into force on the first anniversary of the day the *Budget Measures Act, 2015* receives Royal Assent.

33. Short title — The short title of the Act set out in this Schedule is the *Escheats Act, 2015*.

ESTATE ADMINISTRATION TAX ACT, 1998

S.O. 1998, c. 34, Sched., as am. S.O. 2001, c. 23, ss. 86, 87; 2011, c. 9, Sched. 14; 2019, c. 7, Sched. 21.

[Editor's Note: Sections 1 to 3 and sections 7 to 9 are deemed to have come into force on May 15, 1950; Sections 4, 5 and 6 came into force on December 18, 1998, the date upon which S.O. 1998, c. 34 received Royal Assent; see s. 8 below, and s. 64(2) of S.O. 1998, c. 34.]

1. (1) Definitions — In this Act,

“estate certificate” means,

- (a) a grant of probate, administration or testamentary guardianship by the Ontario Court (General Division) or the Surrogate Court made before January 1, 1995, but not a grant of double probate, a cessate grant or a grant of administration *de bonis non administratis* by either of those courts before that date;
- (b) a certificate of appointment of estate trustee issued by the Ontario Court (General Division) or the Superior Court of Justice after December 31, 1994, but not a certificate of succeeding estate trustee or a certificate of estate trustee during litigation issued by that court after that date;

“estate representative” includes, with respect to the estate of a deceased person,

- (a) an executor or administrator of the estate;
- (b) a person entitled to act in the capacity of executor or administrator of the estate;
- (c) a person appointed as guardian of a person who is a beneficiary of the estate of the deceased person or as guardian of the beneficiary’s property;
- (d) an estate trustee;
- (e) an estate trustee with a will, and
- (f) an estate trustee without a will;

“value of the estate” means the value which is required to be disclosed under section 32 of the *Estates Act* (or a predecessor thereof) of all the property that belonged to the deceased person at the time of his or her death less the actual value of any encumbrance on real property that is included in the property of the deceased person.

(2) Interpretation re Retail Sales Tax Act — Any provision of the *Retail Sales Tax Act* that applies for the purposes of this Act shall be read as though,

- (a) the tax payable by a purchaser under that Act is the tax payable by an estate under this Act;
- (b) an amount to be remitted by a vendor under that Act is an amount payable by an estate representative under this Act; and
- (c) references to a “person” in that Act were read as including an estate.

2001, c. 23, s. 86; 2011, c. 9, Sched. 14, s. 1

S. 2(1)

Estate Administration Tax Act, 1998

2. (1) Tax on estate — A tax determined in accordance with this section is payable to Her Majesty in right of Ontario by the estate of a deceased person immediately upon the issuance of an estate certificate.

(2) Exemption — An estate is exempt from tax under this Act if,

- (a) the value of the estate does not exceed \$1,000 and the application for an estate certificate in respect of the estate is made before January 1, 2020; or
- (b) the value of the estate does not exceed \$50,000 and the application for an estate certificate in respect of the estate is made on or after January 1, 2020.

(3) Amount, certificate sought before May 12, 1960 — The amount of tax payable upon the issuance of an estate certificate for which application is made after May 14, 1950 and before May 12, 1960 is \$2.50 for each \$1,000 or part thereof of the value of the estate.

(4) Amount, certificate sought before September 1, 1966 — The amount of tax payable upon the issuance of an estate certificate for which application is made after May 11, 1960 and before September 1, 1966 is \$3 for each \$1,000 or part thereof of the value of the estate.

(5) Amount, certificate sought before June 8, 1992 — The amount of tax payable upon the issuance of an estate certificate for which application is made after August 31, 1966 and before June 8, 1992 is \$5 for each \$1,000 or part thereof of the value of the estate.

(6) Amount, certificate sought after June 7, 1992 — The amount of tax payable upon the issuance of an estate certificate for which application is made after June 7, 1992 and before January 1, 2020 is,

- (a) five dollars for each \$1,000 or part thereof of the first \$50,000 of the value of the estate; and
- (b) fifteen dollars for each \$1,000 or part thereof by which the value of the estate exceeds \$50,000.

(6.1) Amount, certificate sought on or after January 1, 2020 — The amount of tax payable upon the issuance of an estate certificate for which application is made on or after January 1, 2020 is \$15 for each \$1,000 or part thereof by which the value of the estate exceeds \$50,000.

(7) Subsequently-discovered property of the estate — If, after an estate certificate is issued, a statement is delivered under subsection 32(2) of the *Estates Act* disclosing subsequently-discovered property of the estate, tax in respect of the value of the property is payable when the statement is delivered.

(8) Payment by estate representative — Tax is payable by the estate representative in his, her or its representative capacity only.

2019, c. 7, Sched. 21, s. 1

3. (1) Deposit on account of tax — When an application for an estate certificate is made, the applicant shall deposit the amount determined in accordance with this section with an official of the court at which the application is made.

(2) Amount of deposit — Subject to subsection (3), the amount to be deposited is an amount equal to the tax that will become payable by the estate under this Act.

(3) Amount based on estimate — If the applicant is able only to estimate the value of the estate when making the application, the amount to be deposited shall be based on the estimated value.

(4) Same — If the amount to be deposited is based on the estimated value of the estate, the applicant shall give the undertaking described in subsection 4(3) when making the application.

(5) Payment of tax — The amount deposited shall be applied to reduce the estate's liability for tax under this Act on the issuance of the estate certificate.

(6) Refund of deposit — The amount deposited shall be refunded if no estate certificate is issued.

(7) Partial refund — If the amount deposited is based upon an estimated value, and if the estimated value of the estate is greater than the actual value subsequently ascertained, the amount referable to the difference shall be refunded.

4. (1) Restriction on issuance of estate certificate — A person who wishes to obtain an estate certificate before making the deposit required by section 3 may apply to the Superior Court of Justice, without notice, for issuance of the certificate.

(2) Same — The estate certificate shall not be issued before the deposit required by section 3 is made unless a judge is satisfied, based upon the applicant's affidavit and upon such other material as the judge may require,

- (a) that the estate certificate is urgently required;
- (b) that financial hardship would result from not issuing the estate certificate before the deposit is made; and
- (c) that sufficient security for the payment of the tax under this Act has been furnished to the court.

(3) Restriction, deposit based on estimate — If the amount of the deposit is based upon an estimated value, the estate certificate shall not be issued until the applicant for the certificate gives the court a signed undertaking that the applicant will, within six months after giving the undertaking,

- (a) file a sworn statement of the actual total value of the estate; and
- (b) pay any additional tax payable under this Act if the actual value is higher than the estimated value.

(4) Undertaking not fulfilled — If the undertaking is not fulfilled, the court may, on the request of the registrar of the court, make an order for compliance.

2001, c. 23, s. 87

4.1 Duty to give information — **(1) Application** — This section applies in respect of applications for estate certificates that are made on or after January 1, 2013, or on or after such later date as may be prescribed by the Minister of Finance.

(2) Duty to give information — If an estate representative makes an application for an estate certificate, the estate representative shall give the Minister of Revenue such information about the deceased person as may be prescribed by the Minister of Finance.

S. 4.1(3)

Estate Administration Tax Act, 1998

(3) Time and manner — The information required under subsection (2) shall be given within the time and in the manner as may be prescribed by the Minister of Finance.

2011, c. 9, Sched. 14, s. 2

4.2 Assessments — The Minister of Revenue may assess an estate in respect of its tax payable under this Act.

2011, c. 9, Sched. 14, s. 2

4.3 Notice of assessment, etc. — Subsections 18(4) to (9) of the *Retail Sales Tax Act* apply, with necessary modifications, for the purposes of assessments and reassessments under this Act.

2011, c. 9, Sched. 14, s. 2

4.4 (1) Reassessments — The Minister of Revenue may reassess an amount previously assessed under section 4.2 or reassessed under this section.

(2) Same — The provisions in this Act that apply to assessments apply with necessary modifications to reassessments.

2011, c. 9, Sched. 14, s. 2

4.5 (1) Time limit for assessment, reassessment — Subject to subsection (2), the Minister of Revenue may assess or reassess an estate for its tax payable under this Act within four years after the day the tax became payable.

(2) Exceptions — The Minister may, at any time he or she considers reasonable, assess or reassess an estate's tax payable if the Minister establishes,

- (a) that any person failed to comply with section 4.1; or
- (b) that any person made a misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed any fraud in supplying any information regarding an estate or in omitting to disclose any information regarding the estate.

2011, c. 9, Sched. 14, s. 2

4.5.1 (1) Refunds — The Minister of Revenue shall refund any overpayment of tax paid by an estate under this Act if,

- (a) the estate representative has given the information required by section 4.1 to the Minister within four years after the issuance of the estate certificate;
- (b) the Minister has confirmed that there has been an overpayment of tax paid under this Act; and
- (c) the Minister has received a written request for the refund during any of the time periods that relate to the estate as described in subsection (2).

(2) Time periods — The following are the time periods that relate to an estate referred to in clause (1) (c):

1. The time period that begins on the day that the estate certificate for the estate is issued and ends 12 years after that day.
2. The time period that begins on the date of any notice of assessment of the estate under section 4.2 or reassessment of the estate under section 4.4 and ends two years after that day.

2019, c. 7, Sched. 21, s. 2

4.6 (1) Objections and appeals — An estate representative may object to or appeal from an assessment or a reassessment made in respect of an estate under this Act.

(2) Same — Sections 24 to 30 of the *Retail Sales Tax Act* apply, with necessary modifications, with respect to objections and appeals under this section.

2011, c. 9, Sched. 14, s. 2

4.7 (1) Audit and inspection — The Minister of Revenue may appoint one or more inspectors who are authorized to exercise any of the powers and perform any of the duties of a person authorized by the Minister of Finance under subsection 31(1) of the *Retail Sales Tax Act* for any purpose relating to the administration and enforcement of this Act.

(2) Same — Subsections 31(1), (2), (2.1) and (2.2) of the *Retail Sales Tax Act* apply, with necessary modifications, with respect to the administration and enforcement of this Act.

(3) Interference with inspection — No person shall prevent or interfere with, or attempt to prevent or interfere with, an inspector doing anything that he or she is authorized to do under this section.

2011, c. 9, Sched. 14, s. 2

4.8 (1) Confidentiality — Subject to subsection (2), the rules concerning confidentiality in subsections 17(1) to (8) of the *Retail Sales Tax Act* apply, with necessary modifications, for the purposes of the administration and enforcement of this Act.

(2) Exception — For any of the following purposes, the Minister of Revenue and any person employed by the Crown who is engaged in, directly or indirectly, the administration or enforcement of this Act or in the development and evaluation of tax policy for the Crown may communicate information or material obtained in the course of his or her duties, or allow it to be communicated, to another person employed by the Crown or may receive information and material in the course of his or her duties from another person employed by the Crown:

1. For use in developing or evaluating tax policy for the Crown.
2. For use in developing or evaluating a program that confers a benefit.
3. For use in the administration or enforcement of an Act that imposes a tax or confers a benefit.

2011, c. 9, Sched. 14, s. 2

4.9 Records — Every estate representative shall keep, at their residence or place of business, records and books of account in the form and containing the information that will enable the accurate determination of the tax payable under this Act.

2011, c. 9, Sched. 14, s. 2

5. (1) Recovery of tax — The Minister of Finance may commence proceedings to recover any tax payable after this section comes into force that has not been paid.

(1.1) Compliance order — The Minister of Revenue may commence proceedings to obtain an order directing a person who fails to comply with or contravenes this Act or the regulations to comply with one or more specific provisions of this Act or the regulations, or restraining the person from contravening one or more specific provisions of this Act or the regulations.

S. 5(2)

Estate Administration Tax Act, 1998

(2) Same — A proceeding may be brought in any court of competent jurisdiction in the name of the Minister of Finance or in his or her name of office and may be continued by his or her successor in office as if no change had occurred.

(3) Same — Subsection (1) is in addition to any other remedy available to the Crown for the recovery of a debt due to the Crown.

2011, c. 9, Sched. 14, s. 3

5.1 Offences — **(1) Failure to comply with s. 4.1** — Every person is guilty of an offence who fails to comply with section 4.1.

(2) False or misleading statements — Every person is guilty of an offence who, in giving information required under section 4.1, makes or assists in making a statement that, at the time and in light of the circumstances under which it was made, is false or misleading in respect of any fact, or that omits to state any fact the omission of which makes the statement false or misleading.

(3) Exception — No person is guilty of an offence under subsection (2) if the person did not know that the statement or omission was false or misleading and in the exercise of reasonable diligence could not have known that the statement or omission was false or misleading.

(4) Penalty — Every person who is guilty of an offence under subsection (1) or (2) is liable on conviction,

- (a) to a fine equal to an amount that is at least \$1,000, but does not exceed twice the amount of tax payable by the estate if that amount is greater than \$1,000;
- (b) to imprisonment for a term of not more than two years; or
- (c) to both clauses (a) and (b).

(5) Offence, confidentiality — Every person who contravenes section 4.8 is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

2011, c. 9, Sched. 14, s. 4

6. (1) Regulations — The Lieutenant Governor in Council may make regulations,

- (a) exempting an estate from the payment of all or part of the tax under this Act on the basis of the value of the estate or on such other basis as the Lieutenant Governor in Council considers appropriate;
- (b) providing for the refund of all or part of the tax payable by an estate under this Act and providing for the manner of applying for a refund;
- (c) prescribing procedures to be followed and information or evidence to be given to any person by a person applying for an estate certificate, for the purpose of establishing the value of the estate; and
- (d) providing for such administrative and procedural matters as are considered necessary or advisable to carry out the intent and purpose of this Act.

(2) Scope of regulations — A regulation may be general or particular in its application.

(3) Retroactivity — A regulation is, if it so provides, effective with reference to a period before it is filed.

6.1 Regulations, Minister — The Minister of Finance may make regulations prescribing anything referred to in this Act as prescribed by the Minister of Finance.

2011, c. 9, Sched. 14, s. 5

7. (1) Transition — This section applies with respect to estates for which an estate certificate was issued after May 14, 1950 and before the day on which the *Tax Credits and Revenue Protection Act, 1998* receives Royal Assent.

(2) Exemption — The estate of Donald Valentine Eurig, who died on or about October 14, 1993, is exempt from tax under this Act.

(3) Fees — Amounts paid before the *Tax Credits and Revenue Protection Act, 1998* receives Royal Assent as fees for the issuance of an estate certificate under the *Administration of Justice Act* or under the *Surrogate Courts Act* for an estate shall be applied to discharge the estate's liability for tax under this Act.

8. (1) Commencement — Subject to subsection (2), the Act set out in this Schedule shall be deemed to have come into force on May 15, 1950.

(2) Same — Sections 4, 5 and 6 come into force on the day the *Tax Credits and Revenue Protection Act, 1998* receives Royal Assent.

9. Short title — The short title of the Act set out in this Schedule is the *Estate Administration Tax Act, 1998*.

ONT. REG. 310/14 — INFORMATION REQUIRED UNDER SECTION 4.1 OF THE ACT

made under the *Estate Administration Tax Act, 1998*

O. Reg. 310/14, as am. O. Reg. 346/19.

1. Application of s. 4.1(1) of the Act — For the purposes of subsection 4.1(1) of the Act, the prescribed date is January 1, 2015.

2. Deemed day of giving return or revised return — A return or revised return required under this Regulation is deemed to have been given to the Minister on the day on which it is received by the Minister.

3. Return under s. 4.1(2) of the Act — (1) Information about a deceased person that is required under subsection 4.1(2) of the Act must be given to the Minister by the estate representative, in a return approved by the Minister, no later than 180 days after an estate certificate is issued to the estate representative.

(2) The return must contain the following information about the deceased person:

1. Name.
2. Address of fixed place of abode.
3. Date of birth or, if not known, the approximate date or year of birth.
4. Date of death.
5. A complete list of the assets of the deceased person used to determine the value of the estate, including the following information with respect to each asset:
 - i. The actual value of the asset or, if the actual value is unavailable, the estimated value of the asset at the time of the deceased person's death.
 - ii. If the asset is real property,
 - A. the full address of the real property, including, where applicable, the street number, street name, street direction, unit number, rural route number, town or city, and postal code,
 - B. the actual value of any encumbrances on the real property,
 - C. the assessment roll number of the real property that is created or used under the *Assessment Act*, and
 - D. the property identifier mentioned in subsection 141(2) of the *Land Titles Act* or subsection 21(2) of the *Registry Act*, if any, of the real property.
 - iii. If the asset is cash (including cash on deposit with a Canadian or foreign bank, a broker, a credit union or caisse populaire, a loan corporation or a trust corporation), a guaranteed investment certificate, a loan receivable, a security (including common shares, preferred shares, bonds, treasury bills and mutual funds), a contract of insurance without a named beneficiary, a derivative (including options,

S. 3(2) Ont. Reg. 310/14 — Information Required Under Section 4.1 of the Act

futures contracts, rights or warrants), an interest in a partnership or any other investment, a full description of the asset, including,

- A. the type of asset,
 - B. the number of units held at the time of the deceased person's death, if applicable,
 - C. other particulars of the asset, such as the particular series of bonds or the particular class of shares,
 - D. the name and contact information of the deceased person's adviser, dealer, financial institution or other person holding the asset on behalf of the deceased person, if applicable, and
 - E. the account number in relation to the asset assigned by the person or institution referred to in sub subparagraph D, if applicable.
- iv. If the asset is not an asset referred to in subparagraph ii or iii, detailed information about the asset, including the type of asset and other particulars of the asset.
 - v. If the deceased person was known by a name that is different than the name set out in paragraph 1 and if the asset is registered or held under that other name, the asset and the other name of the deceased person.
 - vi. If the asset is owned by the deceased person as tenant-in-common, the asset and the percentage that is owned by the deceased person at the time of death.
- 6. The amount of tax owing or paid under section 2 of the Act by the estate of the deceased person or the amount deposited under section 3 of the Act by the applicant referred to in that section.
 - 7. The name and contact information of every estate representative of the deceased person.
 - 8. The address of the court where the application for a certificate of appointment of estate trustee was made.
 - 9. The type of application that was made by the estate representative in respect of the estate of the deceased person under Rule 74.04, 74.05, 74.05.1, 74.08 or 74.09 of the *Rules of Civil Procedure*.
 - 10. The court file number that is assigned to the application referred to in paragraph 9.
 - 11. The date on which the estate certificate was issued to the estate representative.
 - 12. If the tax or deposit was calculated based on the estimated value of the estate, the date on which the estate representative gave an undertaking required under subsection 3(4) of the Act and a copy of the undertaking.
 - 13. If the Superior Court of Justice issued the estate certificate under subrule 74.13(3) of the *Rules of Civil Procedure*, without payment of a deposit required under section 3 of the Act,
 - i. a copy of the order that was obtained under subsection 4(1) of the Act, and
 - ii. details about the security furnished to the court under subsection 4(2) of the Act.
 - 14. Any other information about the deceased person that is necessary for the determination of the amount of tax owing or paid under section 2 of the Act.

(3) If any assets described in subparagraph 5 iii of subsection (2) are held by an adviser, dealer, financial institution or other person on behalf of the deceased person, the return may include the following information about those assets instead of the information required under subparagraphs 5 i and iii of subsection (2) in respect of those assets:

1. The name and contact information of the adviser, dealer, financial institution or other person who holds those assets.
2. The account number or numbers associated with the adviser, dealer, financial institution or other person in relation to those assets.
3. The total value of all of the assets within each of the accounts referred to in paragraph 2.

O. Reg. 346/19, s. 1

4. Requirement to update information, amended return — (1) If the estate representative becomes aware that any information described in paragraph 5, 6 or 14 of subsection 3(2) or in subsection 3(3) that was given in the return is incorrect or incomplete, the estate representative shall give the Minister a revised return containing updated information, including the reason for updating the information.

(2) The revised return under subsection (1) must be given no later than 60 days after the estate representative becomes aware that the information given is incorrect or incomplete.

(3) A revised return under subsection (1) is not required if the estate representative becomes aware of the incorrect or incomplete information after the fourth anniversary of the day tax became payable.

(4) Despite subsections (1), (2) and (3), if a statement disclosing subsequently discovered property of the estate is delivered under subsection 32(2) of the *Estate Act*, the estate representative shall give the Minister, no later than 60 days after the statement is delivered, a revised return with particulars about the subsequently discovered property.

O. Reg. 346/19, s. 2

5. Requirement to update information, notify Minister — If the estate representative becomes aware that any information described in paragraph 1, 2, 3, 4, 7, 8, 9, 10, 11, 12 or 13 of subsection 3(2) that was given in the return is incorrect or incomplete, the estate representative shall notify the Minister in writing of the updated information no later than 60 days after the estate representative becomes aware that the information given is incorrect or incomplete.

O. Reg. 346/19, s. 3

6. Additional information, refund received — If a full or partial refund of a deposit or tax imposed under the Act is received by the estate representative after giving the return under section 3, the estate representative shall, no later than 60 days after the refund is received, give the Minister a revised return with particulars about the refund.

O. Reg. 346/19, s. 4

7. Additional information, additional tax or deposit — If an additional tax imposed under the Act is paid or an additional amount is deposited by the estate representative after giving the return under section 3, the estate representative shall, no later than 60 days after the payment or the deposit is made, give the Minister a revised return with particulars about the payment or amount deposited.

O. Reg. 346/19, s. 5

S. 8 Ont. Reg. 310/14 — Information Required Under Section 4.1 of the Act

8. Additional information, undertaking under s. 4(3) of the Act — If the estate representative gives an undertaking described in subsection 4(3) of the Act with respect to the estate of the deceased person, the estate representative shall, no later than 60 days after fulfilling the undertaking, give the Minister a revised return with particulars about the fulfilment of the undertaking and any additional tax paid.

O. Reg. 346/19, s. 6

9. Commencement — This Regulation comes into force on the later of January 1, 2015 and the day it is filed.

ESTATES ACT

R.S.O. 1990, c. E.21, as am. S.O. 1994, c. 27, s. 43(2); 1997, c. 23, s. 8; 1998, c. 34, s. 63; 1999, c. 6, s. 23; 1999, c. 12, Sched. B, s. 6 (Fr.); 2002, c. 24, Sched. B, s. 36; 2005, c. 5, s. 24; 2006, c. 19, Sched. C, s. 1(1), (3); CTS 30 AU 10 – 1; 2020, c. 11, Sched. 8 [ss. 1(3), (4), 4, 6 not in force at date of publication.].

1. Definitions — In this Act,

“**administration**” includes all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special or limited purposes;

“**common form business**” [Repealed 2020, c. 11, Sched. 8, s. 1(1).]

“**county**” includes a territorial district;

“**matters and causes testamentary**” includes all matters and causes relating to the grant and revocation of letters probate of wills or letters of administration;

“**registrar**” means a local registrar of the Superior Court of Justice;

“**will**” includes a testament and all other testamentary instruments of which probate may be granted.

Proposed Amendment — 1

1. (1) Definitions — In this Act,

“**administration**” includes all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special or limited purposes;

“**common form business**” [Repealed 2020, c. 11, Sched. 8, s. 1(1).]

“**county**” includes a territorial district;

“**matters and causes testamentary**” includes all matters and causes relating to the grant and revocation of letters probate of wills or letters of administration;

“**registrar**” means a local registrar of the Superior Court of Justice;

Proposed Addition — 1 “small estate”

“**small estate**” means an estate that does not exceed the amount prescribed by regulations made under subsection (2);

2020, c. 11, Sched. 8, s. 1(3) [Not in force at date of publication.]

“**will**” includes a testament and all other testamentary instruments of which probate may be granted.

S. 1(2)

Estates Act

(2) Regulations — The Lieutenant Governor in Council may make regulations prescribing an amount for the purposes of the definition of “small estate” in subsection (1).

2020, c. 11, Sched. 8, s. 1(4) [Not in force at date of publication.]

2006, c. 19, Sched. C, s. 1(1); 2020, c. 11, Sched. 8, s. 1(1), (2)

2. Depository for the wills of living persons — The office of the registrar is a depository for all wills of living persons given there for safekeeping, and the registrar shall receive and keep those wills under such regulations as are prescribed by the rules of court.

2006, c. 19, Sched. C, s. 1(1); 2020, c. 11, Sched. 8, s. 2

3. Preservation of testamentary instruments, etc. — The registrar shall file and preserve all original wills of which probate or letters of administration with the will annexed are granted, and all other papers used in any matter in the registrar’s court, subject to such conditions as are prescribed by the rules of court.

4. [Repealed 2020, c. 11, Sched. 8, s. 3.]

5. Administration not to be granted to non-resident — Letters of administration shall not be granted to a person not residing in Ontario, but this does not apply to resealing letters under section 52.

6. Probate or letters ancillary to persons not residing in Commonwealth — Letters probate shall not be granted to a person not resident in Ontario or elsewhere in the Commonwealth unless the person has given the like security as is required from an administrator in case of intestacy or in the opinion of the judge such security should under special circumstances be dispensed with or be reduced in amount.

7. (1) Grant of probate or administration, jurisdiction — An application for a grant of probate or letters of administration shall be made to the Superior Court of Justice and shall be filed in the office for the county or district in which the testator or intestate had at the time of death a fixed place of abode.

(2) Where decedent had no abode in Ontario — If the testator or intestate had no fixed place of abode in Ontario or resided out of Ontario at the time of death, the application shall be filed in the office for the county or district in which the testator or intestate had property at the time of death.

(3) When application may be filed in any office — In other cases the application for probate or letters of administration may be filed in any office.

Proposed Addition — 7(4)

(4) Rules of court — Except as otherwise provided by this Act, applications for a grant of probate or letters of administration are subject to the procedures set out in the rules of court and, in the case of small estates, to the procedures set out in the rules of court that are specific to small estates.

2020, c. 11, Sched. 8, s. 4 [Not in force at date of publication.]

2006, c. 19, Sched. C, s. 1(1)

8. (1) Trial of questions of fact by a jury — The court may cause any question of fact arising in any proceeding to be tried by a jury.

(2) The issue — The question directed to be tried by a jury shall be reduced to writing in such form as the court may direct.

9. (1) Production of instruments purporting to be testamentary — Whether a suit or other proceeding is or is not pending in the court with respect to a probate or administration, the Superior Court of Justice may, on motion or otherwise in a summary way, order any person to produce and bring before the registrar, or otherwise as the court may direct, any paper or writing being or purporting to be testamentary that is shown to be in the possession or under the control of such person.

(2) Examination of persons touching such instruments — If it is not shown that such paper or writing is in the possession or under the control of such person, but it appears that there are reasonable grounds for believing that he or she has knowledge of such paper or writing, the court may direct such person to attend for the purpose of being examined in open court or before the registrar or such person as the court may direct, or upon interrogatories respecting the same, and to produce and bring in such paper or writing, and such person is subject to the like process in case of default in not attending or in not answering questions or interrogatories or not bringing in such paper or writing, as the person would have been subject to if he or she had been a party to a suit in the court and had made such default, and the costs of such motion or other proceeding are in the discretion of the court.

2006, c. 19, Sched. C, s. 1(1)

10. (1) Right of appeal — Any party or person taking part in a proceeding under this Act may appeal to the Divisional Court from an order, determination or judgment of the Superior Court of Justice if the value of the property affected by such order, determination or judgment exceeds \$200.

(2) Rights of persons interested to appeal — Where the claimant or personal representative having a right of appeal does not appeal from the order, judgment or determination, the Children's Lawyer or any person beneficially interested in the estate may, by leave of a judge of the Divisional Court, appeal therefrom.

(3) Rights of persons interested to be heard at appeal — The Children's Lawyer or any person beneficially interested in the estate, may, by leave of a judge of the Divisional Court, appear and be heard upon any such appeal.

1994, c. 27, s. 43(2); 2006, c. 19, Sched. C, s. 1(1)

11. (1) Where deceased resided in Ontario — On every application for probate of a will or for letters of administration where the deceased was resident in Ontario at the time of his or her death, the deceased's place of abode at the time of his or her death shall be made to appear by affidavit of the person or one of the persons making the application, and thereupon and upon proof of the will or, in case of intestacy, upon proof that the deceased died intestate, probate of the will or letters of administration, as the case may be, may be granted.

(2) Death or absence of witnesses of will of member of forces or mariner — Where, upon the application for probate of the will of a person who at the time of the execution of the will was a member of the forces or was a mariner or sailor at sea or in the course of a voyage, it appears that the witnesses are dead or are incompetent or that the whereabouts of the witnesses, or either of them, is unknown, the judge of the Superior Court of Justice to whom the application is made may accept such evidence as he or she considers satisfactory as to the validity and proper execution of such will, despite anything in this Act or in the rules of court to the contrary.

S. 11(3)

Estates Act

(3) Definition — In subsection (2), “**member of the forces**” means a member of a component of the Canadian Forces,

- (a) that is referred to in the *National Defence Act* (Canada) as a regular force; or
- (b) while placed on active service under the *National Defence Act* (Canada).

2006, c. 19, Sched. C, s. 1(1)

12. Where deceased had no fixed place of abode in Ontario — On every application for probate of a will or for letters of administration where the deceased had no fixed place of abode in or resided out of Ontario at the time of his or her death, the same shall be made to appear by affidavit of the person or one of the persons making the application to the court, and that the deceased died leaving property, or leaving no property in Ontario, as the case may be, and thereupon and upon proof of the will or, in case of intestacy, upon proof that the deceased died intestate, probate of the will or letters of administration, as the case may be, may be granted.

13. Proof, etc., requisite for obtaining grant to party not next-of-kin to intestate — Where application is made for letters of administration by a person not entitled to the same as next-of-kin of the deceased, an order shall be made requiring the next-of-kin, or others having or pretending interest in the property of the deceased, resident in Ontario, to show cause why the administration should not be granted to the person applying therefor; and if neither the next-of-kin nor any person of the kindred of the deceased resides in Ontario, a copy of the order shall be served or published in the manner prescribed by the rules of court.

14. (1) Temporary administration in certain cases — If the next-of-kin, usually residing in Ontario and regularly entitled to administer, is absent from Ontario, the court having jurisdiction may grant a temporary administration to the applicant, or to such other person as the court thinks fit, for a limited time, or subject to be revoked upon the return of such next-of-kin to Ontario.

(2) Security to be given — The administrator so appointed shall give such security as the court may direct, and has all the rights and powers of a general administrator, and is subject to the immediate control of the court.

15. Quebec notarial wills — A notarial will made in the Province of Quebec may be admitted to probate without the production of the original will upon filing a notarial copy thereof together with the other proper proofs to lead grant.

16. Where probate or administration shall not be granted — Unless the court orders otherwise, probate or administration shall not be granted until the registrar has confirmed that,

- (a) no other application has been filed in respect of the estate;
- (b) no notice of objection filed by a person who appears to have a financial interest in the estate is in effect;
- (c) on an application where there is a will, there is no will or codicil of a later date than that for which the grant is sought deposited in the Superior Court of Justice; and

(d) on an application where there is no will, there is no will or codicil deposited in the Superior Court of Justice.

2020, c. 11, Sched. 8, s. 5

17. Stay, if multiple applications — If the registrar determines that an application for probate or administration has been filed in two or more court offices, the proceeding shall be stayed until, on motion, a judge of the Superior Court of Justice determines where the application will proceed.

2020, c. 11, Sched. 8, s. 5

18. [Repealed 2020, c. 11, Sched. 8, s. 5.]

19. [Repealed 2020, c. 11, Sched. 8, s. 5.]

20. [Repealed 2020, c. 11, Sched. 8, s. 5.]

21. [Repealed 2020, c. 11, Sched. 8, s. 5.]

22. [Repealed 2020, c. 11, Sched. 8, s. 5.]

23. Citation of persons interested — Where a proceeding is commenced for proving a will in solemn form or for revoking the probate of a will on the ground of the invalidity thereof or where in any other contentious cause or matter the validity of a will is disputed, all persons having or pretending to have an interest in the property affected by the will may, subject to this Act and to the rules of court, be summoned to see the proceeding and may be permitted to become parties, subject to such rules and to the discretion of the court.

24. Citation to prove or renounce — The court having jurisdiction may summon any person named executor of any will to prove, or refuse to prove, such will, and to bring in inventories and to do every other thing necessary or expedient concerning the same.

25. Consequences of failure to appear — When an executor survives the testator, but dies without having taken probate, and when an executor is summoned to take probate, and does not appear, the executor's right in respect of the executorship wholly ceases, and the representation to the testator, and the administration of the testator's property, without any further renunciation, goes, devolves, and is committed in like manner as if such person had not been appointed executor.

26. (1) Where a minor sole executor — Where a minor is sole executor, administration with the will annexed shall be granted to the guardian of the minor or to such other person as the court thinks fit, until the minor has attained the full age of eighteen years, at which time, and not before, probate of the will may be granted to the minor.

(2) Power of administrator in such case — The person to whom such administration is granted has the same powers as an administrator has by virtue of an administration granted to an administrator during minority of the next-of-kin.

27. Official copies — An official copy of the whole or any part of a will or an official certificate of the grant of any letters of administration may be obtained from the registrar on payment of the prescribed fees.

28. Administration pending action — Pending an action touching the validity of the will of a deceased person, or for obtaining, recalling or revoking any probate or grant of administration, the Superior Court of Justice has jurisdiction to grant administration in the case of intestacy and may appoint an administrator of the property of the deceased person, and the administrator so appointed has all the rights and powers of a general administrator, other than the right of distributing the residue of the property, and every such administrator is subject to the immediate control and direction of the court, and the court may direct that such administrator shall receive out of the property of the deceased such reasonable remuneration as the court considers proper.

2006, c. 19, Sched. C, s. 1(1)

29. (1) To what persons administration shall be granted — Subject to subsection (3), where a person dies intestate or the executor named in the will refuses to prove the will, administration of the property of the deceased may be committed by the Superior Court of Justice to,

- (a) the person to whom the deceased was married immediately before the death of the deceased or person with whom the deceased was living in a conjugal relationship outside marriage immediately before the death;
- (b) the next-of-kin of the deceased; or
- (c) the person mentioned in clause (a) and the next-of-kin,

as in the discretion of the court seems best, and, where more persons than one claim the administration as next-of-kin who are equal in degree of kindred to the deceased, or where only one desires the administration as next-of-kin where there are more persons than one of equal kindred, the administration may be committed to such one or more of such next-of-kin as the court thinks fit.

(2) Appointment at request of parties interested — Subject to subsection (3), where a person dies wholly intestate as to his or her property, or leaving a will affecting property but without having appointed an executor thereof, or an executor willing and competent to take probate and the persons entitled to administration, or a majority of such of them as are resident in Ontario, request that another person be appointed to be the administrator of the property of the deceased, or of any part of it, the right that such persons possessed to have administration granted to them in respect of it belongs to such person.

(3) General power as to appointment of administrator under special circumstances — Where a person dies wholly intestate as to his or her property, or leaving a will affecting property but without having appointed an executor thereof willing and competent to take probate, or where the executor was at the time of the death of such person resident out of Ontario, and it appears to the court to be necessary or convenient by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the property of the deceased, or of any part of such property, other than the person who if this subsection had not been enacted would have been entitled to the grant of administration, it is not obligatory upon the court to grant administration to the person who if this subsection had not been enacted would have been entitled to a grant thereof, but the court may appoint such person as it thinks fit upon his or her giving such security as it may direct, and every such administration may be limited as it thinks fit.

(4) Appointment of trust corporation — A trust corporation may be appointed as administrator under subsection (2) or (3), either alone or jointly with another person.
1999, c. 6, s. 23; 2005, c. 5, s. 24; 2006, c. 19, Sched. C, s. 1(1)

30. After grant of administration no person to act as executor — After a grant of administration, no person, other than the administrator or executor, has power to sue or prosecute any action or otherwise act as executor of the deceased as to the property comprised in or affected by such grant of administration until such administration has been recalled or revoked.

31. Administration limited to personal estate — A person entitled to letters of administration to the property of a deceased person is entitled to take out such letters limited to the personal estate of the deceased, exclusive of the real estate.

32. (1) Evaluation — The person applying for a grant of probate or administration shall before it is granted make or cause to be made and delivered to the registrar a true statement of the total value, verified by the oath or affirmation of the applicant, of all the property that belonged to the deceased at the time of his or her death.

(2) Evaluation of subsequently discovered property — When after the grant of probate or letters of administration any property belonging to the deceased at the time of his or her death and not included in such statement of total value is discovered by the executor or administrator, they shall, within six months thereafter, deliver to the registrar a true statement of the total value, duly verified by oath or affirmation, of such newly discovered property.

(3) Evaluation of limited grant — Where the application or grant is limited to part only of the property of the deceased, it is sufficient to set forth in the statement of value only the property and value thereof intended to be affected by such application or grant.

33. [Repealed 1998, c. 34, s. 63.]

34. Consequences upon executor renouncing — Where a person renounces probate of the will of which the person is appointed an executor, the person's rights in respect of the executorship wholly cease, and the representation to the testator and the administration of the testator's property, without any further renunciation, goes, devolves and is committed in like manner as if such person had not been appointed executor.

35. Bonds — Except where otherwise provided by law, every person to whom a grant of administration, including administration with the will annexed, is committed shall give a bond to the judge of the court by which the grant is made, to enure for the benefit of the Accountant of the Superior Court of Justice, with a surety or sureties as may be required by the judge, conditioned for the due collecting, getting in, administering and accounting for the property of the deceased, and the bond shall be in the form prescribed by the rules of court, and in cases not provided for by the rules, the bond shall be in such form as the judge by special order may direct.

2006, c. 19, Sched. C, s. 1(3)

36. (1) When security not required — It is not necessary for the Government of Ontario or any ministry thereof or any Provincial commission or board created under any Act of the

S. 36(1)

Estates Act

Legislature to give any security for the due performance of its duty as executor, administrator, trustee, committee, or in any other office to which it may be appointed by order of the court or under any Act.

(2) **Idem** — A bond shall not be required where the administration on an intestacy is granted to the surviving spouse of the deceased and where,

- (a) the net value of the estate as computed for the purposes of section 45 of the *Succession Law Reform Act* does not exceed the preferential share prescribed under subsection 45(6) of that Act; and
- (b) there is filed with the application for administration an affidavit setting forth the debts of the estate.

Proposed Addition — 36(3)–(5)

(3) **Same** — Subject to section 6, a bond shall not be required in respect of a small estate, unless,

- (a) a beneficiary of the estate is a minor; or
- (b) a beneficiary of the estate is incapable within the meaning of section 6 of the *Substitute Decisions Act, 1992* in respect of an issue in the proceeding, whether or not the person has a guardian.

(4) **Same** — Subsection (3) does not affect the operation of subsection (2).

(5) **Subsequently discovered property** — Subsection (3) ceases to apply if, following the discovery of property belonging to the deceased in the circumstances described in subsection 32(2), the estate ceases to be a small estate.

2020, c. 11, Sched. 8, s. 6 [Not in force at date of publication.]

1997, c. 23, s. 8(1)

37. (1) Amount of security — The bond shall be in a penalty of double the amount under which the property of the deceased has been sworn, and the judge may direct that more than one bond be given so as to limit the liability of any surety to such amount as the judge considers proper.

(2) Power to reduce amount — The judge may at any time under special circumstances reduce the amount of or dispense with the bond.

38. Power of courts as to assignment of bonds — The judge on application made in a summary way and on being satisfied that the condition of the bond has been broken may order the registrar to assign the bond to some person to be named in the order, and such person is thereupon entitled to sue on the bond in the person's own name as if it had been originally given to the person, and shall recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the bond.

39. Accounts to be rendered — The oaths and affirmations to be taken by executors, administrators and guardians, and the bonds or other security to be given by administrators and guardians, and probates, letters of administration and letters of guardianship shall require the executor, administrator or guardian to render a just and full account of their executorship, administration or guardianship only when thereunto lawfully required.

40. (1) New or additional security in certain cases — Where a surety for an administrator or guardian dies or becomes insolvent or where for any other reason the security furnished by an administrator or guardian becomes inadequate or insufficient, the judge may require other or additional security to be furnished, and if it is not furnished as directed by the judge, he or she may revoke the grant of administration or letters of guardianship.

(2) Order by judge or on application — The order may be made by the judge on the judge's own initiative or on the application of any person interested.

41. (1) Substitution of security — Where a surety for an administrator or guardian desires to be discharged from their obligation or where an administrator or guardian desires to substitute other security for that furnished by the surety, the judge may allow other security to be furnished in lieu of that of such surety or of the security so furnished on such terms as the judge considers proper, and the judge may direct that, on the substituted security being furnished, and, if the judge so directs, the accounts of the administrator or guardian being passed, the surety or sureties be discharged.

(2) How application made — The application may be made without notice or on such notice as the judge may direct.

42. Cancellation of security — Where an executor or administrator has passed their final account and has paid into court or distributed the whole of the property of the deceased that has come to their hands, the judge may direct the bond or other security furnished by the executor or administrator to be delivered up to be cancelled.

43. Cancellation of bond of administrator in distribution of estate — Where an executor or administrator has produced evidence to the satisfaction of the judge that the debts of the deceased have been paid and the residue of the estate duly distributed, the judge may make an order directing the bond or other security furnished by the executor or administrator to be delivered up to be cancelled, but where a minor was or is entitled to a part of the estate under the distribution, the order shall not be made until after such notice as the judge may direct has been given to the Children's Lawyer, and where any person who is a patient in a psychiatric facility under the *Mental Health Act* was or is entitled to a part of the estate under the distribution, the order shall not be made until after like notice has been given to the Public Guardian and Trustee.

1994, c. 27, s. 43(2); CTS 30 AU 10 – 1

44. (1) Contestation of claims against estate — Where a claim or demand is made against the estate of a deceased person or where the personal representative has notice of such claim or demand, they may serve the claimant with a notice in writing that they contest the same in whole or in part, and, if in part, stating what part, and also referring to this section.

(2) Application for order allowing claim — Within thirty days after the receipt of such notice of contestation or within three months thereafter if the judge of the Superior Court of Justice on application so allows, the claimant may, upon filing with the registrar a statement of their claim verified by affidavit and a copy of the notice of contestation, apply to the judge of the Superior Court of Justice for an order allowing the claim and determining the amount of it, and the judge shall hear the parties and their witnesses and shall make such order upon the application as the judge considers just, and if the claimant does not make such application, the claimant shall be deemed to have abandoned the claim and it is forever barred.

(3) Claim within jurisdiction of Small Claims Court — Where the claim is within the jurisdiction of the Small Claims Court, an application for the extension of time referred to in subsection (2) and the application for the order shall be made to the judge of a Small Claims Court in which an action for the recovery of the claim might be brought, and the application for the order shall be heard by the judge at the sittings of such court, but where the claimant and the personal representative consent, the applications may be made to the judge of the Superior Court of Justice.

(4) Notice in such cases — Not less than seven days notice of the application shall be given to the personal representative, and where the application is to be made to the judge of the Superior Court of Justice, shall also be given to the Children's Lawyer if minors are concerned, and to such, if any, of the persons beneficially interested in the estate as the judge may direct.

(5) Right of persons interested to be heard — Where the application is made to the judge of the Superior Court of Justice, in addition to the persons to whom notice has been given, any other person who is interested in the estate has the right to be heard and to take part in the proceeding.

(6) Consent to jurisdiction of Superior Court of Justice in certain cases — Where the claim, or the part of it that is contested, amounts to \$800 or more, instead of proceeding as provided by this section, the judge shall, on the application of either party, or of any of the parties mentioned in subsection (5), direct the creditor to bring an action for the recovery or the establishment of the creditor's claim, on such terms and conditions as the judge considers just but, where the claimant and the personal representative consent to have the trial before the judge of the Superior Court of Justice, the trial shall take place and be disposed of before the Superior Court of Justice judge under this section.

(7) Fees and costs when claim within Small Claims Court jurisdiction — Where the claim is within the jurisdiction of the Small Claims Court, the fees and costs shall be according to the tariff of that court and in other cases the fees payable to the judge of the Superior Court of Justice and to the registrar shall be the same as are allowed on an audit in an estate of a value equal to the amount of the claim or so much thereof as is contested, and the fees to be allowed to counsel or solicitors shall be fixed and determined by the Superior Court of Justice judge having regard to the amount involved and the importance of the contest.

(8) Claims not presently payable — This section applies, even if the claim or demand is not presently payable, and that, for that reason, an action for the recovery of it could not be brought.

(9) Application for order allowing commission — The judge may order the issue of a commission to take the testimony of any person or party residing out of Ontario.

(10) Judge may make an order appointing a person to take testimony — The judge may make an order for the taking of evidence before trial of any material and necessary witness residing in Ontario who is sick, aged or infirm or is about to leave Ontario and provide to whom notice of the examination is to be given.

(11) Right to issue summons — A summons may be issued to enforce the attendance of witnesses to give evidence on any proceeding under this section.

(12) Rules of court apply — The Rules of Civil Procedure, so far as they are applicable, apply to every application for such commission or order for examination, the issue, execu-

tion, enforcement and return thereof and the judge has power to award costs of all such procedures according to the tariff in force from time to time.

(13) Permission for enforcement of judgment — Where a claim is established under this section, no procedures shall be commenced to enforce payment of the claim without the permission of the judge.

(14) Enforcement of judgment — Where permission to enforce payment of a claim is given, the order shall be filed in the Superior Court of Justice and an execution shall issue as upon a judgment of that court and an order for payment of costs may be entered in the same way.

1994, c. 27, s. 43(2); 2006, c. 19, Sched. C, s. 1(1)

45. (1) Notice of contestation of unliquidated claims — Where any claim or demand not within the meaning of subsection 44 (1) is made against the estate of a deceased person or where the personal representative has notice or knowledge of the claim or demand, they may serve the claimant with the notice prescribed in the said subsection.

(2) Application by claimant for order for directions — Within the time limits mentioned in subsection 44(2), the claimant may, upon filing with the registrar a statement of their claim verified by affidavit and a copy of the notice of contestation, apply to the judge of the Superior Court of Justice for an order for directions as to the disposition of the claim or demand, and if the claimant does not make the application, the claimant shall be deemed to have abandoned the claim, and it is forever barred.

(3) Notice in such cases — Not less than seven days notice of the application shall be given to the personal representative and to the Children's Lawyer if minors are concerned and to such, if any, of the persons beneficially interested in the estate as the judge may direct.

(4) Powers of judge — The judge shall make such order upon the application for directions as he or she considers just and, in particular but without limiting the generality of the foregoing, the judge may,

- (a) direct the claimant to bring an action for the recovery or establishment of their claim on such terms and conditions as the judge considers just; and
- (b) where the claim or demand is not presently recoverable, prescribe the time after which the claimant shall proceed pursuant to the directions.

(5) Application of parts of s. 44 — When an order is made under subsection (4), subsections 44(9), (10), (11) and (12) apply.

(6) Right of persons interested to appeal — If the personal representative does not appeal from an order made under subsection (2) or (4), the Children's Lawyer or any person beneficially interested in the estate may, by leave of a judge of the Divisional Court, appeal therefrom.

(7) Right of persons interested to be heard on appeal — Where the claimant or the personal representative appeals from an order made under subsection (2) or (4), the Children's Lawyer and any person beneficially interested in the estate may, by leave of the court that hears the appeal, appear and be heard.

1994, c. 27, s. 43(2); 2006, c. 19, Sched. C, s. 1(1)

46. Summary determination of disputes as to ownership — Where the personal representative of a person claims the ownership of any personal property not exceeding in value \$800 and the claim is disputed by any other person, the dispute may be determined in a summary manner and section 44 applies with necessary modifications.

47. (1) Trustee Act not to apply in certain cases — The *Trustee Act* does not affect the claim of a person against the estate of a deceased person where notice of the claim giving full particulars of the claim and verified by affidavit, is filed with the executor or administrator of the estate at any time prior to the date upon which the claim would be barred by the *Trustee Act*, but where no executor or administrator has been appointed, the notice may be filed in the office of a registrar.

(2) Special provision — Where the claim of a person against any other person would be barred by the *Trustee Act* at any time within three months after the death of the person having the claim, the claim shall for all purposes be deemed not to be barred until three months after the date of such death.

2002, c. 24, Sched. B, s. 36; 2006, c. 19, Sched. C, s. 1(1); 2020, c. 11, Sched. 8, s. 7

48. Accounting by executor trustee — Every executor who is also a trustee under the will may be required to account for their trusteeship in the same manner as they may be required to account in respect of their executorship.

49. (1) Passing accounts by guardians — A guardian appointed by the Superior Court of Justice may pass the accounts of the guardian's dealings with the estate before the judge of the court by which letters of guardianship were issued.

(2) Powers of judge on passing accounts — The judge, on passing the accounts of an executor, administrator or trustee under a will of which the trustee is an executor, has jurisdiction to enter into and make full inquiry and accounting of and concerning the whole property that the deceased was possessed of or entitled to, and its administration and disbursement.

(3) Further powers — The judge, on passing any accounts under this section, has power to inquire into any complaint or claim by any person interested in the taking of the accounts of misconduct, neglect, or default on the part of the executor, administrator or trustee occasioning financial loss to the estate or trust fund, and the judge, on proof of such claim, may order the executor, administrator or trustee, to pay such sum by way of damages or otherwise as the judge considers proper and just to the estate or trust fund, but any order made under this subsection is subject to appeal.

(4) May order trial and give directions as to pleadings, etc. — The judge may order the trial of an issue of any complaint or claim under subsection (3), and in such case the judge shall make all necessary directions as to pleadings, production of documents, discovery and otherwise in connection with the issue.

(5) [Repealed 1997, c. 23, s. 8(2).]

(6) [Repealed 1997, c. 23, s. 8(2).]

(7) [Repealed 1997, c. 23, s. 8(2).]

(8) Notice of taking accounts to be served on Public Guardian and Trustee — Where by the terms of a will or other instrument in writing under which such an executor,

administrator or trustee acts, real or personal property or any right or interest therein, or proceeds therefrom have heretofore been given, or are hereafter to be vested in any person, executor, administrator or trustee for any religious, educational, charitable or other purpose, or are to be applied by them to or for any such purpose, notice of taking the accounts shall be served upon the Public Guardian and Trustee.

(9) Where person to whom administration granted is not next-of-kin — Where a person has died intestate in Ontario and administration has been granted to some person, not one of the next-of-kin, and it appears to be doubtful whether the intestate left any next-of-kin surviving them or that there are no known next-of-kin resident in Ontario, notice of taking the accounts shall be served upon the Public Guardian and Trustee.

(10) Appointment of expert on examination of accounts — Where accounts submitted to the judge of the Superior Court of Justice are of an intricate or complicated character and in the judge's opinion require expert investigation, the judge may appoint an accountant or other skilled person to investigate and to assist him or her in auditing the accounts.

1997, c. 23, s. 8(2); 2006, c. 19, Sched. C, s. 1(1); CTS 30 AU 10 – 1

50. (1) At whose instance executors or administrators compellable to account — An executor or an administrator shall not be required by any court to render an account of the property of the deceased, otherwise than by an inventory thereof, unless at the instance or on behalf of some person interested in such property or of a creditor of the deceased, nor is an executor or administrator otherwise compellable to account before any judge.

(2) Application — This section applies despite any provision to the contrary of any bond or security heretofore given by the executor or administrator.

51. [Repealed 1998, c. 34, s. 63.]

52. (1) Manner of giving effect to grants of probate of Commonwealth and Canadian courts, etc. — Where probate or letters of administration or other legal document purporting to be of the same nature granted by a court of competent jurisdiction in the United Kingdom or in a province or territory of Canada or in any British possession is produced to and a copy thereof deposited with a registrar and the amount required by the *Estate Administration Tax Act, 1998* is deposited with an officer of the court as on a grant of probate or administration, the probate or letters of administration or other document shall, under the direction of the judge, be sealed with the seal of the Superior Court of Justice, and thereupon is of the like force and effect in Ontario as if the same had been originally granted by the Superior Court of Justice, and is, so far as regards Ontario, subject to any order made by such court, or on appeal therefrom, as if the probate or letters of administration had been granted thereby.

(2) Letters of verification in Quebec — Letters of verification issued in the Province of Quebec shall be deemed to be a probate within the meaning of this section.

(3) Security required — The letters of administration shall not be sealed with the seal of the Superior Court of Justice until a certificate has been filed under the hand of the registrar of the court that issued the letters that security has been given in such court in a sum of sufficient amount to cover as well the assets within the jurisdiction of such court as the assets within Ontario, or in the absence of such certificate, until like security is given to the judge

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of the Superior Court of Justice covering the assets in Ontario as in the case of granting original letters of administration.

1998, c. 34, s. 63; 2006, c. 19, Sched. C, s. 1(1); 2020, c. 11, Sched. 8, s. 8

53. [Repealed 1998, c. 34, s. 63.]

ESTATES ADMINISTRATION ACT

R.S.O. 1990, c. E.22, as am. S.O. 1992, c. 32, s. 10; 1994, c. 27, s. 43(2); 2006, c. 19, Sched. C, s. 1(1); 2009, c. 33, Sched. 2, s. 31; 2017, c. 20, Sched. 11, ss. 8, 9
[Not in force at date of publication.]

1. Definitions — In this Act,

“court” means the Superior Court of Justice;

“judge” means a judge of the Superior Court of Justice;

“mental incompetency” [Repealed 2009, c. 33, Sched. 2, s. 31(1).]

“mentally incapable person” means a person who is incapable as defined in the *Substitute Decisions Act, 1992*, whether or not the person has a guardian or an attorney for property under a continuing power of attorney for property;

“mentally incompetent person” [Repealed 2009, c. 33, Sched. 2, s. 31(2).]

“personal representative” means an executor, an administrator, or an administrator with the will annexed.

2006, c. 19, Sched. C, s. 1(1); 2009, c. 33, Sched. 2, s. 31(1), (2)

2. (1) Devolution to personal representative of deceased — All real and personal property that is vested in a person without a right in any other person to take by survivorship, on the person’s death, whether testate or intestate and despite any testamentary disposition, devolves to and becomes vested in his or her personal representative from time to time as trustee for the persons by law beneficially entitled thereto, and, subject to the payment of the person’s debts and so far as such property is not disposed of by deed, will, contract or other effectual disposition, it shall be administered, dealt with and distributed as if it were personal property not so disposed of.

(2) Idem, where under appointment — This section applies to property over which a person executes by will a general power of appointment as if it were property vested in the person.

(3) Exceptions — This section does not apply to estates tail or to the personal property, except chattels real, of a person who, at the time of death, is domiciled out of Ontario.

3. Application of enactments as to probate, etc. — The enactments and rules of law relating to the effect of probate or letters of administration as respects personal property and as respects the dealing with personal property before probate or administration and as respects the payment of costs of administration and other matters in relation to the administration of personal estate and the powers, rights, duties and liabilities of personal representatives in respect of personal estate apply to real property vesting in them, so far as the same are applicable as if that real property were personal property, save that it is not lawful for some or one only of several joint personal representatives without the authority of a judge to sell or transfer real property.

4. Real and personal property assimilated in matters of administration — Subject to the other provisions of this Act, in the administration of the assets of a deceased person, his or her real property shall be administered in the same manner, subject to the same liability for debts, costs and expenses and with the same incidents as if it were personal property, but nothing in this section alters or affects as respects real or personal property of which the deceased has made a testamentary disposition the order in which real and personal assets are now applicable to the payment of funeral and testamentary expenses, the costs and expenses of administration, debts or legacies, or the liability of real property to be charged with the payment of legacies.

5. Payment of debts out of residuary estate — Subject to section 32 of the *Succession Law Reform Act*, the real and personal property of a deceased person comprised in a residuary devise or bequest, except so far as a contrary intention appears from the person's will or any codicil thereto, is applicable rateably, according to their respective values, to the payment of his or her debts, funeral and testamentary expenses and the cost and expenses of administration.

6. How far personal representatives to be deemed "heirs" — When any part of the real property of a deceased person vests in his or her personal representative under this Act, such personal representative, in the interpretation of any Act of the Legislature or in the construction of any instrument to which the deceased was a party or under which the deceased is interested, shall, while the estate remains in the personal representative, be deemed in law the deceased's persons heir, in respect of such part, unless a contrary intention appears, but nothing in this section affects the beneficial right to any property or the construction of words of limitation of any estate in or by any deed, will or other instrument.

7. Trust estates and interests of mortgagees — Where an estate or interest of inheritance in real property is vested on a trust or by way of mortgage in a person solely, it, on his or her death, despite any testamentary disposition, devolves to and becomes vested in the person's executor or administrator in like manner as if it were personal estate vesting in him or her, and accordingly all the like powers for one only of several joint executors or administrators as well as for a single executor or administrator and for all the executors and administrators together to dispose of and otherwise deal with it belong to the deceased's executor or administrator with all the like incidents but subject to all the like rights, equities and obligations as if it were personal estate vesting in him or her, and for the purposes of this section the executor or administrator of the deceased shall be deemed in law his or her heirs and assigns within the meaning of all trusts and powers.

8. (1) Who to be defendants in action for foreclosure where no personal representative of mortgagor — Where there is no legal personal representative of a deceased mortgagor of freehold property, it is sufficient for the purposes of an action for the foreclosure of the equity of redemption in, or for the sale of such property that the person beneficially entitled under the last will and testament, if any, of the deceased mortgagor, or under Part II of the *Succession Law Reform Act*, to such property or the proceeds thereof be made defendant to such action, and it is not necessary that a legal personal representative of the deceased mortgagor be appointed or be made a defendant thereto unless it is otherwise ordered by the court in which the action is brought, but, if during the pendency of such action, the equity of redemption devolves upon and becomes vested in a legal personal representative of the mortgagor, the legal personal representative shall be made a party to the action.

(2) Definition — In subsection (1), “**mortgagor**” includes the assignee of a mortgagor and any person entitled to or interested in the equity of redemption.

9. (1) Vesting of real estate not disposed of within 3 years — Real property not disposed of, conveyed to, divided or distributed among the persons beneficially entitled thereto under section 17 by the personal representative within three years after the death of the deceased is, subject to the *Land Titles Act* in the case of land registered under that Act and subject to subsections 53(3) and (5) of the *Registry Act*, and subject as hereinafter provided, at the expiration of that period, whether probate or letters of administration have or have not been taken, thenceforth vested in the persons beneficially entitled thereto under the will or upon the intestacy or their assigns without any conveyance by the personal representative, unless such personal representative, if any, has signed and registered, in the proper land registry office, a caution in Form 1, and, if a caution is so registered, the real property mentioned therein does not so vest for three years from the time of the registration of the caution or of the last caution if more than one was registered.

Proposed Amendment — 9(1)

(1) Vesting of real estate not disposed of within 3 years — Real property not disposed of, conveyed to, divided or distributed among the persons beneficially entitled thereto under section 17 by the personal representative within three years after the death of the deceased is, subject to the *Land Titles Act* in the case of land registered under that Act and subject to subsections 53(3) and (5) of the *Registry Act*, and subject as hereinafter provided, at the expiration of that period, whether probate or letters of administration have or have not been taken, thenceforth vested in the persons beneficially entitled thereto under the will or upon the intestacy or their assigns without any conveyance by the personal representative, unless such personal representative, if any, has signed and registered, in the proper land registry office, a caution in the form prescribed by regulation under subsection (7), and, if a caution is so registered, the real property mentioned therein does not so vest for three years from the time of the registration of the caution or of the last caution if more than one was registered.

2017, c. 20, Sched. 11, s. 8(1) [Not in force at date of publication.]

(2) Verification — The execution of every caution shall be verified by the affidavit of a subscribing witness in the manner prescribed by the *Registry Act* or the *Land Titles Act*, as the case may be.

(3) Effect — A caution registered or reregistered under this section or under section 11 is effectual only as to the real property mentioned in the caution.

(4) Withdrawal of caution — The personal representative, before the expiration of the three years, may register a certificate in Form 2 withdrawing the caution in respect of the real property described in the certificate, and, upon registration of the certificate, the real property described therein shall be treated as if the caution had expired.

Proposed Amendment — 9(4)

(4) Withdrawal of caution — The personal representative, before the expiration of the three years, may register a certificate in the form prescribed by regulation under subsection (7) withdrawing the caution in respect of the real property described in the certificate, and, upon registration of the certificate, the real property described therein shall be treated as if the caution had expired.

2017, c. 20, Sched. 11, s. 8(2) [Not in force at date of publication.]

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(5) Verification — The certificate of withdrawal shall be verified by an affidavit of a subscribing witness in Form 3.

Proposed Amendment — 9(5)

(5) Verification — The certificate of withdrawal shall be verified by an affidavit of a subscribing witness in the form prescribed by regulation under subsection (7).

2017, c. 20, Sched. 11, s. 8(3) [Not in force at date of publication.]

(6) Renewal of caution — Before a caution expires it may be reregistered and so on from time to time as long as the personal representative considers it necessary, and every caution continues in force for three years from the time of its registration or reregistration.

Proposed Addition — 9(7)

(7) Regulations, forms — The Minister responsible for the administration of this Act may make regulations prescribing forms for the purposes of this section and providing for their use.

2017, c. 20, Sched. 11, s. 8(4) [Not in force at date of publication.]

10. Ordinary rights of executors, etc., preserved — Nothing in section 9 derogates from any right possessed by an executor or administrator with the will annexed under a will or under the *Trustee Act* or from any right possessed by a trustee under a will.

11. (1) Registration of caution after three years from death of testator — Where a personal representative has not registered a caution within the proper time after the death of the deceased or has not registered a caution within the proper time, the personal representative may register or reregister the caution, as the case may be, if there is registered therewith,

(a) the affidavit of execution; and

(b) a further affidavit stating that the personal representative finds or believes that it is or may be necessary to sell the real property of the deceased, mentioned in the caution or part thereof, under the powers and in fulfilment of the duties of the personal representative and, as far as they are known to the personal representative, the names of all persons beneficially interested in the real property, and whether any, and, if so, which of them, are minors or mentally incapable persons; and

(c) the written consent of every adult, of the Children's Lawyer on behalf of every minor, and of the Public Guardian and Trustee on behalf of every mentally incapable person who has no guardian or attorney for property, whose property or interest would be affected, and an affidavit verifying the consent; or

(d) in the absence and in lieu of such consent, an order of the court, or the certificate of the Children's Lawyer or of the Public Guardian and Trustee, as the case may be authorizing the caution to be registered or reregistered, which order or certificate the judge, the Children's Lawyer or the Public Guardian and Trustee may make with or without notice on such evidence as satisfies him or her of the propriety of permitting the caution to be registered or reregistered, and the order or certificate to be registered does not require verification and shall not be rendered null by any defect of form or otherwise.

(2) Application of section — This section extends to cases where a grant of probate of the will or of administration to the estate of the deceased may not have been made within the

period after the death of the testator or intestate within which a caution is required to be registered.

(3) Effect of such registration — Where a caution is registered or reregistered under this section, it has the same effect as a caution registered within the proper time after the death of the deceased and of vesting or revesting, as the case may be, the real property of the deceased in his or her personal representative, save as to persons who in the meantime have acquired rights for valuable consideration from or through a person beneficially entitled, and save also and subject to any equities of any non-consenting person beneficially entitled, or of a person claiming under the person beneficially entitled, for improvements made after the time within which the personal representative might, without any consent, order or certificate, have registered or reregistered a caution, if his or her real property is afterwards sold by the personal representative.

(4) Signature to caution — Where there are two or more personal representatives, it is sufficient if a caution or the affidavit mentioned in clause (1)(b) is signed or made by one of such personal representatives.

1994, c. 27, s. 43(2); 2009, c. 33, Sched. 2, s. 31(3)–(5)

12. Effect of repealing enactment — Where a caution has been registered or reregistered under any enactment repealed and not re-enacted by this Act and is still in force, such caution has the same effect as if such enactment had not been repealed and may be registered in the manner provided by section 9.

13. Vacating caution — Any person beneficially entitled to any real property affected by the registration or reregistration of a caution may apply to a judge to vacate the registration or reregistration, and the judge, if satisfied that the vesting of any such real property in such person or of any property of the deceased in any other of the persons beneficially entitled ought not to be delayed, may order that the registration or reregistration be vacated as to such property, and every caution, the registration or reregistration of which is so vacated, thereafter ceases to operate.

14. Land in two or more persons — Where real property becomes vested under this Act in two or more persons beneficially entitled under this Act, they take as tenants in common in proportion to their respective rights, unless in the case of a devise they take otherwise under the will of the deceased.

15. (1) Sales where minors interested — Where a minor is interested in real property that but for this Act would not devolve on the personal representative, no sale or conveyance is valid under this Act without the written approval of the Children's Lawyer, or, in the absence of such consent or approval, without an order of a judge.

(2) Local guardians — A judge may appoint himself or herself or another judge as local guardian of minors in a county or district during the pleasure of the judge, with authority to give such written approval instead of the Children's Lawyer, and the Children's Lawyer and local guardian are subject to such rules as the court may make in regard to their authority and duties under this Act.

1994, c. 27, s. 43(2)

16. Powers of personal representative over real property — Except as otherwise provided in this Act, the personal representative of a deceased person has power to dispose

of and otherwise deal with the real property vested in the personal representative by virtue of this Act, with the like incidents, but subject to the like rights, equities and obligations, as if the real property were personal property vested in the personal representative.

17. (1) Powers of executors and administrators as to selling and conveying real estate — The powers of sale conferred by this Act on a personal representative may be exercised for the purpose not only of paying debts but also of distributing or dividing the estate among the persons beneficially entitled thereto, whether there are or are not debts, and in no case is it necessary that the persons beneficially entitled concur in any such sale except where it is made for the purpose of distribution only.

(2) Concurrence of heirs and devisees — Except with the approval of the majority of the persons beneficially entitled thereto representing together not less than one-half of all the interests therein, including the Children's Lawyer acting on behalf of a minor or the Public Guardian and Trustee acting on behalf of a mentally incapable person who has no guardian or attorney for property, no sale of any such real property made for the purpose of distribution only is valid as respects any person beneficially entitled thereto unless the person concurs therein, but, where a minor or a mentally incapable person who has no guardian or attorney for property is beneficially entitled or where there are other persons beneficially entitled whose consent to the sale is not obtained by reason of their place of residence being unknown or where in the opinion of the Children's Lawyer or the Public Guardian and Trustee, as the case may be it would be inconvenient to require the concurrence of such persons, the Children's Lawyer or the Public Guardian and Trustee may, upon proof satisfactory to him or her that the sale is in the interest and to the advantage of the estate of the deceased person and the persons beneficially interested therein, approve the sale on behalf of such minor or mentally incapable person and non-concurring persons, and any such sale made with the written approval of the Children's Lawyer on behalf of such minor or the Public Guardian and Trustee on behalf of such mentally incapable person is valid and binding upon the minor or mentally incapable person and non-concurring persons, and for this purpose the Children's Lawyer has the same powers and duties as he or she has in the case of minors and the Public Guardian and Trustee has the same powers and duties as he or she has in the case of mentally incapable persons, but in any case a judge may dispense with the concurrence of the persons beneficially entitled or any or either of them.

(3) Powers of personal representative as to dividing estate among persons entitled — The personal representative has power, with the concurrence of the adult persons beneficially entitled thereto, and with the written approval of the Children's Lawyer on behalf of minors or of the Public Guardian and Trustee on behalf of mentally incapable persons who have no guardian or attorney for property, if any, so entitled, to convey, divide or distribute the estate of the deceased person or any part thereof among the persons beneficially entitled thereto according to their respective shares and interests therein.

(4) Patient in psychiatric facility — Where a person beneficially entitled is a patient in a psychiatric facility under the *Mental Health Act* and the Public Guardian and Trustee is his or her guardian of property, the Public Guardian and Trustee may give the concurrence and approval required by subsections (2) and (3).

(5) Distribution by order within three years from death — Upon the application of the personal representative or of any person beneficially entitled, the court may, before the expiration of three years from the death of the deceased, direct the personal representative to divide or distribute the estate or any part thereof to or among the persons beneficially entitled according to their respective rights and interests therein.

(6) Exercise of power of division without concurrence — The power of division conferred by subsection (3) may also be exercised, although all the persons beneficially interested do not concur, with the written approval of the Children's Lawyer or of the Public Guardian and Trustee, as the case may be, which may be given under the same conditions and with the like effect as in the case of a sale under subsection (2).

(7) Ss. 16, 17 not to apply to administrators of personal estate only — Section 16 and this section do not apply to an administrator where the letters of administration are limited to the personal property, exclusive of the real property, and do not derogate from any right possessed by a personal representative independent of this Act, but an executor shall not exercise the powers conferred by this section until the executor has obtained probate of the will except with the approval of a judge.

(8) Conveyance by personal representative without an order — The powers of a personal representative under subsection (2), (3) or (6) have heretofore been and shall hereafter be exercisable during the period of three years from the death of the deceased without an order of a judge, provided that,

(a) real property conveyed, divided or distributed by virtue of such powers to or among the persons beneficially entitled thereto, shall be deemed to have been and to be liable for the payment of the debts of the deceased owner as if no conveyance, division or distribution had been made, even though it has subsequently during such three-year period been conveyed to a purchaser or purchasers in good faith and for value, but, in the case of such purchaser or purchasers, such liability shall only continue after the expiry of such three-year period if some action or legal proceeding has been instituted by the creditor, or an assignee or successor of the creditor to enforce the claim and a certificate of pending action or a caution has, before such expiry, been registered against the property; and that

(b) although such liability has applied and shall apply as aforesaid in respect of real property so conveyed, divided or distributed, any such purchaser, in good faith and for value, shall be deemed to have had and to have a right to relief over against the persons beneficially entitled, and where such conveyance, division or distribution was made by the personal representative with knowledge of the debt in respect of which claim is made, or without due advertisement for creditors, then against such personal representative; and that

(c) upon the expiration of such three-year period where no certificate of pending action or caution has been registered, subsection 21(2) and section 23 apply as if such real property had become vested in the person beneficially entitled thereto under section 9.

1992, c. 32, s. 10; 1994, c. 27, s. 43(2); 2009, c. 33, Sched. 2, s. 31(6)-(8)

18. Effect of accepting share of purchase money — The acceptance by an adult of his or her share of the purchase money in the case of a sale by a personal representative that has been made without the written approval of the Children's Lawyer or of the Public Guardian and Trustee, where such approval is required, is a confirmation of the sale as to him or her.

1994, c. 27, s. 43(2); 2009, c. 33, Sched. 2, s. 31(9)

19. Protection of purchasers from personal representatives — A person purchasing in good faith and for value real property from a personal representative in a manner authorized by this Act is entitled to hold it freed and discharged from any debts or liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his

or her will, and from all claims of the persons beneficially entitled thereto, and is not bound to see to the application of the purchase money.

20. [Repealed 2009, c. 33, Sched. 2, s. 31(10).]

21. (1) Protection of purchasers from beneficiary — A person purchasing real property in good faith and for value from a person beneficially entitled, to whom it has been conveyed by the personal representative, by leave of a judge, is entitled to hold it freed and discharged from any debts and liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his or her will, but nothing in this section affects the rights of creditors as against the personal representative personally, or as against any person beneficially entitled to whom real property of a deceased owner has been conveyed by the personal representative.

(2) Extent to which real property remains liable to debts and personal liability of beneficiary — Real property that becomes vested in a person beneficially entitled thereto under section 9 continues to be liable to answer the debts of the deceased owner so long as it remains vested in such person, or in any person claiming under that person, not being a purchaser in good faith and for valuable consideration, as it would have been if it had remained vested in the personal representative, and in the event of a sale thereof in good faith and for value by such person beneficially entitled that person is personally liable for such debts to the extent of the proceeds of such real property.

22. (1) Powers of personal representative as to leasing and mortgaging — The powers of a personal representative under this Act include,

- (a) power to lease from year to year while the real property remains vested in the personal representative;
- (b) power, with the approval of the majority of the persons beneficially entitled thereto representing together not less than one-half of all the interest therein including the Children's Lawyer acting on behalf of a minor or the Public Guardian and Trustee acting on behalf of a mentally incapable person who has no guardian or attorney for property, to lease for a longer term;
- (c) power to mortgage for the payment of debts.

(2) Approval of Children's Lawyer or of the Public Guardian and Trustee — The written approval of the Children's Lawyer or of the Public Guardian and Trustee to mortgaging is required where it would be required if the real property were being sold.

1994, c. 27, s. 43(2); 2009, c. 33, Sched. 2, s. 31(11), (12)

23. (1) Rights of purchaser in good faith against claims of creditors — A purchaser in good faith and for value of real property of a deceased owner that has become vested under section 9 in a person beneficially entitled thereto is entitled to hold it freed and discharged from the claims of creditors of the deceased owner except such of them of which the purchaser had notice at the time of the purchase.

(2) Liability of personal representative — Nothing in subsection (1) affects the right of the creditor against the personal representative personally where the personal representative has permitted the real property to become vested in the person beneficially entitled to the prejudice of the creditor or against the person beneficially entitled.

24. (1) Search for children born outside marriage — A personal representative shall make reasonable inquiries for persons who may be entitled by virtue of a relationship traced through a birth outside marriage.

(2) Liability of personal representative — A personal representative is not liable for failing to distribute property to a person who is entitled by virtue of a relationship traced through a birth outside marriage where,

- (a) the personal representative makes the inquiries referred to in subsection (1) and the entitlement of the person entitled was not known to the personal representative at the time of the distribution; and
- (b) the personal representative makes such search of the records of the Registrar General relating to parentage as is available for the existence of persons who are entitled by virtue of a relationship traced through a birth outside marriage and the search fails to disclose the existence of such a person.

(3) Saving rights — Nothing in the section prejudices the right of any person to follow the property, or any property representing it, into the hands of any person other than a purchaser in good faith and for value, except that where there is no presumption or court finding of the parentage of a person born outside marriage until after the death of the deceased, a person entitled by virtue of a relationship traced through the birth is entitled to follow only property that is distributed after the personal representative has actual notice of an application to establish the parentage or of the facts giving rise to a presumption of parentage.

25. (1) Cases of children advanced by settlement, etc — If a child of an intestate has been advanced by the intestate by settlement or portion of real or personal property or both, and the same has been so expressed by the intestate in writing or so acknowledged in writing by the child, the value thereof shall be reckoned, for the purposes of this section only, as part of the real and personal property of the intestate to be distributed under this Act, and if the advancement is equal to or greater than the amount of the share that the child would be entitled to receive of the real and personal property of the intestate, as so reckoned, then the child and his or her descendants shall be excluded from any share in the real and personal property of the intestate.

(2) If advancement is not equal — If the advancement is less than the share, the child and his or her descendants are entitled to so much only of the real and personal property as is sufficient to make all the shares of the children in the real and personal property and advancement to be equal, as nearly as can be estimated.

(3) Value of property advanced, how estimated — The value of any real or personal property so advanced shall be deemed to be that, if any, which has been acknowledged by the child by an instrument in writing, otherwise the value shall be estimated according to the value of the property when given.

(4) Education, etc., not advancement — The maintaining or educating of, or the giving of money to, a child without a view to a portion or settlement in life shall not be deemed an advancement within the meaning of this Act.

26. Distribution not to be made for one year — Subject to section 53 of the *Trustee Act*, no distribution shall be made on an intestacy until after one year from the death of the intestate, and every person to whom in distribution a share is allotted shall, if any debt owing by the intestate is afterwards sued for and recovered or otherwise duly made to appear, refund and pay back to the personal representative the person's rateable part of that debt and of

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the costs of suit and charges of the personal representative by reason of such debt out of the part or share so allotted to the person, thereby to enable the personal representative to pay and satisfy such debt, and shall give bond with sufficient sureties that the person will do so.

27. Appointment of temporary deputy Children's Lawyer — The Lieutenant Governor in Council may appoint a temporary deputy of the Children's Lawyer for the purposes of this Act who shall have all the powers of the Children's Lawyer for such purposes.

1994, c. 27, s. 43(2)

28. Affidavits — Affidavits may be used in proceedings taken under this Act.

Form 1 — Caution

Estates Administration Act, (Subsection 9(1))

I,, executor of (*or* administrator with the will annexed of, *or* administrator of), who died on or about the day of, 19 .., certify that it may be necessary for me under my powers and in fulfilment of my duty as executor (*or* administrator) to sell the real property of the said.....as hereinafter described, or part thereof, and of this all persons concerned are hereby required to take notice.

The real property to be affected by this caution is described as follows: (*Describe the real property in a manner sufficient for registration under the Land Titles Act, or the Registry Act, as the case may be.*)

Proposed Repeal — Form 1

Form 1 [Repealed 2017, c. 20, Sched. 11, s. 9. Not in force at date of publication.]

[Repealed 2017, c. 20, Sched. 11, s. 9. Not in force at date of publication.]

Form 2 — Certificate of Withdrawal

Estates Administration Act, (Subsection 9(4))

I,, executor (*or* administrator) of, hereby withdraw the caution heretofore registered with respect to the real property hereinafter described: (*Describe the real property in a manner sufficient for registration under the Land Titles Act, as the case may be.*)

Proposed Repeal — Form 2

Form 2 [Repealed 2017, c. 20, Sched. 11, s. 9. Not in force at date of publication.]

[Repealed 2017, c. 20, Sched. 11, s. 9. Not in force at date of publication.]

Form 3 — Affidavit of Witness

Estates Administration Act, (Subsection 9(5))

Form 3

Form 3

I, of, etc., make oath and say: (*or I* of, etc, affirm) that I am well acquainted with named in the above certificate; that I was present and did see the said certificate signed by the said; that I am a subscribing witness to the said certificate, and that I believe the said is the person who registered the caution referred to in the said certificate. (Sworn, etc.)

Proposed Repeal — Form 3

Form 3 [Repealed 2017, c. 20, Sched. 11, s. 9. Not in force at date of publication.]

[Repealed 2017, c. 20, Sched. 11, s. 9. Not in force at date of publication.]

EVIDENCE ACT

R.S.O. 1990, c. E.23, as am. S.O. 1993, c. 27, Sched.; 1995, c. 6, s. 6; 1996, c. 25, s. 5; 1998, c. 18, Sched. B, s. 7, Sched. G, s. 50; 1999, c. 12, Sched. B, s. 7; 2000, c. 26, Sched. A, s. 7; 2001, c. 9, Sched. B, s. 8; 2002, c. 8, Sched. I, s. 10; 2002, c. 17, Sched. F, s. 1; 2002, c. 18, Sched. A, s. 8 [Cannot be applied.]; 2005, c. 5, s. 25; 2006, c. 21, Sched. F, s. 110; 2009, c. 33, Sched. 2, s. 32; 2011, c. 1, Sched. 1, s. 2; 2017, c. 8, Sched. 17, s. 6; 2020, c. 7, Sched. 4, s. 10; 2020, c. 11, Sched. 5, s. 15; 2020, c. 34, Sched. 13, s. 3 [Not in force at date of publication.]

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13. Actions by or against heirs, etc. — In an action by or against the heirs, next of kin, executors, administrators or assigns of a deceased person, an opposite or interested party shall not obtain a verdict, judgment or decision on his or her own evidence in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence.

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49. Effect of probate, etc., as evidence of will, etc. — In order to establish a devise or other testamentary disposition of or affecting real estate, probate of the will or letters of administration with the will annexed containing such devise or disposition, or a copy thereof, under the seal of the court that granted it or under the seal of the Superior Court of Justice, are proof, in the absence of evidence to the contrary, of the will and of its validity and contents.

2000, c. 26, Sched. A, s. 7(2), para. 1

50. (1) Proof in the case of will of real estate filed in courts outside Ontario — Where a person dies in any of Her Majesty's possessions outside Ontario having made a will sufficient to pass real estate in Ontario, purporting to devise, charge or affect real estate in Ontario, the party desiring to establish any such disposition, after giving one month's notice to the opposite party to the proceeding of the party's intentions so to do, may produce and file the probate of the will or letters of administration with the will annexed or a certified copy thereof under the seal of the court that granted the same with a certificate of the judge, registrar or clerk of such court that the original will is filed and remains in the court and purports to have been executed before two witnesses, and such probate or letters of administration or certified copy with such certificate is, unless the court otherwise orders, proof in the absence of evidence to the contrary of the will and of its validity and contents.

(2) Effect of certificate — The production of the certificate mentioned in subsection (1) is proof in the absence of evidence to the contrary of the facts therein stated and of the author-

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ity of the judge, registrar or clerk, without proof of his or her appointment, authority or signature.

1993, c. 27, Sched.

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FAMILY LAW ACT

R.S.O. 1990, c. F.3, as am. S.O. 1992, c. 32, s. 12; 1993, c. 27, Sched.; 1997, c. 20; 1997, c. 25, Sched. E, s. 1; 1998, c. 26, s. 102; 1999, c. 6, s. 25; 2000, c. 4, s. 12; 2000, c. 33, s. 22 [Not in force at date of publication. Repealed 2009, c. 11, s. 21.]; 2002, c. 17, Sched. F, s. 1; 2002, c. 24, Sched. B, s. 25, items 9, 37; 2004, c. 31, Sched. 38, s. 2; 2005, c. 5, s. 27(1), (2) (Fr.), (3)–(5), (6) (Fr.), (7)–(28); 2006, c. 1, s. 5; 2006, c. 19, Sched. B, s. 9, Sched. C, s. 1(1), (2), (4); 2009, c. 11, ss. 22(1), (2), (3) (Fr.), (4), (5), 23, 24 (Fr.), 25 (Fr.), 26, 27, 28 (Fr.), 29, 30 (Fr.), 31 (Fr.), 32(1) (Fr.), (2), 33, 34 (Fr.), 35–37, 38 (Fr.), 39, 40 [ss. 32(2), 33, 40(2) not in force at date of publication. Repealed 2014, c. 7, Sched. 9, s. 11.]; 2009, c. 33, Sched. 2, s. 34; 2014, c. 7, Sched. 9, ss. 1(1) (Fr.), (2), 2–10; 2015, c. 9, s. 28; 2015, c. 27, Sched. 1, s. 2; 2016, c. 23, s. 47; 2017, c. 8, Sched. 27, s. 21; 2017, c. 34, Sched. 15; 2019, c. 14, Sched. 9, ss. 41–44 [ss. 41, 43 44 not in force at date of publication.]; 2020, c. 11, Sched. 15, s. 53 [Not in force at date of publication.]; 2020, c. 25, Sched. 1, s. 28, Sched. 2, s. 7, Sched. 3 [Sched. 3, ss. 3, 4 not in force at date of publication.].

Preamble

Whereas it is desirable to encourage and strengthen the role of the family; and whereas for that purpose it is necessary to recognize the equal position of spouses as individuals within marriage and to recognize marriage as a form of partnership; and whereas in support of such recognition it is necessary to provide in law for the orderly and equitable settlement of the affairs of the spouses upon the breakdown of the partnership, and to provide for other mutual obligations in family relationships, including the equitable sharing by parents of responsibility for their children; *Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:*

1. (1) Definitions — In this Act,

“**child**” includes a person whom a parent has demonstrated a settled intention to treat as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;

“**child support guidelines**” means the guidelines established by the regulations made under subsections 69(2) and (3);

“**cohabit**” means to live together in a conjugal relationship, whether within or outside marriage;

“**court**” means the Ontario Court of Justice, the Family Court of the Superior Court of Justice or the Superior Court of Justice;

“**domestic contract**” means a domestic contract as defined in Part IV (Domestic Contracts);

“**parent**” includes a person who has demonstrated a settled intention to treat a child as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;

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“**paternity agreement**” [Repealed 2020, c. 25, Sched. 3, s. 1.]

“**regulations**” means the regulations made under this Act;

“**spouse**” means either of two persons who,

(a) are married to each other, or

(b) have together entered into a marriage that is voidable or void, in good faith on the part of a person relying on this clause to assert any right.

(2) Polygamous marriages — In the definition of “spouse”, a reference to marriage includes a marriage that is actually or potentially polygamous, if it was celebrated in a jurisdiction whose system of law recognizes it as valid.

1997, c. 20, s. 1; 1999, c. 6, s. 25(1); 2005, c. 5, s. 27(1); 2006, c. 19, Sched. C, s. 1(1), (2), (4); 2014, c. 7, Sched. 9, s. 1(2); 2020, c. 25, Sched. 3, s. 1

2. (1) Staying application — If, in an application under this Act, it appears to the court that for the appropriate determination of the spouses’ affairs it is necessary or desirable to have other matters determined first or simultaneously, the court may stay the application until another proceeding is brought or determined as the court considers appropriate.

(2) All proceedings in one court — Except as this Act provides otherwise, no person who is a party to an application under this Act shall make another application under this Act to another court, but the court may order that the proceeding be transferred to a court having other jurisdiction where, in the first court’s opinion, the other court is more appropriate to determine the matters in issue that should be determined at the same time.

(3) Applications in Superior Court of Justice — In the Superior Court of Justice, an application under this Act may be made by action or application.

(4) Statement re removal of barriers to remarriage — A party to an application under section 7 (net family property), 10 (questions of title between spouses), 33 (support), 34 (powers of court) or 37 (variation) may serve on the other party and file with the court a statement, verified by oath or statutory declaration, indicating that,

(a) the author of the statement has removed all barriers that are within his or her control and that would prevent the other spouse’s remarriage within that spouse’s faith; and

(b) the other party has not done so, despite a request.

(5) Idem — Within ten days after service of the statement, or within such longer period as the court allows, the party served with a statement under subsection (4) shall serve on the other party and file with the court a statement, verified by oath or statutory declaration, indicating that the author of the statement has removed all barriers that are within his or her control and that would prevent the other spouse’s remarriage within that spouse’s faith.

(6) Dismissal, etc. — When a party fails to comply with subsection (5),

(a) if the party is an applicant, the proceeding may be dismissed;

(b) if the party is a respondent, the defence may be struck out.

(7) Exception — Subsections (5) and (6) do not apply to a party who does not claim costs or other relief in the proceeding.

(8) Extension of times — The court may, on motion, extend a time prescribed by this Act if it is satisfied that,

(a) there are apparent grounds for relief;

- (b) relief is unavailable because of delay that has been incurred in good faith; and
- (c) no person will suffer substantial prejudice by reason of the delay.

(9) Incorporation of contract in order — A provision of a domestic contract in respect of a matter that is dealt with in this Act may be incorporated in an order made under this Act.

(10) Act subject to contracts — A domestic contract dealing with a matter that is also dealt with in this Act prevails unless this Act provides otherwise.

(11) Registration of orders — An order made under this Act that affects real property does not affect the acquisition of an interest in the real property by a person acting in good faith without notice of the order, unless the order is registered in the proper land registry office.

2006, c. 19, Sched. C, s. 1(1)

3. (1) Mediation — In an application under this Act, the court may, on motion, appoint a person whom the parties have selected to mediate any matter that the court specifies.

(2) Consent to act — The court shall appoint only a person who,

- (a) has consented to act as mediator; and
- (b) has agreed to file a report with the court within the period of time specified by the court.

(3) Duty of mediator — The mediator shall confer with the parties, and with the children if the mediator considers it appropriate to do so, and shall endeavour to obtain an agreement between the parties.

(4) Full or limited report — Before entering into mediation, the parties shall decide whether,

- (a) the mediator is to file a full report on the mediation, including anything that he or she considers relevant; or
- (b) the mediator is to file a limited report that sets out only the agreement reached by the parties or states only that the parties did not reach agreement.

(5) Filing and copies of report — The mediator shall file with the clerk or registrar of the court a full or limited report, as the parties have decided, and shall give a copy to each of the parties.

(6) Admissions, etc., in the course of mediation — If the parties have decided that the mediator is to file a limited report, no evidence of anything said or of any admission or communication made in the course of the mediation is admissible in any proceeding, except with the consent of all parties to the proceeding in which the mediator was appointed.

(7) Fees and expenses — The court shall require the parties to pay the mediator's fees and expenses and shall specify in the order the proportions or amounts of the fees and expenses that each party is required to pay.

(8) Idem, serious financial hardship — The court may require one party to pay all the mediator's fees and expenses if the court is satisfied that payment would cause the other party or parties serious financial hardship.

PART I — FAMILY PROPERTY (SS. 4–16)

4. (1) Definitions — In this Part,

“**court**” means a court as defined in subsection 1(1), but does not include the Ontario Court of Justice;

“**matrimonial home**” means a matrimonial home under section 18 and includes property that is a matrimonial home under that section at the valuation date;

“**net family property**” means the value of all the property, except property described in subsection (2), that a spouse owns on the valuation date, after deducting,

(a) the spouse’s debts and other liabilities, and

(b) the value of property, other than a matrimonial home, that the spouse owned on the date of the marriage, after deducting the spouse’s debts and other liabilities, other than debts or liabilities related directly to the acquisition or significant improvement of a matrimonial home, calculated as of the date of the marriage;

“**property**” means any interest, present or future, vested or contingent, in real or personal property and includes,

(a) property over which a spouse has, alone or in conjunction with another person, a power of appointment exercisable in favour of himself or herself,

(b) property disposed of by a spouse but over which the spouse has, alone or in conjunction with another person, a power to revoke the disposition or a power to consume or dispose of the property, and

(c) in the case of a spouse’s rights under a pension plan, the imputed value, for family law purposes, of the spouse’s interest in the plan, as determined in accordance with section 10.1, for the period beginning with the date of the marriage and ending on the valuation date;

“**valuation date**” means the earliest of the following dates:

1. The date the spouses separate and there is no reasonable prospect that they will resume cohabitation.

2. The date a divorce is granted.

3. The date the marriage is declared a nullity.

4. The date one of the spouses commences an application based on subsection 5(3) (improvident depletion) that is subsequently granted.

5. The date before the date on which one of the spouses dies leaving the other spouse surviving.

(1.1) Net family property, liabilities — The liabilities referred to in clauses (a) and (b) of the definition of “**net family property**” in subsection (1) include any applicable contingent tax liabilities in respect of the property.

(2) Excluded property — The value of the following property that a spouse owns on the valuation date does not form part of the spouse’s net family property:

1. Property, other than a matrimonial home, that was acquired by gift or inheritance from a third person after the date of the marriage.

2. Income from property referred to in paragraph 1, if the donor or testator has expressly stated that it is to be excluded from the spouse's net family property.
3. Damages or a right to damages for personal injuries, nervous shock, mental distress or loss of guidance, care and companionship, or the part of a settlement that represents those damages.
4. Proceeds or a right to proceeds of a policy of life insurance, as defined under the *Insurance Act*, that are payable on the death of the life insured.
5. Property, other than a matrimonial home, into which property referred to in paragraphs 1 to 4 can be traced.
6. Property that the spouses have agreed by a domestic contract is not to be included in the spouse's net family property.
7. Unadjusted pensionable earnings under the *Canada Pension Plan*.

(3) Onus of proof re deductions and exclusions — The onus of proving a deduction under the definition of "net family property" or an exclusion under subsection (2) is on the person claiming it.

(4) Close of business — When this section requires that a value be calculated as of a given date, it shall be calculated as of close of business on that date.

(5) Net family property not to be less than zero — If a spouse's net family property as calculated under subsections (1), (2) and (4) is less than zero, it shall be deemed to be equal to zero.

2004, c. 31, Sched. 38, s. 2(1); 2006, c. 19, Sched. C, s. 1(2); 2009, c. 11, s. 22(1), (2), (4), (5); 2009, c. 33, Sched. 2, s. 34(1), (2)

5. (1) Equalization of net family properties — When a divorce is granted or a marriage is declared a nullity, or when the spouses are separated and there is no reasonable prospect that they will resume cohabitation, the spouse whose net family property is the lesser of the two net family properties is entitled to one-half the difference between them.

(2) Idem — When a spouse dies, if the net family property of the deceased spouse exceeds the net family property of the surviving spouse, the surviving spouse is entitled to one-half the difference between them.

(3) Improvident depletion of spouse's net family property — When spouses are cohabiting, if there is a serious danger that one spouse may improvidently deplete his or her net family property, the other spouse may on an application under section 7 have the difference between the net family properties divided as if the spouses were separated and there were no reasonable prospect that they would resume cohabitation.

(4) No further division — After the court has made an order for division based on subsection (3), neither spouse may make a further application under section 7 in respect of their marriage.

(5) Idem — Subsection (4) applies even though the spouses continue to cohabit, unless a domestic contract between the spouses provides otherwise.

(6) Variation of share — The court may award a spouse an amount that is more or less than half the difference between the net family properties if the court is of the opinion that equalizing the net family properties would be unconscionable, having regard to,

- (a) a spouse's failure to disclose to the other spouse debts or other liabilities existing at the date of the marriage;
- (b) the fact that debts or other liabilities claimed in reduction of a spouse's net family property were incurred recklessly or in bad faith;
- (c) the part of a spouse's net family property that consists of gifts made by the other spouse;
- (d) a spouse's intentional or reckless depletion of his or her net family property;
- (e) the fact that the amount a spouse would otherwise receive under subsection (1), (2) or (3) is disproportionately large in relation to a period of cohabitation that is less than five years;
- (f) the fact that one spouse has incurred a disproportionately larger amount of debts or other liabilities than the other spouse for the support of the family;
- (g) a written agreement between the spouses that is not a domestic contract; or
- (h) any other circumstance relating to the acquisition, disposition, preservation, maintenance or improvement of property.

(7) Purpose — The purpose of this section is to recognize that child care, household management and financial provision are the joint responsibilities of the spouses and that inherent in the marital relationship there is equal contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities, entitling each spouse to the equalization of the net family properties, subject only to the equitable considerations set out in subsection (6).

6. (1) Election: spouse's will — When a spouse dies leaving a will, the surviving spouse shall elect to take under the will or to receive the entitlement under section 5.

(2) Idem: spouse's intestacy — When a spouse dies intestate, the surviving spouse shall elect to receive the entitlement under Part II of the *Succession Law Reform Act* or to receive the entitlement under section 5.

(3) Idem: spouse's partial intestacy — When a spouse dies testate as to some property and intestate as to other property, the surviving spouse shall elect to take under the will and to receive the entitlement under Part II of the *Succession Law Reform Act*, or to receive the entitlement under section 5.

(4) Property outside estate — A surviving spouse who elects to take under the will or to receive the entitlement under Part II of the *Succession Law Reform Act*, or both in the case of a partial intestacy, shall also receive the other property to which he or she is entitled because of the first spouse's death.

(5) Gifts by will — The surviving spouse shall receive the gifts made to him or her in the deceased spouse's will in addition to the entitlement under section 5 if the will expressly provides for that result.

(6) Amounts to be credited — The rules in subsection (7) apply if a surviving spouse elects or has elected to receive an entitlement under section 5 and is,

- (a) the beneficiary of a policy of life insurance, as defined in the *Insurance Act*, that was taken out on the life of the deceased spouse and owned by the deceased spouse or was taken out on the lives of a group of which he or she was a member;
- (b) the beneficiary of a lump sum payment provided under a pension or similar plan on the death of the deceased spouse; or
- (c) the recipient of property or a portion of property to which the surviving spouse becomes entitled by right of survivorship or otherwise on the death of the deceased spouse.

(7) Same — The following rules apply in the circumstances described in subsection (6):

1. The amount of every payment and the value of every property or portion of property described in that subsection, less any contingent tax liability in respect of the payment, property or portion of property, shall be credited against the surviving spouse's entitlement under section 5.
2. If the total amount of the credit under paragraph 1 exceeds the entitlement under section 5, the deceased spouse's personal representative may recover the excess amount from the surviving spouse.
3. Paragraphs 1 and 2 do not apply in respect of a payment, property or portion of property if,
 - (i) the deceased spouse provided in a written designation, will or other written instrument, as the case may be, that the surviving spouse shall receive the payment, property or portion of property in addition to the entitlement under section 5, or
 - (ii) in the case of property or a portion of property referred to in clause (6)(c), if the surviving spouse's entitlement to the property or portion of property was established by or on behalf of a third person, either the deceased spouse or the third person provided in a will or other written instrument that the surviving spouse shall receive the property or portion of property in addition to the entitlement under section 5.

(8) Effect of election to receive entitlement under section 5 — When a surviving spouse elects to receive the entitlement under section 5, the gifts made to him or her in the deceased spouse's will are revoked and the will shall be interpreted as if the surviving spouse had died before the other, unless the will expressly provides that the gifts are in addition to the entitlement under section 5.

(9) Idem — When a surviving spouse elects to receive the entitlement under section 5, the spouse shall be deemed to have disclaimed the entitlement under Part II of the *Succession Law Reform Act*.

(10) Manner of making election — The surviving spouse's election shall be in the form prescribed by the regulations and shall be filed in the office of the Estate Registrar for Ontario within six months after the first spouse's death.

(11) Deemed election — If the surviving spouse does not file the election within that time, he or she shall be deemed to have elected to take under the will or to receive the entitlement under the *Succession Law Reform Act*, or both, as the case may be, unless the court, on application, orders otherwise.

(12) Priority of spouse's entitlement — The spouse's entitlement under section 5 has priority over,

- (a) the gifts made in the deceased spouse's will, if any, subject to subsection (13);
- (b) a person's right to a share of the estate under Part II (Intestate Succession) of the *Succession Law Reform Act*;
- (c) an order made against the estate under Part V (Support of Defendants) of the *Succession Law Reform Act*, except an order in favour of a child of the deceased spouse.

(13) Exception — The spouse's entitlement under section 5 does not have priority over a gift by will made in accordance with a contract that the deceased spouse entered into in good faith and for valuable consideration, except to the extent that the value of the gift, in the court's opinion, exceeds the consideration.

(14) Distribution within six months of death restricted — No distribution shall be made in the administration of a deceased spouse's estate within six months of the spouse's death, unless,

- (a) the surviving spouse gives written consent to the distribution; or
- (b) the court authorizes the distribution.

(15) Idem, notice of application — No distribution shall be made in the administration of a deceased spouse's estate after the personal representative has received notice of an application under this Part, unless,

- (a) the applicant gives written consent to the distribution; or
- (b) the court authorizes the distribution.

(16) Extension of limitation period — If the court extends the time for a spouse's application based on subsection 5(2), any property of the deceased spouse that is distributed before the date of the order and without notice of the application shall not be brought into the calculation of the deceased spouse's net family property.

(17) Exception — Subsections (14) and (15) do not prohibit reasonable advances to dependants of the deceased spouse for their support.

(18) Definition — In subsection (17), "defendant" has the same meaning as in Part V of the *Succession Law Reform Act*.

(19) Liability of personal representative — If the personal representative makes a distribution that contravenes subsection (14) or (15), the court makes an order against the estate under this Part and the undistributed portion of the estate is not sufficient to satisfy the order, the personal representative is personally liable to the applicant for the amount that was distributed or the amount that is required to satisfy the order, whichever is less.

(20) Order suspending administration — On motion by the surviving spouse, the court may make an order suspending the administration of the deceased spouse's estate for the time and to the extent that the court decides.

2004, c. 31, Sched. 38, s. 2(2); 2009, c. 11, s. 23; 2014, c. 7, Sched. 9, s. 2; 2020, c. 25, Sched. 3, s. 2

7. (1) Application to court — The court may, on the application of a spouse, former spouse or deceased spouse's personal representative, determine any matter respecting the spouses' entitlement under section 5.

(2) Personal action; estates — Entitlement under subsections 5(1), (2) and (3) is personal as between the spouses but,

- (a) an application based on subsection 5(1) or (3) and commenced before a spouse's death may be continued by or against the deceased spouse's estate; and
- (b) an application based on subsection 5(2) may be made by or against a deceased spouse's estate.

(3) Limitation — An application based on subsection 5(1) or (2) shall not be brought after the earliest of,

- (a) two years after the day the marriage is terminated by divorce or judgment of nullity;
- (b) six years after the day the spouses separate and there is no reasonable prospect that they will resume cohabitation;
- (c) six months after the first spouse's death.

8. Statement of property — In an application under section 7, each party shall serve on the other and file with the court, in the manner and form prescribed by the rules of the court, a statement verified by oath or statutory declaration disclosing particulars of,

- (a) the party's property and debts and other liabilities,
 - (i) as of the date of the marriage,
 - (ii) as of the valuation date, and
 - (iii) as of the date of the statement;
- (b) the deductions that the party claims under the definition of "net family property";
- (c) the exclusions that the party claims under subsection 4(2); and
- (d) all property that the party disposed of during the two years immediately preceding the making of the statement, or during the marriage, whichever period is shorter.

9. (1) Powers of court — In an application under section 7, the court may order,

- (a) that one spouse pay to the other spouse the amount to which the court finds that spouse to be entitled under this Part;
- (b) that security, including a charge on property, be given for the performance of an obligation imposed by the order;
- (c) that, if necessary to avoid hardship, an amount referred to in clause (a) be paid in instalments during a period not exceeding ten years or that payment of all or part of the amount be delayed for a period not exceeding ten years; and
- (d) that, if appropriate to satisfy an obligation imposed by the order,
 - (i) property be transferred to or in trust for or vested in a spouse, whether absolutely, for life or for a term of years, or
 - (ii) any property be partitioned or sold.

(2) Financial information, inspections — The court may, at the time of making an order for instalment or delayed payments or on motion at a later time, order that the spouse who has the obligation to make payments shall,

- (a) furnish the other spouse with specified financial information, which may include periodic financial statements; and

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(b) permit inspections of specified property of the spouse by or on behalf of the other spouse, as the court directs.

(3) Variation — If the court is satisfied that there has been a material change in the circumstances of the spouse who has the obligation to make instalment or delayed payments, the court may, on motion, vary the order, but shall not vary the amount to which the court found the spouse to be entitled under this Part.

(4) Ten-year period — Subsections (3) and 2(8) (extension of times) do not permit the postponement of payment beyond the ten-year period mentioned in clause (1) (c).

10. (1) Determination of questions of title between spouses — A person may apply to the court for the determination of a question between that person and his or her spouse or former spouse as to the ownership or right to possession of particular property, other than a question arising out of an equalization of net family properties under section 5, and the court may,

- (a) declare the ownership or right to possession;
- (b) if the property has been disposed of, order payment in compensation for the interest of either party;
- (c) order that the property be partitioned or sold for the purpose of realizing the interests in it; and
- (d) order that either or both spouses give security, including a charge on property, for the performance of an obligation imposed by the order,

and may make ancillary orders or give ancillary directions.

(2) Estates — An application based on subsection (1) may be made by or continued against the estate of a deceased spouse.

10.1 Interest in a pension plan — (1) Imputed value for family law purposes — The imputed value, for family law purposes, of a spouse's interest in a pension plan to which the *Pension Benefits Act* applies is determined in accordance with section 67.2 or, in the case of a spouse's interest in a variable benefit account, section 67.7 of that Act.

(1.1) Same — The imputed value, for family law purposes, of a spouse's interest in a pension plan to which the *Pooled Registered Pension Plans Act, 2015* applies is determined in accordance with section 17 of that Act.

(2) Same — The imputed value, for family law purposes, of a spouse's interest in any other pension plan is determined, where reasonably possible, in accordance with section 67.2 or, in the case of a spouse's interest in a variable benefit account, section 67.7 of the *Pension Benefits Act* with necessary modifications.

(3) Order for immediate transfer of a lump sum — An order made under section 9 or 10 may provide for the immediate transfer of a lump sum out of a pension plan but, except as permitted under subsection (5), not for any other division of a spouse's interest in the plan.

(4) Same — In determining whether to order the immediate transfer of a lump sum out of a pension plan and in determining the amount to be transferred, the court may consider the following matters and such other matters as the court considers appropriate:

1. The nature of the assets available to each spouse at the time of the hearing.

2. The proportion of a spouse's net family property that consists of the imputed value, for family law purposes, of his or her interest in the pension plan.
3. The liquidity of the lump sum in the hands of the spouse to whom it would be transferred.
4. Any contingent tax liabilities in respect of the lump sum that would be transferred.
5. The resources available to each spouse to meet his or her needs in retirement and the desirability of maintaining those resources.

(5) Order for division of pension payments — If payment of the first instalment of a spouse's pension under a pension plan is due on or before the valuation date, an order made under section 9 or 10 may provide for the division of pension payments but not for any other division of the spouse's interest in the plan.

(6) Same — Subsections 9(2) and (4) do not apply with respect to an order made under section 9 or 10 that provides for the division of pension payments.

(7) Restrictions re certain pension plans — If the *Pension Benefits Act* applies to the pension plan, the restrictions under sections 67.3 and 67.4 of that Act or under sections 67.8 and 67.9 of that Act in relation to variable benefits apply with respect to the division of the spouse's interest in the plan by an order under section 9 or 10.

Proposed Amendment — 10.1(7)

(7) Restrictions re certain pension plans — If the *Pension Benefits Act* applies to the pension plan, the restrictions under sections 67.3, 67.3.1, 67.4 and 67.4.1 of that Act or under sections 67.8 and 67.9 of that Act in relation to variable benefits apply with respect to the division of the spouse's interest in the plan by an order under section 9 or 10.

2019, c. 14, Sched. 9, s. 41 [Not in force at date of publication.]

(7.1) Same — If the *Pooled Registered Pension Plans Act, 2015* applies to the pension plan, the restrictions under sections 19 and 20 of that Act apply with respect to the division of the spouse's interest in the plan by an order under section 9 or 10 of this Act.

(8) Transition, valuation date — This section applies whether the valuation date is before, on or after the date on which this section comes into force.

(9) Transition, previous orders — This section does not apply to an order made before the date on which this section comes into force that requires one spouse to pay to the other spouse the amount to which that spouse is entitled under section 5.

2009, c. 11, s. 26; 2015, c. 9, s. 28(1); 2017, c. 8, Sched. 27, s. 21(1), (2), item 1

11. (1) Operating business or farm — An order made under section 9 or 10 shall not be made so as to require or result in the sale of an operating business or farm or so as to seriously impair its operation, unless there is no reasonable alternative method of satisfying the award.

(2) Idem — To comply with subsection (1), the court may,

- (a) order that one spouse pay to the other a share of the profits from the business or farm; and
- (b) if the business or farm is incorporated, order that one spouse transfer or have the corporation issue to the other shares in the corporation.

12. Orders for preservation — In an application under section 7 or 10, if the court considers it necessary for the protection of the other spouse's interests under this Part, the court may make an interim or final order,

- (a) restraining the depletion of a spouse's property; and
- (b) for the possession, delivering up, safekeeping and preservation of the property.

13. Variation and realization of security — If the court has ordered security or charged a property with security for the performance of an obligation under this Part, the court may, on motion,

- (a) vary or discharge the order; or
- (b) on notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge.

13.1 Order regarding conduct — In making any order under this Part, the court may also make an interim order prohibiting, in whole or in part, a party from directly or indirectly contacting or communicating with another party, if the court determines that the order is necessary to ensure that an application under this Part is dealt with justly.

2009, c. 11, s. 27

14. Presumptions — The rule of law applying a presumption of a resulting trust shall be applied in questions of the ownership of property between spouses, as if they were not married, except that,

- (a) the fact that property is held in the name of spouses as joint tenants is proof, in the absence of evidence to the contrary, that the spouses are intended to own the property as joint tenants; and
- (b) money on deposit in the name of both spouses shall be deemed to be in the name of the spouses as joint tenants for the purposes of clause (a).

2005, c. 5, s. 27(3)

15. Conflict of laws — The property rights of spouses arising out of the marital relationship are governed by the internal law of the place where both spouses had their last common habitual residence or, if there is no place where the spouses had a common habitual residence, by the law of Ontario.

16. (1) Application of Part — This Part applies to property owned by spouses,

- (a) whether they were married before or after the 1st day of March, 1986; and
- (b) whether the property was acquired before or after that day.

(2) Application of s. 14 — Section 14 applies whether the event giving rise to the presumption occurred before or after the 1st day of March, 1986.

PART II — MATRIMONIAL HOME (SS. 17–28)

17. Definitions — In this Part,

“court” means a court as defined in subsection 1(1) but does not include the Ontario Court of Justice;

“**property**” means real or personal property.

2006, c. 19, Sched. C, s. 1(2)

18. (1) Matrimonial home — Every property in which a person has an interest and that is or, if the spouses have separated, was at the time of separation ordinarily occupied by the person and his or her spouse as their family residence is their matrimonial home.

(2) Ownership of shares — The ownership of a share or shares, or of an interest in a share or shares, of a corporation entitling the owner to occupy a housing unit owned by the corporation shall be deemed to be an interest in the unit for the purposes of subsection (1).

(3) Residence on farmland, etc. — If property that includes a matrimonial home is normally used for a purpose other than residential, the matrimonial home is only the part of the property that may reasonably be regarded as necessary to the use and enjoyment of the residence.

19. (1) Possession of matrimonial home — Both spouses have an equal right to possession of a matrimonial home.

(2) Idem — When only one of the spouses has an interest in a matrimonial home, the other spouse's right of possession,

- (a) is personal as against the first spouse; and
- (b) ends when they cease to be spouses, unless a separation agreement or court order provides otherwise.

20. (1) Designation of matrimonial home — One or both spouses may designate property owned by one or both of them as a matrimonial home, in the form prescribed by the regulations.

(2) Contiguous property — The designation may include property that is described in the designation and is contiguous to the matrimonial home.

(3) Registration — The designation may be registered in the proper land registry office.

(4) Effect of designation by both spouses — On the registration of a designation made by both spouses, any other property that is a matrimonial home under section 18 but is not designated by both spouses ceases to be a matrimonial home.

(5) Effect of designation by one spouse — On the registration of a designation made by one spouse only, any other property that is a matrimonial home under section 18 remains a matrimonial home.

(6) Cancellation of designation — The designation of a matrimonial home is cancelled, and the property ceases to be a matrimonial home, on the registration or deposit of,

- (a) a cancellation, executed by the person or persons who made the original designation, in the form prescribed by the regulations;
- (b) a decree absolute of divorce or judgment of nullity;
- (c) an order under clause 23(e) cancelling the designation; or
- (d) proof of death of one of the spouses.

(7) Revival of other matrimonial homes — When a designation of a matrimonial home made by both spouses is cancelled, section 18 applies again in respect of other property that is a matrimonial home.

2014, c. 7, Sched. 9, s. 3

21. (1) Alienation of matrimonial home — No spouse shall dispose of or encumber an interest in a matrimonial home unless,

- (a) the other spouse joins in the instrument or consents to the transaction;
- (b) the other spouse has released all rights under this Part by a separation agreement;
- (c) a court order has authorized the transaction or has released the property from the application of this Part; or
- (d) the property is not designated by both spouses as a matrimonial home and a designation of another property as a matrimonial home, made by both spouses, is registered and not cancelled.

(2) Setting aside transaction — If a spouse disposes of or encumbers an interest in a matrimonial home in contravention of subsection (1), the transaction may be set aside on an application under section 23, unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice, at the time of acquiring it or making an agreement to acquire it, that the property was a matrimonial home.

(3) Proof that property not a matrimonial home — For the purpose of subsection (2), a statement by the person making the disposition or encumbrance,

- (a) verifying that he or she is not, or was not, a spouse at the time of the disposition or encumbrance;
- (b) verifying that the person is a spouse who is not separated from his or her spouse and that the property is not ordinarily occupied by the spouses as their family residence;
- (c) verifying that the person is a spouse who is separated from his or her spouse and that the property was not ordinarily occupied by the spouses, at the time of their separation, as their family residence;
- (d) where the property is not designated by both spouses as a matrimonial home, verifying that a designation of another property as a matrimonial home, made by both spouses, is registered and not cancelled; or
- (e) verifying that the other spouse has released all rights under this Part by a separation agreement,

shall, unless the person to whom the disposition or encumbrance is made had notice to the contrary, be deemed to be sufficient proof that the property is not a matrimonial home.

(4) Idem, attorney's personal knowledge — The statement shall be deemed to be sufficient proof that the property is not a matrimonial home if it is made by the attorney of the person making the disposition or encumbrance, on the basis of the attorney's personal knowledge.

(5) Liens arising by operation of law — This section does not apply to the acquisition of an interest in property by operation of law or to the acquisition of a lien under section 48 of the *Legal Aid Services Act, 1998*.

Proposed Amendment — 21(5)

(5) Liens arising by operation of law — This section does not apply to the acquisition of an interest in property by operation of law or to the acquisition of a lien under the *Legal Aid Services Act, 2020* or a predecessor of that Act.

2020, c. 11, Sched. 15, s. 53 [Not in force at date of publication.]

1998, c. 26, s. 102

22. (1) Right of redemption and to notice — When a person proceeds to realize upon a lien, encumbrance or execution or exercises a forfeiture against property that is a matrimonial home, the spouse who has a right of possession under section 19 has the same right of redemption or relief against forfeiture as the other spouse and is entitled to the same notice respecting the claim and its enforcement or realization.

(2) Service of notice — A notice to which a spouse is entitled under subsection (1) shall be deemed to be sufficiently given if served or given personally or by registered mail addressed to the spouse at his or her usual or last known address or, if none, the address of the matrimonial home, and, if notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing.

(3) Idem: power of sale — When a person exercises a power of sale against property that is a matrimonial home, sections 33 and 34 of the *Mortgages Act* apply and subsection (2) does not apply.

(4) Payments by spouse — If a spouse makes a payment in exercise of the right conferred by subsection (1), the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, execution or forfeiture.

(5) Realization may continue in spouse's absence — Despite any other Act, when a person who proceeds to realize upon a lien, encumbrance or execution or exercises a forfeiture does not have sufficient particulars of a spouse for the purpose and there is no response to a notice given under subsection (2) or under section 33 of the *Mortgages Act*, the realization or exercise of forfeiture may continue in the absence and without regard to the interest of the spouse and the spouse's rights under this section end on the completion of the realization or forfeiture.

1993, c. 27, Sched.

23. Powers of court respecting alienation — The court may, on the application of a spouse or person having an interest in property, by order,

(a) determine whether or not the property is a matrimonial home and, if so, its extent;

(b) authorize the disposition or encumbrance of the matrimonial home if the court finds that the spouse whose consent is required,

(i) cannot be found or is not available,

(ii) is not capable of giving or withholding consent, or

(iii) is unreasonably withholding consent,

subject to any conditions, including provision of other comparable accommodation or payment in place of it, that the court considers appropriate;

(c) dispense with a notice required to be given under section 22;

- (d) direct the setting aside of a transaction disposing of or encumbering an interest in the matrimonial home contrary to subsection 21 (1) and the revesting of the interest or any part of it on the conditions that the court considers appropriate; and
- (e) cancel a designation made under section 20 if the property is not a matrimonial home.

24. (1) Order for possession of matrimonial home — Regardless of the ownership of a matrimonial home and its contents, and despite section 19 (spouse's right of possession), the court may on application, by order,

- (a) provide for the delivering up, safekeeping and preservation of the matrimonial home and its contents;
- (b) direct that one spouse be given exclusive possession of the matrimonial home or part of it for the period that the court directs and release other property that is a matrimonial home from the application of this Part;
- (c) direct a spouse to whom exclusive possession of the matrimonial home is given to make periodic payments to the other spouse;
- (d) direct that the contents of the matrimonial home, or any part of them,
 - (i) remain in the home for the use of the spouse given possession, or
 - (ii) be removed from the home for the use of a spouse or child;
- (e) order a spouse to pay for all or part of the repair and maintenance of the matrimonial home and of other liabilities arising in respect of it, or to make periodic payments to the other spouse for those purposes;
- (f) authorize the disposition or encumbrance of a spouse's interest in the matrimonial home, subject to the other spouse's right of exclusive possession as ordered; and
- (g) where a false statement is made under subsection 21(3), direct,
 - (i) the person who made the false statement, or
 - (ii) a person who knew at the time he or she acquired an interest in the property that the statement was false and afterwards conveyed the interest,

to substitute other real property for the matrimonial home, or direct the person to set aside money or security to stand in place of it, subject to any conditions that the court considers appropriate.

(2) Temporary or interim order — The court may, on motion, make a temporary or interim order under clause (1)(a), (b), (c), (d) or (e).

(3) Order for exclusive possession: criteria — In determining whether to make an order for exclusive possession, the court shall consider,

- (a) the best interests of the children affected;
- (b) any existing orders under Part I (Family Property) and any existing support orders or other enforceable support obligations;
- (c) the financial position of both spouses;
- (d) any written agreement between the parties;
- (e) the availability of other suitable and affordable accommodation; and
- (f) any violence committed by a spouse against the other spouse or the children.

(4) Best interests of child — In determining the best interests of a child, the court shall consider,

- (a) the possible disruptive effects on the child of a move to other accommodation; and
- (b) the child's views and preferences, if they can reasonably be ascertained.

(5) Offence — A person who contravenes an order for exclusive possession is guilty of an offence and upon conviction is liable,

- (a) in the case of a first offence, to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or to both; and
- (b) in the case of a second or subsequent offence, to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years, or to both.

(6) Arrest without warrant — A police officer may arrest without warrant a person the police officer believes on reasonable and probable grounds to have contravened an order for exclusive possession.

(7) Existing orders — Subsections (5) and (6) also apply in respect of contraventions, committed on or after the 1st day of March, 1986, of orders for exclusive possession made under Part III of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980.

2014, c. 7, Sched. 9, s. 4

25. (1) Variation of possessory order — On the application of a person named in an order made under clause 24(1)(a), (b), (c), (d) or (e) or his or her personal representative, if the court is satisfied that there has been a material change in circumstances, the court may discharge, vary or suspend the order.

(2) Variation of conditions of sale — On the motion of a person who is subject to conditions imposed in an order made under clause 23(b) or (d) or 24(1)(g), or his or her personal representative, if the court is satisfied that the conditions are no longer appropriate, the court may discharge, vary or suspend them.

(3) Existing orders — Subsections (1) and (2) also apply to orders made under the corresponding provisions of Part III of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980.

25.1 Order regarding conduct — In making any order under this Part, the court may also make an interim order prohibiting, in whole or in part, a party from directly or indirectly contacting or communicating with another party, if the court determines that the order is necessary to ensure that an application under this Part is dealt with justly.

2009, c. 11, s. 29

26. (1) Joint tenancy in matrimonial home — If a spouse dies owning an interest in a matrimonial home as a joint tenant with a third person and not with the other spouse, the joint tenancy shall be deemed to have been severed immediately before the time of death.

(2) Sixty-day period after spouse's death — Despite clauses 19(2)(a) and (b) (termination of spouse's right of possession), a spouse who has no interest in a matrimonial home but is occupying it at the time of the other spouse's death, whether under an order for exclusive possession or otherwise, is entitled to retain possession against the spouse's estate, rent free, for sixty days after the spouse's death.

27. Registration of order — Orders made under this Part or under Part III of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980 are registrable against land under the *Registry Act* and the *Land Titles Act*.

28. (1) Application of Part — This Part applies to matrimonial homes that are situated in Ontario.

(2) Idem — This Part applies,

- (a) whether the spouses were married before or after the 1st day of March, 1986; and
- (b) whether the matrimonial home was acquired before or after that day.

PART III — SUPPORT OBLIGATIONS (SS. 29—50)

29. Definitions — In this Part,

“**defendant**” means a person to whom another has an obligation to provide support under this Part;

“**same-sex partner**” [Repealed 2005, c. 5, s. 27(4).]

“**spouse**” means a spouse as defined in subsection 1(1), and in addition includes either of two persons who are not married to each other and have cohabited,

- (a) continuously for a period of not less than three years, or
- (b) in a relationship of some permanence, if they are the parents of a child as set out in section 4 of the *Children’s Law Reform Act*.

1999, c. 6, s. 25(2); 2005, c. 5, s. 27(4), (5); 2016, c. 23, s. 47(1)

30. Obligation of spouses for support — Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so.

1999, c. 6, s. 25(3); 2005, c. 5, s. 27(7)

31. (1) Obligation of parent to support child — Every parent has an obligation to provide support, to the extent that the parent is capable of doing so, for his or her unmarried child who,

- (a) is a minor;
- (b) is enrolled in a full-time program of education; or
- (c) is unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents.

(2) Idem — The obligation under subsection (1) does not extend to a child who is sixteen years of age or older and has withdrawn from parental control.

1997, c. 20, s. 2; 2017, c. 34, Sched. 15, s. 1

32. Obligation of child to support parent — Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for or provided support for the child, to the extent that the child is capable of doing so.

33. (1) Order for support — A court may, on application, order a person to provide support for his or her dependants and determine the amount of support.

(2) Applicants — An application for an order for the support of a defendant may be made by the defendant or the defendant's parent.

(2.1) Same — The *Limitations Act, 2002* applies to an application made by the defendant's parent or by an agency referred to in subsection (3) as if it were made by the defendant himself or herself.

(3) Same — An application for an order for the support of a defendant who is the respondent's spouse or child may also be made by one of the following agencies,

- (a) the Ministry of Community and Social Services in the name of the Minister;
- (b) a municipality, excluding a lower-tier municipality in a regional municipality;
- (c) a district social services administration board under the *District Social Services Administration Boards Act*;
- (d) [Repealed 2006, c. 19, Sched. B, s. 9.]
- (e) a delivery agent under the *Ontario Works Act, 1997*,

if the agency is providing or has provided a benefit under the *Family Benefits Act*, assistance under the *General Welfare Assistance Act* or the *Ontario Works Act, 1997* or income support under the *Ontario Disability Support Program Act, 1997* in respect of the defendant's support, or if an application for such a benefit or assistance has been made to the agency by or on behalf of the defendant.

(4) Setting aside domestic contract — The court may set aside a provision for support or a waiver of the right to support in a domestic contract and may determine and order support in an application under subsection (1) although the contract contains an express provision excluding the application of this section,

- (a) if the provision for support or the waiver of the right to support results in unconscionable circumstances;
- (b) if the provision for support is in favour of or the waiver is by or on behalf of a defendant who qualifies for an allowance for support out of public money; or
- (c) if there is default in the payment of support under the contract at the time the application is made.

(5) Adding party — In an application the court may, on a respondent's motion, add as a party another person who may have an obligation to provide support to the same defendant.

(6) Idem — In an action in the Superior Court of Justice, the defendant may add as a third party another person who may have an obligation to provide support to the same defendant.

(7) Purposes of order for support of child — An order for the support of a child should,

- (a) recognize that each parent has an obligation to provide support for the child;
- (b) apportion the obligation according to the child support guidelines.

(8) Purposes of order for support of spouse — An order for the support of a spouse should,

- (a) recognize the spouse's contribution to the relationship and the economic consequences of the relationship for the spouse;

- (b) share the economic burden of child support equitably;
- (c) make fair provision to assist the spouse to become able to contribute to his or her own support; and
- (d) relieve financial hardship, if this has not been done by orders under Parts I (Family Property) and II (Matrimonial Home).

(9) Determination of amount — In determining the amount and duration, if any, of support for a spouse or parent in relation to need, the court shall consider all the circumstances of the parties, including,

- (a) the dependant's and respondent's current assets and means;
- (b) the assets and means that the dependant and respondent are likely to have in the future;
- (c) the dependant's capacity to contribute to his or her own support;
- (d) the respondent's capacity to provide support;
- (e) the dependant's and respondent's age and physical and mental health;
- (f) the dependant's needs, in determining which the court shall have regard to the accustomed standard of living while the parties resided together;
- (g) the measures available for the dependant to become able to provide for his or her own support and the length of time and cost involved to enable the dependant to take those measures;
- (h) any legal obligation of the respondent or dependant to provide support for another person;
- (i) the desirability of the dependant or respondent remaining at home to care for a child;
- (j) a contribution by the dependant to the realization of the respondent's career potential;
- (k) [Repealed 1997, c. 20, s. 3(3).]
- (l) if the dependant is a spouse,
 - (i) the length of time the dependant and respondent cohabited,
 - (ii) the effect on the spouse's earning capacity of the responsibilities assumed during cohabitation,
 - (iii) whether the spouse has undertaken the care of a child who is of the age of eighteen years or over and unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents,
 - (iv) whether the spouse has undertaken to assist in the continuation of a program of education for a child eighteen years of age or over who is unable for that reason to withdraw from the charge of his or her parents,
 - (v) any housekeeping, child care or other domestic service performed by the spouse for the family, as if the spouse were devoting the time spent in performing that service in remunerative employment and were contributing the earnings to the family's support,
 - (v.1) [Repealed 2005, c. 5, s. 27(12).]
 - (vi) the effect on the spouse's earnings and career development of the responsibility of caring for a child; and

(m) any other legal right of the defendant to support, other than out of public money.

(10) Conduct — The obligation to provide support for a spouse exists without regard to the conduct of either spouse, but the court may in determining the amount of support have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship.

(11) Application of child support guidelines — A court making an order for the support of a child shall do so in accordance with the child support guidelines.

(12) Exception: special provisions — Despite subsection (11), a court may award an amount that is different from the amount that would be determined in accordance with the child support guidelines if the court is satisfied,

(a) that special provisions in an order or a written agreement respecting the financial obligations of the parents, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and

(b) that the application of the child support guidelines would result in an amount of child support that is inequitable given those special provisions.

(13) Reasons — Where the court awards, under subsection (12), an amount that is different from the amount that would be determined in accordance with the child support guidelines, the court shall record its reasons for doing so.

(14) Exception: consent orders — Despite subsection (11), a court may award an amount that is different from the amount that would be determined in accordance with the child support guidelines on the consent of both parents if the court is satisfied that,

(a) reasonable arrangements have been made for the support of the child to whom the order relates; and

(b) where support for the child is payable out of public money, the arrangements do not provide for an amount less than the amount that would be determined in accordance with the child support guidelines.

(15) Reasonable arrangements — For the purposes of clause (14)(a), in determining whether reasonable arrangements have been made for the support of a child,

(a) the court shall have regard to the child support guidelines; and

(b) the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the child support guidelines.

1997, c. 20, s. 3; 1997, c. 25, Sched. E, s. 1; 1999, c. 6, s. 25(4)–(10); 2002, c. 17, Sched. F, s. 1; 2002, c. 24, Sched. B, s. 37; 2005, c. 5, s. 27(8)–(14); 2006, c. 1, s. 5(1); 2006, c. 19, Sched. B, s. 9, Sched. C, s. 1(1)

34. (1) Powers of court — In an application under section 33, the court may make an interim or final order,

(a) requiring that an amount be paid periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;

(b) requiring that a lump sum be paid or held in trust;

(c) requiring that property be transferred to or in trust for or vested in the defendant, whether absolutely, for life or for a term of years;

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- (d) respecting any matter authorized to be ordered under clause 24(1) (a), (b), (c), (d) or (e) (matrimonial home);
- (e) requiring that some or all of the money payable under the order be paid into court or to another appropriate person or agency for the defendant's benefit;
- (f) requiring that support be paid in respect of any period before the date of the order;
- (g) requiring payment to an agency referred to in subsection 33(3) of an amount in reimbursement for a benefit or assistance referred to in that subsection, including a benefit or assistance provided before the date of the order;
- (h) requiring payment of expenses in respect of a child's prenatal care and birth;
- (i) requiring that a spouse who has a policy of life insurance as defined under the *Insurance Act* designate the other spouse or a child as the beneficiary irrevocably;
- (j) requiring that a spouse who has an interest in a pension plan or other benefit plan designate the other spouse or a child as beneficiary under the plan and not change that designation; and
- (k) requiring the securing of payment under the order, by a charge on property or otherwise.

(2) Limitation on jurisdiction of Ontario Court of Justice — The Ontario Court of Justice shall not make an order under clause (1)(b), (c), (i), (j) or (k) except for the provision of necessities or to prevent the defendant from becoming or continuing to be a public charge, and shall not make an order under clause (d).

(3) Assignment of support — An order for support may be assigned to an agency referred to in subsection 33(3).

(3.1) Same — An agency referred to in subsection 33(3) to whom an order for support is assigned is entitled to the payments due under the order and has the same right to be notified of and to participate in proceedings under this Act to vary, rescind, suspend or enforce the order as the person who would otherwise be entitled to the payments.

(4) Support order binds estate — An order for support binds the estate of the person having the support obligation unless the order provides otherwise.

(5) Indexing of support payments — In an order made under clause (1)(a), other than an order for the support of a child, the court may provide that the amount payable shall be increased annually on the order's anniversary date by the indexing factor, as defined in subsection (6), for November of the previous year.

(6) Definition — The indexing factor for a given month is the percentage change in the Consumer Price Index for Canada for prices of all items since the same month of the previous year, as published by Statistics Canada.

1997, c. 20, s. 4; 1999, c. 6, s. 25(11); 2004, c. 31, Sched. 38, s. 2(3); 2005, c. 5, s. 27(15); 2006, c. 19, Sched. C, s. 1(2)

35. (1) Domestic contract, etc., may be filed with court — A person who is a party to a domestic contract may file the contract with the clerk of the Ontario Court of Justice or of the Family Court of the Superior Court of Justice together with the person's affidavit stating that the contract is in effect and has not been set aside or varied by a court or agreement.

(1.1) Interpretation — For the purposes of subsection (1), a party to a domestic contract includes a party's guardian of property or attorney for property, if the guardian or attorney

entered into the domestic contract on behalf of the party under the authority of subsection 55(3).

(2) Effect of filing — A provision for support or maintenance contained in a contract that is filed in this manner,

- (a) may be enforced;
- (b) may be varied under section 37;
- (c) except in the case of a provision for the support of a child, may be increased under section 38, and
- (d) in the case of a provision for the support of a child, may be recalculated under section 39.1.

as if it were an order of the court where it is filed.

(3) Setting aside available — Subsection 33(4) (setting aside in unconscionable circumstances, etc.) applies to a contract that is filed in this manner.

(4) Enforcement available despite waiver — Subsection (1) and clause (2)(a) apply despite an agreement to the contrary.

(5) Existing contracts, etc. — Subsections (1) and (2) also apply to contracts made before the 1st day of March, 1986.

(6) Existing arrears — Clause (2)(a) also applies to arrears accrued before the 1st day of March, 1986.

1997, c. 20, s. 5; 2006, c. 1, s. 5(2)–(5); 2006, c. 19, Sched. C, s. 1(2), (4); 2009, c. 33, Sched. 2, s. 34(3); 2014, c. 7, Sched. 9, s. 5

36. (1) Effect of divorce proceeding — When a divorce proceeding is commenced under the *Divorce Act* (Canada), an application for support under this Part that has not been adjudicated is stayed, unless the court orders otherwise.

(2) Arrears may be included in order — The court that deals with a divorce proceeding under the *Divorce Act* (Canada) may determine the amount of arrears owing under an order for support made under this Part and make an order respecting that amount at the same time as it makes an order under the *Divorce Act* (Canada).

(3) Idem — If a marriage is terminated by divorce or judgment of nullity and the question of support is not adjudicated in the divorce or nullity proceedings, an order for support made under this Part continues in force according to its terms.

37. (1) Application for variation — An application to the court for variation of an order made or confirmed under this Part may be made by,

- (a) a dependant or respondent named in the order;
- (b) a parent of a dependant referred to in clause (a);
- (c) the personal representative of a respondent referred to in clause (a); or
- (d) an agency referred to in subsection 33(3).

(2) Powers of court: spouse and parent support — In the case of an order for support of a spouse or parent, if the court is satisfied that there has been a material change in the

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dependant's or respondent's circumstances or that evidence not available on the previous hearing has become available, the court may,

- (a) discharge, vary or suspend a term of the order, prospectively or retroactively;
- (b) relieve the respondent from the payment of part or all of the arrears or any interest due on them; and
- (c) make any other order under section 34 that the court considers appropriate in the circumstances referred to in section 33.

(2.1) Powers of court: child support — In the case of an order for support of a child, if the court is satisfied that there has been a change in circumstances within the meaning of the child support guidelines or that evidence not available on the previous hearing has become available, the court may,

- (a) discharge, vary or suspend a term of the order, prospectively or retroactively;
- (b) relieve the respondent from the payment of part or all of the arrears or any interest due on them; and
- (c) make any other order for the support of a child that the court could make on an application under section 33.

(2.2) Application of child support guidelines — A court making an order under subsection (2.1) shall do so in accordance with the child support guidelines.

(2.3) Exception: special provisions — Despite subsection (2.2), a court may award an amount that is different from the amount that would be determined in accordance with the child support guidelines if the court is satisfied,

- (a) that special provisions in an order or a written agreement respecting the financial obligations of the parents, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and
- (b) that the application of the child support guidelines would result in an amount of child support that is inequitable given those special provisions.

(2.4) Reasons — Where the court awards, under subsection (2.3), an amount that is different from the amount that would be determined in accordance with the child support guidelines, the court shall record its reasons for doing so.

(2.5) Exception: consent orders — Despite subsection (2.2), a court may award an amount that is different from the amount that would be determined in accordance with the child support guidelines on the consent of both parents if the court is satisfied that,

- (a) reasonable arrangements have been made for the support of the child to whom the order relates; and
- (b) where support for the child is payable out of public money, the arrangements do not provide for an amount less than the amount that would be determined in accordance with the child support guidelines.

(2.6) Reasonable arrangements — For the purposes of clause (2.5)(a), in determining whether reasonable arrangements have been made for the support of a child,

- (a) the court shall have regard to the child support guidelines; and

(b) the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the child support guidelines.

(3) Limitation on applications for variation — No application for variation shall be made within six months after the making of the order for support or the disposition of another application for variation in respect of the same order, except by leave of the court.

(4) No variation — An order may not be varied on the basis of the enactment or coming into force of any provision of Schedule 1 to the *Moving Ontario Family Law Forward Act, 2020*.

1997, c. 20, s. 6; 1999, c. 6, s. 25(12); 2005, c. 5, s. 27(16); 2020, c. 25, Sched. 1, s. 28(1)

38. (1) Non-application to orders for child support — This section does not apply to an order for the support of a child.

(2) Application to have existing order indexed — If an order made or confirmed under this Part is not indexed under subsection 34(5), the defendant, or an agency referred to in subsection 33(3), may apply to the court to have the order indexed in accordance with subsection 34(5).

(3) Power of court — The court shall, unless the respondent shows that his or her income, assets and means have not increased sufficiently to permit the increase, order that the amount payable be increased by the indexing factor, as defined in subsection 34(6), for November of the year before the year in which the application is made and be increased in the same way annually thereafter on the anniversary date of the order under this section.

1997, c. 20, s. 7

38.1 (1) Priority to child support — Where a court is considering an application for the support of a child and an application for the support of a spouse, the court shall give priority to the support of the child in determining the applications.

(2) Reasons — Where as a result of giving priority to the support of a child, the court is unable to make an order for the support of a spouse or the court makes an order for the support of a spouse in an amount less than it otherwise would have, the court shall record its reasons for doing so.

(3) Consequences of reduction or termination of child support — Where as a result of giving priority to the support of a child, an order for the support of a spouse is not made or the amount of the order for the support of a spouse is less than it otherwise would have been, any material reduction or termination of the support for the child constitutes a material change of circumstances for the purposes of an application for the support of the spouse or for variation of an order for the support of the spouse.

(4) [Repealed 2002, c. 24, Sched. B, s. 25, item 9.]

1997, c. 20, s. 8; 1999, c. 6, s. 25(13)–(16); 2002, c. 24, Sched. B, s. 25, item 9; 2005, c. 5, s. 27(17)–(19)

39. Administrative calculation of child support — (1) Definition — In this section, “child support calculation service” means the service established by the Government of Ontario for the purposes of this section.

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(2) Application for calculation — Subject to subsection (3), a parent of a child may apply in accordance with the regulations for a calculation by the child support calculation service of an amount to be paid for the support of the child.

(3) Requirements — Subsection (2) does not apply unless the following requirements are met:

1. The applicant is a parent of the child as set out in section 4 of the *Children's Law Reform Act*, or has decision-making responsibility, within the meaning of that Act, with respect to the child under an order or domestic contract.
2. If the applicant is a parent of the child as set out in section 4 of the *Children's Law Reform Act*,
 - i. the parents of the child live separate and apart, and
 - ii. the child lives with one of the parents with the consent, implied consent or acquiescence of the other parent.
3. No order has been made by a court providing for the support of the child, and no domestic contract containing a provision for support of the child has been filed under subsection 35(1).
4. Any other requirement specified by the regulations.

(4) Information to be provided — The child support calculation service shall not calculate an amount under this section unless each parent of the child has provided the income information and any other information that is required by the regulations, in the manner or form specified by the regulations.

(5) Application of child support guidelines — Amounts calculated by the child support calculation service shall be determined in accordance with the child support guidelines as if the amounts were being calculated for the purposes of an order under this Part for the support of a child, subject to such modifications in the application of the child support guidelines as the regulations may specify.

(6) Periodic payments — Amounts calculated under this section are payable on a monthly basis, or on such other periodic basis as may be specified by the regulations.

(7) Notice — The child support calculation service shall give notice to the parents of a calculation of support payable in respect of a child, showing,

- (a) the date on which the calculation was made;
- (b) the income information on which the calculation was based;
- (c) the amount payable for support and by which parent;
- (d) the child's name and birthdate;
- (e) the date on which the first payment is due and when subsequent payments become due; and
- (f) any other information required by the regulations to be provided in the notice.

Proposed Addition — 39(7.1)

(7.1) Certified copies — The Minister of Finance shall provide a certified copy of a notice of calculation given under subsection (7) to a parent or to the designated authority in Ontario under the *Interjurisdictional Support Orders Act, 2002* at the request of the parent or authority.

2020, c. 25, Sched. 3, s. 3 [Not in force at date of publication.]

(8) When amount becomes due — The first payment under a notice of calculation is due,

- (a) on the 31st day after the day the notice is given, as determined by the regulations; or
- (b) on the first instance of a day consented to by the parents in the application for calculation that follows the day described in clause (a).

(9) Corrections to notice — If the notice of calculation contains an error respecting the amount payable or to whom, any parent affected by the error may, subject to subsection (10), apply in accordance with the regulations to have the error corrected.

(10) Limitation on corrections — An application for a correction under subsection (9) may be made no later than the time specified by the regulations.

(11) No error respecting payment — If the correction of the error does not result in a change to the amount to be paid under the notice or to whom, or if there is in fact no error, the child support calculation service shall give notice to that effect to the parents.

(12) Copies to Director — The child support calculation service shall, on receiving an application under subsection (9) or on giving notice under subsection (11), file a copy of the application or notice with the office of the Director of the Family Responsibility Office.

(13) Effect of correction — If a notice of calculation is corrected and the correction results in a change to the amount to be paid or to whom,

- (a) the child support calculation service shall give a new notice under subsection (7) to the parents;
- (b) subsections (8), (9), (10), (11), (12) and this subsection apply with respect to the new notice; and
- (c) the original notice of calculation ceases to have effect.

(14) Effect of notice of calculation — A notice of calculation shall be treated as if it were an order of a court for the purposes of,

- (a) enforcement;
- (b) subsections 34(3), (3.1) and (4); and
- (c) recalculation under section 39.1.

(15) Enforcement by Director — For the purposes of clause (14)(a), a notice of calculation shall be enforced by the Director of the Family Responsibility Office in accordance with and subject to the *Family Responsibility and Support Arrears Enforcement Act, 1996*.

(16) Ongoing disclosure of information — Each party to a notice of calculation shall provide information, including income information, to the other party on an ongoing basis, in accordance with the regulations.

1997, c. 20, s. 9; 1999, c. 6, s. 25(17); 2005, c. 5, s. 27(20); 2014, c. 7, Sched. 9, s. 6; 2015, c. 27, Sched. 1, s. 2(1); 2016, c. 23, s. 47(2), (3); 2020, c. 25, Sched. 1, s. 28(2)

39.1 Administrative recalculation of child support — **(1) Definition** — In this section,

“child support recalculation service” means the service established by the Government of Ontario for the purposes of this section.

(2) Application for recalculation — If a party to an order for the support of a child believes that the income information on which the order was based has changed, the party may apply in accordance with the regulations for a recalculation by the child support recalculation service of the amount payable under the order.

(3) Ineligible — Subsection (2) does not apply with respect to any order or child support obligation that is prescribed by the regulations as being ineligible for recalculation under this section.

(4) Information to be provided — In an application under subsection (2), every party shall provide the income information and any other information that is required by the regulations, in the manner or form and within the timelines specified by the regulations.

(5) If income information not provided — If a party does not provide income information in accordance with subsection (4), the child support recalculation service shall determine an income amount in accordance with the regulations, and that amount is deemed to be the person's income for the purposes of the recalculation.

(6) Application of child support guidelines — Amounts calculated by the child support recalculation service shall be determined in accordance with the child support guidelines as if the amounts were being calculated for the purposes of an order for the support of a child, subject to such modifications in the application of the child support guidelines as the regulations may specify.

(7) Notice — Subject to subsection (8), the child support recalculation service shall give notice of a recalculation to the parties and to any agency to which the order is assigned showing,

- (a) the date on which the recalculation was made;
- (b) the income information on which the recalculation was based;
- (c) the recalculated amount payable for support and by which parent;
- (d) the name and birthdate of each child in respect of whom the support is payable;
- (e) the date on which the first payment is due and when subsequent payments become due; and
- (f) any other information required by the regulations to be provided in the notice.

(8) No recalculated amount — If the difference between an amount payable for support under the order and the recalculated amount is less than an amount specified by the regulations,

- (a) the amount payable for support remains unchanged; and
- (b) the child support recalculation service shall give notice to that effect to the parties and to any agency to which the order is assigned, and the notice shall set out how the recalculated amount was determined and any other related information.

Proposed Addition — 39.1(8.1)

(8.1) Certified copies — The Minister of Finance shall provide a certified copy of a notice of recalculation given under subsection (7) to a party or to the designated authority in Ontario under the *Interjurisdictional Support Orders Act, 2002* at the request of the party or authority.

2020, c. 25, Sched. 3, s. 4 [Not in force at date of publication.]

(9) Copy to Director — On giving a notice under subsection (8) in relation to a support order that is being enforced by the Director of the Family Responsibility Office, the child support recalculation service shall file a copy of the notice with the Director's office.

(10) When recalculated amount becomes due — The first payment of the recalculated amount is due,

- (a) on the first instance of the due date specified in the order that follows the 31st day after the day the notice of recalculation is given, as determined by the regulations; or
- (b) on the first instance of another day consented to by the parties in the application for recalculation that follows the 31st day after the day the notice of recalculation is given, as determined by the regulations.

(11) Corrections to notice — If the notice of recalculation or a notice given under subsection (8) contains an error respecting the amount payable or to whom, any party or any agency to which the order is assigned may, subject to subsection (12), apply in accordance with the regulations to have the error corrected.

(12) Limitation on corrections — An application for a correction under subsection (11) may be made no later than the time specified by the regulations.

(13) No error respecting payment — If the correction of the error does not result in a change to the amount to be paid in accordance with the notice or to whom, or if there is in fact no error, the child support recalculation service shall give notice to that effect to the parties and to any agency to which the order is assigned.

(14) Copies to Director — The child support recalculation service shall, on receiving an application under subsection (11) or giving notice under subsection (13) in relation to a support order that is being enforced by the Director of the Family Responsibility Office, file a copy of the application or notice with the Director's office.

(15) Effect of correction — If a notice of recalculation or a notice given under subsection (8) is corrected and the correction results in a change to the amount to be paid or to whom,

- (a) the child support recalculation service shall give a new notice under subsection (7) or (8), as the case may be;
- (b) subsections (9), (10), (11), (12), (13), (14) and this subsection apply with respect to the new notice as applicable; and
- (c) if the error was in a notice of recalculation, that notice ceases to have effect.

(16) Recalculation deemed to be part of order — Subject to subsection 25.1(5) of the *Divorce Act* (Canada), on the day that the first payment of the recalculated amount becomes payable in accordance with subsection (10), the recalculated amount is deemed to be the amount payable under the order for the support of the child and, if the due date for payments under the order is changed in accordance with clause (10)(b), the new due date is deemed to be the date on which payments are due under the order.

2014, c. 7, Sched. 9, s. 7

40. Restraining orders — The court may, on application, make an interim or final order restraining the depletion of a spouse's property that would impair or defeat a claim under this Part.

1999, c. 6, s. 25(18); 2005, c. 5, s. 27(21)

41. Financial statement — In an application under section 33 or 37, each party shall serve on the other and file with the court a financial statement verified by oath or statutory declaration in the manner and form prescribed by the rules of the court.

42. (1) Order for return by employer — In an application under section 33 or 37, the court may order the employer of a party to the application to make a written return to the court showing the party's wages or other remuneration during the preceding twelve months.

(2) Return as evidence — A return purporting to be signed by the employer may be received in evidence as proof, in the absence of evidence to the contrary, of its contents.

(3) Order for access to information — The court may, on motion, make an order under subsection (4) if it appears to the court that, in order to make an application under section 33 or 37, the moving party needs to learn or confirm the proposed respondent's whereabouts.

(4) Idem — The order shall require the person or public body to whom it is directed to provide the court or the moving party with any information that is shown on a record in the person's or public body's possession or control and that indicates the proposed respondent's place of employment, address or location.

(5) Crown bound — This section binds the Crown in right of Ontario.

43. (1) Arrest of absconding debtor — If an application is made under section 33 or 37 and the court is satisfied that the respondent is about to leave Ontario and that there are reasonable grounds for believing that the respondent intends to evade his or her responsibilities under this Act, the court may issue a warrant for the respondent's arrest for the purpose of bringing him or her before the court.

(2) Bail — Section 150 (interim release by justice of the peace) of the *Provincial Offences Act* applies with necessary modifications to an arrest under the warrant.

44. (1) Provisional orders — In an application under section 33 or 37 in the Ontario Court of Justice or the Family Court of the Superior Court of Justice, the court shall proceed under this section, whether or not the respondent in the application files a financial statement, if,

- (a) the respondent fails to appear;
- (b) it appears to the court that the respondent resides in a locality in Ontario that is more than 150 kilometres away from the place where the court sits; and
- (c) the court is of the opinion, in the circumstances of the case, that the issues can be adequately determined by proceeding under this section.

(2) Idem — If the court determines that it would be proper to make a final order, were it not for the respondent's failure to appear, the court shall make an order for support that is provisional only and has no effect until it is confirmed by the Ontario Court of Justice or the Family Court of the Superior Court of Justice sitting nearest the place where the respondent resides.

(3) Transmission for hearing — The court that makes a provisional order shall send to the court in the locality in which the respondent resides copies of such documents and records, certified in such manner, as are prescribed by the rules of the court.

(4) Show cause — The court to which the documents and records are sent shall cause them to be served upon the respondent, together with a notice to file with the court the financial statement required by section 41, and to appear and show cause why the provisional order should not be confirmed.

(5) Confirmation of order — At the hearing, the respondent may raise any defence that might have been raised in the original proceeding, but if the respondent fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order without variation or with the variation that the court considers proper having regard to all the evidence.

(6) Adjournment for further evidence — If the respondent appears before the court and satisfies the court that for the purpose of a defence or for the taking of further evidence or otherwise it is necessary to remit the case to the court where the applicant resides, the court may remit the case and adjourn the proceeding for that purpose.

(7) Where order not confirmed — If the respondent appears before the court and the court, having regard to all the evidence, is of the opinion that the order ought not to be confirmed, the court shall remit the case to the court sitting where the order was made with a statement of the reasons for doing so, and the court sitting where the order was made shall dispose of the application in accordance with the statement.

(8) Certificates as evidence — A certificate certifying copies of documents or records for the purpose of this section and purporting to be signed by the clerk of the court is, without proof of the clerk's office or signature, admissible in evidence in a court to which it is transmitted under this section as proof, in the absence of evidence to the contrary, of the copy's authenticity.

(9) Right of appeal — No appeal lies from a provisional order made under this section, but a person bound by an order confirmed under this section has the same right of appeal as he or she would have had if the order had been made under section 34.

2019, c. 14, Sched. 9, s. 42

45. (1) Pledging credit for necessities — During cohabitation, a spouse has authority to render himself or herself and his or her spouse jointly and severally liable to a third party for necessities of life, unless the spouse has notified the third party that he or she has withdrawn the authority.

(2) Liability for necessities of minor — If a person is entitled to recover against a minor in respect of the provision of necessities for the minor, every parent who has an obligation to support the minor is liable for them jointly and severally with the minor.

(3) Recovery between persons jointly liable — If persons are jointly and severally liable under this section, their liability to each other shall be determined in accordance with their obligation to provide support.

(4) Common law supplanted — This section applies in place of the rules of common law by which a wife may pledge her husband's credit.

1999, c. 6, s. 25(19); 2005, c. 5, s. 27(22)

46. (1) Restraining order — On application, the court may make an interim or final restraining order against a person described in subsection (2) if the applicant has reasonable grounds to fear for his or her own safety or for the safety of any child in his or her lawful custody.

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- (2) **Same** — A restraining order under subsection (1) may be made against,
- (a) a spouse or former spouse of the applicant; or
 - (b) a person other than a spouse or former spouse of the applicant, if the person is cohabiting with the applicant or has cohabited with the applicant for any period of time.
- (3) **Provisions of order** — A restraining order made under subsection (1) shall be in the form prescribed by the rules of court and may contain one or more of the following provisions, as the court considers appropriate:
1. Restraining the respondent, in whole or in part, from directly or indirectly contacting or communicating with the applicant or any child in the applicant's lawful custody.
 2. Restraining the respondent from coming within a specified distance of one or more locations.
 3. Specifying one or more exceptions to the provisions described in paragraphs 1 and 2.
 4. Any other provision that the court considers appropriate.
- (4) **Transition** — This section, as it read on October 14, 2009, continues to apply to,
- (a) any prosecution or other proceeding begun under this section before October 15, 2009; and
 - (b) any order made under this section that was in force on October 14, 2009.

1999, c. 6, s. 25(20); 2005, c. 5, s. 27(23); 2009, c. 11, s. 35; 2014, c. 7, Sched. 9, s. 8

47. Application under *Children's Law Reform Act* — The court may direct that an application for support stand over until an application under the *Children's Law Reform Act* for a parenting order has been determined.

2020, c. 25, Sched. 1, s. 28(3)

47.1 Order regarding conduct — In making any order under this Part, other than an order under section 46, the court may also make an interim order prohibiting, in whole or in part, a party from directly or indirectly contacting or communicating with another party, if the court determines that the order is necessary to ensure that an application under this Part is dealt with justly.

2009, c. 11, s. 36

47.2 Duties of parties — (1) **Alternative dispute resolution process** — To the extent that it is appropriate to do so, the parties to a proceeding shall try to resolve the matters that may be the subject of an order under this Part through an alternative dispute resolution process, such as negotiation, mediation or collaborative law.

(2) **Complete, accurate and up-to-date information** — A party to a proceeding under this Part, or a person who is subject to an order made under this Part, shall provide complete, accurate and up-to-date information if required to do so under this Part.

(3) **Duty to comply with orders** — For greater certainty, a person who is subject to an order made under this Part shall comply with the order until it is no longer in effect.

(4) **Certification** — Every document that commences a proceeding under this Part, or that responds to such a document, that is filed with a court by a party to a proceeding shall

contain a statement by the party certifying that the party is aware of the duties to which the party is subject under subsections (1) to (3).

2020, c. 25, Sched. 1, s. 28(4)

47.3 Duties of legal advisers — (1) Definitions — In this section,

“**family justice services**” means public or private services intended to help persons deal with issues arising from separation or divorce;

“**legal adviser**” means a person authorized under the *Law Society Act* to practise law or provide legal services to another person in a proceeding under this Part.

(2) Duty to discuss and inform — It is the duty of every legal adviser who undertakes to act on a person’s behalf in any proceeding under this Part,

- (a) to encourage the person to attempt to resolve the matters that may be the subject of an order under this Part through an alternative dispute resolution process, as provided for under subsection 47.2(1), unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so;
- (b) to inform the person of the family justice services known to the legal adviser that might assist the person,
 - (i) in resolving the matters that may be the subject of an order under this Part, and
 - (ii) in complying with any order or decision made under this Part; and
- (c) to inform the person of the parties’ duties under this Part.

(3) Certification — Every document that commences a proceeding under this Part, or that responds to such a document, that is filed with a court by a legal adviser shall contain a statement by the legal adviser certifying that the legal adviser has complied with subsection (2).

2020, c. 25, Sched. 1, s. 28(4)

47.4 (1) Duties of court — The purpose of this section is to facilitate,

- (a) the identification of orders, undertakings, recognizances, agreements or measures that may conflict with an order under this Part; and
- (b) the co-ordination of proceedings.

(2) Information regarding other orders or proceedings — The court has a duty to consider if any of the following are pending or in effect in relation to any party to a proceeding under this Part, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so:

1. A restraining order under section 46, the *Children’s Law Reform Act* or the *Child, Youth and Family Services Act, 2017*, or any other civil order made to protect a person’s safety, including an order that prohibits a person from,
 - i. being in physical proximity to a specified person or following a specified person from place to place,
 - ii. contacting or communicating with a specified person, either directly or indirectly,
 - iii. attending at or being within a certain distance of a specified place or location,
 - iv. engaging in harassing or threatening conduct directed at a specified person,
 - v. occupying a family home or a residence, or

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- vi. engaging in family violence.
- 2. A child protection order, proceeding, agreement or measure.
- 3. An order, proceeding, undertaking or recognizance in relation to any matter of a criminal nature.

(3) Inquiries — In order to carry out its duty under subsection (2), the court may make inquiries of the parties or review information that is readily available and that has been obtained through a lawful search.

2020, c. 25, Sched. 1, s. 28(4)

48. (1) Appeal — An appeal from an order of the Ontario Court of Justice under this Part lies to the Superior Court of Justice.

(2) Same — An appeal from an order of the Family Court of the Superior Court of Justice under this Part lies to the Divisional Court.

(3) Same — An appeal from an order of the Superior Court of Justice under this Part, other than an order of the Family Court of the Superior Court of Justice, lies to the proper appellate court as determined under the *Courts of Justice Act*.

(4) Transition — This section, as it read immediately before the day section 7 of Schedule 2 to the *Moving Ontario Family Law Forward Act, 2020* came into force, continues to apply to,

- (a) any case in which a notice of appeal was filed before that day; and
- (b) any further appeals or proceedings arising from a case described in clause (a).

2006, c. 19, Sched. C, s. 1(1), (2); 2020, c. 25, Sched. 2, s. 7

49. (1) Contempt of orders of Ontario Court of Justice — In addition to its powers in respect of contempt, the Ontario Court of Justice may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act other than orders under section 46, but the fine shall not exceed \$5,000 nor shall the imprisonment exceed ninety days.

(2) Conditions of imprisonment — An order for imprisonment under subsection (1) may be conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently.

(3) Transition — This section, as it read on October 14, 2009, continues to apply to orders referred to in clause 46(4)(b).

2006, c. 19, Sched. C, s. 1(2); 2014, c. 7, Sched. 9, s. 9

50. [Repealed 2002, c. 24, Sched. B, s. 25, item 9.]

PART IV — DOMESTIC CONTRACTS (SS. 51–60)

51. Definitions — In this Part,

“cohabitation agreement” means an agreement entered into under section 53;

“decision-making responsibility” has the same meaning as in Part III of the *Children’s Law Reform Act*;

“**domestic contract**” means a marriage contract, separation agreement, cohabitation agreement, paternity agreement or family arbitration agreement;

“**family arbitration**” means an arbitration that,

- (a) deals with matters that could be dealt with in a marriage contract, separation agreement, cohabitation agreement or paternity agreement under this Part, and
- (b) is conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction;

“**family arbitration agreement**” and “**family arbitration award**” have meanings that correspond to the meaning of “**family arbitration**”;

“**marriage contract**” means an agreement entered into under section 52;

“**parenting time**” has the same meaning as in Part III of the *Children’s Law Reform Act*;

“**paternity agreement**” means an agreement entered into under section 59;

“**separation agreement**” means an agreement entered into under section 54.

2006, c. 1, s. 5(6), (7); 2020, c. 25, Sched. 1, s. 28(5)

52. (1) Marriage contracts — Two persons who are married to each other or intend to marry may enter into an agreement in which they agree on their respective rights and obligations under the marriage or on separation, on the annulment or dissolution of the marriage or on death, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to decision-making responsibility or parenting time with respect to their children; and
- (d) any other matter in the settlement of their affairs.

(2) Rights re matrimonial home excepted — A provision in a marriage contract purporting to limit a spouse’s rights under Part II (Matrimonial Home) is unenforceable.

2005, c. 5, s. 27(25); 2020, c. 25, Sched. 1, s. 28(6)

53. (1) Cohabitation agreements — Two persons who are cohabiting or intend to cohabit and who are not married to each other may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, or on ceasing to cohabit or on death, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to decision-making responsibility or parenting time with respect to their children; and
- (d) any other matter in the settlement of their affairs.

(2) Effect of marriage on agreement — If the parties to a cohabitation agreement marry each other, the agreement shall be deemed to be a marriage contract.

1999, c. 6, s. 25(23); 2005, c. 5, s. 27(26); 2020, c. 25, Sched. 1, s. 28(7)

54. Separation agreements — Two persons who cohabited and are living separate and apart may enter into an agreement in which they agree on their respective rights and obligations, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children;
- (d) the right to decision-making responsibility or parenting time with respect to their children; and
- (e) any other matter in the settlement of their affairs.

1999, c. 6, s. 25(24); 2005, c. 5, s. 27(27); 2020, c. 25, Sched. 1, s. 28(8)

55. (1) Form of contract — A domestic contract and an agreement to amend or rescind a domestic contract are unenforceable unless made in writing, signed by the parties and witnessed.

(2) Capacity of minor — A minor has capacity to enter into a domestic contract, subject to the approval of the court, which may be given before or after the minor enters into the contract.

(3) Guardian, attorney — If a mentally incapable person has a guardian of property or an attorney under a continuing power of attorney for property, and the guardian or attorney is not his or her spouse, the guardian or attorney may enter into a domestic contract or give any waiver or consent under this Act on the person's behalf, subject to the court's prior approval.

(4) P.G.T. — In all other cases of mental incapacity, the Public Guardian and Trustee has power to act on the person's behalf in accordance with subsection (3).

1992, c. 32, s. 12; 2009, c. 33, Sched. 2, s. 34(4)

56. (1) Contracts subject to best interests of child — In the determination of a matter respecting the education, moral training or decision-making responsibility or parenting time with respect to a child, the court may disregard any provision of a domestic contract pertaining to the matter where, in the opinion of the court, to do so is in the best interests of the child.

(1.1) Contracts subject to child support guidelines — In the determination of a matter respecting the support of a child, the court may disregard any provision of a domestic contract pertaining to the matter where the provision is unreasonable having regard to the child support guidelines, as well as to any other provision relating to support of the child in the contract.

(2) Clauses requiring chastity — A provision in a domestic contract to take effect on separation whereby any right of a party is dependent upon remaining chaste is unenforceable, but this subsection shall not be construed to affect a contingency upon marriage or cohabitation with another.

(3) Idem — A provision in a domestic contract made before the 1st day of March, 1986 whereby any right of a party is dependent upon remaining chaste shall be given effect as a contingency upon marriage or cohabitation with another.

(4) Setting aside domestic contract — A court may, on application, set aside a domestic contract or a provision in it,

- (a) if a party failed to disclose to the other significant assets, or significant debts or other liabilities, existing when the domestic contract was made;
- (b) if a party did not understand the nature or consequences of the domestic contract; or
- (c) otherwise in accordance with the law of contract.

(5) Barriers to remarriage — The court may, on application, set aside all or part of a separation agreement or settlement, if the court is satisfied that the removal by one spouse of barriers that would prevent the other spouse's remarriage within that spouse's faith was a consideration in the making of the agreement or settlement.

(6) Idem — Subsection (5) also applies to consent orders, releases, notices of discontinuance and abandonment and other written or oral arrangements.

(7) Application of subss. (4, 5, 6) — Subsections (4), (5) and (6) apply despite any agreement to the contrary.

1997, c. 20, s. 10; 2006, c. 1, s. 5(8); 2020, c. 25, Sched. 1, s. 28(9)

56.1 Provisions re pension plan — **(1) Family law valuation date** — In this section, “family law valuation date” means, with respect to the parties to a domestic contract,

- (a) the valuation date under Part I (Family Property) that applies in respect of the parties, or
- (b) for parties to whom Part I does not apply, the date on which they separate and there is no reasonable prospect that they will resume cohabitation.

(2) Immediate transfer of lump sum — A domestic contract may provide for the immediate transfer of a lump sum out of a pension plan, but, except as permitted under subsection (3), not for any other division of a party's interest in the plan.

(3) Division of pension payments — If payment of the first instalment of a party's pension under a pension plan is due on or before the family law valuation date, the domestic contract may provide for the division of pension payments, but not for any other division of the party's interest in the plan.

(4) Restrictions re certain pension plans — If the *Pension Benefits Act* applies to the pension plan, the restrictions under sections 67.3 and 67.4 of that Act or under sections 67.8 and 67.9 of that Act in relation to variable benefits apply with respect to the division of the party's interest in the plan under a domestic contract.

Proposed Amendment — 56.1(4)

(4) Restrictions re certain pension plans — If the *Pension Benefits Act* applies to the pension plan, the restrictions under sections 67.3, 67.3.1, 67.4 and 67.4.1 of that Act or under sections 67.8 and 67.9 of that Act in relation to variable benefits apply with respect to the division of the party's interest in the plan under a domestic contract.

2019, c. 14, Sched. 9, s. 43 [Not in force at date of publication.]

(4.1) Same — If the *Pooled Registered Pension Plans Act, 2015* applies to the pension plan, the restrictions under sections 19 and 20 of that Act apply with respect to the division of the party's interest in the plan under a domestic contract.

S. 56.1(5)

Family Law Act

(5) Valuation — Subsections 10.1(1) and (2) apply, with necessary modifications, with respect to the valuation of a party's interest in a pension plan.

(5.1) Same, pooled registered pension plans — Subsection 10.1(1.1) applies, with necessary modifications, with respect to the valuation of a party's interest in a pension plan to which the *Pooled Registered Pension Plans Act, 2015* applies.

(6) Transition, family law valuation date — This section applies whether the family law valuation date is before, on or after the date on which this section comes into force.

(7) Transition, previous domestic contracts — This section does not apply to a domestic contract that provided, before the date on which this section comes into force, for the division of a party's interest in a pension plan.

2009, c. 11, s. 37; 2015, c. 9, s. 28(2); 2017, c. 8, Sched. 27, s. 21(2), item 2

57. Rights of donors of gifts — If a domestic contract provides that specific gifts made to one or both parties may not be disposed of or encumbered without the consent of the donor, the donor shall be deemed to be a party to the contract for the purpose of enforcement or amendment of the provision.

58. Contracts made outside Ontario — The manner and formalities of making a domestic contract and its essential validity and effect are governed by the proper law of the contract, except that,

- (a) a contract of which the proper law is that of a jurisdiction other than Ontario is also valid and enforceable in Ontario if entered into in accordance with Ontario's internal law;
- (b) subsection 33(4) (setting aside provision for support or waiver) and section 56 apply in Ontario to contracts for which the proper law is that of a jurisdiction other than Ontario; and
- (c) a provision in a marriage contract or cohabitation agreement respecting the right to decision-making responsibility or parenting time with respect to children is not enforceable in Ontario.

2020, c. 25, Sched. 1, s. 28(10)

59. (1) Paternity agreements — If a man and a woman who are not spouses enter into an agreement for,

- (a) the payment of the expenses of a child's prenatal care and birth;
- (b) support of a child; or
- (c) funeral expenses of the child or mother,

on the application of a party, or a children's aid society, to the Ontario Court of Justice or the Family Court of the Superior Court of Justice, the court may incorporate the agreement in an order, and Part III (Support Obligations) applies to the order in the same manner as if it were an order made under that Part.

(1.1) Child support guidelines — A court shall not incorporate an agreement for the support of a child in an order under subsection (1) unless the court is satisfied that the agreement is reasonable having regard to the child support guidelines, as well as to any other provision relating to support of the child in the agreement.

(2) Absconding respondent — If an application is made under subsection (1) and a judge of the court is satisfied that the respondent is about to leave Ontario and that there are reasonable grounds to believe that the respondent intends to evade his or her responsibilities under the agreement, the judge may issue a warrant in the form prescribed by the rules of the court for the respondent's arrest.

(3) Bail — Section 150 (interim release by justice of the peace) of the *Provincial Offences Act* applies with necessary modifications to an arrest under the warrant.

(4) Capacity of minor — A minor has capacity to enter into an agreement under subsection (1) that is approved by the court, whether the approval is given before or after the minor enters into the agreement.

(5) Application to existing agreements — This section applies to paternity agreements that were made before the 1st day of March, 1986.

(6) Transitional provision — A paternity agreement that is made before the day section 4 of the *Family Statute Law Amendment Act, 2006* comes into force is not invalid for the reason only that it does not comply with subsection 55(1).

1997, c. 20, s. 11; 2006, c. 1, s. 5(9); 2006, c. 19, Sched. C, s. 1(2), (4)

59.1 (1) Family arbitrations, agreements and awards — Family arbitrations, family arbitration agreements and family arbitration awards are governed by this Act and by the *Arbitration Act, 1991*.

(2) Conflict — In the event of conflict between this Act and the *Arbitration Act, 1991*, this Act prevails.

2006, c. 1, s. 5(10)

59.2 (1) Other third-party decision-making processes in family matters — When a decision about a matter described in clause (a) of the definition of "family arbitration" in section 51 is made by a third person in a process that is not conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction,

- (a) the process is not a family arbitration; and
- (b) the decision is not a family arbitration award and has no legal effect.

(2) Advice — Nothing in this section restricts a person's right to obtain advice from another person.

2006, c. 1, s. 5(10)

59.3 Contracting out — Any express or implied agreement by the parties to a family arbitration agreement to vary or exclude any of sections 59.1 to 59.7 is without effect.

2006, c. 1, s. 5(10)

59.4 No agreement in advance of dispute — A family arbitration agreement and an award made under it are unenforceable unless the family arbitration agreement is entered into after the dispute to be arbitrated has arisen.

2006, c. 1, s. 5(10)

59.4.1 Award re pension plan — (1) Family law valuation date — In this section,

S. 59.4.1(1) fam

Family Law Act

“**family law valuation date**” means, with respect to the parties to an arbitration,

- (a) the valuation date under Part I (Family Property) that applies in respect of the parties, or
- (b) for parties to whom Part I does not apply, the date on which they separate and there is no reasonable prospect that they will resume cohabitation.

(2) Immediate transfer of lump sum — A family arbitration award may provide for the immediate transfer of a lump sum out of a pension plan, but, except as permitted under subsection (3), not for any other division of a party’s interest in the plan.

(3) Division of pension payments — If payment of the first instalment of a party’s pension under a pension plan is due on or before the family law valuation date, the family arbitration award may provide for the division of pension payments, but not for any other division of the party’s interest in the plan.

(4) Restrictions re certain pension plans — If the *Pension Benefits Act* applies to the pension plan, the restrictions under sections 67.3 and 67.4 of that Act or under sections 67.8 and 67.9 of that Act in relation to variable benefits apply with respect to the division of the party’s interest in the plan under a family arbitration award.

Proposed Amendment — 59.4.1(4)

(4) Restrictions re certain pension plans — If the *Pension Benefits Act* applies to the pension plan, the restrictions under sections 67.3, 67.3.1, 67.4 and 67.4.1 of that Act or under sections 67.8 and 67.9 of that Act in relation to variable benefits apply with respect to the division of the party’s interest in the plan under a family arbitration award.

2019, c. 14, Sched. 9, s. 44 [Not in force at date of publication.]

(4.1) Same — If the *Pooled Registered Pension Plans Act, 2015* applies to the pension plan, the restrictions under sections 19 and 20 of that Act apply with respect to the division of the party’s interest in the plan under a family arbitration award.

(5) Valuation — Subsections 10.1(1) and (2) apply, with necessary modifications, with respect to the valuation of a party’s interest in a pension plan.

(5.1) Same, pooled registered pension plans — Subsection 10.1(1.1) applies, with necessary modifications, with respect to the valuation of a party’s interest in a pension plan to which the *Pooled Registered Pension Plans Act, 2015* applies.

(6) Transition, family law valuation date — This section applies whether the family law valuation date is before, on or after the date on which this section comes into force.

(7) Transition, previous family arbitration awards — This section does not apply to a family arbitration award made before the date on which this section comes into force that requires one party to pay to the other party the amount to which that party is entitled under section 5 (equalization of net family properties).

2009, c. 11, s. 39; 2015, c. 9, s. 28(3); 2017, c. 8, Sched. 27, s. 21(2), item 3

59.5 [Repealed 2009, c. 33, Sched. 2, s. 34(5).]

59.6 (1) Conditions for enforceability — A family arbitration award is enforceable only if,

- (a) the family arbitration agreement under which the award is made is made in writing and complies with any regulations made under the *Arbitration Act, 1991*;
- (b) each of the parties to the agreement receives independent legal advice before making the agreement;
- (c) the requirements of section 38 of the *Arbitration Act, 1991* are met (formal requirements, writing, reasons, delivery to parties); and
- (d) the arbitrator complies with any regulations made under the *Arbitration Act, 1991*.

(2) Certificate of independent legal advice — When a person receives independent legal advice as described in clause (1)(b), the lawyer who provides the advice shall complete a certificate of independent legal advice, which may be in a form approved by the Attorney General.

2006, c. 1, s. 5(10)

59.7 (1) Secondary arbitration — The following special rules apply to a secondary arbitration and to an award made as the result of a secondary arbitration:

1. Despite section 59.4, the award is not unenforceable for the sole reason that the separation agreement was entered into or the court order or earlier award was made before the dispute to be arbitrated in the secondary arbitration had arisen.
2. Despite clause 59.6(1)(b), it is not necessary for the parties to receive independent legal advice before participating in the secondary arbitration.
3. Despite clause 59.6(1)(c), the requirements of section 38 of the *Arbitration Act, 1991* need not be met.

(2) Definition — In this section,

“**secondary arbitration**” means a family arbitration that is conducted in accordance with a separation agreement, a court order or a family arbitration award that provides for the arbitration of possible future disputes relating to the ongoing management or implementation of the agreement, order or award.

2006, c. 1, s. 5(10)

59.8 (1) Enforcement — A party who is entitled to the enforcement of a family arbitration award may make an application to the Superior Court of Justice or the Family Court to that effect.

(2) Application or motion — If there is already a proceeding between the parties to the family arbitration agreement, the party entitled to enforcement shall make a motion in that proceeding rather than an application.

(3) Notice, supporting documents — The application or motion shall be made on notice to the person against whom enforcement is sought and shall be supported by,

- (a) the original award or a certified copy;
- (b) a copy of the family arbitration agreement; and
- (c) copies of the certificates of independent legal advice.

(4) Order — If the family arbitration award satisfies the conditions set out in subsection 59.6(1), the court shall make an order in the same terms as the award, unless,

- (a) the period for commencing an appeal or an application to set the award aside has not yet elapsed;
- (b) there is a pending appeal, application to set the award aside or application for a declaration of invalidity; or
- (c) the award has been set aside or the arbitration is the subject of a declaration of invalidity.

(5) Pending proceeding — If clause (4)(a) or (b) applies, the court may,

- (a) make an order in the same terms as the award; or
- (b) order, on such conditions as are just, that enforcement of the award is stayed until the period has elapsed without an appeal or application being commenced or until the pending proceeding is finally disposed of.

(6) Unusual remedies — If the family arbitration award gives a remedy that the court does not have jurisdiction to grant or would not grant in a proceeding based on similar circumstances, the court may,

- (a) make an order granting a different remedy, if the applicant requests it; or
- (b) remit the award to the arbitrator with the court's opinion, in which case the arbitrator may award a different remedy.

2006, c. 1, s. 5(10)

60. (1) Application of Act to existing contracts — A domestic contract validly made before the 1st day of March, 1986 shall be deemed to be a domestic contract for the purposes of this Act.

(2) Contracts entered into before the 1st day of March, 1986 — If a domestic contract was entered into before the 1st day of March, 1986 and the contract or any part would have been valid if entered into on or after that day, the contract or part is not invalid for the reason only that it was entered into before that day.

(3) Idem — If property is transferred, under an agreement or understanding reached before the 31st day of March, 1978, between spouses who are living separate and apart, the transfer is effective as if made under a domestic contract.

PART V — DEPENDANTS' CLAIM FOR DAMAGES (SS. 61–63)

61. (1) Right of dependants to sue in tort — If a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part III (Support Obligations), children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction.

(2) Damages in case of injury — The damages recoverable in a claim under subsection

(1) may include,

- (a) actual expenses reasonably incurred for the benefit of the person injured or killed;
- (b) actual funeral expenses reasonably incurred;
- (c) a reasonable allowance for travel expenses actually incurred in visiting the person during his or her treatment or recovery;
- (d) where, as a result of the injury, the claimant provides nursing, housekeeping or other services for the person, a reasonable allowance for loss of income or the value of the services; and
- (e) an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the person if the injury or death had not occurred.

(3) Contributory negligence — In an action under subsection (1), the right to damages is subject to any apportionment of damages due to contributory fault or neglect of the person who was injured or killed.

(4) [Repealed 2002, c. 24, Sched. B, s. 25, item 9.]

1999, c. 6, s. 25(25); 2002, c. 24, Sched. B, s. 25, item 9; 2005, c. 5, s. 27(28)

62. (1) Offer to settle for global sum — The defendant may make an offer to settle for one sum of money as compensation for his or her fault or neglect to all plaintiffs, without specifying the shares into which it is to be divided.

(2) Apportionment — If the offer is accepted and the compensation has not been otherwise apportioned, the court may, on motion, apportion it among the plaintiffs.

(3) Payment before apportionment — The court may direct payment from the fund before apportionment.

(4) Payment may be postponed — The court may postpone the distribution of money to which minors are entitled.

63. Assessment of damages, insurance — In assessing damages in an action brought under this Part, the court shall not take into account any sum paid or payable as a result of the death or injury under a contract of insurance.

PART VI — AMENDMENTS TO THE COMMON LAW (SS. 64–70)

64. (1) Unity of legal personality abolished — For all purposes of the law of Ontario, a married person has a legal personality that is independent, separate and distinct from that of his or her spouse.

(2) Capacity of married person — A married person has and shall be accorded legal capacity for all purposes and in all respects as if he or she were an unmarried person and, in particular, has the same right of action in tort against his or her spouse as if they were not married.

(3) Purpose of subss. (1, 2) — The purpose of subsections (1) and (2) is to make the same law apply, and apply equally, to married men and married women and to remove any difference in it resulting from any common law rule or doctrine.

65. Actions between parent and child — No person is disentitled from bringing an action or other proceeding against another for the reason only that they are parent and child.

66. Recovery for pre-natal injuries — No person is disentitled from recovering damages in respect of injuries for the reason only that the injuries were incurred before his or her birth.

67. Domicile of minor — The domicile of a person who is a minor is,

- (a) if the minor habitually resides with both parents and the parents have a common domicile, that domicile;
- (b) if the minor habitually resides with one parent only, that parent's domicile;
- (c) if the minor resides with another person who has lawful custody of him or her, that person's domicile; or
- (d) if the minor's domicile cannot be determined under clause (a), (b) or (c), the jurisdiction with which the minor has the closest connection.

68. [Repealed 2000, c. 4, s. 12.]

General

69. (1) Regulations — The Lieutenant Governor in Council may make regulations respecting any matter referred to as prescribed by the regulations.

(2) Same — The Lieutenant Governor in Council may make regulations establishing,

- (a) guidelines respecting the making of orders for child support under this Act; and
- (b) guidelines that may be designated under subsection 2(5) of the *Divorce Act* (Canada).

(3) Same — Without limiting the generality of subsection (2), guidelines may be established under subsection (2),

- (a) respecting the way in which the amount of an order for child support is to be determined;
- (b) respecting the circumstances in which discretion may be exercised in the making of an order for child support;
- (c) respecting the circumstances that give rise to the making of a variation order in respect of an order for the support of a child;
- (d) respecting the determination of income for the purposes of the application of the guidelines;
- (e) authorizing a court to impute income for the purposes of the application of the guidelines;
- (f) respecting the production of income information and providing for sanctions when that information is not provided.

(4) Same — The Lieutenant Governor in Council may make regulations respecting the production of information, including income information, relating to child support obligations created by domestic contracts or by written agreements that are not domestic contracts, and providing for enforcement procedures when that information is not provided.

(5) Same — The Lieutenant Governor in Council may make regulations governing the calculation of amounts payable for the support of a child for the purposes of section 39, including regulations,

- (a) governing applications for a calculation;
- (b) prescribing additional requirements for the purposes of paragraph 4 of subsection 39(3);
- (c) governing the provision of information under subsection 39(4), including specifying the income information and other information that is required to be provided, providing for the collection of a person's income information from the Canada Revenue Agency on the person's consent, and setting out the manner or form in which information must be provided;
- (d) governing the determination of amounts payable for the support of a child in accordance with the child support guidelines by the child support calculation service, including,
 - (i) providing that any part of the child support guidelines do not apply or apply subject to specified modifications,
 - (ii) excluding specified special or extraordinary expenses, within the meaning of section 7 of the child support guidelines, from calculation under section 39 of this Act, and providing for methods of calculating special or extraordinary expenses that are not excluded;
- (e) specifying periods for the purposes of subsection 39(6);
- (f) respecting additional information to be provided in a notice of calculation for the purposes of clause 39(7)(f);
- (g) governing the determination of the day on which a notice of calculation is given, for the purposes of subsection 39(8);
- (h) governing the making of corrections under subsection 39(9), including the process for applying for a correction;
- (i) specifying times for the purposes of subsection 39(10);
- (j) providing for the correction of errors in notices of calculation other than errors described in subsection 39(9) and governing the making of such corrections, including,
 - (i) providing for procedures to correct such errors,
 - (ii) setting out a time limit on having such errors corrected,
 - (iii) providing for the issuance of new or corrected notices of calculation, and
 - (iv) specifying the effect of a correction on a notice of calculation, including providing that the notice of calculation containing the error ceases to have effect;
- (k) providing that an obligation to pay child support under a notice of calculation terminates on a specified date or event, and governing the determination of dates and events for the purpose;
- (l) governing the payment of fees in relation to calculations under section 39, including prescribing fees and requiring their payment, setting out the time or manner of pay-

ment, and providing for exemptions from payment and setting out conditions or circumstances for any exemption;

(m) respecting the production of information, including income information, by parties to a notice of calculation for the purposes of subsection 39(16), and providing for enforcement procedures when that information is not provided.

(6) Same — Regulations made under clause (5)(c) may require a parent of a child to provide personal information, within the meaning of section 38 of the *Freedom of Information and Protection of Privacy Act*, respecting the child, another parent of the child, or any other person whose personal information is relevant to the calculation of child support under section 39 of this Act.

(7) Same — The Lieutenant Governor in Council may make regulations governing the recalculation of amounts payable for the support of a child for the purposes of section 39.1, including regulations,

(a) governing applications for a recalculation, including limiting when or how frequently a person can apply for a recalculation;

(b) prescribing orders or child support obligations for the purposes of subsection 39.1(3);

(c) governing the provision of information under subsection 39.1(4), including specifying the income information and other information that is required to be provided, providing for the collection of a person's income information from the Canada Revenue Agency on the person's consent, setting out the manner or form in which information must be provided, and specifying timelines by which it must be provided;

(d) governing the determination of income amounts for the purposes of subsection 39.1(5);

(e) governing the determination of amounts payable for the support of a child in accordance with the child support guidelines by the child support recalculation service, including,

(i) providing that any part of the child support guidelines do not apply or apply subject to specified modifications,

(ii) excluding specified special or extraordinary expenses, within the meaning of section 7 of the child support guidelines, from recalculation under section 39.1 of this Act, and providing for methods of recalculating special or extraordinary expenses that are not excluded;

(f) respecting additional information to be provided in a notice of recalculation for the purposes of clause 39.1(7)(f);

(g) respecting the determination of amounts for the purposes of subsection 39.1(8);

(h) governing the determination of the day on which a notice of recalculation is given, for the purposes of subsection 39.1(10);

(i) governing the making of corrections under subsection 39.1(11), including the process for applying for a correction;

(j) specifying times for the purposes of subsection 39.1(12);

(k) providing for the correction of errors in notices of recalculation other than errors described in subsection 39.1(11) and governing the making of such corrections, including,

(i) providing for procedures to correct such errors,

- (ii) setting out a time limit on having such errors corrected;
- (iii) providing for the issuance of new or corrected notices of recalculation or notices under subsection 39.1(8), and
- (iv) specifying the effect of a correction on a notice of recalculation, including providing that the notice of recalculation containing the error ceases to have effect;
- (l) providing that an obligation to pay child support in accordance with a notice of recalculation terminates on a specified date or event, and governing the determination of dates and events for the purpose;
- (m) providing that amounts recalculated under section 39.1 are subject to automatic recalculation under that section by or on a specified date or event, governing the determination of dates and events for the purpose, and governing procedures for such a recalculation, including specifying that any part of section 39.1 or the regulations made under this subsection do not apply to such a recalculation or apply subject to specified modifications;
- (n) governing the payment of fees in relation to recalculations under section 39.1, including prescribing fees and requiring their payment, setting out the time or manner of payment, and providing for exemptions from payment and setting out conditions or circumstances for any exemption.

(8) Same — Regulations made under clause (7)(c) may require a person to provide personal information, within the meaning of section 38 of the *Freedom of Information and Protection of Privacy Act*, respecting the child, a parent of the child, or any other person whose personal information is relevant to the recalculation of child support under section 39.1 of this Act.

1997, c. 20, s. 12; 2009, c. 11, s. 40(1); 2014, c. 7, Sched. 9, s. 10; 2015, c. 27, Sched. 1, s. 2(2)

70. (1) Application of ss. 5–8 — Sections 5 to 8 apply unless,

- (a) an application under section 4 of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980 was adjudicated or settled before the 4th day of June, 1985; or
- (b) the first spouse's death occurred before the 1st day of March, 1986.

(2) Application of Part II — Part II (Matrimonial Home) applies unless a proceeding under Part III of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980 to determine the rights between spouses in respect of the property concerned was adjudicated or settled before the 4th day of June, 1985.

(3) Interpretation of existing contracts — A separation agreement or marriage contract that was validly made before the 1st day of March, 1986 and that excludes a spouse's property from the application of sections 4 and 8 of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980,

- (a) shall be deemed to exclude that property from the application of section 5 of this Act; and
- (b) shall be read with necessary modifications.

ONT. REG. 391/97 — CHILD SUPPORT GUIDELINES

made under the *Family Law Act*

O. Reg. 391/97, as am. O. Reg. 26/00 [Amended O. Reg. 126/00.]; 446/01; 102/06; 159/07; 25/10; 463/11; 478/16; 434/17; 32/21, ss. 1(1), (2) (Fr.), (3)–(5), 2–5.

OBJECTIVES

1. Objectives — The objectives of this Regulation are,

- (a) to establish a fair standard of support for children that ensures that they benefit from the financial means of their parents and, in the case of divorce, from the financial means of both spouses after separation;
- (b) to reduce conflict and tension between parents or spouses by making the calculation of child support more objective;
- (c) to improve the efficiency of the legal process by giving courts, and parents and spouses, guidance in setting the levels of child support and encouraging settlement; and
- (d) to ensure consistent treatment of parents or spouses and their children who are in similar circumstances.

O. Reg. 25/10, s. 1

INTERPRETATION

2. (1) Definitions — In this Regulation,

“**child**” means, other than in Schedule II to this Regulation,

- (a) a child who is a dependant under the Act, or
- (b) in cases where the *Divorce Act* (Canada) applies, a child of the marriage under that Act;

“**income**” means the annual income determined under sections 15 to 20;

“**majority of parenting time**” means a period of time that is more than 60 per cent of parenting time over the course of a year;

“**order assignee**” means,

- (a) an agency to whom an order is assigned under subsection 34(3) of the Act, or
- (b) a minister, member or agency referred to in subsection 20.1(1) of the *Divorce Act* (Canada) to whom an order or the support of a child is assigned in accordance with that subsection;

“**parent**”, in a case to which the Act applies, means a parent to whom section 31 of the Act applies;

“spouse”, in a case to which the *Divorce Act* (Canada) applies, means either of two persons who are married to each other and includes a former spouse;

“table” means,

- (a) if the parent or spouse against whom an order is sought ordinarily resides in Ontario at the time of the application, the Child Support Table for Ontario set out in Schedule I to this Regulation,
 - (b) if the parent or spouse against whom an order is sought ordinarily resides elsewhere in Canada, the table set out in the Federal Child Support Guidelines for the province or territory in which the parent or spouse ordinarily resides at the time of the application,
 - (c) if the court is satisfied that the province or territory in which the parent or spouse against whom an order is sought ordinarily resides has changed since the time of the application, the table set out in the Federal Child Support Guidelines for the province or territory in which the parent or spouse ordinarily resides at the time the amount of support is determined,
 - (d) if the court is satisfied that the parent or spouse against whom an order is sought will, in the near future after the amount of support is determined, ordinarily reside in another province or territory than the one in which he or she ordinarily resides at the time the amount of support is determined, the table set out in the Federal Child Support Guidelines for that other province or territory,
 - (e) if the parent or spouse against whom an order is sought ordinarily resides outside of Canada or if the ordinary residence of the parent or spouse is unknown,
 - (i) the Child support Table for Ontario set out in Schedule I to this Regulation if the other parent or spouse applying for the order resides in Ontario, or
 - (ii) the table set out in the Federal Child Support Guidelines for the province or territory in which the parent or spouse applying for the order ordinarily resides;

“universal child care benefit” means a benefit provided under section 4 of the *Universal Child Care Benefit Act* (Canada).

(2) Income Tax Act (Canada)—Words and expressions that are used in sections 15 to 21 and that are not defined in this section have the meanings assigned to them under the *Income Tax Act (Canada)*.

(3) Most current information — Where, for the purposes of the child support guidelines, any amount is determined on the basis of specified information, the most current information must be used.

(4) Application of guidelines — In addition to their application to orders for support of a child, the child support guidelines apply, with such modifications as the circumstances require, to

- (a) interim orders under subsection 34(1) of the Act or subsections 15.1(2), 18.1(12) and 19(10) of the *Divorce Act* (Canada);
 - (b) orders varying a child support order; and
 - (c) orders referred to in subsection 18.1(15) or 19(13) of the *Divorce Act* (Canada).

O. Reg. 446/01, s. 1; 159/07, s. 1; 25/10, s. 2; 32/21, s. 1(1), (3)–(5)

AMOUNT OF CHILD SUPPORT

3. (1) Presumptive rule — Unless otherwise provided under these guidelines, the amount of an order for the support of a child for children under the age of majority is,

- (a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the parent or spouse against whom the order is sought; and
- (b) the amount, if any, determined under section 7.

(2) Child the age of majority or over — Unless otherwise provided under these guidelines, where a child to whom an order for the support of a child relates is the age of majority or over, the amount of an order for the support of a child is,

- (a) the amount determined by applying these guidelines as if the child were under the age of majority; or
- (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each parent or spouse to contribute to the support of the child.

4. Incomes over \$150,000 — Where the income of the parent or spouse against whom an order for the support of a child is sought is over \$150,000, the amount of an order for the support of a child is,

- (a) the amount determined under section 3; or
- (b) if the court considers that amount to be inappropriate,
 - (i) in respect of the first \$150,000 of the parent's or spouse's income, the amount set out in the table for the number of children under the age of majority to whom the order relates,
 - (ii) in respect of the balance of the parent's or spouse's income, the amount that the court considers appropriate, having regard to the condition, means, needs and other circumstances of the children who are entitled to support and the financial ability of each parent or spouse to contribute to the support of the children, and
 - (iii) the amount, if any, determined under section 7.

5. Spouse in place of a parent — Where the spouse against whom an order for the support of a child is sought stands in the place of a parent for a child or the parent is not a parent of the child as set out in section 4 of the *Children's Law Reform Act*, the amount of the order is, in respect of that parent or spouse, such amount as the court considers appropriate, having regard to these guidelines and any other parent's legal duty to support the child.

O. Reg. 478/16, s. 1

6. Medical and dental insurance — In making an order for the support of a child, where medical or dental insurance coverage for the child is available to either parent or spouse through his or her employer or otherwise at a reasonable rate, the court may order that coverage be acquired or continued.

7. (1) Special or extraordinary expenses — In an order for the support of a child, the court may, on the request of either parent or spouse or of an applicant under section 33 of the

Act, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the parents or spouses and those of the child and to the spending pattern of the parents or spouses in respect of the child during cohabitation:

- (a) child care expenses incurred as a result of the employment, illness, disability or education or training for employment of the parent or spouse who has the majority of parenting time;
- (b) that portion of the medical and dental insurance premiums attributable to the child;
- (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy, prescription drugs, hearing aids, glasses and contact lenses;
- (d) extraordinary expenses for primary or secondary school education or for any educational programs that meet the child's particular needs;
- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities.

(1.1) Definition, “extraordinary expenses” — For the purposes of clauses (1)(d) and (f),

“extraordinary expenses” means

- (a) expenses that exceed those that the parent or spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that parent's or spouse's income and the amount that the parent or spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate, or
- (b) where clause (a) is not applicable, expenses that the court considers are extraordinary taking into account,
 - (i) the amount of the expense in relation to the income of the parent or spouse requesting the amount, including the amount that the parent or spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,
 - (ii) the nature and number of the educational programs and extracurricular activities,
 - (iii) any special needs and talents of the child,
 - (iv) the overall cost of the programs and activities, and
 - (v) any other similar factors that the court considers relevant.

(2) Sharing of expense — The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the parents or spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

(3) Subsidies, tax deductions, etc. — Subject to subsection (4), in determining the amount of an expense referred to in subsection (1), the court must take into account any

Amount of Child Support

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subsidies, benefits or income tax deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense.

(4) Universal child care benefit — In determining the amount of an expense referred to in subsection (1), the court shall not take into account any universal child care benefit or any eligibility to claim that benefit.

O. Reg. 446/01, s. 2; 102/06, s. 1; 159/07, s. 2; 32/21, s. 2

8. Split parenting time — If there are two or more children, and each parent or spouse has the majority of parenting time with respect to one or more of those children, the amount of an order for the support of a child is the difference between the amount that each parent or spouse would otherwise pay if such an order were sought against each of the parents or spouses.

O. Reg. 32/21, s. 3

9. Shared parenting time — Where each parent or spouse exercises parenting time with respect to a child for not less than 40 per cent of the time over the course of a year, the amount of the order for the support of a child must be determined by taking into account,

- (a) the amounts set out in the applicable tables for each of the parents or spouses;
- (b) the increased costs of shared parenting time arrangements; and
- (c) the condition, means, needs and other circumstances of each parent or spouse and of any child for whom support is sought.

O. Reg. 32/21, s. 3

10. (1) Undue hardship — On the application of either spouse or an applicant under section 33 of the Act, a court may award an amount of child support that is different from the amount determined under any of sections 3 to 5, 8 or 9 if the court finds that the parent or spouse making the request, or a child in respect of whom the request is made, would otherwise suffer undue hardship.

(2) Circumstances that may cause undue hardship — Circumstances that may cause a parent, spouse or child to suffer undue hardship include,

- (a) the parent or spouse has responsibility for an unusually high level of debts reasonably incurred to support the parents or spouses and their children during cohabitation or to earn a living;
- (b) the parent or spouse has unusually high expenses in relation to exercising parenting time with respect to a child;
- (c) the parent or spouse has a legal duty under a judgment, order or written separation agreement to support any person;
- (d) the spouse has a legal duty to support a child, other than a child of the marriage, who is
 - (i) under the age of majority, or
 - (ii) the age of majority or over but is unable, by reason of illness, disability or other cause, to obtain the necessities of life;
- (e) the parent has a legal duty to support a child, other than the child who is the subject of this application, who is under the age of majority or who is enrolled in a full time course of education;

(f) the parent or spouse has a legal duty to support any person who is unable to obtain the necessities of life due to an illness or disability.

(3) Standards of living must be considered — Despite a determination of undue hardship under subsection (1), an application under that subsection must be denied by the court if it is of the opinion that the household of the parent or spouse who claims undue hardship would, after determining the amount of child support under any of sections 3 to 8, 8 or 9 have a higher standard of living than the household of the other parent or spouse.

(4) Standards of living test — In comparing standards of living for the purpose of subsection (3), the court may use the comparison of household standards of living test set out in Schedule II.

(5) Reasonable time — Where the court awards a different amount of child support under subsection (1), it may specify, in the order for child support, a reasonable time for the satisfaction of any obligation arising from circumstances that cause undue hardship and the amount payable at the end of that time.

(6) Reasons — Where the court makes an order for the support of a child in a different amount under this section, it must record its reason for doing so.

O. Reg. 32/21, s. 4

ELEMENTS OF AN ORDER FOR THE SUPPORT OF A CHILD

11. Form of payments — Where the child support guidelines apply to orders made under the *Divorce Act* (Canada) section 34 of the Act applies.

O. Reg. 25/10, s. 3

12. Security — The court may require in the order for the support of a child that the amount payable under the order be paid or secured, or paid and secured, in the manner specified in the order.

13. Information to be specified in order — An order for the support of a child must include,

- (a) the name and birth date of each child to whom the order relates;
- (b) the income of any parent or spouse whose income is used to determine the amount of the order;
- (c) The amount determined under clause 3 (1) (a) for the number of children to whom the order relates;
- (d) The amount determined under clause 3 (2) (b) for a child the age of majority or over;
- (e) The particulars of any expense described in subsection 7 (1), the child to whom the expense relates and the amount of the expense or, where that amount cannot be determined, the proportion to be paid in relation to the expense;
- (f) The date on which the lump sum or first payment is payable and the day of the month or other time period on which all subsequent payments are to be made; and
- (g) reference to the obligation under subsection 24.1(1) to provide updated income information no later than 30 days after the anniversary of the date on which the order is made in every year in which the child is a child within the meaning of this Regulation,

unless the parties agree that the obligation shall not apply, as provided for in that subsection.

O. Reg. 25/10, s. 4

VARIATION OF ORDERS FOR THE SUPPORT OF A CHILD

14. Circumstances for variation — For the purposes of subsection 37(2.2) of the Act and subsection 17(4) of the *Divorce Act* (Canada), any one of the following constitutes a change of circumstances that gives rise to the making of a variation order:

1. In the case where the amount of child support includes a determination made in accordance with the table, any change in circumstances that would result in a different order for the support of a child or any provision thereof.
2. In the case where the amount of child support does not include a determination made in accordance with a table, any change in the condition, means, needs or other circumstances of either parent or spouse or of any child who is entitled to support.
3. In the case of an order made under the *Divorce Act* (Canada) before May 1, 1997, the coming into force of section 15.1 of that Act, enacted by section 2 of chapter 1 of the Statutes of Canada, (1997).
4. In the case of an order made under the Act, the coming into force of subsection 33 (11) of the Act.

O. Reg. 446/01, s. 3

INCOME

15. (1) Determination of annual income — Subject to subsection (2), a parent's or spouse's annual income is determined by the court in accordance with sections 16 to 20.

(2) Agreement — Where both parents or spouses agree in writing on the annual income of a parent or spouse, the court may consider that amount to be the parent's or spouse's income for the purposes of these guidelines if the court thinks that the amount is reasonable having regard to the income information provided under section 21.

16. Calculation of annual income — Subject to sections 17 to 20, a parent's or spouse's annual income is determined using the sources of income set out under the heading "Total income" in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.

O. Reg. 446/01, s. 4; 102/06, s. 2

17. (1) Pattern of income — If the court is of the opinion that the determination of a parent's or spouse's annual income under section 16 would not be the fairest determination of that income, the court may have regard to the parent's or spouse's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.

(2) Non-recurring losses — Where a parent or spouse has incurred a non-recurring capital or business investment loss, the court may, if it is of the opinion that the determination of the parent's or spouse's annual income under section 16 would not provide the fairest determination of the annual income, choose not to apply sections 6 and 7 of Schedule III, and

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adjust the amount of the loss, including related expenses and carrying charges and interest expenses, to arrive at such amount as the court considers appropriate.

O. Reg. 446/01, s. 5

18. (1) Shareholder, director or officer — Where a parent or spouse is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the parent's or spouse's annual income as determined under section 16 does not fairly reflect all the money available to the parent or spouse for the payment of child support, the court may consider the situations described in section 17 and determine the parent's or spouse's annual income to include,

- (a) all or part of the pre-tax income of the corporation, and of any corporation that is related to that corporation, for the most recent taxation year; or
 - (b) an amount commensurate with the services that the parent or spouse provides the corporation, provided that the amount does not exceed the corporation's pre-tax income.

(2) Adjustment to corporation's pre-tax income — In determining the pre-tax income of a corporation for the purposes of subsection (1), all amounts paid by the corporation as salaries, wages or management fees, or other payments or benefits, to or on behalf of person with whom the corporation does not deal at arm's length must be added to the pre-tax income, unless the parent or spouse establishes that the payments were reasonable in the circumstances.

19. (1) Imputing income — The court may impute such amount of income to a parent or spouse as it considers appropriate in the circumstances, which circumstances include,

- (a) the parent or spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of any child or by the reasonable educational or health needs of the parent or spouse;
 - (b) the parent or spouse is exempt from paying federal or provincial income tax;
 - (c) the parent or spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;
 - (d) it appears that income has been diverted which would affect the level of child support to be determined under these guidelines;
 - (e) the parent's or spouse's property is not reasonably utilized to generate income;
 - (f) the parent or spouse has failed to provide income information when under a legal obligation to do so;
 - (g) the parent or spouse unreasonably deducts expenses from income;
 - (h) the parent or spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and
 - (i) the parent or spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

(2) Reasonableness of expenses — For the purpose of clause (1) (g), the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the *Income Tax Act* (Canada).

O. Reg. 446/01, s. 6

20. (1) Non-resident — Subject to subsection (2), where a parent or spouse is a non-resident of Canada, the parent's or spouse's annual income is determined as though the parent or spouse were a resident of Canada.

(2) Non-resident taxed at higher rates — Where a parent or spouse is a non-resident of Canada and resides in a country that has effective rates of income tax that are significantly higher than those applicable in the province or territory in which the other parent or spouse habitually resides, the non-resident parent's or spouse's annual income is the amount which the court determines to be appropriate taking the higher rates into consideration.

O. Reg. 102/06, s. 3; 32/21, s. 5

INCOME INFORMATION

21. (1) Obligation of applicant — A parent or spouse who is applying for an order for the support of a child and whose income information is necessary to determine the amount of the order must include with the application,

- (a) a copy of every personal income tax return filed by the parent or spouse including any materials that were filed with the return for each of the three most recent taxation years;
- (b) a copy of every notice of assessment and reassessment issued to the parent or spouse for each of the three most recent taxation years;
- (c) where the parent or spouse is an employee, the most recent statement of earnings indicating the total earnings paid in the year to date, including overtime, or, where such a statement is not provided by the employer, a letter from the parent's or spouse's employer setting out that information including the parent's or spouse's rate of annual salary or remuneration;
- (d) where the parent or spouse is self-employed, for the three most recent taxation years,
 - (i) the financial statements of the parent's or spouse's business or professional practice, other than a partnership, and
 - (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefit paid to, or on behalf of, persons or corporations with whom the parent or spouse does not deal at arm's length;
- (e) where the parent or spouse is a partner in partnership, confirmation of the parent's or spouse's income and draw from, and capital in, the partnership for its three most recent taxation years;
- (f) where the parent or spouse controls a corporation, for its three most recent taxation years,
 - (i) the financial statements of the corporation and its subsidiaries, and
 - (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length;
- (g) where the parent or spouse is a beneficiary under a trust, a copy of the trust settlement agreement and copies of the trust's three most recent financial statements; and
- (h) in addition to any information that must be included under clauses (c) to (g), where the parent or spouse receives income from employment insurance, social assistance, a

pension, workers compensation, disability payments or any other source, the most recent statement of income indicating the total amount of income from the applicable source during the current year or, if such a statement is not provided, a letter from the appropriate authority stating the required information.

(2) Obligation of respondent — A parent or spouse who is served with an application for an order for the support of a child and whose income information is necessary to determine the amount of the order, must, within 30 days after the application is served if the parent or spouse resides in Canada or the United States or within 60 days if the parent or spouse resides elsewhere, or such other time limit as the court specifies, provide the court, as well as the other spouse, an applicant under section 33 of the Act or the order assignee with the documents referred to in subsection (1).

(3) Special expenses or undue hardship — Where, in the course of proceedings in respect of an application for an order for the support of a child, a parent or spouse requests an amount to cover expenses referred to in subsection 7 (1) or pleads undue hardship, the parent or spouse who would be receiving the amount of child support must, within 30 days after the amount is sought or undue hardship is pleaded if the parent or spouse resides in Canada or the United States or within 60 days if the parent or spouse resides elsewhere, or such other time limit as the court specifies, provide the court and the other parent or spouse with the documents referred to in subsection (1).

(4) Income over \$150,000 — Where, in the course of proceedings in respect of an application for an order for the support of a child, it is established that the income of the parent or spouse who would be paying the amount of child support is greater than \$150,000, the other parent or spouse must, within 30 days after the income is established to be greater than \$150,000 if the other parent or spouse resides in Canada or the United States or within 60 days if the other parent or spouse resides elsewhere, or such other time limit as the court specifies, provide the court and the other parent or spouse with the documents referred to in subsection (1).

O. Reg. 446/01, s. 7; 25/10, s. 5

22. (1) Failure to comply — Where a parent or spouse fails to comply with section 21, the other spouse, an applicant under section 33 of the Act or an order assignee may apply,

- (a) to have the application for an order for the support of a child set down for a hearing, or move for judgment; or
 - (b) for an order requiring the parent or spouse who failed to comply to provide the court, as well as the other parent or spouse or order assignee, as the case may be, with the required documents.

(2) Costs of the proceedings — Where a court makes an order under clause (1) (a) or (b), the court may award costs in favour of the other spouse, the applicant under section 33 of the Act or an order assignee up to an amount that fully compensates the other spouse, the applicant or order assignee for all costs incurred in the proceedings.

23. Adverse inference — Where the court proceeds to a hearing on the basis of an application under clause 22 (1) (a), the court may draw an adverse inference against the parent or spouse who failed to comply and impute income to that parent or spouse in such amount as it considers appropriate.

24. Failure to comply with court order — Where a parent or spouse fails to comply with an order issued on the basis of an application under clause 22 (1) (b), the court may,

- (a) strike out any of the parent's or spouse's pleadings;
- (b) make a contempt order against the parent or spouse;
- (c) proceed to a hearing, in the course of which it may draw an adverse inference against the parent or spouse and impute income to that parent or spouse in such amount as it considers appropriate; and
- (d) award costs in favour of the other spouse, an applicant under section 33 of the Act or an order assignee up to an amount that fully compensates the other spouse, the applicant or assignee for all costs incurred in the proceedings.

24.1 (1) Annual obligation to provide income information — Every person whose income or other financial information is used to determine the amount of an order for the support of a child shall, no later than 30 days after the anniversary of the date on which the order was made in every year in which the child is a child within the meaning of this Regulation, provide every party to the order with the following, unless the parties have agreed otherwise:

1. For the most recent taxation year, a copy of the person's,
 - i. personal income tax return, including any materials that were filed with the return, and
 - ii. notice of assessment and, if any, notice of reassessment.
2. As applicable, any current information in writing about,
 - i. the status and amount of any expenses included in the order pursuant to subsection 7(1), and
 - ii. any loan, scholarship or bursaries the child has received or will receive in the coming year that affect or will affect the expenses referred to in subparagraph i.

(2) Notices of assessment — If the person has not received his or her notice of assessment or notice of reassessment for the most recent taxation year by the date referred to in subsection (1), the person shall provide every party to the order with a copy of the notice as soon as possible after the person receives the notice.

(3) Change in address — If the address at which a party receives documents changes, the party shall, at least 30 days before the next anniversary of the date on which the order was made, give written notice of his or her updated address information to every person required to provide documents and information under subsection (1).

(4) Failure to comply — If a person required to provide a document or information under this section fails to do so, a court may, on application by the party who did not receive the document or information, make one or more of the following orders:

1. An order finding the person to be in contempt of court.
2. An order awarding costs in favour of the applicant up to an amount that fully compensates the applicant for all costs incurred in the proceedings.
3. An order requiring the person to provide the document or information to,
 - i. the court,
 - ii. the applicant, and

iii. any other party to whom the person did not provide the document or information when required to do so.

(5) Exception — Subsection (4) does not apply if the person who fails to provide the document or information is a child who is not a party to the order for support.

(6) Transition — In the case of an order to which subsection (1) applies that is in existence on the day section 5 of Ontario Regulation 25/10 comes into force, if the first date by which a person must provide documents and information under that subsection occurs less than six months after the day on which the person provided documents and information under section 25, the person is not required to provide documents and information under subsection (1) in the first year in which he or she would otherwise have been required to provide them.

O. Reg. 25/10, s. 6

25. (1) Continuing obligation to provide income information — Every parent or spouse against whom an order for the support of a child has been made must, on the written request of the other spouse or the person or agency entitled to payment under the order not more than once a year after the making of the order and as long as the child is a child within the meaning of this Regulation, provide that other spouse, or the person or agency entitled to payment under the order, with,

- (a) the documents referred to in subsection 21(1) for any of the three most recent taxation years for which the parent or spouse has not previously provided the documents;
- (b) as applicable, any current information in writing about,
 - (i) the status and amount of any expenses included in the order pursuant to subsection 7(1), and
 - (ii) any loan, scholarship or bursaries the child has received that affect the expenses referred to in subclause (i); and
- (c) as applicable, any current information, in writing, about the circumstances relied on by the court in a determination of undue hardship.

(2) Below minimum income — Where a court has determined that the parent or spouse against whom an order for the support of a child is sought does not have to pay child support because his or her income level is below the minimum amount required for application of the tables, that parent or spouse must, on the written request of the other spouse or the applicant under section 33 of the Act, not more than once a year after the determination and as long as the child is a child within the meaning of this Regulation, provide the other spouse or the applicant with the documents referred to in subsection 21(1) for any of the three most recent taxation years for which the parent or spouse has not previously provided the documents.

(3) Obligation of receiving parent or spouse — Where the income information of the parent or spouse in favour of whom an order for the support of a child is made is used to determine the amount of the order, the parent or spouse must, not more than once a year after the making of the order and as long as the child is a child within the meaning of this Regulation, on the written request of the other parent or spouse, provide the other parent or spouse with the documents and information referred to in subsection (1).

(4) Information requests — Where a parent or spouse requests information from the other parent or spouse under any of subsections (1) to (3) and the income information of the requesting parent or spouse is used to determine the amount of the order for the support of a child, the requesting parent or spouse must include the documents and information referred to in subsection (1) with the request.

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Providing Income Information for Domestic Contracts ~~and Other ...~~ **S. 25.1(2)**

(5) Time limit — A parent or spouse who receives a request made under any of subsections (1) to (3) must provide the required documents within 30 days after the request's receipt if the parent or spouse resides in Canada or the United States and within 60 days after the request's receipt if the parent or spouse resides elsewhere.

(6) Deemed receipt — A request made under any of subsection (1) to (3) is deemed to have been received 10 days after it is sent.

(7) Failure to comply — A court may, on application by either spouse, an applicant under section 33 of the Act or an order assignee, where the parent or spouse has failed to comply with any of subsections (1) to (3),

- (a) consider the parent or spouse to be in contempt of court and award costs in favour of the applicant up to an amount that fully compensates the applicant for all costs incurred in the proceedings; or
- (b) make an order requiring the parent or spouse to provide the required documents to the court, as well as to the spouse, order assignee or applicant under section 33 of the Act, as the case may be.

(8) Unenforceable provision — A provision in a judgment, order or agreement purporting to limit a parent's or spouse's obligation to provide documents under this section is unenforceable.

O. Reg. 25/10, s. 7

PROVIDING INCOME INFORMATION FOR DOMESTIC CONTRACTS AND OTHER AGREEMENTS

[Heading added O. Reg. 25/10, s. 8.]

25.1 (1) Annual obligation to provide income information — Every person whose income or other financial information is used to determine the amount of a child support obligation under a domestic contract or other written agreement shall, no later than 30 days after the anniversary of the date on which the contract or agreement was entered into in every year in which the child is a child within the meaning of this Regulation, provide every party to the contract or agreement with the following, unless the parties have agreed otherwise in a domestic contract or other agreement:

1. For the most recent taxation year, a copy of the person's,
 - i. personal income tax return, including any materials that were filed with the return, and
 - ii. notice of assessment and, if any, notice of reassessment.
2. If the contract or agreement provides for the payment of any of the expenses referred to in clauses 7(1)(a) to (f), any current information in writing about,
 - i. the status and amount of the expenses, and
 - ii. any loan, scholarship or bursaries the child has received or will receive in the coming year that affect or will affect the expenses referred to in subparagraph i.

(2) Notices of assessment — If the person has not received his or her notice of assessment or notice of reassessment for the most recent taxation year by the date referred to in subsection (1), the person shall provide every party to the contract or agreement with a copy of the notice as soon as possible after the person receives the notice.

(3) Change in address — If the address at which a party to the domestic contract or agreement receives documents changes, the party shall, at least 30 days before the next anniversary of the date on which the contract or agreement was entered into, give written notice of his or her updated address information to every person required to provide documents and information under subsection (1).

(4) Failure to comply — If a person required to provide a document or information under this section fails to do so, a court may, on application by the person who did not receive the document or information, make one or more of the following orders:

1. An order awarding costs in favour of the applicant up to an amount that fully compensates the applicant for all costs incurred in the proceedings.
 2. An order requiring the person to provide the document or information to,
 - i. the court,
 - ii. the applicant, and
 - iii. any other party to the domestic contract or other written agreement to whom the person did not provide the document or information when required to do so.

(5) Exception — Subsection (4) does not apply if the person who fails to provide the document or information is a child who is not a party to the domestic contract or other written agreement.

(6) Transition — This section applies in respect of a domestic contract or other written agreement only if the contract or agreement was entered into on or after the day section 7 of Ontario Regulation 25/10 comes into force.

O. Reg. 25/10, s. 8

COMING INTO FORCE

26. Coming into Force — (1) These guidelines come into force with respect to cases to which the *Family Law Act* applies on the day the *Uniform Federal and Provincial Child Support Guidelines Act, 1997* is proclaimed in force.

(2) These guidelines come into force with respect to cases to which the *Divorce Act* (Canada) applies on the day these guidelines are specified by order of the Governor in Council as “applicable guidelines” within the meaning of that Act under subsection 2 (5) of that Act.

SCHEDULE I

(Subsection 2(1))

CHILD SUPPORT TABLE FOR ONTARIO

Notes:

1. The child support table for Ontario sets out the amount of monthly child support payments for Ontario on the basis of the annual income of the parent or spouse ordered to pay child support (the “support payor”) and the number of children for whom a table amount is payable. Refer to these guidelines to determine whether special measures apply.

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2. There is a threshold level of income below which no amount of child support is payable. Child support amounts are specified for incomes up to \$150,000 per year. Refer to section 4 of this Regulation to determine the amount of child support payments for support payors with annual incomes over \$150,000.

3. Income is set out in the table in intervals of \$1,000. Monthly amounts are determined by adding the basic amount and the amount calculated by multiplying the applicable percentage by the portion of the income that exceeds the lower amount within that interval of income.

4. The amounts in the tables are based on economic studies of average spending on children in families at different income levels in Canada. They are calculated on the basis that child support payments are no longer taxable in the hands of the receiving parent and no longer deductible by the paying parent. They are calculated using a mathematical formula and generated by a computer program.

5. The formula referred to in note 4 sets support amounts to reflect average expenditures on children by a parent or spouse with a particular number of children and level of income. The calculation is based on the support payor's income. The formula uses the basic personal amount for non-refundable tax credits to recognize personal expense, and takes other federal and provincial income taxes and credits into account. Federal Child Tax benefits and harmonized sales tax credits for children are excluded from the calculation. At lower income levels, the formula sets the amounts to take into account the combined impact of taxes and child support payments on the support payor's limited disposable income.

CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: ONE

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 12000–12999 | 0 | 4.1 | 12000 |
| 13000–13999 | 41 | 1.94 | 13000 |
| 14000–14999 | 60 | 1.92 | 14000 |
| 15000–15999 | 79 | 1.88 | 15000 |
| 16000–16999 | 98 | 1.96 | 16000 |
| 17000–17999 | 118 | 1.92 | 17000 |
| 18000–18999 | 137 | 1.7 | 18000 |
| 19000–19999 | 154 | 0.72 | 19000 |
| 20000–20999 | 161 | 0.74 | 20000 |
| 21000–21999 | 168 | 0.8 | 21000 |
| 22000–22999 | 176 | 0.78 | 22000 |
| 23000–23999 | 184 | 0.8 | 23000 |
| 24000–24999 | 192 | 0.72 | 24000 |
| 25000–25999 | 199 | 0.96 | 25000 |
| 26000–26999 | 209 | 1.36 | 26000 |
| 27000–27999 | 223 | 1.32 | 27000 |

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CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: ONE

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 28000–28999 | 236 | 1.08 | 28000 |
| 29000–29999 | 247 | 0.86 | 29000 |
| 30000–30999 | 256 | 0.82 | 30000 |
| 31000–31999 | 264 | 0.86 | 31000 |
| 32000–32999 | 273 | 0.88 | 32000 |
| 33000–33999 | 282 | 1 | 33000 |
| 34000–34999 | 292 | 1.22 | 34000 |
| 35000–35999 | 304 | 1.14 | 35000 |
| 36000–36999 | 315 | 1.06 | 36000 |
| 37000–37999 | 326 | 1 | 37000 |
| 38000–38999 | 336 | 1.06 | 38000 |
| 39000–39999 | 347 | 1.18 | 39000 |
| 40000–40999 | 359 | 1.14 | 40000 |
| 41000–41999 | 370 | 1.12 | 41000 |
| 42000–42999 | 381 | 1.26 | 42000 |
| 43000–43999 | 394 | 1.24 | 43000 |
| 44000–44999 | 406 | 1.22 | 44000 |
| 45000–45999 | 418 | 0.9 | 45000 |
| 46000–46999 | 427 | 0.88 | 46000 |
| 47000–47999 | 436 | 0.88 | 47000 |
| 48000–48999 | 445 | 0.68 | 48000 |
| 49000–49999 | 452 | 0.88 | 49000 |
| 50000–50999 | 461 | 0.88 | 50000 |
| 51000–51999 | 470 | 0.88 | 51000 |
| 52000–52999 | 479 | 0.96 | 52000 |
| 53000–53999 | 489 | 0.94 | 53000 |
| 54000–54999 | 498 | 0.92 | 54000 |
| 55000–55999 | 507 | 0.98 | 55000 |
| 56000–56999 | 517 | 1.02 | 56000 |
| 57000–57999 | 527 | 0.94 | 57000 |
| 58000–58999 | 536 | 0.96 | 58000 |
| 59000–59999 | 546 | 0.98 | 59000 |
| 60000–60999 | 556 | 1 | 60000 |

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Sch. I**CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: ONE**

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 61000–61999 | 566 | 1.02 | 61000 |
| 62000–62999 | 576 | 0.94 | 62000 |
| 63000–63999 | 585 | 0.98 | 63000 |
| 64000–64999 | 595 | 1 | 64000 |
| 65000–65999 | 605 | 1.02 | 65000 |
| 66000–66999 | 615 | 0.94 | 66000 |
| 67000–67999 | 624 | 0.96 | 67000 |
| 68000–68999 | 634 | 0.98 | 68000 |
| 69000–69999 | 644 | 1 | 69000 |
| 70000–70999 | 654 | 0.94 | 70000 |
| 71000–71999 | 663 | 0.96 | 71000 |
| 72000–72999 | 673 | 0.78 | 72000 |
| 73000–73999 | 681 | 1 | 73000 |
| 74000–74999 | 691 | 0.94 | 74000 |
| 75000–75999 | 700 | 0.86 | 75000 |
| 76000–76999 | 709 | 0.86 | 76000 |
| 77000–77999 | 718 | 0.88 | 77000 |
| 78000–78999 | 727 | 0.88 | 78000 |
| 79000–79999 | 736 | 0.9 | 79000 |
| 80000–80999 | 745 | 1 | 80000 |
| 81000–81999 | 755 | 0.94 | 81000 |
| 82000–82999 | 764 | 0.98 | 82000 |
| 83000–83999 | 774 | 0.94 | 83000 |
| 84000–84999 | 783 | 0.92 | 84000 |
| 85000–85999 | 792 | 0.9 | 85000 |
| 86000–86999 | 801 | 0.88 | 86000 |
| 87000–87999 | 810 | 0.86 | 87000 |
| 88000–88999 | 819 | 0.68 | 88000 |
| 89000–89999 | 826 | 0.76 | 89000 |
| 90000–90999 | 834 | 0.64 | 90000 |
| 91000–91999 | 840 | 0.66 | 91000 |
| 92000–92999 | 847 | 0.76 | 92000 |
| 93000–93999 | 855 | 0.76 | 93000 |

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CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: ONE

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 94000–94999 | 863 | 0.78 | 94000 |
| 95000–95999 | 871 | 0.8 | 95000 |
| 96000–96999 | 879 | 0.8 | 96000 |
| 97000–97999 | 887 | 0.82 | 97000 |
| 98000–98999 | 895 | 0.74 | 98000 |
| 99000–99999 | 902 | 0.76 | 99000 |
| 100000–100999 | 910 | 0.76 | 100000 |
| 101000–101999 | 918 | 0.78 | 101000 |
| 102000–102999 | 926 | 0.8 | 102000 |
| 103000–103999 | 934 | 0.8 | 103000 |
| 104000–104999 | 942 | 0.82 | 104000 |
| 105000–105999 | 950 | 0.84 | 105000 |
| 106000–106999 | 958 | 0.74 | 106000 |
| 107000–107999 | 965 | 0.76 | 107000 |
| 108000–108999 | 973 | 0.78 | 108000 |
| 109000–109999 | 981 | 0.8 | 109000 |
| 110000–110999 | 989 | 0.8 | 110000 |
| 111000–111999 | 997 | 0.82 | 111000 |
| 112000–112999 | 1005 | 0.84 | 112000 |
| 113000–113999 | 1013 | 0.74 | 113000 |
| 114000–114999 | 1020 | 0.76 | 114000 |
| 115000–115999 | 1028 | 0.78 | 115000 |
| 116000–116999 | 1036 | 0.78 | 116000 |
| 117000–117999 | 1044 | 0.8 | 117000 |
| 118000–118999 | 1052 | 0.82 | 118000 |
| 119000–119999 | 1060 | 0.84 | 119000 |
| 120000–120999 | 1068 | 0.74 | 120000 |
| 121000–121999 | 1075 | 0.76 | 121000 |
| 122000–122999 | 1083 | 0.78 | 122000 |
| 123000–123999 | 1091 | 0.78 | 123000 |
| 124000–124999 | 1099 | 0.8 | 124000 |
| 125000–125999 | 1107 | 0.82 | 125000 |
| 126000–126999 | 1115 | 0.82 | 126000 |

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Sch. I**CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: ONE**

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 127000–127999 | 1123 | 0.74 | 127000 |
| 128000–128999 | 1130 | 0.76 | 128000 |
| 129000–129999 | 1138 | 0.78 | 129000 |
| 130000–130999 | 1146 | 0.78 | 130000 |
| 131000–131999 | 1154 | 0.8 | 131000 |
| 132000–132999 | 1162 | 0.82 | 132000 |
| 133000–133999 | 1170 | 0.82 | 133000 |
| 134000–134999 | 1178 | 0.74 | 134000 |
| 135000–135999 | 1185 | 0.76 | 135000 |
| 136000–136999 | 1193 | 0.76 | 136000 |
| 137000–137999 | 1201 | 0.78 | 137000 |
| 138000–138999 | 1209 | 0.8 | 138000 |
| 139000–139999 | 1217 | 0.82 | 139000 |
| 140000–140999 | 1225 | 0.72 | 140000 |
| 141000–141999 | 1232 | 0.76 | 141000 |
| 142000–142999 | 1240 | 0.72 | 142000 |
| 143000–143999 | 1247 | 0.78 | 143000 |
| 144000–144999 | 1255 | 0.74 | 144000 |
| 145000–145999 | 1262 | 0.78 | 145000 |
| 146000–146999 | 1270 | 0.74 | 146000 |
| 147000–147999 | 1277 | 0.7 | 147000 |
| 148000–148999 | 1284 | 0.76 | 148000 |
| 149000–149999 | 1292 | 0.72 | 149000 |
| 150000—or greater | 1299 | 0.72 | 150000 |

CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: TWO

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 12000–12999 | 0 | 9.5 | 12000 |
| 13000–13999 | 95 | 3.86 | 13000 |
| 14000–14999 | 134 | 3.6 | 14000 |
| 15000–15999 | 170 | 3.3 | 15000 |
| 16000–16999 | 203 | 3 | 16000 |

CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: TWO

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 17000–17999 | 233 | 3.02 | 17000 |
| 18000–18999 | 263 | 3.34 | 18000 |
| 19000–19999 | 296 | 1.5 | 19000 |
| 20000–20999 | 311 | 1.3 | 20000 |
| 21000–21999 | 324 | 1.32 | 21000 |
| 22000–22999 | 337 | 1.26 | 22000 |
| 23000–23999 | 350 | 1.26 | 23000 |
| 24000–24999 | 363 | 1.28 | 24000 |
| 25000–25999 | 376 | 1.5 | 25000 |
| 26000–26999 | 391 | 1.86 | 26000 |
| 27000–27999 | 410 | 1.82 | 27000 |
| 28000–28999 | 428 | 1.68 | 28000 |
| 29000–29999 | 445 | 1.44 | 29000 |
| 30000–30999 | 459 | 1.52 | 30000 |
| 31000–31999 | 474 | 1.44 | 31000 |
| 32000–32999 | 488 | 1.48 | 32000 |
| 33000–33999 | 503 | 1.42 | 33000 |
| 34000–34999 | 517 | 1.46 | 34000 |
| 35000–35999 | 532 | 1.4 | 35000 |
| 36000–36999 | 546 | 1.26 | 36000 |
| 37000–37999 | 559 | 1.24 | 37000 |
| 38000–38999 | 571 | 1.3 | 38000 |
| 39000–39999 | 584 | 1.32 | 39000 |
| 40000–40999 | 597 | 1.36 | 40000 |
| 41000–41999 | 611 | 1.3 | 41000 |
| 42000–42999 | 624 | 1.54 | 42000 |
| 43000–43999 | 639 | 1.66 | 43000 |
| 44000–44999 | 656 | 1.76 | 44000 |
| 45000–45999 | 674 | 1.7 | 45000 |
| 46000–46999 | 691 | 1.68 | 46000 |
| 47000–47999 | 708 | 1.72 | 47000 |
| 48000–48999 | 725 | 1.34 | 48000 |
| 49000–49999 | 738 | 1.68 | 49000 |

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Sch. I**CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: TWO**

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 50000–50999 | 755 | 1.72 | 50000 |
| 51000–51999 | 772 | 1.74 | 51000 |
| 52000–52999 | 789 | 1.72 | 52000 |
| 53000–53999 | 806 | 1.72 | 53000 |
| 54000–54999 | 823 | 1.6 | 54000 |
| 55000–55999 | 839 | 1.54 | 55000 |
| 56000–56999 | 854 | 1.52 | 56000 |
| 57000–57999 | 869 | 1.5 | 57000 |
| 58000–58999 | 884 | 1.48 | 58000 |
| 59000–59999 | 899 | 1.56 | 59000 |
| 60000–60999 | 915 | 1.54 | 60000 |
| 61000–61999 | 930 | 1.52 | 61000 |
| 62000–62999 | 945 | 1.5 | 62000 |
| 63000–63999 | 960 | 1.48 | 63000 |
| 64000–64999 | 975 | 1.56 | 64000 |
| 65000–65999 | 991 | 1.54 | 65000 |
| 66000–66999 | 1006 | 1.52 | 66000 |
| 67000–67999 | 1021 | 1.5 | 67000 |
| 68000–68999 | 1036 | 1.48 | 68000 |
| 69000–69999 | 1051 | 1.56 | 69000 |
| 70000–70999 | 1067 | 1.54 | 70000 |
| 71000–71999 | 1082 | 1.52 | 71000 |
| 72000–72999 | 1097 | 1.2 | 72000 |
| 73000–73999 | 1109 | 1.5 | 73000 |
| 74000–74999 | 1124 | 1.48 | 74000 |
| 75000–75999 | 1139 | 1.46 | 75000 |
| 76000–76999 | 1154 | 1.44 | 76000 |
| 77000–77999 | 1168 | 1.4 | 77000 |
| 78000–78999 | 1182 | 1.38 | 78000 |
| 79000–79999 | 1196 | 1.46 | 79000 |
| 80000–80999 | 1211 | 1.52 | 80000 |
| 81000–81999 | 1226 | 1.44 | 81000 |
| 82000–82999 | 1240 | 1.46 | 82000 |

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CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: TWO

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 83000–83999 | 1255 | 1.48 | 83000 |
| 84000–84999 | 1270 | 1.44 | 84000 |
| 85000–85999 | 1284 | 1.42 | 85000 |
| 86000–86999 | 1298 | 1.4 | 86000 |
| 87000–87999 | 1312 | 1.36 | 87000 |
| 88000–88999 | 1326 | 1.18 | 88000 |
| 89000–89999 | 1338 | 1.26 | 89000 |
| 90000–90999 | 1351 | 1.14 | 90000 |
| 91000–91999 | 1362 | 1.18 | 91000 |
| 92000–92999 | 1374 | 1.24 | 92000 |
| 93000–93999 | 1386 | 1.22 | 93000 |
| 94000–94999 | 1398 | 1.2 | 94000 |
| 95000–95999 | 1410 | 1.26 | 95000 |
| 96000–96999 | 1423 | 1.24 | 96000 |
| 97000–97999 | 1435 | 1.22 | 97000 |
| 98000–98999 | 1447 | 1.2 | 98000 |
| 99000–99999 | 1459 | 1.18 | 99000 |
| 100000–100999 | 1471 | 1.26 | 100000 |
| 101000–101999 | 1484 | 1.24 | 101000 |
| 102000–102999 | 1496 | 1.22 | 102000 |
| 103000–103999 | 1508 | 1.18 | 103000 |
| 104000–104999 | 1520 | 1.26 | 104000 |
| 105000–105999 | 1533 | 1.24 | 105000 |
| 106000–106999 | 1545 | 1.22 | 106000 |
| 107000–107999 | 1557 | 1.2 | 107000 |
| 108000–108999 | 1569 | 1.18 | 108000 |
| 109000–109999 | 1581 | 1.26 | 109000 |
| 110000–110999 | 1594 | 1.22 | 110000 |
| 111000–111999 | 1606 | 1.2 | 111000 |
| 112000–112999 | 1618 | 1.18 | 112000 |
| 113000–113999 | 1630 | 1.26 | 113000 |
| 114000–114999 | 1643 | 1.24 | 114000 |
| 115000–115999 | 1655 | 1.22 | 115000 |

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Sch. I**CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: TWO**

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 116000–116999 | 1667 | 1.2 | 116000 |
| 117000–117999 | 1679 | 1.28 | 117000 |
| 118000–118999 | 1692 | 1.24 | 118000 |
| 119000–119999 | 1704 | 1.22 | 119000 |
| 120000–120999 | 1716 | 1.2 | 120000 |
| 121000–121999 | 1728 | 1.18 | 121000 |
| 122000–122999 | 1740 | 1.26 | 122000 |
| 123000–123999 | 1753 | 1.24 | 123000 |
| 124000–124999 | 1765 | 1.22 | 124000 |
| 125000–125999 | 1777 | 1.2 | 125000 |
| 126000–126999 | 1789 | 1.26 | 126000 |
| 127000–127999 | 1802 | 1.24 | 127000 |
| 128000–128999 | 1814 | 1.22 | 128000 |
| 129000–129999 | 1826 | 1.2 | 129000 |
| 130000–130999 | 1838 | 1.18 | 130000 |
| 131000–131999 | 1850 | 1.26 | 131000 |
| 132000–132999 | 1863 | 1.24 | 132000 |
| 133000–133999 | 1875 | 1.2 | 133000 |
| 134000–134999 | 1887 | 1.18 | 134000 |
| 135000–135999 | 1899 | 1.26 | 135000 |
| 136000–136999 | 1912 | 1.24 | 136000 |
| 137000–137999 | 1924 | 1.22 | 137000 |
| 138000–138999 | 1936 | 1.2 | 138000 |
| 139000–139999 | 1948 | 1.18 | 139000 |
| 140000–140999 | 1960 | 1.16 | 140000 |
| 141000–141999 | 1972 | 1.16 | 141000 |
| 142000–142999 | 1984 | 1.1 | 142000 |
| 143000–143999 | 1995 | 1.16 | 143000 |
| 144000–144999 | 2007 | 1.2 | 144000 |
| 145000–145999 | 2019 | 1.14 | 145000 |
| 146000–146999 | 2030 | 1.18 | 146000 |
| 147000–147999 | 2042 | 1.12 | 147000 |
| 148000–148999 | 2053 | 1.16 | 148000 |

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CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: TWO

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 149000–149999 | 2065 | 1.2 | 149000 |
| 150000—or greater | 2077 | 1.2 | 150000 |

CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: THREE

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 12000–12999 | 0 | 10.3 | 12000 |
| 13000–13999 | 103 | 4.12 | 13000 |
| 14000–14999 | 144 | 3.86 | 14000 |
| 15000–15999 | 183 | 3.6 | 15000 |
| 16000–16999 | 219 | 3.24 | 16000 |
| 17000–17999 | 251 | 3.22 | 17000 |
| 18000–18999 | 283 | 3.62 | 18000 |
| 19000–19999 | 319 | 4.12 | 19000 |
| 20000–20999 | 360 | 3.84 | 20000 |
| 21000–21999 | 398 | 3.96 | 21000 |
| 22000–22999 | 438 | 3.86 | 22000 |
| 23000–23999 | 477 | 2.34 | 23000 |
| 24000–24999 | 500 | 1.68 | 24000 |
| 25000–25999 | 517 | 1.98 | 25000 |
| 26000–26999 | 537 | 2.2 | 26000 |
| 27000–27999 | 559 | 2.26 | 27000 |
| 28000–28999 | 582 | 2.02 | 28000 |
| 29000–29999 | 602 | 1.86 | 29000 |
| 30000–30999 | 621 | 1.96 | 30000 |
| 31000–31999 | 641 | 1.92 | 31000 |
| 32000–32999 | 660 | 1.98 | 32000 |
| 33000–33999 | 680 | 1.94 | 33000 |
| 34000–34999 | 699 | 1.9 | 34000 |
| 35000–35999 | 718 | 1.88 | 35000 |
| 36000–36999 | 737 | 1.68 | 36000 |
| 37000–37999 | 754 | 1.64 | 37000 |
| 38000–38999 | 770 | 1.7 | 38000 |

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Sch. I**CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: THREE**

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 39000–39999 | 787 | 1.8 | 39000 |
| 40000–40999 | 805 | 1.8 | 40000 |
| 41000–41999 | 823 | 1.7 | 41000 |
| 42000–42999 | 840 | 1.6 | 42000 |
| 43000–43999 | 856 | 1.64 | 43000 |
| 44000–44999 | 872 | 1.64 | 44000 |
| 45000–45999 | 888 | 1.56 | 45000 |
| 46000–46999 | 904 | 1.56 | 46000 |
| 47000–47999 | 920 | 2 | 47000 |
| 48000–48999 | 940 | 1.66 | 48000 |
| 49000–49999 | 957 | 2.04 | 49000 |
| 50000–50999 | 977 | 2.08 | 50000 |
| 51000–51999 | 998 | 2.14 | 51000 |
| 52000–52999 | 1019 | 2.14 | 52000 |
| 53000–53999 | 1040 | 2.04 | 53000 |
| 54000–54999 | 1060 | 2.06 | 54000 |
| 55000–55999 | 1081 | 2.26 | 55000 |
| 56000–56999 | 1104 | 2.24 | 56000 |
| 57000–57999 | 1126 | 2.24 | 57000 |
| 58000–58999 | 1148 | 2.22 | 58000 |
| 59000–59999 | 1170 | 2.22 | 59000 |
| 60000–60999 | 1192 | 2.22 | 60000 |
| 61000–61999 | 1214 | 2.2 | 61000 |
| 62000–62999 | 1236 | 2.2 | 62000 |
| 63000–63999 | 1258 | 2.18 | 63000 |
| 64000–64999 | 1280 | 1.92 | 64000 |
| 65000–65999 | 1299 | 1.98 | 65000 |
| 66000–66999 | 1319 | 1.92 | 66000 |
| 67000–67999 | 1338 | 1.96 | 67000 |
| 68000–68999 | 1358 | 1.92 | 68000 |
| 69000–69999 | 1377 | 1.96 | 69000 |
| 70000–70999 | 1397 | 2 | 70000 |
| 71000–71999 | 1417 | 1.94 | 71000 |

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CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: THREE

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 72000–72999 | 1436 | 1.5 | 72000 |
| 73000–73999 | 1451 | 1.96 | 73000 |
| 74000–74999 | 1471 | 2 | 74000 |
| 75000–75999 | 1491 | 1.84 | 75000 |
| 76000–76999 | 1509 | 1.88 | 76000 |
| 77000–77999 | 1528 | 1.84 | 77000 |
| 78000–78999 | 1546 | 1.88 | 78000 |
| 79000–79999 | 1565 | 1.84 | 79000 |
| 80000–80999 | 1583 | 1.86 | 80000 |
| 81000–81999 | 1602 | 1.86 | 81000 |
| 82000–82999 | 1621 | 1.86 | 82000 |
| 83000–83999 | 1640 | 1.86 | 83000 |
| 84000–84999 | 1659 | 1.82 | 84000 |
| 85000–85999 | 1677 | 1.88 | 85000 |
| 86000–86999 | 1696 | 1.84 | 86000 |
| 87000–87999 | 1714 | 1.8 | 87000 |
| 88000–88999 | 1732 | 1.62 | 88000 |
| 89000–89999 | 1748 | 1.6 | 89000 |
| 90000–90999 | 1764 | 1.6 | 90000 |
| 91000–91999 | 1780 | 1.54 | 91000 |
| 92000–92999 | 1795 | 1.54 | 92000 |
| 93000–93999 | 1810 | 1.58 | 93000 |
| 94000–94999 | 1826 | 1.6 | 94000 |
| 95000–95999 | 1842 | 1.52 | 95000 |
| 96000–96999 | 1857 | 1.56 | 96000 |
| 97000–97999 | 1873 | 1.58 | 97000 |
| 98000–98999 | 1889 | 1.62 | 98000 |
| 99000–99999 | 1905 | 1.54 | 99000 |
| 100000–100999 | 1920 | 1.56 | 100000 |
| 101000–101999 | 1936 | 1.6 | 101000 |
| 102000–102999 | 1952 | 1.52 | 102000 |
| 103000–103999 | 1967 | 1.56 | 103000 |
| 104000–104999 | 1983 | 1.58 | 104000 |

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Sch. I**CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: THREE**

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 105000–105999 | 1999 | 1.6 | 105000 |
| 106000–106999 | 2015 | 1.54 | 106000 |
| 107000–107999 | 2030 | 1.56 | 107000 |
| 108000–108999 | 2046 | 1.6 | 108000 |
| 109000–109999 | 2062 | 1.62 | 109000 |
| 110000–110999 | 2078 | 1.54 | 110000 |
| 111000–111999 | 2093 | 1.58 | 111000 |
| 112000–112999 | 2109 | 1.6 | 112000 |
| 113000–113999 | 2125 | 1.54 | 113000 |
| 114000–114999 | 2140 | 1.56 | 114000 |
| 115000–115999 | 2156 | 1.58 | 115000 |
| 116000–116999 | 2172 | 1.62 | 116000 |
| 117000–117999 | 2188 | 1.54 | 117000 |
| 118000–118999 | 2203 | 1.58 | 118000 |
| 119000–119999 | 2219 | 1.6 | 119000 |
| 120000–120999 | 2235 | 1.52 | 120000 |
| 121000–121999 | 2250 | 1.56 | 121000 |
| 122000–122999 | 2266 | 1.58 | 122000 |
| 123000–123999 | 2282 | 1.62 | 123000 |
| 124000–124999 | 2298 | 1.54 | 124000 |
| 125000–125999 | 2313 | 1.58 | 125000 |
| 126000–126999 | 2329 | 1.6 | 126000 |
| 127000–127999 | 2345 | 1.52 | 127000 |
| 128000–128999 | 2360 | 1.56 | 128000 |
| 129000–129999 | 2376 | 1.58 | 129000 |
| 130000–130999 | 2392 | 1.62 | 130000 |
| 131000–131999 | 2408 | 1.54 | 131000 |
| 132000–132999 | 2423 | 1.56 | 132000 |
| 133000–133999 | 2439 | 1.6 | 133000 |
| 134000–134999 | 2455 | 1.52 | 134000 |
| 135000–135999 | 2470 | 1.56 | 135000 |
| 136000–136999 | 2486 | 1.58 | 136000 |
| 137000–137999 | 2502 | 1.6 | 137000 |

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CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: THREE

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 138000–138999 | 2518 | 1.54 | 138000 |
| 139000–139999 | 2533 | 1.56 | 139000 |
| 140000–140999 | 2549 | 1.5 | 140000 |
| 141000–141999 | 2564 | 1.46 | 141000 |
| 142000–142999 | 2579 | 1.48 | 142000 |
| 143000–143999 | 2594 | 1.5 | 143000 |
| 144000–144999 | 2609 | 1.5 | 144000 |
| 145000–145999 | 2624 | 1.52 | 145000 |
| 146000–146999 | 2639 | 1.52 | 146000 |
| 147000–147999 | 2654 | 1.54 | 147000 |
| 148000–148999 | 2669 | 1.44 | 148000 |
| 149000–149999 | 2683 | 1.46 | 149000 |
| 150000—or greater | 2698 | 1.46 | 150000 |

CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: FOUR

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 12000–12999 | 0 | 11 | 12000 |
| 13000–13999 | 110 | 4.5 | 13000 |
| 14000–14999 | 155 | 4.12 | 14000 |
| 15000–15999 | 196 | 3.8 | 15000 |
| 16000–16999 | 234 | 3.46 | 16000 |
| 17000–17999 | 269 | 3.44 | 17000 |
| 18000–18999 | 303 | 3.9 | 18000 |
| 19000–19999 | 342 | 4.34 | 19000 |
| 20000–20999 | 385 | 4.18 | 20000 |
| 21000–21999 | 427 | 4.32 | 21000 |
| 22000–22999 | 470 | 4.14 | 22000 |
| 23000–23999 | 511 | 4.04 | 23000 |
| 24000–24999 | 551 | 4.02 | 24000 |
| 25000–25999 | 591 | 4.38 | 25000 |
| 26000–26999 | 635 | 4.38 | 26000 |
| 27000–27999 | 679 | 2.88 | 27000 |

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Sch. I**CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: *FOUR***

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 28000–28999 | 708 | 2.44 | 28000 |
| 29000–29999 | 732 | 2.24 | 29000 |
| 30000–30999 | 754 | 2.36 | 30000 |
| 31000–31999 | 778 | 2.34 | 31000 |
| 32000–32999 | 801 | 2.32 | 32000 |
| 33000–33999 | 824 | 2.28 | 33000 |
| 34000–34999 | 847 | 2.36 | 34000 |
| 35000–35999 | 871 | 2.24 | 35000 |
| 36000–36999 | 893 | 1.96 | 36000 |
| 37000–37999 | 913 | 2 | 37000 |
| 38000–38999 | 933 | 2.02 | 38000 |
| 39000–39999 | 953 | 2.16 | 39000 |
| 40000–40999 | 975 | 2.2 | 40000 |
| 41000–41999 | 997 | 2.04 | 41000 |
| 42000–42999 | 1017 | 1.9 | 42000 |
| 43000–43999 | 1036 | 1.96 | 43000 |
| 44000–44999 | 1056 | 2.02 | 44000 |
| 45000–45999 | 1076 | 1.96 | 45000 |
| 46000–46999 | 1096 | 1.9 | 46000 |
| 47000–47999 | 1115 | 1.9 | 47000 |
| 48000–48999 | 1134 | 1.4 | 48000 |
| 49000–49999 | 1148 | 1.88 | 49000 |
| 50000–50999 | 1167 | 1.96 | 50000 |
| 51000–51999 | 1187 | 2.04 | 51000 |
| 52000–52999 | 1207 | 2.44 | 52000 |
| 53000–53999 | 1231 | 2.42 | 53000 |
| 54000–54999 | 1255 | 2.42 | 54000 |
| 55000–55999 | 1279 | 2.5 | 55000 |
| 56000–56999 | 1304 | 2.56 | 56000 |
| 57000–57999 | 1330 | 2.52 | 57000 |
| 58000–58999 | 1355 | 2.58 | 58000 |
| 59000–59999 | 1381 | 2.54 | 59000 |
| 60000–60999 | 1406 | 2.5 | 60000 |

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CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: *FOUR*

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 61000–61999 | 1431 | 2.56 | 61000 |
| 62000–62999 | 1457 | 2.52 | 62000 |
| 63000–63999 | 1482 | 2.58 | 63000 |
| 64000–64999 | 1508 | 2.54 | 64000 |
| 65000–65999 | 1533 | 2.5 | 65000 |
| 66000–66999 | 1558 | 2.56 | 66000 |
| 67000–67999 | 1584 | 2.52 | 67000 |
| 68000–68999 | 1609 | 2.58 | 68000 |
| 69000–69999 | 1635 | 2.54 | 69000 |
| 70000–70999 | 1660 | 2.5 | 70000 |
| 71000–71999 | 1685 | 2.56 | 71000 |
| 72000–72999 | 1711 | 2.02 | 72000 |
| 73000–73999 | 1731 | 2.36 | 73000 |
| 74000–74999 | 1755 | 2.32 | 74000 |
| 75000–75999 | 1778 | 2.22 | 75000 |
| 76000–76999 | 1800 | 2.2 | 76000 |
| 77000–77999 | 1822 | 2.2 | 77000 |
| 78000–78999 | 1844 | 2.2 | 78000 |
| 79000–79999 | 1866 | 2.2 | 79000 |
| 80000–80999 | 1888 | 2.28 | 80000 |
| 81000–81999 | 1911 | 2.24 | 81000 |
| 82000–82999 | 1933 | 2.28 | 82000 |
| 83000–83999 | 1956 | 2.14 | 83000 |
| 84000–84999 | 1977 | 2.16 | 84000 |
| 85000–85999 | 1999 | 2.18 | 85000 |
| 86000–86999 | 2021 | 2.22 | 86000 |
| 87000–87999 | 2043 | 2.14 | 87000 |
| 88000–88999 | 2064 | 1.94 | 88000 |
| 89000–89999 | 2083 | 1.9 | 89000 |
| 90000–90999 | 2102 | 1.86 | 90000 |
| 91000–91999 | 2121 | 1.8 | 91000 |
| 92000–92999 | 2139 | 1.9 | 92000 |
| 93000–93999 | 2158 | 1.84 | 93000 |

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Sch. I**CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: *FOUR***

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 94000–94999 | 2176 | 1.88 | 94000 |
| 95000–95999 | 2195 | 1.84 | 95000 |
| 96000–96999 | 2213 | 1.88 | 96000 |
| 97000–97999 | 2232 | 1.82 | 97000 |
| 98000–98999 | 2250 | 1.86 | 98000 |
| 99000–99999 | 2269 | 1.9 | 99000 |
| 100000–100999 | 2288 | 1.84 | 100000 |
| 101000–101999 | 2306 | 1.88 | 101000 |
| 102000–102999 | 2325 | 1.82 | 102000 |
| 103000–103999 | 2343 | 1.86 | 103000 |
| 104000–104999 | 2362 | 1.82 | 104000 |
| 105000–105999 | 2380 | 1.86 | 105000 |
| 106000–106999 | 2399 | 1.9 | 106000 |
| 107000–107999 | 2418 | 1.84 | 107000 |
| 108000–108999 | 2436 | 1.88 | 108000 |
| 109000–109999 | 2455 | 1.82 | 109000 |
| 110000–110999 | 2473 | 1.86 | 110000 |
| 111000–111999 | 2492 | 1.9 | 111000 |
| 112000–112999 | 2511 | 1.84 | 112000 |
| 113000–113999 | 2529 | 1.9 | 113000 |
| 114000–114999 | 2548 | 1.84 | 114000 |
| 115000–115999 | 2566 | 1.88 | 115000 |
| 116000–116999 | 2585 | 1.82 | 116000 |
| 117000–117999 | 2603 | 1.86 | 117000 |
| 118000–118999 | 2622 | 1.9 | 118000 |
| 119000–119999 | 2641 | 1.84 | 119000 |
| 120000–120999 | 2659 | 1.88 | 120000 |
| 121000–121999 | 2678 | 1.82 | 121000 |
| 122000–122999 | 2696 | 1.88 | 122000 |
| 123000–123999 | 2715 | 1.82 | 123000 |
| 124000–124999 | 2733 | 1.86 | 124000 |
| 125000–125999 | 2752 | 1.9 | 125000 |
| 126000–126999 | 2771 | 1.84 | 126000 |

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CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: *FOUR*

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 127000–127999 | 2789 | 1.88 | 127000 |
| 128000–128999 | 2808 | 1.82 | 128000 |
| 129000–129999 | 2826 | 1.86 | 129000 |
| 130000–130999 | 2845 | 1.82 | 130000 |
| 131000–131999 | 2863 | 1.86 | 131000 |
| 132000–132999 | 2882 | 1.9 | 132000 |
| 133000–133999 | 2901 | 1.84 | 133000 |
| 134000–134999 | 2919 | 1.88 | 134000 |
| 135000–135999 | 2938 | 1.82 | 135000 |
| 136000–136999 | 2956 | 1.86 | 136000 |
| 137000–137999 | 2975 | 1.9 | 137000 |
| 138000–138999 | 2994 | 1.84 | 138000 |
| 139000–139999 | 3012 | 1.9 | 139000 |
| 140000–140999 | 3031 | 1.84 | 140000 |
| 141000–141999 | 3049 | 1.74 | 141000 |
| 142000–142999 | 3066 | 1.78 | 142000 |
| 143000–143999 | 3084 | 1.72 | 143000 |
| 144000–144999 | 3101 | 1.76 | 144000 |
| 145000–145999 | 3119 | 1.8 | 145000 |
| 146000–146999 | 3137 | 1.74 | 146000 |
| 147000–147999 | 3154 | 1.78 | 147000 |
| 148000–148999 | 3172 | 1.72 | 148000 |
| 149000–149999 | 3189 | 1.76 | 149000 |
| 150000—or greater | 3207 | 1.76 | 150000 |

CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: *FIVE*

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 12000–12999 | 0 | 11 | 12000 |
| 13000–13999 | 110 | 4.5 | 13000 |
| 14000–14999 | 155 | 4.12 | 14000 |
| 15000–15999 | 196 | 3.8 | 15000 |
| 16000–16999 | 234 | 3.46 | 16000 |

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Sch. I**CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: FIVE**

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 17000–17999 | 269 | 3.44 | 17000 |
| 18000–18999 | 303 | 3.9 | 18000 |
| 19000–19999 | 342 | 4.34 | 19000 |
| 20000–20999 | 385 | 4.18 | 20000 |
| 21000–21999 | 427 | 4.32 | 21000 |
| 22000–22999 | 470 | 4.14 | 22000 |
| 23000–23999 | 511 | 4.04 | 23000 |
| 24000–24999 | 551 | 4.02 | 24000 |
| 25000–25999 | 591 | 4.38 | 25000 |
| 26000–26999 | 635 | 4.38 | 26000 |
| 27000–27999 | 679 | 4.38 | 27000 |
| 28000–28999 | 723 | 4.36 | 28000 |
| 29000–29999 | 767 | 4.56 | 29000 |
| 30000–30999 | 813 | 4.62 | 30000 |
| 31000–31999 | 859 | 4.66 | 31000 |
| 32000–32999 | 906 | 3.9 | 32000 |
| 33000–33999 | 945 | 2.64 | 33000 |
| 34000–34999 | 971 | 2.68 | 34000 |
| 35000–35999 | 998 | 2.64 | 35000 |
| 36000–36999 | 1024 | 2.24 | 36000 |
| 37000–37999 | 1046 | 2.2 | 37000 |
| 38000–38999 | 1068 | 2.36 | 38000 |
| 39000–39999 | 1092 | 2.5 | 39000 |
| 40000–40999 | 1117 | 2.44 | 40000 |
| 41000–41999 | 1141 | 2.38 | 41000 |
| 42000–42999 | 1165 | 2.24 | 42000 |
| 43000–43999 | 1187 | 2.22 | 43000 |
| 44000–44999 | 1209 | 2.38 | 44000 |
| 45000–45999 | 1233 | 2.3 | 45000 |
| 46000–46999 | 1256 | 2.24 | 46000 |
| 47000–47999 | 1278 | 2.24 | 47000 |
| 48000–48999 | 1300 | 1.64 | 48000 |
| 49000–49999 | 1316 | 2.2 | 49000 |

CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: *FIVE*

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 50000–50999 | 1338 | 2.2 | 50000 |
| 51000–51999 | 1360 | 2.3 | 51000 |
| 52000–52999 | 1383 | 2.24 | 52000 |
| 53000–53999 | 1405 | 2.28 | 53000 |
| 54000–54999 | 1428 | 2.24 | 54000 |
| 55000–55999 | 1450 | 2.36 | 55000 |
| 56000–56999 | 1474 | 2.58 | 56000 |
| 57000–57999 | 1500 | 2.82 | 57000 |
| 58000–58999 | 1528 | 2.8 | 58000 |
| 59000–59999 | 1556 | 2.78 | 59000 |
| 60000–60999 | 1584 | 2.86 | 60000 |
| 61000–61999 | 1613 | 2.84 | 61000 |
| 62000–62999 | 1641 | 2.84 | 62000 |
| 63000–63999 | 1669 | 2.82 | 63000 |
| 64000–64999 | 1697 | 2.8 | 64000 |
| 65000–65999 | 1725 | 2.78 | 65000 |
| 66000–66999 | 1753 | 2.86 | 66000 |
| 67000–67999 | 1782 | 2.84 | 67000 |
| 68000–68999 | 1810 | 2.82 | 68000 |
| 69000–69999 | 1838 | 2.8 | 69000 |
| 70000–70999 | 1866 | 2.8 | 70000 |
| 71000–71999 | 1894 | 2.78 | 71000 |
| 72000–72999 | 1922 | 2.26 | 72000 |
| 73000–73999 | 1945 | 2.8 | 73000 |
| 74000–74999 | 1973 | 2.78 | 74000 |
| 75000–75999 | 2001 | 2.76 | 75000 |
| 76000–76999 | 2029 | 2.74 | 76000 |
| 77000–77999 | 2056 | 2.74 | 77000 |
| 78000–78999 | 2083 | 2.74 | 78000 |
| 79000–79999 | 2110 | 2.72 | 79000 |
| 80000–80999 | 2137 | 2.8 | 80000 |
| 81000–81999 | 2165 | 2.8 | 81000 |
| 82000–82999 | 2193 | 2.52 | 82000 |

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Sch. I**CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: FIVE**

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 83000–83999 | 2218 | 2.46 | 83000 |
| 84000–84999 | 2243 | 2.42 | 84000 |
| 85000–85999 | 2267 | 2.46 | 85000 |
| 86000–86999 | 2292 | 2.42 | 86000 |
| 87000–87999 | 2316 | 2.36 | 87000 |
| 88000–88999 | 2340 | 2.18 | 88000 |
| 89000–89999 | 2362 | 2.16 | 89000 |
| 90000–90999 | 2384 | 2.16 | 90000 |
| 91000–91999 | 2406 | 2.04 | 91000 |
| 92000–92999 | 2426 | 2.1 | 92000 |
| 93000–93999 | 2447 | 2.1 | 93000 |
| 94000–94999 | 2468 | 2.12 | 94000 |
| 95000–95999 | 2489 | 2.12 | 95000 |
| 96000–96999 | 2510 | 2.12 | 96000 |
| 97000–97999 | 2531 | 2.12 | 97000 |
| 98000–98999 | 2552 | 2.12 | 98000 |
| 99000–99999 | 2573 | 2.14 | 99000 |
| 100000–100999 | 2594 | 2.14 | 100000 |
| 101000–101999 | 2615 | 2.14 | 101000 |
| 102000–102999 | 2636 | 2.04 | 102000 |
| 103000–103999 | 2656 | 2.06 | 103000 |
| 104000–104999 | 2677 | 2.06 | 104000 |
| 105000–105999 | 2698 | 2.06 | 105000 |
| 106000–106999 | 2719 | 2.06 | 106000 |
| 107000–107999 | 2740 | 2.06 | 107000 |
| 108000–108999 | 2761 | 2.08 | 108000 |
| 109000–109999 | 2782 | 2.08 | 109000 |
| 110000–110999 | 2803 | 2.08 | 110000 |
| 111000–111999 | 2824 | 2.08 | 111000 |
| 112000–112999 | 2845 | 2.08 | 112000 |
| 113000–113999 | 2866 | 2.1 | 113000 |
| 114000–114999 | 2887 | 2.1 | 114000 |
| 115000–115999 | 2908 | 2.1 | 115000 |

Sch. I

Ont. Reg. 391/97 — Child Support Guidelines

CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: FIVE

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 116000–116999 | 2929 | 2.1 | 116000 |
| 117000–117999 | 2950 | 2.1 | 117000 |
| 118000–118999 | 2971 | 2.12 | 118000 |
| 119000–119999 | 2992 | 2.12 | 119000 |
| 120000–120999 | 3013 | 2.12 | 120000 |
| 121000–121999 | 3034 | 2.12 | 121000 |
| 122000–122999 | 3055 | 2.12 | 122000 |
| 123000–123999 | 3076 | 2.14 | 123000 |
| 124000–124999 | 3097 | 2.14 | 124000 |
| 125000–125999 | 3118 | 2.14 | 125000 |
| 126000–126999 | 3139 | 2.14 | 126000 |
| 127000–127999 | 3160 | 2.04 | 127000 |
| 128000–128999 | 3180 | 2.06 | 128000 |
| 129000–129999 | 3201 | 2.06 | 129000 |
| 130000–130999 | 3222 | 2.06 | 130000 |
| 131000–131999 | 3243 | 2.06 | 131000 |
| 132000–132999 | 3264 | 2.06 | 132000 |
| 133000–133999 | 3285 | 2.08 | 133000 |
| 134000–134999 | 3306 | 2.08 | 134000 |
| 135000–135999 | 3327 | 2.08 | 135000 |
| 136000–136999 | 3348 | 2.08 | 136000 |
| 137000–137999 | 3369 | 2.08 | 137000 |
| 138000–138999 | 3390 | 2.1 | 138000 |
| 139000–139999 | 3411 | 2.1 | 139000 |
| 140000–140999 | 3432 | 2 | 140000 |
| 141000–141999 | 3452 | 1.98 | 141000 |
| 142000–142999 | 3472 | 1.98 | 142000 |
| 143000–143999 | 3492 | 2 | 143000 |
| 144000–144999 | 3512 | 2.02 | 144000 |
| 145000–145999 | 3532 | 2.04 | 145000 |
| 146000–146999 | 3552 | 1.94 | 146000 |
| 147000–147999 | 3571 | 1.96 | 147000 |
| 148000–148999 | 3591 | 1.98 | 148000 |

Schedule I

Sch. I**CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: *FIVE***

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 149000–149999 | 3611 | 2 | 149000 |
| 150000—or greater | 3631 | 2 | 150000 |

CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: *SIX OR MORE*

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 12000–12999 | 0 | 11 | 12000 |
| 13000–13999 | 110 | 4.5 | 13000 |
| 14000–14999 | 155 | 4.12 | 14000 |
| 15000–15999 | 196 | 3.8 | 15000 |
| 16000–16999 | 234 | 3.46 | 16000 |
| 17000–17999 | 269 | 3.44 | 17000 |
| 18000–18999 | 303 | 3.9 | 18000 |
| 19000–19999 | 342 | 4.34 | 19000 |
| 20000–20999 | 385 | 4.18 | 20000 |
| 21000–21999 | 427 | 4.32 | 21000 |
| 22000–22999 | 470 | 4.14 | 22000 |
| 23000–23999 | 511 | 4.04 | 23000 |
| 24000–24999 | 551 | 4.02 | 24000 |
| 25000–25999 | 591 | 4.38 | 25000 |
| 26000–26999 | 635 | 4.38 | 26000 |
| 27000–27999 | 679 | 4.38 | 27000 |
| 28000–28999 | 723 | 4.36 | 28000 |
| 29000–29999 | 767 | 4.56 | 29000 |
| 30000–30999 | 813 | 4.62 | 30000 |
| 31000–31999 | 859 | 4.66 | 31000 |
| 32000–32999 | 906 | 4.6 | 32000 |
| 33000–33999 | 952 | 4.66 | 33000 |
| 34000–34999 | 999 | 4.7 | 34000 |
| 35000–35999 | 1046 | 4.54 | 35000 |
| 36000–36999 | 1091 | 3.98 | 36000 |
| 37000–37999 | 1131 | 4.02 | 37000 |
| 38000–38999 | 1171 | 3.84 | 38000 |

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Ont. Reg. 391/97 — Child Support Guidelines

CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: *SIX OR MORE*

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 39000–39999 | 1209 | 2.68 | 39000 |
| 40000–40999 | 1236 | 2.76 | 40000 |
| 41000–41999 | 1264 | 2.64 | 41000 |
| 42000–42999 | 1290 | 2.44 | 42000 |
| 43000–43999 | 1314 | 2.48 | 43000 |
| 44000–44999 | 1339 | 2.58 | 44000 |
| 45000–45999 | 1365 | 2.56 | 45000 |
| 46000–46999 | 1391 | 2.44 | 46000 |
| 47000–47999 | 1415 | 2.4 | 47000 |
| 48000–48999 | 1439 | 1.86 | 48000 |
| 49000–49999 | 1458 | 2.42 | 49000 |
| 50000–50999 | 1482 | 2.46 | 50000 |
| 51000–51999 | 1507 | 2.5 | 51000 |
| 52000–52999 | 1532 | 2.5 | 52000 |
| 53000–53999 | 1557 | 2.5 | 53000 |
| 54000–54999 | 1582 | 2.5 | 54000 |
| 55000–55999 | 1607 | 2.68 | 55000 |
| 56000–56999 | 1634 | 2.62 | 56000 |
| 57000–57999 | 1660 | 2.66 | 57000 |
| 58000–58999 | 1687 | 2.7 | 58000 |
| 59000–59999 | 1714 | 2.64 | 59000 |
| 60000–60999 | 1740 | 2.68 | 60000 |
| 61000–61999 | 1767 | 2.9 | 61000 |
| 62000–62999 | 1796 | 3.06 | 62000 |
| 63000–63999 | 1827 | 3.02 | 63000 |
| 64000–64999 | 1857 | 3.06 | 64000 |
| 65000–65999 | 1888 | 3.02 | 65000 |
| 66000–66999 | 1918 | 3.06 | 66000 |
| 67000–67999 | 1949 | 3 | 67000 |
| 68000–68999 | 1979 | 3.06 | 68000 |
| 69000–69999 | 2010 | 3 | 69000 |
| 70000–70999 | 2040 | 3.06 | 70000 |
| 71000–71999 | 2071 | 3 | 71000 |

Schedule I

Sch. I**CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: *SIX OR MORE***

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 72000–72999 | 2101 | 2.46 | 72000 |
| 73000–73999 | 2126 | 3 | 73000 |
| 74000–74999 | 2156 | 3.06 | 74000 |
| 75000–75999 | 2187 | 2.9 | 75000 |
| 76000–76999 | 2216 | 2.96 | 76000 |
| 77000–77999 | 2246 | 2.92 | 77000 |
| 78000–78999 | 2275 | 2.98 | 78000 |
| 79000–79999 | 2305 | 2.94 | 79000 |
| 80000–80999 | 2334 | 2.98 | 80000 |
| 81000–81999 | 2364 | 2.98 | 81000 |
| 82000–82999 | 2394 | 3.06 | 82000 |
| 83000–83999 | 2425 | 2.94 | 83000 |
| 84000–84999 | 2454 | 2.96 | 84000 |
| 85000–85999 | 2484 | 3 | 85000 |
| 86000–86999 | 2514 | 2.92 | 86000 |
| 87000–87999 | 2543 | 2.96 | 87000 |
| 88000–88999 | 2573 | 2.64 | 88000 |
| 89000–89999 | 2599 | 2.44 | 89000 |
| 90000–90999 | 2623 | 2.3 | 90000 |
| 91000–91999 | 2646 | 2.26 | 91000 |
| 92000–92999 | 2669 | 2.32 | 92000 |
| 93000–93999 | 2692 | 2.32 | 93000 |
| 94000–94999 | 2715 | 2.32 | 94000 |
| 95000–95999 | 2738 | 2.32 | 95000 |
| 96000–96999 | 2761 | 2.34 | 96000 |
| 97000–97999 | 2784 | 2.34 | 97000 |
| 98000–98999 | 2807 | 2.34 | 98000 |
| 99000–99999 | 2830 | 2.34 | 99000 |
| 100000–100999 | 2853 | 2.34 | 100000 |
| 101000–101999 | 2876 | 2.34 | 101000 |
| 102000–102999 | 2899 | 2.34 | 102000 |
| 103000–103999 | 2922 | 2.24 | 103000 |
| 104000–104999 | 2944 | 2.26 | 104000 |

Sch. I

Ont. Reg. 391/97 — Child Support Guidelines

CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: *SIX OR MORE*

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 105000–105999 | 2967 | 2.26 | 105000 |
| 106000–106999 | 2990 | 2.26 | 106000 |
| 107000–107999 | 3013 | 2.26 | 107000 |
| 108000–108999 | 3036 | 2.26 | 108000 |
| 109000–109999 | 3059 | 2.26 | 109000 |
| 110000–110999 | 3082 | 2.26 | 110000 |
| 111000–111999 | 3105 | 2.26 | 111000 |
| 112000–112999 | 3128 | 2.28 | 112000 |
| 113000–113999 | 3151 | 2.28 | 113000 |
| 114000–114999 | 3174 | 2.28 | 114000 |
| 115000–115999 | 3197 | 2.28 | 115000 |
| 116000–116999 | 3220 | 2.28 | 116000 |
| 117000–117999 | 3243 | 2.28 | 117000 |
| 118000–118999 | 3266 | 2.28 | 118000 |
| 119000–119999 | 3289 | 2.28 | 119000 |
| 120000–120999 | 3312 | 2.3 | 120000 |
| 121000–121999 | 3335 | 2.3 | 121000 |
| 122000–122999 | 3358 | 2.3 | 122000 |
| 123000–123999 | 3381 | 2.3 | 123000 |
| 124000–124999 | 3404 | 2.3 | 124000 |
| 125000–125999 | 3427 | 2.3 | 125000 |
| 126000–126999 | 3450 | 2.3 | 126000 |
| 127000–127999 | 3473 | 2.3 | 127000 |
| 128000–128999 | 3496 | 2.32 | 128000 |
| 129000–129999 | 3519 | 2.32 | 129000 |
| 130000–130999 | 3542 | 2.32 | 130000 |
| 131000–131999 | 3565 | 2.32 | 131000 |
| 132000–132999 | 3588 | 2.32 | 132000 |
| 133000–133999 | 3611 | 2.32 | 133000 |
| 134000–134999 | 3634 | 2.32 | 134000 |
| 135000–135999 | 3657 | 2.34 | 135000 |
| 136000–136999 | 3680 | 2.34 | 136000 |
| 137000–137999 | 3703 | 2.34 | 137000 |

Schedule I

Sch. I**CHILD SUPPORT TABLE FOR ONTARIO, NUMBER OF CHILDREN: *SIX OR MORE***

| Income (\$) | Monthly Award (\$) | | |
|--------------------|---------------------------|-----------------|-----------------------|
| From — To | Basic Amount | Plus (%) | Of Income Over |
| 138000–138999 | 3726 | 2.34 | 138000 |
| 139000–139999 | 3749 | 2.34 | 139000 |
| 140000–140999 | 3772 | 2.24 | 140000 |
| 141000–141999 | 3794 | 2.22 | 141000 |
| 142000–142999 | 3816 | 2.14 | 142000 |
| 143000–143999 | 3837 | 2.16 | 143000 |
| 144000–144999 | 3859 | 2.2 | 144000 |
| 145000–145999 | 3881 | 2.22 | 145000 |
| 146000–146999 | 3903 | 2.14 | 146000 |
| 147000–147999 | 3924 | 2.16 | 147000 |
| 148000–148999 | 3946 | 2.18 | 148000 |
| 149000–149999 | 3968 | 2.22 | 149000 |
| 150000—or greater | 3990 | 2.22 | 150000 |

O. Reg. 434/17, s. 1

O. Reg. 102/06, s. 4; 25/10, s. 9; 463/11, s. 1; 478/16, s. 2

SCHEDULE II

(Subsection 10(4))

COMPARISON OF HOUSEHOLD STANDARDS OF LIVING TEST

1. Definitions — The definitions in this section apply in this Schedule.

“**average tax rate**” [Revoked O. Reg. 446/01, s. 8(1).]

“**child**” means,

- (a) in cases where the *Divorce Act* (Canada) applies, a child of the marriage or a child who,
 - (i) is under the age of majority, or
 - (ii) is the age of majority or over but is unable, by reason of illness, disability or other cause to obtain the necessities of life, or
- (b) in cases where the Act applies, a child who is a dependant under the Act; (“*enfant*”)

“**household**” means a parent or spouse and any of the following persons residing with him or her,

- (a) any person who has a legal duty to support the parent or spouse or whom the parent or spouse has a legal duty to support,
- (b) any person who shares living expenses with the parent or spouse or from whom the parent or spouse otherwise receives an economic benefit as a result of living with that person, if the court considers it reasonable for that person to be considered part of the household, and
- (c) any child whom the parent or spouse or the person described in clause (a) or (b) has legal duty to support; (“*ménage*”)

“**taxable income**” means the annual taxable income determined using the calculations required to determine “Taxable Income” in the T1 General form issued by the Canada Revenue Agency. (“*revenu imposable*”)

2. Test — The comparison of household standards of living test is as follows:

Step 1: Establish the annual income of each person in each household by applying the formula

$$A - B - C$$

where

- A is the person’s income determined under sections 15 to 20 of this Regulation,
- B is the federal and provincial taxes payable on the person’s taxable income, and
- C is the person’s source deductions for premiums paid under the *Employment Insurance Act* and contributions made to the *Canada Pension Plan* and the *Quebec Pension Plan*.

Where the information on which to base the income determination is not provided, the court may impute income in the amount it considers appropriate.

Step 2: Adjust the annual income of each person in each household by

(a) deducting the following amounts, calculated on an annual basis:

- (i) any amount relied on by the court as a factor that resulted in a determination of undue hardship, except any amount attributable to the support of a member of the household that is not incurred due to a disability or serious illness of that member,
- (ii) the amount that would otherwise be payable by the person in respect of a child to whom the order relates, if the pleading of undue hardship was not made,
 - (A) under the applicable table, or
 - (B) as considered by the court to be appropriate, where the court considers the table amount to be inappropriate,
- (iii) any amount of support that is paid by the person under a judgment, order or written separation agreement, except,
 - (A) an amount already deducted under subclause (i), and
 - (B) an amount paid by the person in respect of a child to whom the order referred to in subclause (ii) relates; and

(b) adding the following amounts, calculated on an annual basis:

- (i) any amount that would otherwise be receivable by the person in respect of a child to whom the order relates, if the pleading of undue hardship was not made,
 - (A) under the applicable table, or
 - (B) as considered by the court to be appropriate, where the court considers the table amount to be inappropriate, and
- (ii) any amount of child support that the person has received for any child under a judgment, order or written separation agreement.

Step 3: Add the amounts of adjusted annual income for all the persons in each household to determine the total household income for each household.

Step 4: Determine the applicable low-income measures amount for each household based on the following:

| Household Size | Household Composition | Low-income Measures Amount (\$) |
|-----------------------|------------------------------|--|
| One person | One adult | 10,382 |
| Two persons | Two adults | 14,535 |
| Two persons | One adult and one child | 14,535 |
| Three persons | Three adults | 18,688 |
| Three persons | Two adults and one child | 17,649 |
| Three persons | One adult and two children | 17,649 |
| Four persons | Four adults | 22,840 |
| Four persons | Three adults and one child | 21,802 |
| Four persons | Two adults and two children | 20,764 |
| Four persons | One adult and three children | 20,764 |
| Five persons | Five adults | 26,993 |
| Five persons | Four adults and one child | 25,955 |

Sch. II

Ont. Reg. 391/97 — Child Support Guidelines

| Household Size | Household Composition | Low-income Measures Amount (\$) |
|-----------------------|---------------------------------|--|
| Five persons | Three adults and two children | 24,917 |
| Five persons | Two adults and three children | 23,879 |
| Five persons | One adult and four children | 23,879 |
| Six persons | Six adults | 31,145 |
| Six persons | Five adults and one child | 30,108 |
| Six persons | Four adults and two children | 29,070 |
| Six persons | Three adults and three children | 28,031 |
| Six persons | Two adults and four children | 26,993 |
| Six persons | One adult and five children | 26,993 |
| Seven persons | Seven adults | 34,261 |
| Seven persons | Six adults and one child | 33,222 |
| Seven persons | Five adults and two children | 32,184 |
| Seven persons | Four adults and three children | 31,146 |
| Seven persons | Three adults and four children | 30,108 |
| Seven persons | Two adults and five children | 29,070 |
| Seven persons | One adult and six children | 29,070 |
| Eight persons | Eight adults | 38,413 |
| Eight persons | Seven adults and one child | 37,375 |
| Eight persons | Six adults and two children | 36,337 |
| Eight persons | Five adults and three children | 35,299 |
| Eight persons | Four adults and four children | 34,261 |
| Eight persons | Three adults and five children | 33,222 |
| Eight persons | Two adults and six children | 32,184 |
| Eight persons | One adult and seven children | 32,184 |

Step 5: Divide the household income amount (Step 3) by the low-income measures amount (Step 4) to get a household income ratio for each household.

Step 6: Compare the household income ratios. The household that has the higher ration has the higher standard of living.

O. Reg. 446/01, ss. 8, 9; 102/06, s. 5; 25/10, s. 10; 478/16, s. 3

SCHEDULE III
(Section 16)

push to next page
please

ADJUSTMENTS TO INCOME

1. Employment expenses — Where the parent or spouse is an employee, the parent's or spouse's applicable employment expense described in the following provisions of the *Income Tax Act* (Canada) are deducted:

- (a) [Revoked O. Reg. 446/01, s. 10(1).]
- (b) paragraph 8(1)(d) concerning expenses of teacher's exchange fund contribution;
- (c) paragraph 8(1)(e) concerning expenses of railway employees;
- (d) paragraph 8(1)(f) concerning sales expenses;
- (e) paragraph 8(1)(g) concerning transport employee's expenses;
- (f) paragraph 8(1)(h) concerning travel expenses;
- (f.1) paragraph 8(1)(h.1) concerning motor vehicle travel expenses;
- (g) paragraph 8(1)(i) concerning dues and other expenses of performing duties;
- (h) paragraph 8(1)(j) concerning motor vehicle and aircraft costs;
- (i) paragraph 8(1)(l.1) concerning *Canada Pension Plan* contributions and *Employment Insurance Act* (Canada) premiums paid in respect of another employee who acts as an assistant or substitute for the parent or spouse;
- (j) paragraph 8(1)(n) concerning salary reimbursement;
- (k) paragraph 8(1)(o) concerning forfeited amounts;
- (l) paragraph 8(1)(p) concerning musical instrument costs; and
- (m) paragraph 8(1)(q) concerning artists' employment expenses.

2. Child support — Deduct any child support received that is included to determine total income in the T1 General form issued by the Canada Revenue Agency.

3. Support other than child support and universal child care benefit — To calculate income for the purpose of determining an amount under an applicable table, deduct,

- (a) the support, not including child support, received from the other parent or spouse; and
- (b) any universal child care benefit that is included to determine the parent or spouse's total income in the T1 General form issued by the Canada Revenue Agency.

3.1 Special or extraordinary expenses — To calculate income for the purpose of determining an amount under section 7 of this Regulation, deduct the support, not including child support, paid to the other parent or spouse and, as applicable, make the following adjustment in respect of universal child care benefits:

- (a) deduct benefits that are included to determine the parent or spouse's total income in the T1 General form issued by the Canada Revenue Agency and that are for a child for whom special or extraordinary expenses are not being requested; or
- (b) include benefits that are not included to determine the parent or spouse's total income in the T1 General form issued by the Canada Revenue Agency and that are received by the parent or spouse for a child for whom special or extraordinary expenses are being requested.

4. Social assistance — Deduct any amount of social assistance income that is not attributable to the parent or spouse.

5. Dividends from taxable Canadian corporations — Replace the taxable amount of dividends from taxable Canadian corporations received by the parent or spouse by the actual amount of those dividends received by the parent or spouse.

6. Capital gains and capital losses — Replace the taxable capital gains realized in a year by the parent or spouse by the actual amount of capital gains realized by the parent or spouse in excess of the parent or spouse's actual capital losses in that year.

7. Business investment losses — Deduct the actual amount of business investment losses suffered by the parent or spouse during the year.

8. Carrying charges — Deduct the parent's or spouse's carrying charges and interest expenses that are paid by the parent or spouse and that would be deductible under the *Income Tax Act* (Canada).

9. Net self-employment income — Where the parent's or spouse's net self-employment income is determined by deducting an amount for salaries, benefits, wages or management fees, or other payments, paid to or on behalf of person with whom the parent or spouse does not deal at arm's length, include that amount, unless the parent or spouse establishes that the payments were necessary to earn the self-employment income and were reasonable in the circumstances.

10. Additional amount — Where the parent or spouse reports income from self-employment that, in accordance with sections 34.1 and 34.2 of the *Income Tax Act* (Canada), includes an additional amount earned in a prior period, deduct the amount earned in the prior period, net of reserves.

11. Capital cost allowance for property — Include the parent or spouse's deduction for an allowable capital cost allowance with respect to real property.

12. Partnership or sole proprietorship income — Where the parent or spouse earns income through a partnership or sole proprietorship, deduct any amount included in income that is properly required by the partnership or sole proprietorship for purposes of capitalization.

13. (1) Employee stock options — Where the parent or spouse has received, as an employee benefit, options to purchase shares of a Canadian-controlled private corporation or a publicly traded corporation that is subject to the same tax treatment with reference to stock options as a Canadian-controlled private corporation, and has exercised those options during the year, add the difference between the value of the shares at the time the options are exercised and the amount paid by the parent or spouse for the shares and any amount paid by the parent or spouse to acquire the options to purchase the shares, to the income for the year in which the options are exercised.

Schedule III

Sch. III

(2) Disposal of shares — If the parent or spouse has disposed of the shares during a year, deduct from the income for that year the difference determined under subsection (1).

O. Reg. 26/00, s. 1; 446/01, s. 10; 102/06, s. 6; 159/07, s. 3; 25/10, s. 11

**ONT. REG. 367 — DESIGNATION OF MATRIMONIAL
HOME — FORMS**

made under the *Family Law Act*

R.R.O. 1990, Reg. 367, as am. O. Reg. 438/05 (Fr.).

1. A designation of a matrimonial home under subsection 20(1) of the Act shall be in Form 1.

2. A cancellation of a designation of a matrimonial home under clause 20(6)(a) of the Act shall be in Form 2.

SCHEDULE — [FORMS]

Thomson Reuters
Canada

The text in square brackets has been editorially added by Carswell and does not form part of the text of the legislation.

Form 1 — Designation of Matrimonial Home

Form 1 — Designation of Matrimonial Home

Form 1

Family Law Act

DESIGNATION OF MATRIMONIAL HOME

Document General

Form 4 -- Land Registration Reform Act

| | | | | |
|--|--|---|--|--|
| Ontario | | Form 4 - Land Registration Reform Act | | |
| | | (1) Registry <input type="checkbox"/> Land Titles <input type="checkbox"/> | | (2) Page 1 of pages |
| | | (13) Property Holder(s) | | Block Property |
| | | | | Additional Schedule |
| | | (4) Nature of Document Designation of matrimonial home (Family Law Act, s. 20) | | |
| | | (5) Consideration Not applicable | | Dollars \$ |
| | | (6) Description | | |
| New Property Identifiers | | Additional S Schedule | | <input type="checkbox"/> |
| Executions | | Additional S Schedule | | <input type="checkbox"/> |
| | | (7) This Document Contains Redescription New Encum- berance Plat Search | | (8) Schedule for Description <input type="checkbox"/> Additional Parties <input type="checkbox"/> Other <input type="checkbox"/> |
| (9) This Document provides as follows: (Check appropriate box and strike out inappropriate paragraph) | | | | |
| <input type="checkbox"/> The parties signing in box 10, who are spouses of each other, designate the property described in box 6 as a matrimonial home. | | | | |
| <input type="checkbox"/> The party signing in box 10, who is the spouse of _____, (name) designates the property described in box 6 as a matrimonial home. | | | | |
| Continued on Schedule <input type="checkbox"/> | | | | |
| (10) This Document relates to Instrument Number(s) Not applicable | | | | |
| (11) Party(ies) (Set out Status or Interest) Name(s) | | Signature(s) | | Date of Signature Y M D |
| | | | | |
| | | | | |
| | | | | |
| (12) Address for Service | | | | |
| (13) Party(ies) (Set out Status or Interest) Name(s) | | Signature(s) | | Date of Signature Y M D |
| Not applicable | | | | |
| | | | | |
| | | | | |
| (14) Municipal Address of Property | | (15) Document Prepared by: | | Fees and Tax Registration Fee Total |
| | | | | |
| | | | | |
| | | | | |

O. Reg. 95/86, Form 1

Form 2 — Cancellation of Designation of Matrimonial Home **Form 2**

Form 2—Cancellation of Designation of Matrimonial Home

Form 2—Cancellation of Designation of Matrimonial Home

Family Law Act
Document General
 Form 4 — Land Registration Reform Act

| | | |
|--|---|---|
| FOR OFFICE USE ONLY | (1) Registry <input type="checkbox"/> Land Titles <input type="checkbox"/> (2) Page 1 of _____ pages (3) Property Identifier(s) Block _____ Property _____ Additional See Schedule <input type="checkbox"/> (4) Nature of Document Cancellation of designation of matrimonial home <i>(Family Law Act, s. 20)</i> (5) Consideration Not applicable Deed # _____ (6) Description New Property Identifiers Additional See Schedule <input type="checkbox"/> Executions Additional See Schedule <input type="checkbox"/> (7) This Document contains: (a) Redescription New Enclosure Plan/Sketch <input type="checkbox"/> (b) Schedule for: Description <input type="checkbox"/> Additional Parties <input type="checkbox"/> Other <input type="checkbox"/> | D |
| (8) This Document provides as follows: (Check appropriate box and strike out inapplicable paragraph) <input type="checkbox"/> The parties signing in box 10, who are spouses of each other, cancel the designation by them of the property described in box 6 as a matrimonial home in the instrument referred to in box 9. <input type="checkbox"/> The party signing in box 10, who is the spouse of _____, (name) cancels the designation of the property described in box 6 as a matrimonial home in the instrument referred to in box 9. Continued on Schedule <input type="checkbox"/> | | |
| (9) This Document relates to instrument number(s) (10) Party(ies) (Set out Status or Interest) Name(s) _____ Signature(s) _____ Date of Signature Y _____ M _____ D _____ (11) Address for Service _____ (12) Party(ies) (Set out Status or Interest) Name(s) _____ Signature(s) _____ Date of Signature Y _____ M _____ D _____ (13) Address for Service Not applicable _____ (14) Municipal Address of Property _____ (15) Document Prepared by: _____ FOR OFFICE USE ONLY Registration Fee _____ _____ _____ Total _____ | | |

ONT. REG. 368 — ELECTION OF SURVIVING SPOUSE

made under the *Family Law Act*

R.R.O. 1990, Reg. 368, as am. O. Reg. 150/17.

1. An election made under section 6 of the Act shall be in Form 1, titled “Election of Surviving Spouse”, dated April 10, 2017 and available on the Internet through www.ontariocourtforms.on.ca.

O. Reg. 150/17, s. 1

SCHEDULE — [FORM 1]

The text in square brackets has been editorially added by Carswell and does not form part of the text of the legislation.

Thomson Reuters
Canada

Form 1 — Election of Surviving Spouse

(*Family Law Act*, s. 6)

[Repealed O. Reg. 150/17, s. 2.]

[Editor’s Note: Pursuant to Election of Surviving Spouse, R.R.O. 1990, Reg. 368, s. 1, when a form is referred to, the reference is to the form described by s. 1 of this Regulation and which is available on the website of the Ontario Court Forms. For your convenience, the government form as published on this website is reproduced below.]

| | | |
|--|------------------|------------------|
| This election is filed by (solicitors) | | |
| Name of deceased | | |
| Surname | Given name(s) | |
| Last address of deceased | | |
| Street or postal address | | City, town, etc. |
| Postal code | | |
| Date of death | | |
| Day | Month | Year |
| Surviving spouse | | |
| Surname | Given name(s) | |
| Address of spouse | | |
| Street or postal address | City, town, etc. | Postal code |

move highlighted to
next page please

Form 1

Ont. Reg. 368 — Election of Surviving Spouse

| | | |
|--|--|--|
| | | |
|--|--|--|

I, , the surviving spouse, elect: (*check one box only*)

- to receive the entitlement under section 5 of the *Family Law Act*; or
 to receive the entitlement under the will, or under Part II of the *Succession Law Reform Act*, if there is an intestacy, or both, if there is a partial intestacy.

.....

Date

.....

Signature of surviving spouse

NOTE: This election has important effects on your rights. You should have legal advice before signing it.

April 10, 2017

FRAUDULENT CONVEYANCES ACT

R.S.O. 1990, c. F.29

1. Definitions — In this Act,

“**conveyance**” includes gift, grant, alienation, bargain, charge, encumbrance, limitation of use or uses of, in, to or out of real property or personal property by writing or otherwise; (“cession”)

“**personal property**” includes goods, chattels, effects, bills, bonds, notes and securities, and shares, dividends, premiums and bonuses in a bank, company or corporation, and any interest therein; (“biens meubles”)

“**real property**” includes lands, tenements, hereditaments and any estate or interest therein. (“biens immeubles”)

2. Where conveyances void as against creditors — Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.

3. Where s. 2 does not apply — Section 2 does not apply to an estate or interest in real property or personal property conveyed upon good consideration and in good faith to a person not having at the time of the conveyance to the person notice or knowledge of the intent set forth in that section.

4. Where s. 2 applies — Section 2 applies to every conveyance executed with the intent set forth in that section despite the fact that it was executed upon a valuable consideration and with the intention, as between the parties to it, of actually transferring to and for the benefit of the transferee the interest expressed to be thereby transferred, unless it is protected under section 3 by reason of good faith and want of notice or knowledge on the part of the purchaser.

5. When fraudulent conveyances declared void as against purchasers — Every conveyance of real property heretofore or hereafter made with intent to defraud and deceive the purchaser shall be deemed to be void only as against that person and the person’s assigns and all persons lawfully claiming under that person or the person’s assigns who have purchased or hereafter purchase for money or other good consideration the same real property or a part thereof.

6. Where s. 5 does not apply — Section 5 does not apply to and shall not be construed to impeach, defeat or make void a conveyance of real property made in good faith and for good consideration.

7. (1) Conveyances made revocable — If a person makes a conveyance of real property with a clause, provision, article, or condition of revocation, determination or alteration at that person's will or pleasure, and after such conveyance bargains, sells, demises, grants, conveys or charges such real property or a part thereof to a person for money or other good consideration paid or given, such first conveyance not being revoked, made void or altered according to the power and authority so reserved or expressed therein, then such first conveyance as touching the real property so after bargained, sold, conveyed, demised or charged is void against the bargainees, vendees, lessees, grantees, their heirs, successors, and their assigns and against every person lawfully claiming under them.

(2) Saving as to mortgages — No lawful mortgage made in good faith, and without fraud or covin, and upon good consideration shall be impeached or impaired by force of this Act, but it has the like force and effect as if this Act had not been passed.

8. (1) Validity of voluntary conveyance, etc., executed in good faith and duly registered — Nothing in section 5, 6 or 7 extends to a conveyance that is executed in good faith and duly registered in the proper land registry office before the execution of the conveyance to, and before the creation of any binding contract for the conveyance to a subsequent purchaser from the same grantor of the same real property or a part thereof, nor is such a conveyance merely by reason of the absence of a valuable consideration void as against such purchaser or the heirs, executors, administrators or assigns of the purchaser or any person claiming by, from or under any of them.

(2) Effect of subs. (1) — Nothing in subsection (1) has the effect of making valid an instrument that is for any reason, other than or in addition to the absence of a valuable consideration, void under section 5, 6 or 7 or otherwise, nor has the effect of making valid an instrument as against a purchaser who had before the 28th day of February, 1868, entered into a binding contract for or received a conveyance upon such purchase.

FUNERAL, BURIAL AND CREMATION SERVICES ACT, 2002

An Act respecting funerals, burials, cremations and related services and providing for the amendment of other statutes

S.O. 2002, c. 33 [ss. 4(4), 10, 11, 56, 141(3), 145, 147–149 not in force at date of publication.] [ss. 4(4), 10, 11, 56, 141(3), 145 repealed 2006, c. 21, Sched. F, s. 10.1.] [ss. 116(2), (4), (6), (7), 117(1), (3), 118, 119, 123–125, 126(2), 136, 137 repealed 2006, c. 34, Sched. D, s. 77.], as am. S.O. 2002, c. 33, s. 115; 2006, c. 21, Sched. F, s. 112; 2006, c. 32, Sched. C, s. 21; 2006, c. 34, Sched. D, ss. 1–77; 2007, c. 4, s. 33; 2007, c. 8, s. 205; 2009, c. 33, Sched. 10, s. 8; 2012, c. 8, Sched. 11, s. 47, Sched. 18 [Sched. 11, s. 47 not in force at date of publication. Repealed 2020, c. 14, Sched. 8, s. 21.]; 2016, c. 23, s. 50 (Fr.); 2017, c. 33, Sched. 5, ss. 2, 3; 2019, c. 14, Sched. 10, s. 7(1) (Fr.), (2)–(4); 2020, c. 36, Sched. 7, s. 314 [Not in force at date of publication.].

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART IV — LICENSING (SS. 14–26)

14. (1) Requirements for licences — An applicant is entitled to a licence or to a renewal of the licence unless,

- (a) the applicant or an interested person in respect of the applicant,
 - (i) is in contravention of this Act or the regulations, or
 - (ii) would be in contravention of this Act, the regulations, another Act or a municipal by-law if the applicant were issued a licence;
- (b) the applicant is not a corporation and,
 - (i) having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business,
 - (ii) the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with the law and with integrity and honesty, or
 - (iii) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for a licence or for renewal of a licence;
- (c) the applicant is a corporation and,
 - (i) the past conduct of officers or directors of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that its

S. 14(1)(c)(i) Funeral, Burial and Cremation Services Act, 2002

business will not be carried on in accordance with the law and with integrity and honesty, or

(ii) an officer, director, employee or agent of the applicant makes a false statement or provides a false statement in an application for a licence or for renewal of a licence;

(d) in the case of an applicant for a licence to operate a cemetery, crematorium, funeral establishment, casket or marker retailing business, transfer service or other bereavement activity for which a licence is required under the regulations, or a renewal of such a licence,

(i) in the opinion of the registrar, the applicant or managing employees of the applicant do not have the integrity, honesty, experience and competence required to manage the business in accordance with the law, or having regard for the financial position of the applicant or managing employees, the applicant or managing employees cannot be reasonably expected to be financially responsible in the conduct of the business,

(ii) the applicant is unable to provide the resources and facilities required to manage a business, or

(iii) the registrar has reasonable grounds to believe that the operation of the business by the applicant creates a risk to public health, safety or decency;

(e) in the case of an applicant for a licence to operate a funeral establishment, casket or marker retailing business, transfer service or other bereavement activity for which a licence is required under the regulations, or a renewal of such a licence, the applicant is,

(i) a board of trustees established for the purpose of operating a cemetery, except if the applicant is otherwise a person within the meaning of section 87 of the *Legislation Act, 2006* and is applying in that capacity, or

(ii) any organization or group of persons organized for the purpose of operating a cemetery, except if the applicant is otherwise a person within the meaning of section 87 of the *Legislation Act, 2006* and is applying in that capacity;

(f) the applicant fails to satisfy the other requirements that are prescribed;

(g) the applicant or other person that is prescribed has not successfully completed the educational requirements that are prescribed;

(h) the applicant is in breach of a condition of the licence; or

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2006, c. 34, Sched. D, s. 13; 2009, c. 33, Sched. 10, s. 8(2)

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17. (1) Refusal to issue — Subject to section 18, the registrar may refuse to issue a licence if of the opinion that the applicant is not entitled to a licence under section 14.

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2006, c. 34, Sched. D, s. 16

18. (1) Notice and hearing — The registrar shall notify an applicant or licensee in writing if he or she proposes to,

- (a) refuse to issue or renew a licence;
- (b) suspend or revoke a licence; or

(c) apply conditions to a licence or renewal of a licence to which the applicant or licensee has not consented.

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19. (1) Immediate suspension — If the registrar proposes to suspend or revoke a licence under section 17 and if the registrar considers it in the public interest to do so, the registrar may by order temporarily suspend the licence.

(2) Immediate effect — An order under subsection (1) takes effect immediately.

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24. Further application — A person who is refused a licence or a renewal of a licence or whose licence is revoked may reapply for a licence only if,

- (a) the time prescribed to reapply has passed since the refusal, revocation or refusal to renew; and
- (b) new or other evidence is available or it is clear that material circumstances have changed.

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PART V — CONSUMER PROTECTION (SS. 27–50)

General

27. False advertising — No licensee shall make a false, misleading or deceptive statement in any advertisement, circular, pamphlet or material published or distributed by any means relating to the sale or provision of any licensed supplies or services.

28. (1) Order of registrar — If the registrar believes on reasonable grounds that a licensee is making a false, misleading or deceptive statement in any advertisement, circular, pamphlet, brochure, price list, contract, letterhead or similar material published by any means, the registrar may,

- (a) order the cessation of the use of such material;
- (b) order the licensee to retract the statement or publish a correction of equal prominence to the original publication; or
- (c) order both a cessation described in clause (a) and a retraction or correction described in clause (b).

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2006, c. 34, Sched. D, s. 19

29. Prohibitions against soliciting — **(1) By phone or in person** — No licensee or other person shall contact, by telephone or in person, a person for the purpose of soliciting the making of, or negotiating, a contract for the sale or provision of a licensed supply or service.

(2) Vulnerable persons — No licensee or other person shall contact, by any means, a person in a hospital, long-term care home, hospice or such other institution as may be pre-

S. 29(2) Funeral, Burial and Cremation Services Act, 2002

scribed for the purpose of soliciting the making of, or negotiating, a contract for the sale or provision of a licensed supply or service.

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2006, c. 34, Sched. D, s. 20

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33. (1) Price list — Every operator shall maintain a price list of the licensed supplies and services that are provided by the operator in accordance with the regulations.

(2) Price list available to public — Every licensee shall make the price list maintained under subsection (1) available to the public in accordance with the regulations.

34. (1) Prohibition: exceeding listed price — No licensee shall charge, collect or receive any amount of money for a licensed supply or service that is more than the price indicated on the price list maintained under section 33.

(2) Repayment — A licensee who charges, collects or receives an amount of money for a licensed supply or service that is more than the price indicated on the price list or, if the price for the supply or service sold is not on the price list, more than the price charged for a similar supply or service, shall repay the difference to the purchaser within 30 days.

2006, c. 34, Sched. D, s. 21

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37. [Repealed 2006, c. 34, Sched. D, s. 22.]

38. Contract price — If money is paid under a contract for the sale or provision of licensed supplies and services in advance of the provision of the supplies and services and if, subsequent to the payment but before the provision of the supplies and services, there is an increase in the price of any of those supplies and services, the operator shall not charge the purchaser any additional amount in respect of the increase and may retain only the amounts that are prescribed.

2006, c. 34, Sched. D, s. 23

38.1 Tied selling — No operator shall require, as a condition to selling certain licensed supplies and services to a purchaser, whether or not the condition is set out in a contract, that the purchaser also purchase other supplies and services from the same operator or from a person specified by the operator, unless the operator does so in the circumstances that are prescribed.

2006, c. 34, Sched. D, s. 23

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40. (1) Contract requirements — A contract for the provision of licensed supplies or services is not enforceable by an operator unless,

- (a) the contract is written, signed by both parties and complies with the regulations;
- (b) the contract sets out the purchaser's cancellation rights under this Act;
- (c) the contract sets out all the supplies and services to be provided and the price charged for each of them;

- (d) the operator delivers a signed copy of the contract to the purchaser in the prescribed manner;
- (e) in the case of a contract for the purchase of interment rights, the operator delivers to the purchaser,
 - (i) a copy of the by-laws of the cemetery and written notice as to whether the by-laws of the cemetery permit the purchaser to resell the interment rights to a third party, and
 - (ii) a description of the location of the lot that is purchased;
- (f) in the case of a contract for the purchase of scattering rights, the operator delivers to the purchaser,
 - (i) a copy of the by-laws of the cemetery and written notice as to whether the by-laws of the cemetery permit the purchaser to resell the scattering rights to a third party, and
 - (ii) a description of the location of the scattering ground where the rights may be exercised;
- (g) in the case of a contract for the purchase of crematorium supplies and services, the operator delivers to the purchaser a copy of the crematorium's by-laws; and
- (h) such other requirements as may be prescribed are met.

(2) Right of action — A purchaser under a contract that does not meet the requirements of clauses (1)(a), (b) or (c) or in respect of which the operator has not complied with the requirements of clauses (1)(d), (e), (f), (g) or (h) may bring an action in a court of competent jurisdiction to recover any amounts paid under the contract together with costs if,

- (a) the purchaser has given the operator notice of cancellation under subsection 41(1); and
- (b) the operator has refused to pay the purchaser the amount payable under subsection 41(2).

(3) Exception — Subsections (1) and (2) do not apply to a contract for the provision of licensed supplies or services in the prescribed circumstances.

2006, c. 34, Sched. D, s. 24

41. (1) Cancellation, unenforceable contract — A purchaser under a contract that is not enforceable by the operator under subsection 40(1) may cancel the contract at any time after it is made by giving the operator written notice of cancellation.

(2) Refund — An operator who receives a notice of cancellation under subsection (1) shall, within 30 days of receiving the notice, refund to the purchaser all money received under the contract together with the amounts that are prescribed.

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2006, c. 34, Sched. D, s. 25

42. (1) 30-day cooling-off period — If a purchaser enters into a contract for the provision of licensed supplies and services and all of the requirements in subsection 40(1) are met, the purchaser is entitled to cancel the contract at any time within 30 days after the day on which the last of the requirements described in subsection 40(1) is met.

(2) Notice — A purchaser may cancel a contract under subsection (1) by giving the operator written notice of the cancellation.

S. 42(3)

Funeral, Burial and Cremation Services Act, 2002

(3) Refund — An operator who receives a notice of cancellation under subsection (2) shall, within 30 days after receiving the notice, refund to the purchaser all money received under the contract together with the amounts that are prescribed.

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2006, c. 34, Sched. D, s. 26

43. (1) Delivery within 30 days — Except as permitted by the regulations, an operator who enters into a contract for the provision of licensed supplies or services shall not provide any of the licensed supplies and services under the contract within 30 days after the day on which the contract is made.

(2) Right to cancel — By giving the operator written notice of cancellation, a purchaser may cancel a contract that includes the provision of licensed supplies or services within 30 days after the day on which the contract is made if the operator has not fully performed the contract.

(3) Exception — A right to cancel under subsection (2) does not apply with respect to interment or scattering rights that have been exercised.

(4) Refund — An operator who receives a notice of cancellation under subsection (2) shall, within 30 days of receiving the notice, refund to the purchaser,

(a) all money received under the contract, if none of the licensed supplies and services under the contract have been provided at the time the purchaser cancels the contract and the purchaser cancels the contract within 30 days after the day on which the contract is made; and

(b) all money received under the contract less the value of those supplies and services that have been provided, if part of the licensed supplies and services have been provided in accordance with the contract at the time the purchaser cancels the contract and the purchaser cancels the contract within 30 days after the day on which the contract is made.

(5) Unauthorized delivery — If the operator provides licensed supplies or services to a purchaser within 30 days after the day on which the contract is made and the regulations do not permit the provision of the licensed supplies or services, the purchaser continues to be entitled to those cancellation rights with respect to the supplies or services that are provided under sections 41 and 42.

(6) [Repealed 2006, c. 34, Sched. D, s. 27.]

(7) [Repealed 2006, c. 34, Sched. D, s. 27.]

2006, c. 34, Sched. D, s. 27

44. (1) Further cancellation rights — The purchaser under a contract for the provision of licensed supplies or services, other than interment rights and scattering rights, may cancel the contract at any time if a right to cancel under section 42 or 43 no longer applies and if the operator has not fully performed the contract.

(4) Refund — An operator who receives a notice of cancellation under subsection (3) shall, within 30 days of receiving the notice, refund to the purchaser,

(a) all money received under the contract, together with the amounts that are prescribed, less a prescribed amount, if none of the licensed supplies and services under the contract have been provided at the time the contract is cancelled; and

(b) the amount specified in clause (a), less the value of the supplies and services that have been provided, if part of the licensed supplies and services have been provided in accordance with the contract at the time the purchaser cancels the contract.

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2006, c. 34, Sched. D, s. 28

45. Other persons to cancel contract — The rights to cancel a contract to which a purchaser under the contract is entitled under sections 41, 42, 43 and 44 may also be exercised by such other persons as may be prescribed and the refund payable under those sections may be required to be paid to such other persons as may be prescribed, if the regulations so provide.

2006, c. 34, Sched. D, s. 29

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PART VI — TRUST ACCOUNTS (SS. 51–60)

51. Trust accounts, funds — An operator shall maintain such trust accounts or establish such trust funds as may be required by regulation.

52. (1) Money held in trust — An operator who receives money in respect of the sale of licensed supplies or services, in advance of the provision of those supplies or services, shall ensure that the money is held in trust if required by the regulations.

(2) Money in respect of sale — For the purposes of subsection (1), money received by an operator in respect of a sale of licensed supplies and services includes any money paid by the purchaser to cover an administrative fee or any disbursements incurred by the operator.

(3) Non-application — Unless the regulations provide otherwise, this section does not apply to money received by or on behalf of a cemetery operator if the money is required to be paid into an account or a fund under section 53 or 56.

(4) Payments into trust — A licensee shall pay the money that is required to be held in trust into a trust account within the prescribed time.

(5) Payment out — Money held in trust under this section and any income from the money shall not be paid out except in accordance with the regulations.

(6) Refunds — This section does not apply to a refund amount owing under a contract if the amount of the refund is less than a prescribed amount.

(7) Application — This section applies to money received by an operator under a contract entered into on or after the day this section comes into force.

(8) Transition — An operator who receives money in respect of the sale of licensed supplies or services, in advance of the provision of those supplies or services, under a contract entered into before the day this section comes into force shall ensure that the money is held

S. 52(8) Funeral, Burial and Cremation Services Act, 2002

in trust and disbursed in accordance with the rules established under the *Cemeteries Act (Revised)* or the *Funeral Directors and Establishments Act*, as applicable, even if the operator receives the money on or after the day this section comes into force.

(9) Same — Subject to subsection (11), if, immediately before the day this subsection comes into force, an operator was licensed under the *Cemeteries Act (Revised)* or under the *Funeral Directors and Establishments Act* and was holding in trust money under either of those Acts, other than money in a care and maintenance fund, the operator shall,

- (a) continue to hold the money in trust on and after that day in accordance with the rules established under the applicable one of those two Acts that are in force immediately before that day; and
- (b) disburse the money on or after that day, in accordance with the rules established under the applicable one of those two Acts.

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2006, c. 34, Sched. D, s. 34
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PART VII — COMPENSATION FUNDS (S. 61)

61. (1) Compensation fund scheme — A compensation fund scheme shall be established for the purposes of this Act in accordance with the regulations.

(2) Purpose — The purpose of a prescribed compensation fund shall be to compensate a person who suffers a financial loss due to a failure on the part of a licensee to comply with this Act or the regulations or with the terms of an agreement made under this Act.

(3) Contributions to fund — A licensee shall make such contributions to a prescribed compensation fund as may be required by regulation at such times and in such a manner as may be prescribed.

2006, c. 34, Sched. D, s. 41
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PART IX — COMPLAINTS, INSPECTIONS AND INVESTIGATIONS (SS. 66–71)

66. (1) Complaints — If the registrar receives a complaint about a licensee, the registrar may request information in relation to the complaint from any licensee.

(4) Powers — In handling complaints, the registrar may, do any of the following, as appropriate:

1. Attempt to mediate or resolve the complaint.
2. Give the licensee a written warning that if the licensee continues with the activity that led to the complaint, action may be taken against the licensee.
3. Require the licensee to attend a specified educational program or require the licensee to ensure that a person prescribed for the purposes of clause 14(1)(g) attends a specified educational program.
4. Refer the matter, in whole or in part, to the discipline committee.

5. Take an action under section 17, subject to section 18.
6. Take further action as is appropriate in accordance with this Act.

2006, c. 34, Sched. D, s. 45

67. (1) Inspection — The registrar or a person designated in writing by the registrar may conduct an inspection and may, as part of that inspection, enter and inspect at any reasonable time the business premises of a licensee, other than any part of the premises used as a dwelling, for the purposes of,

- (a) ensuring compliance with this Act and the regulations;
- (b) dealing with a complaint under section 66; or
- (c) ensuring the licensee remains entitled to be licensed.

(2) Inspection of applicant for licence — The registrar or a person designated in writing by the registrar may at any reasonable time conduct an inspection of the business premises of an applicant for a licence under this Act, other than any part of the premises used as a dwelling, for the purpose of ensuring the applicant is entitled to be licensed under this Act.

(3) Powers — While carrying out an inspection, an inspector,

- (a) is entitled to free access to all money, valuables, documents, records, equipment, supplies and such other things of the person being inspected that are relevant to the inspection;
- (b) may use any data storage, processing or retrieval device or system used in carrying on business in order to produce information that is relevant to the inspection and that is in any form;
- (c) may, upon giving a receipt for them, remove for examination and testing and may copy anything relevant to the inspection and testing, including any data storage disk or other retrieval device in order to produce information, but shall promptly return the thing to the person being inspected; and
- (d) conduct tests that are reasonably necessary.

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(5) Production and assistance — An inspector may, in the course of an inspection, require a person to produce a document, record, equipment, supply or such other things that are relevant to the inspection and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce information that is relevant to the inspection and that is in any form, and the person shall produce the things required and provide the assistance.

(6) No obstruction — No person shall obstruct an inspector conducting an inspection or withhold from the inspector or conceal, alter or destroy any money, valuables, documents, records, equipment, supplies or such other things that are relevant to the inspection.

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(8) Admissibility of copies — A copy of a document or record certified by an inspector to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

2006, c. 34, Sched. D, s. 46

S. 70(1) Funeral, Burial and Cremation Services Act, 2002

70. (1) Search warrant — Upon application made without notice by an investigator, a justice of the peace may issue a warrant, if he or she is satisfied on information under oath that there is reasonable ground for believing that,

- (a) a person has contravened or is contravening this Act or the regulations or has committed an offence under the law of any jurisdiction that is relevant to the person's fitness to be licensed under this Act; and
- (b) there is,
 - (i) in any building, dwelling, receptacle or place anything relating to the contravention of this Act or the regulations or to the person's fitness to be licensed under this Act, or
 - (ii) information or evidence relating to the contravention of this Act or the regulations or the person's fitness to be licensed under this Act that may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant.

(2) Powers under warrant — A warrant obtained under subsection (1) authorizes an investigator,

- (a) to enter or access the building, dwelling, receptacle or place specified in the warrant and to seize, examine and remove anything described in the warrant;
- (b) to make reasonable inquiries of any person, orally or in writing, with respect to anything relevant to the investigation;
- (c) to require a person to produce the information or evidence described in the warrant and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the information or evidence described in the warrant;
- (d) to use any data storage, processing or retrieval device or system used in carrying on business in order to produce information or evidence described in the warrant, in any form; and
- (e) to use any investigative technique or procedure or do anything described in the warrant.
- (f) [Repealed 2006, c. 34, Sched. D, s. 48(1).]
- (g) [Repealed 2006, c. 34, Sched. D, s. 48(1).]
- (h) [Repealed 2006, c. 34, Sched. D, s. 48(1).]
- (i) [Repealed 2006, c. 34, Sched. D, s. 48(1).]

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(5) [Repealed 2006, c. 34, Sched. D, s. 48(2).]

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(9) Obstruction — No person shall obstruct an investigator executing a warrant under this section or withhold from the investigator or conceal, alter or destroy any thing relevant to the investigation being conducted pursuant to the warrant.

(10) Compliance — If an investigator under clause (2)(c) requires a person to produce evidence or information or to provide assistance, the person shall produce the evidence or information or provide the assistance, as the case may be.

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2006, c. 34, Sched. D, s. 48; 2009, c. 33, Sched. 10, s. 8(3); 2019, c. 14, Sched. 10, s. 7(2), (3)

70.1 Seizure of things not specified — An investigator who is lawfully present in a place pursuant to a warrant or otherwise in the execution of his or her duties may, without a warrant, seize anything in plain view that the investigator believes on reasonable grounds will afford evidence relating to a contravention of this Act or the regulations.

2006, c. 34, Sched. D, s. 49

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PART X — ENFORCEMENT (SS. 72–82)

72. (1) Freeze order, licensee — If the conditions in subsection (2) are met, the director may in writing do one or more of the following:

1. Order any person having on deposit or controlling any money or asset of a licensee or former licensee to hold the money or asset.
2. Order a licensee or former licensee to refrain from withdrawing any money or asset from a person having it on deposit or controlling it.
3. Order a licensee or former licensee to hold any money or asset of a customer or other person in trust for the person entitled to it.

(2) Conditions — The director may make an order under subsection (1) if the director believes that it is advisable for the protection of the customers of a licensee or former licensee and,

- (a) a search warrant has been issued under this Act; or
- (b) criminal proceedings or proceedings in relation to a contravention under this Act or any other Act are about to be or have been instituted against the licensee or former licensee in connection with or arising out of the business in respect of which the licensee or former licensee is or was licensed.

(3) Limitation — An order made under subsection (1) against a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994* or a loan or trust corporation applies only to the offices and branches named in the order.

Proposed Amendment — 72(3)

(3) Limitation — An order made under subsection (1) against a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 2020* or a loan or trust corporation applies only to the offices and branches named in the order.

2020, c. 36, Sched. 7, s. 314 [Not in force at date of publication.]

(4) No order — The director may not make an order under subsection (1) if the licensee or former licensee files with the director, in the manner and amount that the director determines,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;
- (c) a bond of a guarantor accompanied by collateral security; or
- (d) another prescribed form of security.

S. 72(5) Funeral, Burial and Cremation Services Act, 2002

(5) Release — The director may consent to the release of any particular money or asset from the order or may wholly revoke the order.

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2006, c. 34, Sched. D, s. 51

73. (1) Freeze order, non-licensee — The director may make an order described in subsection (2) in respect of money or assets of a person if,

- (a) the director receives an affidavit in which it is alleged that the person is not licensed under this Act and,
 - (i) is subject to criminal proceedings or proceedings in relation to a contravention under this Act or any other Act that are about to be or have been instituted against the person in connection with or arising out of conducting business for which a licence is required under this Act, or
 - (ii) owns a building, dwelling, receptacle or place, or carries on activities in a building, dwelling, receptacle or place, in respect of which a warrant has been issued under section 70;
- (b) the affidavit sets out facts supporting the allegation mentioned in clause (a); and
- (c) the director, based on the affidavit, finds reasonable grounds to believe that,
 - (i) in the course of conducting business for which a licence is required under this Act, the person has received money or assets from customers, and
 - (ii) that the interests of those customers require protection.

(2) Order — In the circumstances described in subsection (1), the director may, in writing,

- (a) order any person having on deposit or controlling any money or asset of the person who is the subject of the allegation mentioned in clause (1)(a) to hold the money or asset; or
- (b) order the person who is the subject of the allegation mentioned in clause (1)(a),
 - (i) to refrain from withdrawing any money or asset from a person having it on deposit or controlling it, or
 - (ii) to hold any money or asset of a customer or other person in trust for the person who is entitled to it.

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2006, c. 34, Sched. D, s. 51

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76. [Repealed 2006, c. 34, Sched. D, s. 51.]

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79. (1) Offence — A person is guilty of an offence who,

- (a) furnishes false information in any application under this Act or in any statement or return required under this Act;
- (b) fails to comply with any order, other than an order made under section 64, direction or other requirement under this Act; or
- (c) contravenes or fails to comply with any section of this Act or the regulations, other than a code of ethics established by the Minister under section 112.

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(3) Penalties — An individual who is convicted of an offence under this Act is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years less a day, or both, and a corporation that is convicted of an offence under this Act is liable to a fine of not more than \$250,000.

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2006, c. 34, Sched. D, s. 53
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82. (1) Liens and charges — If a fine payable as a result of a conviction for an offence under this Act is in default for at least 60 days, the director may by order create a lien against the property of the person who is liable to pay the fine.

(2) Liens on personal property — If the lien created by the director under subsection (1) relates to personal property,

- (a) the *Personal Property Security Act*, except Part V, applies with necessary modifications to the lien, despite clause 4(1)(a) of that Act;
- (b) the lien shall be deemed to be a security interest that has attached for the purposes of the *Personal Property Security Act*; and
- (c) the director may perfect the security interest referred to in clause (b) for the purposes of the *Personal Property Security Act* by the registration of a financing statement under that Act.

(3) Liens and charges on real property — If the lien created by the director under subsection (1) relates to real property, the director may register the lien against the property of the person liable to pay the fine in the proper land registry office and, on registration, the obligation under the lien becomes a charge on the property.

(4) Initiation of sale proceedings prohibited — The director shall not initiate sale proceedings in respect of any real property against which he or she has registered a lien under subsection (3).

(5) Proceeds of sale — If a lien is perfected by registration under subsection (2) or is registered against real property under subsection (3) and the related real or personal property is sold, the director shall ensure that the funds he or she receives as a result of the sale are used to pay the fine.

(6) Discharge of lien — Within 10 days after the director has knowledge of the payment in full of the fine, the director shall,

- (a) discharge the registration of any financing statement registered under clause (2)(c); and
 - (b) register a discharge of a charge created on registration of a lien under subsection (3).
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PART XIII — REGULATIONS (SS. 112, 113)

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113.

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(1) Lieutenant Governor in Council regulations — The Lieutenant Governor in Council may make regulations,

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27. governing the payment of money into and out of trust accounts and trust funds, including the time within which and the circumstances under which payments are to be made;
 28. governing the disbursements of capital gains realized from the investments of money held in trust under this Act;
 29. prescribing records and information on trust accounts and trust funds to be provided to purchasers of licensed supplies and services;
 30. prescribing fees that may be retained by trustees in respect of any type of trust fund;
 31. governing a compensation fund scheme for the purposes of this Act, establishing one or more compensation funds and determining which licensees or classes of licensees shall be participants in each compensation fund;
 32. providing for the payment of contributions to any compensation fund established by regulation, requiring licensees or classes of licensees to contribute to specified funds and prescribing the amounts and timing of the contributions;
 33. respecting the maintenance of any compensation fund established by regulation, establishing a committee or board to administer each fund, providing for the selection or appointment of members of the committee or board and of its chair, respecting the powers and duties of the members, the operation of the committee or board and procedures before the committee or board;
 34. requiring that a compensation fund be kept in trust and respecting the selection of the trustee of the fund;
 35. governing the investing of compensation fund money;
 36. governing payments out of a compensation fund and providing for appeals from a refusal to pay out of a compensation fund;
 37. governing procedures and obligations if a participant is in default in making a payment to a compensation fund;
 38. respecting the removal of an operator as a participant in a compensation fund and the obligations of operators on ceasing to be participants in a compensation fund;
 39. respecting the borrowing of money to supplement a compensation fund;
 40. governing the procedures to be followed in cases of over-capitalization of a compensation fund;
 41. requiring licensees to maintain business premises that comply with prescribed rules;
 42. governing the establishment of one or more discipline committees and appeal committees for the purpose of enforcing the codes of ethics established by the Minister under section 112 against licensees or classes of licensees, respecting the appointment of members of those committees and the composition of the committees;

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2006, c. 34, Sched. D, s. 76; 2017, c. 33, Sched. 5, s. 3
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ONT. REG. 184/12 — CARE AND MAINTENANCE EXEMPTIONS AND MISCELLANEOUS CHARGES

made under the *Funeral, Burial and Cremation Services Act,*
2002

O. Reg. 184/12

EXEMPTIONS FROM CARE AND MAINTENANCE REQUIREMENTS

1. Exemptions — The operator of each of the following cemeteries is exempt from sections 53 and 54 of the Act in respect of that cemetery:

1. Alma Mennonite Cemetery (Maple View), part of Lot 21 in Concession 14 in the Township of Peel in the County of Wellington.
2. Amish Mennonite (Aylmer) Cemetery, part of Lot 25 in Concession 8 in the Township of Malahide in the County of Elgin.
3. Amish Mennonite Cemetery, part of Lot 3 in Concession 6 in the Township of Wellesley, Western Section in The Regional Municipality of Waterloo.
4. Bethel Old Order Amish Cemetery, in the west half of Lot 24 in Concession 11 in the Township of West Wawanosh in the County of Huron.
5. Brotherston Mennonite Church Cemetery, part of Lot 43 in Concession 7 in the Township of Wallace in the County of Perth.
6. Cedar Grove Amish Mennonite Cemetery, part of Lot 12 in Concession 3 in the Township of Wellesley, Western Section in The Regional Municipality of Waterloo.
7. Cedarview Old Order Mennonite Cemetery, part of Lot 5 in Concession 10 in the Township of Egremont in the County of Grey.
8. Chesley Old Order Amish Cemetery, part of Lot 25 in Concession 10 in the Municipality of Brockton in the County of Bruce.
9. Church Lane Cemetery, part of Lot 12 in Concession 12 in the Township of Chisholm in the District of Nipissing.
10. Clear View Mennonite Cemetery, part of Lot 10 in Concession 12 in the Township of Perth East, formerly in the Township of Mornington, in the County of Perth.
11. Clover Valley Mennonite Cemetery, part of Lot 10 in Concession 4 in the Township of Huron-Kinloss in the County of Bruce.
12. Conestoga Mennonite Cemetery, part of Lot 39 in the German Company Tract in the Township of Woolwich in The Regional Municipality of Waterloo.
13. Creek Bank Mennonite Cemetery, part of Lot 19 in Concession 9 in the Village of Drayton in the County of Wellington.
14. Desboro Old Order Amish Cemetery, in the west part of Lot 23 in Concession 7 in the Township of Sullivan in the County of Grey.

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15. East Nissouri Amish Mennonite Cemetery, part of Lot 27 in Concession 9 in the Township of Zorra in the County of Oxford, formerly in the Township of East Nissouri.
16. Elmira Mennonite (Old Order) Cemetery, part of Lot 104 in the German Company Tract in the Township of Woolwich in The Regional Municipality of Waterloo.
17. Fairhaven Mennonite Cemetery, part of Lot 15 in Concession 9 in the Township of Mornington in the County of Perth.
18. Farewell Old Order Mennonite Cemetery, part of the south half of Lot 14 in Concession 10 in the Township of Arthur in the County of Wellington.
19. Fenelon Old Order Amish Cemetery, part of Lot 18 in Concession 4 in the Township of Fenelon in the County of Victoria.
20. Goshen Mennonite Cemetery, part of Lot 9 in Concession 7 in the Township of Peel in the County of Wellington.
21. Hillside Mennonite Church Cemetery, part of Lot 17 in Concession 5 in the former Town of Chesley, now the Municipality of Arran-Elderslie, in the County of Bruce.
22. Howick Orthodox Mennonite Cemetery, in Lot 7 in Concession 16 in the Township of Howick in the County of Huron.
23. Howick Orthodox Mennonite Lakelet Cemetery, in Lot 17 in Concession 16 in the Township of Howick in the County of Huron.
24. Ignatius College Cemetery, in Lot 3 in Concession 2 in the Township of Guelph in the County of Wellington.
25. Iron Bridge Amish Cemetery, in the north half of Lot 8 in Concession 1 in the Township of Iron Bridge, now the Township of Huron Shores, in the District of Algoma.
26. Kinloss Mennonite Cemetery, in Lot 3 in Concession 11 in the Township of Kinloss in the County of Bruce.
27. Langside Mennonite Cemetery, part of Lot 25 in Concession 4 in the Township of Huron-Kinloss in the County of Bruce.
28. Linwood Mennonite Cemetery, part of Lot 12 in Concession 10 in the Township of Wellesley, Western Section in The Regional Municipality of Waterloo.
29. Maple Dell Mennonite Cemetery, part of Lot 21 in Concession 6 in the Township of Norwich in the County of Oxford, formerly in the Township of North Norwich.
30. Mapleton Mennonite Cemetery, in Lot 8 in Concession 3 in the Township of Mapleton in the County of Wellington.
31. Martinfield Mennonite Cemetery, part of Lot 14 in Concession 7 in the Township of Huron-Kinloss in the County of Bruce.
32. Martin's Mennonite Cemetery, part of Lot 9 in the German Company Tract in the City of Waterloo in The Regional Municipality of Waterloo, formerly in the Township of Waterloo.
33. McMichael Canadian Art Collection Cemetery, part of Lot 23 in Concession 8 in the City of Vaughan in the Regional Municipality of York.
34. Meadowside Mennonite Cemetery, part of Lot 1 in Concession 14 in the Township of Wellington North in the County of Wellington.
35. Minto Grove Mennonite Cemetery, part of Lot 69 in Concession D in the Town of Minto in the County of Wellington.

36. Mornington Amish Mennonite Cemetery, part of Lot 24 in Concession 2 in the Township of Mornington in the County of Perth.
37. Mount Elgin District Amish Cemetery, part of Lot 25 in Concession 5 in the Township of South West Oxford in the County of Oxford, formerly in the Township of Dereham.
38. The mausoleum owned by the Municipal Corporation of the City of Hamilton and located on the premises of the Stoney Creek Cemetery in the Township of Saltfleet in the County of Wentworth, as it existed on December 31, 1973, now the City of Hamilton in the Regional Municipality of Hamilton-Wentworth.
39. North Bend Mennonite Church Cemetery, part of Lot 16 in Concession 12 in the Municipality of Arran-Elderslie in the County of Bruce.
40. North Woolwich Mennonite Cemetery, part of Lot 99 in the German Company Tract in the Township of Woolwich in The Regional Municipality of Waterloo.
41. Old Order Amish Cemetery, part of Lot 3 in Concession 10 in the Municipality of Kincardine in the County of Bruce.
42. Old Order Amish Mennonite Cemetery, part of Lot 4 in Concession 7 in the Township of Mornington in the County of Perth.
43. Olivet Mennonite Cemetery, part of Lot 12 in Concession 5 in the Township of Peel in the County of Wellington.
44. Orthodox Mennonite Cemetery, part of Lot 6 in Concession 14 in the Township of Wellesley, Eastern Section in The Regional Municipality of Waterloo.
45. Riverdale Old Order Mennonite Cemetery, part of Lot 20 in Concession 7 in the Township of Southgate in the County of Grey.
46. St. Bernard's Convalescent Hospital Cemetery, part of Lot 20, Concession 2 west of Yonge Street, in the City of Toronto, formerly the City of North York in The Municipality of Metropolitan Toronto.
47. St. Felician Sisters Cemetery, part of Lot 10, Range 3, in the City of Mississauga in The Regional Municipality of Peel, as it existed on December 31, 1967.
48. Society of St. John the Evangelist Cemetery, Lots 4, 5 and 6 on the south side of Cedar Street, in the Town of Bracebridge in The District Municipality of Muskoka.
49. South Peel Mennonite Cemetery, part of Lot 16 in Concession 1 in the Township of Peel in the County of Wellington.
50. Spring Creek (Mount Forest) Old Order Mennonite Church Cemetery, part of Lot 2 in Concession 7 in the Township of Arthur in the County of Wellington.
51. Sunrise Cemetery, part of Lot 15 in Concession 13 in the Township of Perth East in the County of Perth.
52. Valleyview Old Order Mennonite Cemetery, in Lot 9 in Concession 13 in the City of Kawartha Lakes in the County of Kawartha Lakes.
53. Weaverland Mennonite Cemetery, part of Lot 2 in Concession 12 in the Township of Wellesley, Western Section in The Regional Municipality of Waterloo.
54. Westdale Mennonite Cemetery, in Lot 10 in Concession 10 in the Township of Minto in the County of Wellington.
55. West Montrose Mennonite Cemetery, part of Lot 72 in Broken Front Concession in the German Company Tract in the Township of Woolwich in The Regional Municipality of Waterloo.

S. 1 Ont. Reg. 184/12 — Care and Maintenance Exemptions ~~and Miscellaneous ...~~

56. Winterbourne Mennonite Cemetery, part of Lot 2 in Broken Front Concession east of the Grand River in Crooks Tract in the Township of Woolwich in The Regional Municipality of Waterloo.

57. Wroxeter Orthodox Mennonite Church Cemetery, in Lot 20 in Concession A in the Township of Howick in the County of Huron.

MISCELLANEOUS CHARGES

2. Unclaimed cremated human remains — For the purposes of section 53 of Ontario Regulation 30/11 (*General*) made under the Act, the maximum amount that an operator may specify on the price list as a refundable deposit to inter unclaimed cremated human remains is,

- (a) if the operator is not also a cemetery operator, \$350; or
- (b) if the operator is also a cemetery operator, the lesser of \$350 and the minimum amount the cemetery operator charges for the interment of cremated human remains in a common lot in the cemetery.

3. Assisted burials — (1) The maximum amount that an operator may specify on a price list for providing one or more services under subsection 164(1) or (2) of Ontario Regulation 30/11 (*General*) made under the Act, which amount is payable by the delivery agent who sent the written direction requesting the services, is the lesser of,

- (a) \$1,300 for all services that the operator provided with respect to the interment or scattering; and
- (b) the price that the operator charged for the services as shown on the operator's price list.

(2) The maximum amount that an operator of a cemetery may specify on a price list for receiving human remains from an irregular burial site under section 178 of Ontario Regulation 30/11 (*General*) made under the Act is the lesser of,

- (a) \$650; and
- (b) the lowest price charged by the operator for the purchase of interment rights and opening and closing services.

4. Assisted cremation — The maximum amount that an operator may specify on a price list for providing a service under subsection 188(1) of Ontario Regulation 30/11 (*General*) made under the Act, which amount is payable by the delivery agent who sent the written direction requesting the service, is the lesser of,

- (a) \$500 for all services that the operator provides with respect to the cremation; and
- (b) the price charged by the operator for the services described in clause (a) as shown on the price list.

COMMENCEMENT

5. Commencement — This Regulation comes into force on the latest of,

- (a) the day clause 112(1)(c) and subsections 113(1), (2) and (3) of the Act come into force;

Commencement

S. 5(c)

- (b) the day subsections 76(13), (21), (22) and (27) of Schedule D to the *Ministry of Government Services Consumer Protection and Service Modernization Act, 2006* come into force; and
- (c) the day this Regulation is filed.

ONT. REG. 216/18 — CODE OF ETHICS

made under the *Funeral, Burial and Cremation Services Act, 2002*

O. Reg. 216/18

1. Purpose — The purpose of this Regulation is to preserve the standards of professional conduct and competence that, under the *Board of Funeral Services Act*, as it read immediately before its repeal on April 1, 2016, the Board of Funeral Services was entitled to require of individuals licensed as funeral directors under the *Funeral, Burial and Cremation Services Act, 2002*.

2. Definition — In this Regulation,

“funeral director” means an individual licensed as a funeral director under the Act.

3. Professional misconduct — A funeral director shall not engage in conduct that could have led to a finding that the person was guilty of professional misconduct under subsection 16(2) of the *Board of Funeral Services Act* and section 8 of Ontario Regulation 32/11 (*General*) made under that Act as they read immediately before the repeal of that Act on April 1, 2016, with necessary modifications.

4. Incompetence — A funeral director shall not engage in conduct that could have led to a finding that the person was incompetent under subsection 16(3) of the *Board of Funeral Services Act* as that subsection read immediately before the repeal of that Act on April 1, 2016, with necessary modifications.

5. Revocation — Ontario Regulation 306/16 (*Code of Ethics*) made under the Act is revoked.

6. Commencement — This Regulation comes into force on the day it is filed.

ONT. REG. 30/11 — GENERAL

made under the *Funeral, Burial and Cremation Services Act, 2002*

O. Reg. 30/11, as am. O. Reg. 30/11, s. 231; 239/11; 21/14; 48/15, ss. 1–17, 18 (Fr.); 288/15; 122/16; 81/19; 412/19.

PART I — OPERATION OF BUSINESS

DIVISION A — DEFINITIONS

1. Definitions — (1) In this Part,

“**business day**” means a day that is not,

- (a) Saturday, or
- (b) a holiday within the meaning of section 87 of the *Legislation Act, 2006*;

“**care and maintenance trust money**” means money that section 53 of the Act requires be held in a care and maintenance fund or in a care and maintenance account;

“**commercial cemetery**” means a cemetery operated for the purpose of making a profit for the owner;

“**eligible depository**” means,

- (a) a bank or authorized foreign bank as both those terms are defined in section 2 of the *Bank Act* (Canada),
- (b) a corporation registered under the *Loan and Trust Corporations Act*, or
- (c) a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994*;

“**embalming room**” means a room designated for arterially embalming or restoring dead human bodies;

“**funeral director**” means an individual licensed to provide or direct the provision of funeral services or to hold oneself out as available to do so;

“**funeral preplanner**” means an individual who, in respect of contracts made before the death of the intended recipient of supplies and services, is licensed to act under subsection 6(1) on behalf of a person licensed as a Funeral Establishment Operator — Class 1 or Funeral Establishment Operator — Class 2 or who is licensed to hold oneself out as available to do so;

“**group insurance**” means group insurance as defined in subsection 171(1) of the *Insurance Act*;

“holding room” means a room designated for holding dead human bodies, preparing them and placing them in caskets, but not for arterially embalming or restoring them;

“licence” means a licence issued under section 14 of the Act or deemed to be held under the Act by virtue of section 13 of the Act;

“operator licence” means a licence authorizing the licensee to operate a cemetery, crematorium, funeral establishment or transfer service;

“personal licence” means a licence authorizing a licensee who is an individual to act as a sales representative of an operator or as a funeral director or a funeral preplanner;

“personal representative” means a personal representative as defined in the *Succession Law Reform Act*;

“person in charge of the day-to-day operations”, with respect to the business of an operator, means an individual managing the business of the operator at a particular location;

“prepaid trust money” means,

(a) money that is required under section 52 of the Act to be held in trust and paid out in accordance with the regulations that apply for the purposes of that section, and

(b) unless the context indicates otherwise, income earned on the investment and reinvestment of the money described in clause (a) while it is held in trust in accordance with the regulations that apply for the purposes of section 52 of the Act,

but does not include money paid for the purchase of interment or scattering rights;

“sales representative” means an individual, other than a funeral preplanner, who is licensed to act under subsection 5(1) on behalf of an operator other than a funeral establishment operator;

“temporarily held care and maintenance trust money” means money that is required to be held in trust under section 55 of the Act;

“trust money” means prepaid trust money;

“unclaimed trust money” means prepaid trust money,

(a) that is held in trust with respect to the provision by an operator of licensed supplies or services, and

(b) that is payable or repayable to a purchaser whom the payer is unable to identify or locate.

(2) In the French version of this Part,

“crématorium” has the same meaning as “crématoire” in the Act.

(3) The other prescribed services mentioned in the definition of **“funeral services”** in subsection 1(1) of the Act include the co-ordination and provision of rites and ceremonies with respect to cremated human remains if the services are provided in close proximity to the time of death of the person whose remains they are and the remains are to be present, other than rites or ceremonies taking place at the time of interment or scattering.

DIVISION B — ADDITIONAL PROHIBITED ACTIVITIES

2. Scattering of cremated remains — (1) No person, other than an operator, a person described in clause 6(1)(c) or a funeral director, sales representative or funeral preplanner acting on behalf of an operator, shall offer to sell or sell the service of scattering of cremated human remains for consideration, whether the consideration is received directly or indirectly.

(2) No person, other than an operator, shall provide the service of scattering of cremated human remains for consideration, whether the consideration is received directly or indirectly.

3. Sales, etc., of insurance products — (1) Subject to the *Insurance Act*, no person, other than a licensee, shall sell or offer to sell, or enrol or offer to enrol anyone in, an annuity or insurance contract, including group insurance, that,

- (a) is used to fund, directly or indirectly, in whole or in part, the purchase of licensed supplies or services; and
- (b) names an operator as the beneficiary of the proceeds, assigns the beneficiary's rights to proceeds to an operator or assigns to an operator the right to designate the beneficiary of the proceeds.

(2) Subsection (1) does not apply to a person acting under the authority of a licence issued under the *Insurance Act*.

DIVISION C — LICENSING***Requirement for Licences***

4. Embalming services — (1) Except as permitted by subsection 36(4), no person shall embalm dead human bodies or hold oneself out as available to embalm dead human bodies, unless,

- (a) the person is licensed as a funeral director and is acting on behalf of a funeral establishment operator;
- (b) the person is enrolled in an approved education program and is working,
 - (i) under the supervision and in the presence of the course instructor, or
 - (ii) under the supervision of a person licensed as a Funeral Director — Class 1; or
- (c) the person is employed in a faculty of medicine or a school of anatomy designated under the *Anatomy Act*.

(2) A person licensed as a Transfer Service Operator — Class 1 is prescribed for the purposes of subsection 8(2) of the Act as a person who is authorized to sell or offer to sell to the public or hold oneself out as available to sell to the public services described in subsection 36(4).

5. Sales representative — (1) No person shall act as a sales representative on behalf of an operator, or hold oneself out as a sales representative of an operator, unless the person is licensed as a sales representative.

(2) The licence of a sales representative is a prescribed licence for the purposes of clauses 4(2)(a), 6(2)(a) and 12(2)(b) of the Act.

(3) A sales representative of a person licensed as a Transfer Service Operator — Class 1 is prescribed for the purposes of clause 8(2)(c) of the Act as a person who is authorized to sell or offer to sell to the public, or hold oneself out as available to sell to the public, funeral services that the operator on whose behalf the representative acts, is authorized to sell or offer to sell.

6. Funeral director or preplanner — **(1)** No person shall sell or offer to sell to the public funeral supplies and services on behalf of a funeral establishment operator, or hold oneself out as available to do so, unless,

- (a) the person holds a licence as a Funeral Director — Class 1 or Funeral Director — Class 2 licence;
- (b) the person is licensed as a funeral preplanner; or
- (c) the person is enrolled in a funeral director or funeral preplanner education program approved by the registrar and is,
 - (i) employed by and acting on the behalf of a person licensed as a Funeral Establishment Operator — Class 1 or a Funeral Establishment Operator — Class 2, and
 - (ii) working under the supervision of a person licensed as a Funeral Director — Class 1 or a Funeral Director — Class 2.

(2) The licence of a funeral director or a funeral preplanner is a prescribed licence for the purposes of clauses 8(2)(a) and 12(2)(b) of the Act.

(3) The class of persons described in clause (1)(c) is a prescribed class for purposes of clause 8(2)(c) of the Act.

(4) The licence of a funeral director is a prescribed licence for the purposes of clause 6(2)(a) of the Act if the funeral director has received written authorization to act as a sales representative on behalf of a crematorium operator.

7. Exemptions from licences — **(1)** A person is exempt from clause 4(2)(a) of the Act if,

- (a) the person is acting on behalf of the operator of a cemetery other than a commercial cemetery;
- (b) selling licensed supplies or services is not the person's primary occupation; and
- (c) the person is not selling, or holding oneself out as available to sell, licensed supplies or services in circumstances in which,
 - (i) money is required to be held in trust under section 52 of the Act, or
 - (ii) payment is to be made by way of proceeds of an annuity or insurance contract, including group insurance.

(2) A family member of a deceased individual is exempt from subsection 8(2) of the Act when the family member is, for no consideration, providing funeral services in respect of the deceased individual, other than arterial embalming.

General

8. Prescribed requirements for licence — (1) The following requirements are prescribed for the purposes of subsection 14(1) of the Act in the case of an applicant who is an individual:

1. The applicant shall be at least 18 years old.
2. The applicant shall be legally entitled to work in Canada.

(2) In the case of an applicant for an operator licence, or a renewal of that licence, it is a prescribed requirement for the purposes of subsection 14(1) of the Act that, if the applicant intends to carry on business from a dwelling, the applicant shall have made arrangements satisfactory to the registrar to give the registrar access to the operator's business records.

9. Application for licence — An application for a licence shall meet the following requirements:

1. The application shall be in a form and manner approved by the registrar.
2. The application shall include information for which a notice of change would be required under section 103 or 104.
3. The application shall contain the additional information that the registrar requires.
4. The application shall be accompanied by the fee established under section 108 of the Act.
5. In the case of a licence to operate a cemetery, crematorium, funeral establishment or transfer service, the application shall be accompanied by confirmation from the local municipality that the proposed use is a permitted use and is in accordance with applicable municipal by-laws and that the plans have been approved by the local municipality.
6. In the case of a licence to operate a cemetery, the application shall be accompanied by evidence that the deposit, if any, that was required to be paid into a care and maintenance fund under clause 86(1)(c) of the Act has been paid.
7. In the case of a licence to operate a crematorium, the application shall be accompanied by,
 - i. a copy of the environmental compliance approval required under section 9 of the *Environmental Protection Act*, and
 - ii. plans or drawings of the site, building, location of retorts, processing area, and body storage areas.
8. In the case of a licence to operate a funeral establishment, the application shall be accompanied by,
 - i. plans or drawings of all holding rooms and all embalming rooms that the operator proposes to use, containing sufficient detail to permit the registrar to assess whether the rooms comply with section 47 or 48, as applicable, and
 - ii. a certificate of inspection, in a form approved by the registrar, issued by a medical officer of health, a public health inspector or a person designated by the registrar, stating that all holding rooms and all embalming rooms the operator proposes to use have been inspected within 180 days before the date of the application and are suitable for the purpose for which they will be used.

S. 9

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9. In the case of a licence to operate a transfer service, the application shall be accompanied by,
- i. plans or drawings of all holding rooms that the operator proposes to use, containing sufficient detail to permit the registrar to assess whether the rooms comply with section 47, and
 - ii. a certificate of inspection, in a form approved by the registrar, issued by a medical officer of health, a public health inspector or a person designated by the registrar, stating that a holding room that the operator proposes to use has been inspected within 180 days before the date of the application and is suitable for the purpose for which it will be used.

O. Reg. 239/11, s. 1

10. Expiry of licences — Subject to section 22 of the Act, a licence expires on the expiry date shown on the licence.

11. Application for renewal of licence — An application for renewal of a licence shall,

- (a) meet the requirements set out in paragraphs 1, 2, 3 and 4 of section 9, unless the registrar directs otherwise; and
- (b) meet the requirements set out in paragraphs 5, 7, 8 and 9 of section 9, if the registrar so requires.

12. Separate licences — Under subsection 16(2) of the Act, the registrar may, as a condition of a licence, limit the number of different locations to which the licence applies.

13. Application after expiry — If a licensee applies to renew a licence after the licence has expired, the application shall be treated as an application for a new licence.

14. Content of licence form — (1) If the registrar issues or renews a licence, the registrar shall provide the applicant with a form of licence that sets out the class of licence and the expiry date, if any, of the licence.

(2) The registrar may set out on the form of licence,

- (a) the conditions to which the licence is subject under section 16 of the Act and that the registrar considers appropriate for inclusion on the licence; and
- (b) the additional information that the registrar considers appropriate.

(3) If a person holds more than one licence, the registrar may combine the licences.

15. Name on operator licence — (1) An operator licence shall set out the name of the operator.

(2) If an operator, where permitted by law, carries on the business authorized by the licence under a name other than the name mentioned in subsection (1), the licence shall also set out the other name.

(3) An operator shall ensure that the registrar has current information about the operator's names described in subsections (1) and (2).

(4) An operator shall not carry on the business authorized by the licence under a name other than a name set out in the licence.

16. Time for reapplication — For the purposes of section 24 of the Act, a person who is refused a licence or a renewal of a licence or whose licence is revoked shall not reapply for a licence before the expiry of one year from the day of the refusal or revocation.

17. Continuation of operator's duties — If an operator licence expires without the operator having applied for renewal of the licence, if the registrar cancels an operator licence upon the request in writing of the operator under section 21 of the Act or if the licence is suspended, surrendered or revoked, the person who was licensed as the operator shall continue to be subject to the duties and obligations of an operator under the Act until all of the duties and obligations have been fulfilled.

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DIVISION F — TRUST ACCOUNTS AND TRUST FUNDS

General Trust Rules

76. Trust money — (1) Every operator shall,

- (a) except as otherwise permitted in this Division, hold all trust money separate and apart from all money other than trust money; and
- (b) deal with trust money in accordance with this Division.

(2) If prepaid trust money is temporarily deposited into an account, other than in an individual trust account or a pooled trust fund or account, the operator,

- (a) shall deposit it only with an eligible depositary;
- (b) shall deposit it only in an account in the name of the operator as it appears on the operator's licence;
- (c) shall not use the money and shall preserve it for the beneficiary; and
- (d) shall maintain adequate account controls to limit the exposure of the money to unilateral withdrawal for purposes that would be in breach of the obligation to hold it in trust.

Prepaid Trust Money

77. Application of sections — Sections 78 to 81 apply for the purposes of section 52 of the Act.

78. Deposit into trust account or fund — (1) An operator who receives money in respect of the sale of licensed supplies or services, in advance of the provision of those supplies or services, shall hold the money in trust as prepaid trust money except that the operator may, on or after the 30th day after the day on which the contract for the sale was made, elect to retain, as not being prepaid trust money, an amount not exceeding the amount to which the operator would be entitled under section 140 if the purchaser cancelled the contract under subsection 44(1) of the Act.

S. 78(2)

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(2) An operator shall ensure that prepaid trust money is deposited, not later than the 35th day after the day the operator receives the money, into,

- (a) an individual trust account established by the operator that complies with subsection 79(1); or
- (b) a pooled trust fund established by the operator that complies with subsection 80(2).

(3) An operator shall retain prepaid trust money in trust in the account or fund into which the operator is required to deposit it under subsection (2) until this Division permits or requires the operator to transfer it or pay it out.

(4) Despite subsection (2), if a contract is for the provision of licensed supplies or services within 30 days after the day the contract is made,

- (a) the operator shall deposit, into an account or fund described in subsection (2), the money paid under the contract in respect of the supplies or services if the supplies or services are not provided within 30 days after the day the contract is made; and
- (b) the operator shall make the deposit described in clause (a) no later than the 35th day after the day the contract is made.

O. Reg. 48/15, s. 5

79. Individual trust account — (1) An individual trust account maintained by an operator shall comply with the following rules:

1. The individual trust account shall be established in the name of the operator as it appears on its licence under the Act as the trustee for the purchaser.
2. The individual trust account shall be used only as a trust account to hold in accordance with this Division trust money received in respect of contracts with the same purchaser for the same recipient.
3. The operator shall be the trustee for the trust money held in the individual trust account.
4. Trust money in the individual trust account shall be invested in and kept invested in one or more of the following types of investments:
 - i. An interest-bearing account with an eligible depositary.
 - ii. A guaranteed investment certificate, deposit receipt, deposit note, certificate of deposit, term deposit or other similar instrument that is issued by an eligible depositary.
5. Trust money in the individual trust account may be invested in an investment described in paragraph 4,
 - i. directly by the trustee, or
 - ii. through a fraternal society licensed under the *Insurance Act*.

(2) If a purchaser so requests, every operator shall, in respect of each individual trust account that the operator maintains for the purchaser, provide the purchaser, once a year, with a statement that sets out,

- (a) the current value of the account as of the end of the month before the request;
- (b) the types of investments held as of the day described in clause (a); and
- (c) the name of the eligible depositary of any account in which the prepaid trust money is deposited.

O. Reg. 48/15, s. 6

80. Pooled trust fund — (1) An operator may hold prepaid trust money in a pooled trust fund only if the records maintained for the fund permit the tracking and reporting on funds in the fund on an individual contract basis.

(2) Every pooled trust fund established by an operator and maintained for the purposes of holding prepaid trust money in trust in accordance with this Division shall comply with the following rules:

1. Subject to subsections (3) and (4), every trustee of the pooled trust fund shall be either a corporation registered under the *Loan and Trust Corporations Act* or a credit union or league as defined in the *Credit Unions and Caisses Populaires Act, 1994*.
2. The name of the pooled trust fund shall include the name of the operator as it appears on the licence and the words “pooled trust fund” if the fund is operated in English and the words “fonds commun en fiducie” if the fund is operated in French.
3. Trustee fees may be paid only out of the income earned on the pooled trust fund.

(3) An operator that is a municipality may act as trustee of its pooled trust fund.

(4) The Public Guardian and Trustee shall act as trustee of the pooled trust fund of an operator that is a religious organization, a municipality or another non-profit entity, if the operator has no practical alternative and requests the Public Guardian and Trustee to so act.

(5) If a purchaser so requests, every operator shall, in respect of a pooled trust fund that the operator maintains, provide the purchaser, once a year, with a statement that sets out the current value of the purchaser’s money as of the end of the month before the request.

O. Reg. 48/15, s. 7

81. Payout of prepaid trust money — (1) Prepaid trust money shall be paid out only in accordance with the following rules:

1. Prepaid trust money may be paid to the operator in consideration for the licensed supplies or services purchased under the contract as the supplies and services are provided in accordance with the contract.
2. Subject to paragraph 3, any prepaid trust money that remains after the supplies or services to which the money relates have been provided and after all amounts payable to the operator and any other suppliers in respect of the supplies and services have been paid shall be paid by the operator to the purchaser or to the person whom the contract designates as being entitled to receive the payment.
3. If the operator is unable to identify or locate the purchaser or the person whom the contract designates as being entitled to receive the payment, the money mentioned in paragraph 2 shall be paid out in accordance with section 82.
4. If a contract is cancelled in whole or in part, the prepaid trust money relating to the part of the contract that is cancelled shall be paid out to the operator and the operator shall,
 - i. determine, in accordance with the Act and the regulations, the amount to be refunded to the purchaser or the person whom the contract designates as being entitled to receive the payment, and
 - ii. refund the amount determined under subparagraph i to the purchaser or the person whom the contract designates as being entitled to receive the payment.

S. 81(1)

Ont. Reg. 30/11 — General, Part I

5. If prepaid trust money is held in a pooled trust fund, trustee fees may be paid out to the trustee of the pooled trust fund in accordance with paragraph 3 of subsection 80(2) and the trust agreement governing the management of the fund.

6. If an operator receives a deposit with respect to cremated human remains under subsection 125(2), the operator shall pay out the deposit in accordance with that subsection.

(2) Despite any provision in a contract for the provision of licensed supplies and services, the maximum amount an operator may retain under the contract in consideration for the provision of the supplies and services is the lesser of,

(a) the amount of prepaid trust money in respect of the supplies and services and the amount of proceeds from an annuity or insurance contract, including group insurance, in respect of the supplies and services; and

(b) the current selling price for the supplies and services at the time they are provided, as set out in the price list maintained by the operator under section 33 of the Act.

(3) For the purposes of clause (2)(b), if the current selling price for a supply or service is not set out in the price list maintained by the operator, the current selling price shall be the price charged by the operator for a similar supply or service.

(4) Any amount payable by an operator to a purchaser may be paid to another person if the person who is entitled to receive the money has provided a written direction to the operator to make the payment to the other person.

O. Reg. 48/15, s. 8

Unclaimed Trust Money

82. Payment of unclaimed trust money — (1) If an operator is unable to identify or locate the purchaser or the person whom the contract designates as being entitled to receive unclaimed trust money by the end of the year after the completion or cancellation of the contract to which the money relates, the operator shall pay out the unclaimed trust money to,

(a) a compensation fund established under subsection 61(1) of the Act that has as one of its purposes the holding and investment of unclaimed trust money; or

(b) the Minister of Finance, if the compensation fund mentioned in clause (a) has not been established.

(2) An operator shall make a payment to the Minister of Finance under subsection (1) by forwarding the money to a director appointed under section 2 of the Act.

(3) An operator who makes a payment under subsection (1) shall provide the compensation fund or the director, as the case may be, with as much information as the operator has in order to assist in the determination of the identity or location of the person entitled to the unclaimed trust money.

(4) Upon receipt of information that proves on a balance of probabilities that a person is entitled to unclaimed trust money paid to the compensation fund under this section, the compensation fund shall pay the money to the person.

(5) An operator is exempt from subsection (1) if the amount of unclaimed trust money is less than \$50.

DIVISION G — CARE AND MAINTENANCE FUNDS AND ACCOUNTS

83. Establishment of fund — (1) For the purposes of subsection 53(3) of the Act, a care and maintenance fund shall be established in a corporation registered under the *Loan and Trust Corporations Act* or a credit union or league as defined in the *Credit Unions and Caisses Populaires Act, 1994*.

(2) Subject to section 85, for the purposes of clause 53(5)(a) of the Act, the trustee of the fund shall be the corporation, credit union or league in which the fund has been established.

(3) The name under which a care and maintenance fund is established and maintained shall include the words “care and maintenance fund” in English or “fonds d’entretien” in French.

84. Establishment of account — (1) A cemetery operator may establish a care and maintenance account for the purposes of care and maintenance trust money if,

- (a) the account is in relation to a cemetery that is not a commercial cemetery;
- (b) the cemetery operator holds in trust or will hold in trust less than \$50,000 in total for care and maintenance in respect of all cemeteries that the cemetery operator operates;
- (c) the cemetery operator has requested that the municipality act as trustee as permitted under section 85 and the municipality has declined to do so; and
- (d) the registrar has not determined that the use of a care and maintenance account by the operator would be contrary to the public interest.

(2) A care and maintenance account established under subsection (1) shall comply with the following requirements:

1. It shall be maintained in an eligible depositary.
2. It shall be designated as the care and maintenance account.
3. It shall be established in the names of the cemetery operator as they appear on the licence, as trustee, for each cemetery to which the trust money in the account will relate.
4. It shall be used only as a care and maintenance account to hold care and maintenance trust money.
5. Money in the account shall be invested in and kept invested in one or more of the following types of investments:
 - i. An interest-bearing account.
 - ii. A guaranteed investment certificate, deposit receipt, deposit note, certificate of deposit, term deposit or other similar instrument that is issued by an eligible depositary.

(3) A cemetery operator who is permitted under subsection (1) to establish a care and maintenance account shall notify the registrar in writing before beginning to use the account.

(4) The cemetery operator shall be the trustee if care and maintenance trust money is held in a care and maintenance account.

85. Municipality as trustee of fund or account — For the purposes of subsection 53(5) of the Act, a municipality may act as the trustee of a care and maintenance fund or account,

- (a) for a cemetery of which the municipality is the owner; or
- (b) for a cemetery of which the municipality is not the owner, if the cemetery operator requests the municipality to act as trustee.

86. Payment before establishment of cemetery — (1) When an owner of land applies to the registrar for consent to the establishment of a cemetery on the land, the deposit that the owner is required to pay into a care and maintenance fund or account under clause 86(1)(c) of the Act is \$100,000.

(2) An owner of land who applies to the registrar for consent to the establishment of a cemetery on the land is exempt from the requirement in clause 86(1)(c) of the Act and subsection (1) if,

- (a) the owner is a municipality;
- (b) the land is a burial site; or
- (c) the cemetery is being established for the purpose of interring human remains to be moved from a burial site.

(3) At the request of the owner of the land on which the cemetery is to be established, the registrar may issue a declaration that it would not be contrary to the public interest for the owner to pay an amount set out in the declaration that is less than \$100,000, or to pay nothing, into a care and maintenance fund or account, if,

- (a) the owner provides evidence satisfactory to the registrar that the cemetery will be maintained in accordance with the Act and the regulations despite the payment of the lesser amount or the non-payment, as the case may be;
- (b) the owner provides evidence satisfactory to the registrar that the municipality has consented to the request; and
- (c) the cemetery to be established is not a commercial cemetery.

87. Payment in relation to interment or scattering rights, etc. — (1) In this section, “price” means the price payable by the purchaser, excluding taxes.

(2) For the purposes of subsection 53(14) of the Act, a cemetery operator shall pay the amounts specified in section 168 into a care and maintenance fund or account for the cemetery within 60 days after the earlier of the day the operator sells or transfers interment rights or scattering rights and the day the interment or scattering is carried out.

(3) If a price, on which an amount payable under subsection (2) is based, is payable in instalment payments, the operator, instead of complying with subsection (2), may pay into a care and maintenance fund or account for the cemetery, within 60 days after receiving each instalment payment, the pro rata portion of the payment required under section 168.

(4) For the purposes of subsection (3), the amount of an instalment payment shall not include any financing charges, penalties or taxes that would otherwise form part of the instalment payment.

(5) If, after a cemetery operator pays an amount into a care and maintenance fund in respect of a sale or transfer of interment rights for an in-ground grave, the interment rights holder requires the installation of a private mausoleum or private columbarium on the same lot, the

amount that the operator paid into the fund in respect of the sale or transfer of the interment rights for the in-ground grave shall be deducted from the amount otherwise payable under subsection (2) and from the amounts otherwise payable under subsection (3).

(6) If the sum of the amounts paid into a care and maintenance fund or account under subsection (3) in respect of all of the instalment payments is less than the amount that would have been required to be paid into the fund under subsection (2), the cemetery operator shall pay the difference into the fund within 60 days after receiving the last instalment payment.

(7) A cemetery operator is exempt from this section,

- (a) to the extent of the amount that was paid into a care and maintenance fund under clause 86(1)(c) of the Act; and
- (b) for interment or scatterings conducted in relation to human remains from an irregular burial site.

88. Payment upon installation of marker — (1) For the purposes of subsection 53(10) of the Act, the prescribed period is within 60 days after the marker is installed in the cemetery.

(2) If a marker is to be installed in a cemetery to replace a marker that has been damaged and cannot be repaired, or if a marker that was sold before April 1, 1992 is to be installed in a cemetery, the person on behalf of whom the marker is to be installed and the cemetery operator are exempt from subsections 53(9) and (10) of the Act.

89. Services requested by delivery agent — (1) A cemetery operator who provides licensed services at the request of a delivery agent as defined in the *Ontario Works Act, 1997*, as required by the regulations, shall not make a payment into a care and maintenance fund or account in respect of the services in accordance with section 87, but shall do so in accordance with subsection (2).

(2) If the total amount received by the operator for providing the licensed services is the same as the price that the operator would normally charge for providing the services,

- (a) the operator shall pay into a care and maintenance fund or account for the cemetery, within 60 days after the total amount is received, the amount required by section 87; and
- (b) the calculation required by section 87 shall be carried out on the basis that the price is the total amount received by the operator for the services, excluding taxes.

90. Payment upon installation of private structure — For the purposes of subsection 53(13) of the Act, the prescribed period is within 60 days after the mausoleum or columbarium is ready for interment purposes.

91. Deduction from contribution on resale of rights — (1) This section applies if,

- (a) an interment rights holder or a scattering rights holder cancels the contract for the purchase of the interment rights or scattering rights under subsection 47(5) of the Act; and
- (b) on making the payment required under subsection 47(6) of the Act to the rights holder, the operator does not deduct the amount that the operator paid into the cemetery's care and maintenance funds in connection with the contract being cancelled, as permitted under subsection 47(6) of the Act and subsection 142(1) of this Regulation.

(2) Upon reselling the interment rights or scattering rights mentioned in subsection (1), the operator may deduct, from the amount that the operator would otherwise be required under the Act to pay into a care and maintenance fund, all or part of the amount mentioned in clause (1)(b) that the operator did not deduct as permitted.

92. Payment in lieu of property tax — (1) If a cemetery is exempt from property tax imposed under the *Municipal Act, 2001*, the *City of Toronto Act, 2006* or the *Provincial Land Tax Act, 2006* by reason of paragraph 2.1 or subparagraph 2.2 ii of subsection 3(1) of the *Assessment Act* in relation to a crematorium and if the Registrar under the *Cemeteries Act (Revised)* or the registrar consented after January 1, 2002 to the establishment of the crematorium, the operator of the cemetery shall make a payment into the care and maintenance fund or account for the cemetery, as the case may be, in an amount set out in subsection (2) and within the time set out in subsection (3).

(2) The amount payable under subsection (1) is the amount of tax that would otherwise be payable for the preceding calendar year, but for the exemption under the *Assessment Act*.

(3) The payment under subsection (1) shall be made by June 1 of the year following the year on which the calculation is based.

(4) The cemetery operator shall, within 30 days of making the payment under subsection (1), provide the registrar with confirmation of,

- (a) the assessed value for the portion of the property used for the bereavement related activity;
- (b) the tax rates and other adjustments, if any, under Part VIII, IX or X of the *Municipal Act, 2001*, Part XI, XII or XIII of the *City of Toronto Act, 2006*, or the *Provincial Land Tax Act, 2006* that would have applied to the property for the preceding calendar year, but for the exemption under the *Assessment Act*;
- (c) the exemption under the *Assessment Act*; and
- (d) the fact that the required payment has been made into the care and maintenance fund or account for the cemetery.

93. Use of income from fund or account — (1) For the purposes of subsection 53(17) of the Act, a cemetery operator shall use the income earned by a care and maintenance fund or account only for the following purposes and in accordance with the following rules:

1. Income earned from the investment and reinvestment of money paid into the fund or account under subsection 53(10) of the Act in respect of markers installed in the cemetery shall be used only,
 - i. to stabilize, maintain, secure and preserve markers in the cemetery, and
 - ii. if the work described in subparagraph i has been completed, to stabilize, maintain, secure and preserve markers in other cemeteries operated by the same operator.
2. Income from the investment and reinvestment of money paid into the fund or account for the cemetery, other than money paid into the fund under subsection 53(10) of the Act in respect of markers, shall be used only,
 - i. to maintain, secure and preserve the cemetery, including its grounds, buildings, structures and markers, and the equipment used to maintain, secure and preserve the cemetery,

- ii. if the work described in subparagraph i has been completed, to maintain, secure and preserve other cemeteries operated by the same operator, including their grounds, buildings, structures and markers, and the equipment used to maintain, secure and preserve the other cemeteries, and
- iii. to pay the expenses incurred in establishing and maintaining any of the cemetery's care and maintenance funds or accounts or to purchase equipment to be used strictly for the care and maintenance of the cemetery, if,
 - A. the operator is no longer selling interment rights, and is no longer selling scattering rights, for the cemetery, and
 - B. the cemetery does not generate any revenue from the operation of a funeral establishment, crematorium or transfer service or from the sale of caskets or markers.

(2) For greater certainty, subject to subparagraph 2 iii of subsection (1), that subsection does not permit the operator to use income from the fund or account to purchase equipment or to apply to any other purpose other than the care and maintenance of the cemetery.

(3) For greater certainty, paragraph 1 of subsection (1) permits the operator to use income from the fund or account to pay a worker wages and benefits for engaging in, or supervising, the stabilization, maintenance, securing or preservation of markers.

(4) For greater certainty, paragraph 2 of subsection (1) permits the operator to use income described in that paragraph to pay a worker wages and benefits for engaging in, or supervising, the maintenance, securing or preservation of,

- (a) the cemetery or any of its grounds, buildings, structures or markers; or
- (b) the equipment used to maintain, secure or preserve the cemetery.

(5) For greater certainty, subsection (1) does not permit the operator to use income from the fund or account to pay a worker wages or benefits for office work, sales work or engaging in, or supervising, the opening or closing of lots.

(6) Despite subsection (1), a cemetery operator shall not use income from a care and maintenance fund or account for that portion of a cemetery that is subject to property tax imposed under the *Municipal Act, 2001*, the *City of Toronto Act, 2006* or the *Provincial Land Tax Act, 2006* or for a payment that is required to be made under section 92.

94. Payment out for purchase of adjoining land — **(1)** For the purposes of subsection 53(18) of the Act, the trustee of a care and maintenance fund or account for a cemetery that is not a commercial cemetery shall, at the request of the cemetery operator, pay to the operator, from the capital of the fund or account, an amount to be used to purchase land adjoining the cemetery in order to enlarge the cemetery, if the registrar authorizes the payment to be made.

(2) The registrar shall authorize a payment to be made under subsection (1) only if, in the opinion of the registrar,

- (a) the cemetery operator does not have enough money to purchase the adjoining land;
- (b) payment of the amount from the capital of the fund or account will enable the operator to purchase the adjoining land;
- (c) the operator will continue to provide adequate care and maintenance for the enlarged cemetery; and

(d) the enlargement of the cemetery will promote its economic viability and strengthen the fund.

(3) A cemetery operator shall use a payment received under subsection (1) only to purchase the adjoining land in order to enlarge the cemetery.

(4) Subject to subsections (5) and (6), a cemetery operator shall pay the amount received under subsection (1) back to the fund or account,

- (a) out of the money received by the operator from the sale of interment rights and scattering rights with respect to the purchased land, after paying into a care and maintenance fund or account the payments required to be made in respect of those rights; and
- (b) in accordance with the registrar's directions regarding the circumstances in which repayment must be made and the portion that must be repaid in each of such circumstances.

(5) If a cemetery operator uses any part of a payment received under subsection (1) for a purpose other than that mentioned in subsection (3), the operator shall pay the amount used for the other purpose back to the fund or account within the period specified by the registrar.

(6) If a cemetery operator does not use the whole payment received under subsection (1) within a period that the registrar determines is reasonable in the circumstances, the operator shall pay the amount that was not used back to the fund or account within the period specified by the registrar.

95. Prohibition against charging maintenance costs — (1) No cemetery operator shall charge an interment rights holder or a scattering rights holder for the costs associated with the operator's obligations under clause 5(3)(b) of the Act, except as permitted under subsections (2) and (4).

(2) If interment rights were sold or transferred, or a marker was installed, before 1955 in a cemetery that is not a commercial cemetery, and if no money was collected to be held in trust for the purpose of maintaining the cemetery or for the purpose of maintaining its markers, as the case may be, the cemetery operator may charge the interment rights holder an amount no greater than the amount that the operator would be required under the Act to pay into a care and maintenance fund or account for the cemetery if equivalent interment rights were sold or transferred, or an equivalent marker was installed, at market price on the day the holder is charged.

(3) Within 60 days after receiving payment of an amount charged under subsection (2), a cemetery operator shall pay the amount into a care and maintenance fund or account for the cemetery.

(4) In a contract under which a person purchases a licensed supply or a licensed service from a cemetery operator, the operator may build into the price charged for the supply or service an amount to cover the amount that the operator is required to pay into a care and maintenance fund or account for the cemetery in respect of the supply or service.

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PART II — CONSUMER PROTECTION

DIVISION A — DISCLOSURE REQUIREMENTS

Definitions

112. Definitions — (1) In this Division,

“**consumer information guide**” means the guide that the registrar prepares and that sets out a consumer’s rights and obligations under the Act;

“**transfer**” means a gift, a bequest or any other transfer made without consideration.

(2) In the French version of this Division,

“**crématorium**” has the same meaning as “crématoire” in the Act.

O. Reg. 81/19, s. 1

Disclosure to Prospective Purchasers

112.1 Disclosure to public by registrar — Upon preparing the consumer information guide, the registrar shall make it available to the public by posting it in a printable form on the website used by the registrar for purposes of communicating information to the public.

O. Reg. 81/19, s. 2

113. Disclosure by operator before contract made — (1) Every operator shall ensure that, before a contract for the sale of licensed supplies or services is entered into, a prospective purchaser has received,

- (a) a copy of the consumer information guide if the registrar has prepared the guide;
- (b) a copy of the operator’s price list;
- (c) an explanation of cancellation rights and refund entitlements that the operator proposes to include in the contract and an explanation of the cancellation rights and refund entitlements under the Act; and
- (d) an offer to provide to the prospective purchaser an explanation of the funding, financing and payment options available to the purchaser, including,
 - (i) an explanation of any penalties or fees that apply in respect of a particular funding, financing or payment option, and
 - (ii) an explanation of how the purchaser’s choice of funding, financing or payment option may affect rights and refunds available upon cancellation;
- (e) an offer to provide to the prospective purchaser a copy of the cemetery or crematorium by-laws, as the case may be;
- (f) a statement that the cemetery is governed by by-laws and that a copy of the by-laws is available from the operator for review;
- (g) information on any restrictions contained in the cemetery by-laws with respect to markers, lot decorations and private structures;

- (h) information as to the resale or transfer of interment or scattering rights by a rights holder, including,
- (i) any restrictions on the resale or transfer of interment or scattering rights, including any prohibition under the cemetery by-laws and any applicable fee;
 - (ii) obligations imposed under the Act or the cemetery by-laws on the parties to a resale or transfer of interment or scattering rights, and
 - (iii) if the resale of interment or scattering rights is prohibited under the cemetery by-laws, an explanation of a rights holder's cancellation rights and refund entitlement under section 47 of the Act;
- (i) information on any restrictions or requirements in the cemetery by-laws as to the purchase of supplies or services from the operator or a person specified by the operator;
 - (j) if consideration and benefits are due to the operator or another person if the purchaser chooses a particular funding, financing or payment option, a statement to that effect; and
 - (k) if consideration and benefits are due to the operator or another person by reason of recommendations made to the purchaser with respect to particular supplies or services that the purchaser will contract for with a third party other than the operator, a statement to that effect.

(2) If an operator maintains or makes use of a website and enters into electronic contracts for the sale of licensed supplies and services through the website, the operator shall, subject to subsection (2.1), provide the items that subsection (1) requires the operator to ensure the prospective purchaser receives by,

- (a) posting the items on the website in a printable form; or
- (b) posting a link to the website where the registrar has posted the consumer information guide in accordance with section 112.1, in the case of the copy of the guide.

(2.1) If the prospective purchaser consents to receiving the copy of the consumer information guide in electronic form under clause (1)(a) and provides the operator with an electronic address for that purpose, the operator shall, for the purpose of that clause, send to that address an electronic copy of the guide or a link to the website where the registrar has posted the guide in accordance with section 112.1.

(2.2) If the prospective purchaser consents to receiving the link described in subsection (2.1) but does not provide the operator with an electronic address for that purpose, the operator shall, for the purpose of clause (1)(a), provide the prospective purchaser with a document in non-electronic form containing the link.

(2.3) If an operator posts items on a website in accordance with subsection (2), the prospective purchaser is deemed to have received the items at the time of posting.

(2.4) If an operator, in accordance with subsection (2.1), sends an item that subsection requires the operator to send, the prospective purchaser is deemed to have received the copy of the consumer information guide at the time the operator sends the item.

(3) Subsections (1) and (2) do not apply to contracts which are exempt from subsections 40(1) and (2) of the Act.

O. Reg. 81/19, s. 3

Disclosure to Purchasers

114. Disclosure if circumstances change — (1) If an operator has entered into a contract for the sale of licensed supplies and services, the operator shall notify the purchaser of any of the following changes in circumstances that occur before the contract is fully performed and that result in the operator not being able to provide the supplies and services specified in the contract at the location specified in the contract:

1. A sale of the assets of the operator's business.
2. The expiry, surrender, revocation or termination of the operator's licence.

(2) An operator shall give a purchaser written notice of a change mentioned in subsection (1) within 30 days of the change occurring.

(3) The notice shall set out the purchaser's cancellation rights under the Act and under the contract.

Disclosure on Resale or Transfer of Interment or Scattering Rights

115. Disclosure on resale of rights — (1) For the purposes of clause 47(2)(a) of the Act, an interment rights holder or scattering rights holder who sells the rights shall provide the following information to the third party purchaser upon selling the rights:

1. The interment or scattering rights certificate endorsed in accordance with subsection (2) by the rights holder selling the rights and by the cemetery operator.
2. A copy of the current cemetery by-laws.
3. In the case of the sale of interment rights, a written statement of the number of lots that have been used in the plot to which the rights relate and the number of lots that remain available.
4. In the case of the sale of scattering rights, a written statement of the number of scatterings that have occurred on the scattering grounds to which the rights relate and of the number of scatterings that remain available.
5. Any other documentation in the rights holder's possession relating to the rights.

(2) The endorsement on the certificate provided to a third party purchaser under paragraph 1 of subsection (1) shall include,

- (a) a statement, signed by the rights holder selling the rights, acknowledging the sale to the third party purchaser;
- (b) the signature of the cemetery operator confirming that the person selling the rights is shown as the rights holder on the records of the cemetery;
- (c) the date on which the rights were sold;
- (d) the name and address of the third party purchaser; and
- (e) a statement of any money owing to the operator in respect of the rights.

(3) After an interment rights holder or scattering rights holder sells the rights to a third party purchaser but before the purchaser exercises those rights, the purchaser shall provide the cemetery operator with,

- (a) the endorsed certificate mentioned in subsection (1); and

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Ont. Reg. 30/11 — General, Part II

- (b) all other information that the cemetery operator specifies and that is necessary in order to issue a new certificate in relation to the rights.
- (4) Upon request, a cemetery operator shall provide additional copies of the cemetery by-laws to a third party purchaser, any other person who has an interest in the rights that were subject to the resale or a representative of such a person.
- (5) A cemetery operator who provides copies of the by-laws may charge the person who is provided with the copies a fee to recover the cost of providing the copies.

O. Reg. 48/15, s. 11

116. Disclosure on transfer of rights other than by resale — If a rights holder transfers interment rights or scattering rights to another person by any means other than by sale,

- (a) the rights holder who transfers the rights shall disclose to the person acquiring the rights the same information, with necessary modifications, as an interment rights holder or scattering rights holder is required to disclose under subsections 115(1) and (2) upon selling the rights; and
- (b) the person who acquires the rights shall provide the cemetery operator with the same documentation and information as a third party purchaser is required to disclose upon a sale of the rights under subsection 115(3).

General

117. Proof of licence — (1) Every operator shall display the operator's licence or a copy of the licence in a place that is,

- (a) near the main entrance to any office, building or other dedicated space maintained by the operator in which a member of the public may enter into a contract for the purchase of licensed supplies or services with the operator; and
 - (b) clearly visible to a person attending at the premises described in clause (a).
- (2) If an operator maintains or makes use of a website and enters into contracts for the sale of licensed supplies or services through the website, the operator shall ensure that the operator's licence number and a description of the type of licence are available in a conspicuous place on the website.
- (3) Individuals licensed under the Act shall carry their licence on their person whenever conducting business relating to the sale of licensed supplies or services and shall produce it upon request.

O. Reg. 48/15, s. 12

118. Disclosure of cemetery and crematorium by-laws — (1) Every operator of a cemetery or crematorium shall provide a copy of the cemetery by-laws or crematorium by-laws, as the case may be, to every person who requests it.

- (2) The operator shall provide, without charge, the copy requested under subsection (1) but if a prospective purchaser requests more than one copy of the cemetery by-laws or crematorium by-laws, the operator shall provide the additional copies, subject to a fee to recover the cost of providing the additional copies.

(3) The operator of a cemetery or crematorium shall make a copy of the by-laws and proposed by-law amendments available for the public to inspect during normal office hours without charge.

O. Reg. 48/15, s. 13

119. Promotional material, etc. — (1) Every operator shall ensure that the following information appears in any sign or written advertisement, brochure, price list, contract, letter-head, pamphlet, circular, or other written material, other than business cards, used by the operator to promote the sale of licensed supplies and services:

1. The operator's name.
2. The operator's business name, if different from the operator's name.
3. The name of any person who directly or indirectly controls the operator's business and who directly or indirectly controls another business that sells licensed supplies or services and that has a business premises within 100 kilometres of the operator's business location, except if the business is a cemetery owned by a municipality or a religious organization.

(2) Despite subsection (1), if more than one sign is posted at an operator's business premises, the information mentioned in that subsection need only appear on one of the signs so long as the sign in question is close to the main entrance of the operator's business premises and is, by its size and placement, the sign with the most prominence at the premises.

(3) The information included on a sign under subsection (1) shall be placed on the sign in a manner that ensures the information is clearly visible to the public.

(4) Every operator shall ensure that the information mentioned in subsection (1) is included in any audio or video material that the operator uses to promote the sale of licensed supplies or services if the material is at least one minute in duration.

(5) An operator who maintains or makes use of a website to promote the sale of licensed supplies or services shall ensure that the information mentioned in subsection (1) is available in a clearly visible place on the website.

(6) When advertising a price, an operator shall include an explanation of all of the conditions of sale that relate to the advertised price and a full description of the supplies and services that are included in the advertised price.

DIVISION B — CONTRACT REQUIREMENTS

General

120. Definitions — In this Division,

“**group insurance**” means group insurance as defined in subsection 171(1) of the *Insurance Act*;

“**recipient**” means a person who is designated in a contract for the provision of a licensed supply or service as the person for whom the service or supply is to be provided.

121. General requirements — (1) This section applies to every contract for the provision of licensed supplies or services.

(2) The contract shall be written in plain language and legibly printed in 10 point or larger type.

(3) The contract shall contain the following:

1. A unique identification number or code which is sequential.
2. The date of the contract.
3. The name, address and telephone number of each party to the contract, the operator's business name, if different, and the operator's licence number.
4. The name and address of each recipient if different from the purchaser for whom licensed supplies or services are to be provided under the contract and the date of birth or age of each recipient, if known.
5. The name of the individual who negotiated the contract on behalf of the operator and, if the individual is licensed under the Act, his or her licence number.
6. A description of all supplies and services to be provided under the contract and the corresponding price, which description is sufficiently detailed to permit identification of the supplies and services, including details of any customization, model and other identification that refer to any specific licensed supplies.
7. A description of when, under what circumstances and in what manner the supplies or services will be provided.
8. If applicable, the address or location of where the supplies or services are to be provided.
9. A statement setting out,
 - i. the consideration and benefits, if any, that is due to the operator or another person by reason of recommendations made to the purchaser with respect to particular supplies or services for which the purchaser will contract with a third party, and
 - ii. the name of every person from whom the operator or another person is entitled to receive the consideration and benefits mentioned in subparagraph i.
10. The total price payable under the contract, including all taxes and any payments to be made by the operator in connection with or under the contract for which the purchaser is required under the contract to reimburse the operator and less any discount allowed to the purchaser.
11. The amount, if any, paid on signing the contract and, if payments under the contract are to be made over time or in instalments, a payment schedule setting out when payments are due, the amount or method of calculating the amount of each payment and the amount or method of calculating the amount of any financing charges and discounts.
12. A statement of the rate of interest or method of calculating the rate of interest and any other amounts and the method of calculating the other amounts charged by the operator on late or deficient payments under the contract and a description of the rights and duties of the purchaser and the operator relating to the cancellation of the contract for non-payment.
13. The terms of any warranties applicable to the supplies or services offered by the operator and information on whether the warranties survive completion of the contract.

14. The undertaking of the operator that if, after making reasonable efforts to obtain a licensed supply or service agreed to under the contract, the operator needs to substitute a different supply or service for the one agreed to in the contract, the operator,

- i. shall inform the purchaser of the proposed substitution, and whether the substitution is of equal or greater value than the original supply or service;
- ii. shall inform the purchaser of the purchaser's cancellation rights and determine if the purchaser wishes to cancel the contract, and
- iii. shall not increase the purchase price as a result of the substitution, if the purchaser does not cancel the contract.

15. The name of any person other than the purchaser who may cancel the contract and the circumstances under which the person may do so.

16. The name of every person other than the purchaser who is entitled to receive a refund or payment under the contract that would otherwise be payable to the purchaser and the circumstances under which the refund or payment is to be made to that person.

17. The manner in which the amount of any refund or payment to the purchaser is to be determined and the reason for and amount of any deduction that may be made in calculating the amount of a refund or payment.

18. All cancellation, refund and return policies of the operator that are in addition to the rights of purchasers under the Act.

(4) If the parties to a contract agree that certain supplies or services that the operator has not contracted to provide will be provided by another supplier, the contract between the parties shall contain,

- (a) a description of the supplies and services the operator will arrange to obtain from other suppliers;
- (b) the acknowledgement of the parties that the operator is acting on behalf of and only as agent for the purchaser in obtaining supplies or services from another supplier;
- (c) an estimate of the anticipated price for the supplies or services;
- (d) the purchaser's acknowledgement and agreement that the purchaser is liable to pay and will pay the supplier directly for the supplies or services at the price in effect at the time the supplies or services are provided; and
- (e) the undertaking of the purchaser to save the operator harmless from any claims by the other supplier for payment for the supplies or services.

(5) The contract shall disclose which, if any, licensed supply to be provided under the contract was previously used.

(6) If the licensed supplies or services are to be provided under the contract as a package, the contract shall set out,

- (a) the package price;
- (b) the price at which each supply and service would be sold if it were sold separately and not as part of the package;
- (c) the total price that would have been payable under the contract using the prices mentioned in clause (b); and
- (d) the amount, if any, saved by the purchaser by purchasing the supplies and services as a package.

- (7) If any licensed supplies to be provided under the contract are to be placed in storage so that the supply is being treated as delivered at the time of storage, the contract shall include,
- (a) the purchaser's agreement to the operator's storing or arranging the storage of the supply;
 - (b) the purchaser's agreement to treat the supply, for the purposes of section 44 of the Act and section 81 of this Regulation, as being provided at the time the supply is placed in storage; and
 - (c) a statement that the purchaser's agreement to place the supply in storage affects the cancellation rights and refund entitlements of the purchaser, including how the rights are affected.

Specific Contracts

122. Exemption — (1) For the purposes of subsection 40(3) of the Act, a contract that meets the following requirements with respect to the supplies and services under the contract is exempt from subsections 40(1) and (2) and sections 41, 42, 43 and 44 of the Act and sections 121, 123 and 128 of this Regulation:

1. A licence issued under the Act is not required in order to sell the supplies and services.
2. The supplies and services are purchased separately from licensed supplies or services.
3. The total purchase price does not exceed \$250.
4. The purchaser is taking immediate delivery of the supply or receiving the service immediately.
5. If the purchase is a supply, the supply will not be stored by the operator.

(2) No operator contracting for the provision of a supply or service shall enter into separate contracts, rather than a single contract, if the purpose of entering into separate contracts is to keep the value of any contract at less than \$250 so this section applies to the contract.

123. If payment precedes provision and is held in trust — (1) This section applies to every contract for the provision of licensed supplies or services if money is paid under the contract before the licensed supplies or services are provided and the money is required to be held in trust.

(2) The contract shall contain the following:

1. Details concerning the holding, investment and payment out of the money in accordance with the regulations, including the manner in which the funds will be held in trust.
2. A statement setting out,
 - i. whether the operator or another person will receive, directly or indirectly, any consideration or benefit related to arrangements for holding money paid under the contract in trust as required under section 52 of the Act, and
 - ii. the name of every person, if any, from whom the operator or another person may be entitled to receive the consideration or benefit mentioned in subparagraph i.

3. If the money is held in an individual trust account under the regulations, a description of the purchaser's right to request a statement once in each 12-month period from the operator that sets out,
 - i. the current value of the individual trust account as of the end of the prior month,
 - ii. the types of investments held as of that day, and
 - iii. the name of the eligible depositary of any account in which trust money in the individual trust account is deposited.
4. If the money is held in a pooled trust fund or account under the regulations, a description of the purchaser's right to request a statement from the operator, once in each 12-month period, setting out,
 - i. the current value of the purchaser's money as of the end of the month before the request, and
 - ii. the name of the trustee.
5. Information concerning the manner in which the operator will determine the prices for the licensed supplies and services applicable at the time they are provided.
6. A description of the purchaser's right to receive on completion of the contract any amount held in trust in excess of all amounts paid or payable to the operator and any other suppliers and a description of the manner in which the operator will calculate the amount to be paid to the purchaser or other person entitled under the contract to receive the payment.

124. Contract for future provision funded by insurance or annuity — (1) If the price payable under a contract for the provision of licensed supplies or services is to be funded in whole or in part out of the proceeds of an insurance or annuity contract including group insurance, the contract for the licensed supplies or services shall contain,

- (a) the name, address and telephone number, if any, of the insurer or the issuer of the annuity contract and the number of the insurance or annuity contract if known;
- (b) a statement disclosing any formal or informal arrangements the operator or another person affiliated or associated with the operator has with any agent, insurer or issuer of annuity contracts relating to the recommendation of the agent, insurer or issuer to purchasers and potential purchasers of licensed supplies or services;
- (c) a statement disclosing whether the operator or another person affiliated or associated with the operator will receive, directly or indirectly, any consideration or benefit from any person as a result of the purchaser applying for or purchasing insurance or an annuity in connection with the purchaser's contract with the operator;
- (d) the name of the beneficiary under the insurance or annuity contract, if named, and, if applicable, details of any assignment to the operator of the proceeds under the insurance or annuity contract;
- (e) a description of the licensed supplies and services to be paid for out of the proceeds if not all of the supplies and services under the contract are to be paid for out of the proceeds;
- (f) the acknowledgement by the operator and the purchaser that once the operator is named as a beneficiary or assigned the right to designate the beneficiary under the insurance or annuity contract or the beneficiary's rights to proceeds are assigned to the operator, money is considered, for the purposes of section 38 of the Act, to be paid under the contract for the provision of the licensed supplies or services in an amount

equal to the amount of the proceeds under the insurance or annuity contract that will be paid directly or indirectly to the operator;

(g) a statement of,

- (i) what will occur if the insurance or annuity contract application is denied,
- (ii) what will occur if the insurance or annuity contract is not paid for in full at the time the contract for licensed supplies and services is to be fulfilled,
- (iii) what will occur if the contract for licensed supplies and services is cancelled and the effect the cancellation will have on the insurance or annuity contract,
- (iv) what will occur if the insurance or annuity contract is cancelled and the effect the cancellation will have on the contract for licensed supplies and services that the insurance or annuity proceeds were intended to fund, and
- (v) what will occur if the operator was to be the beneficiary or was to have been assigned the right to designate a beneficiary under the insurance or annuity contract and at the time the contract for licensed supplies and services is to be fulfilled, the beneficiary who was named or designated at the time the contract was made has changed;

(h) information concerning the manner in which the operator will determine the prices for the licensed supplies and services applicable at the time they are provided; and

(i) a description of the purchaser's right to receive, on completion of the contract, any amount held by the operator in excess of all amounts paid or payable to the operator and a description of the manner in which the operator will calculate the amount to be paid to the purchaser or other person entitled under the contract to receive the payment.

(2) The operator shall attach the following to the contract if available:

1. The insurance policy and insurance or annuity contract.
2. The enrolment or other documents that confirm the purchase of the insurance or annuity.
3. The document designating the operator as the beneficiary of the insurance or annuity or assigning the proceeds of the insurance or annuity to the operator.

O. Reg. 48/15, s. 14

125. Contract for cremation or related services — (1) If a contract for the provision of licensed supplies or services provides for a cremation, the contract shall include,

(a) a statement that a dead human body shall not be cremated if,

- (i) the body has a pacemaker,
- (ii) the body has a radioactive implant, except that a body that has a radioactive implant can be cremated if,
 - (A) it is at least two years after the day the body received the implant, or
 - (B) a lesser time has passed since the body received the implant, and it is safe to cremate the body, or
- (iii) the body is in a casket that consists of or has on or in it material made of or containing non-flammable or hazardous material or chlorinated or fibre-reinforced plastic, other than incidental metal used in the construction of the casket or accompanying material; and

(b) a statement that a dead human body shall not be cremated unless a certificate issued by the coroner authorizing the cremation has been received by the operator.

(2) If a contract for the provision of licensed supplies or services provides for a cremation or otherwise provides for the operator to come into possession of cremated human remains, the contract shall include,

- (a) the requirement that, if the operator so requests, the purchaser shall pay a refundable deposit that does not exceed the amount specified in the Minister's order on fees and other charges made under the Act;
- (b) a statement that if cremated remains are not claimed on or before the first anniversary of the cremation, the operator may inter the cremated remains in a cemetery, including in a common lot for which the cemetery is the interment rights holder, and is entitled to retain the amount of any deposit described in clause (a) that was paid; and
- (c) a statement that if the cremated remains are claimed before they are interred, the operator shall promptly return any deposit described in clause (a) that was paid.

O. Reg. 412/19, s. 2

126. Contract for interment or scattering rights — A contract for the provision of licensed supplies or services that includes the sale of interment or scattering rights shall include,

- (a) the name and address of the holder or intended holder of the rights;
- (b) the price for and a description of the interment rights or scattering rights that the purchaser has indicated being interested in purchasing, including,
 - (i) the location and dimension of each lot or scattering ground,
 - (ii) the number and type of interments or scatterings permitted in each lot or scattering ground with respect to the particular interment or scattering rights being purchased,
 - (iii) in the case of interment rights relating to a private mausoleum or columbarium, the number of niches, crypts or compartments, and
 - (iv) any limitations or restrictions on exercising the interment or scattering rights;
- (c) information relating to when and under what circumstances the rights certificate can be expected to be provided to the purchaser, if the certificate is not provided at the time the contract is made;
- (d) a requirement that payment under the contract shall be applied first to the purchase of the rights before being applied to the purchase of any other supplies or services under the contract;
- (e) the amount of the care and maintenance contribution for the lot or scattering ground;
- (f) information on any restrictions contained in the cemetery by-laws with respect to markers, lot decorations and private structures;
- (g) information as to the resale or transfer of interment or scattering rights by a rights holder, including,
 - (i) any restrictions on the resale or transfer of interment or scattering rights, including any prohibition under the cemetery by-laws and any applicable fee, and
 - (ii) obligations imposed under the Act or the cemetery by-laws on the parties to a resale or transfer of interment or scattering rights; and
- (h) information on any restrictions or requirements in the cemetery by-laws as to the purchase of supplies or services from the operator or a person specified by the operator.

127. Delivery of contract — (1) The operator under a contract for the provision of licensed supplies or services shall ensure that the purchaser receives a copy of the contract as signed by the purchaser at the time the purchaser signs it.

(2) For the purposes of clause 40(1)(d) of the Act, the prescribed manner of delivering a copy of a contract for the provision of licensed supplies or services to a purchaser after it is signed by all parties is, as soon as possible,

- (a) to deliver it personally to the purchaser;
- (b) to send it to the purchaser by registered mail; or
- (c) to send it to the purchaser by another manner if the operator can prove receipt of it by the purchaser.

128. Additional requirements for enforceability of contracts — For the purposes of clause 40(1)(h) of the Act, a contract for the provision of licensed supplies or services is not enforceable by an operator if any of the following requirements are not satisfied:

1. The contract was signed by the individual who negotiated the contract on behalf of the operator.
2. If the operator entered into the contract with the purchaser over the internet, the contract was formed by text-based communications.
3. If the operator no longer provides a supply or service that the operator agreed to provide under the contract, the operator has made reasonable efforts to provide the supply or service and, if unable to do so, has arranged to provide an appropriate refund of the sum of the initial amount paid for the supply or service and any income earned on the initial amount.
4. If the operator substitutes a different supply or service for the licensed supply or service agreed to under the contract, the operator,
 - i. has informed the purchaser, or the person entitled under the contract to cancel the contract, of the substitution and whether or not the substitution is of equal or greater value than the original supply,
 - ii. has provided or arranged for the provision of a substituted supply or service of comparable quality and value, and
 - iii. has not charged any increase in price as a result of the substitution.

Prohibited Practices

129. On default — (1) No operator shall take any action to repossess a licensed supply or interment or scattering rights on a default in payment for the supply or rights if at least two-thirds of the purchase price for the supply or rights has been paid to the operator, unless a judge of the Superior Court of Justice grants leave to do so.

(2) Upon an application for leave under subsection (1), the court may, in its discretion, grant leave to the operator, refuse leave or grant leave upon the terms and conditions that the court considers advisable.

(3) Any provision in any agreement for payment to precede provision of supplies or services or in any security agreement incidental to such an agreement under which the operator may acquire title to, possession of or any rights in any goods of the purchaser, other than the goods passing under the agreement, is not enforceable.

130. Content of contract — No operator shall include in any contract for the provision of any licensed supply or service a provision that,

- (a) conflicts with the Act or the regulations;
- (b) entitles the operator to unilaterally amend the contract, except with respect to the provision of substituted supplies or services in accordance with paragraph 4 of section 128; or
- (c) permits the contract to be amended in a manner other than by text-based communications.

131. Operator's policies — No operator shall have a cancellation, refund or return policy that would deprive a person of any of the person's rights under the Act or the regulations relating to the purchase of licensed supplies or services or that would effectively penalize the person for exercising any of those rights.

Insurance or Annuity Contracts Relating to the Sale of Licensed Supplies or Services

132. Prohibited practices — (1) No licensee shall sell, lend or permit the use of an operator's business name, logo, letterhead or other identifier to a person who is soliciting the making of or negotiating the terms of an annuity or insurance contract with a vulnerable person mentioned in subsection 29(2) of the Act or the terms of enrolling a vulnerable person mentioned in that subsection in group insurance.

(2) Section 29 of the Act applies with necessary modifications to a person, other than a person who is subject to section 17.1 of Ontario Regulation 347/04 (*Agents*) made under the *Insurance Act*, in respect of the solicitation and negotiation of an agreement for the sale of an annuity or insurance contract or enrolment in group insurance if,

- (a) the proceeds of the annuity, insurance contract or group insurance, as the case may be, are intended to be used to fund, directly or indirectly, in whole or in part the purchase of licensed supplies or services; and
- (b) the annuity, insurance contract or group insurance, as the case may be, names an operator as beneficiary of the proceeds or assigns to an operator the right to designate the beneficiary of the proceeds.

(3) No licensee shall accept any payment for an annuity, insurance contract or group insurance that is in cash or made payable to the licensee.

(4) Subsection (3) does not apply if the licensee receives the payment in the licensee's capacity as a person who is subject to section 17.1 of Ontario Regulation 347/04 (*Agents*) made under the *Insurance Act*.

(5) No operator shall agree to be named as a beneficiary or to have the right to designate the beneficiary assigned under an annuity, insurance contract or group insurance or to have the beneficiary's rights to proceeds under an annuity, insurance contract or group insurance assigned to the operator if the proceeds are to be used to fund the purchase of licensed supplies or services, unless the operator and the person who names the operator as the beneficiary or assignee have entered into a contract for the provision of the supplies or services.

133. Excess insurance or annuity proceeds — An operator shall make a refund in accordance with the Act and the regulations if the operator receives insurance or annuity proceeds to fund the purchase of licensed supplies or services and,

- (a) the amount received exceeds the amount payable to the operator and any other suppliers for the provision of the supplies or services to be funded out of the proceeds; or
- (b) the operator provides no licensed supplies or services in consideration for the proceeds.

DIVISION C — MISCELLANEOUS CONSUMER PROTECTION MATTERS

134. Interpretation — (1) In this Division,

“customized supply” means a licensed supply that is customized to the purchaser’s specifications within the meaning of subsection (2);

“recipient” has the same meaning as in Division B.

(2) For the purposes of subsection 44(6) of the Act and the definition of “customized supply” in subsection (1), a supply is customized to the purchaser’s specifications if,

- (a) the supply is produced on the basis of instructions or specifications provided by or on behalf of the purchaser;
- (b) the supply is personalized or has another unique characteristic, with the result that the operator is prevented from readily reselling or reusing it in the ordinary course of business; and
- (c) removing or undoing the personalization or unique characteristic would affect the structural integrity or aesthetic characteristics of the supply or would involve extraordinary expense.

135. Prohibitions against soliciting — A long-term care home, as defined in the *Long-Term Care Homes Act, 2007*, is prescribed for the purposes of subsection 29(2) of the Act.

O. Reg. 30/11, s. 231

136. Storage of supplies in advance of use — (1) For the purposes of section 39 of the Act, an operator who sells a licensed supply in advance of the use of the supply may agree to store the supply, or arrange for the supply to be stored by another person, if the supply is one that is listed in subsection (2) and all of the conditions set out in subsection (3) have been met.

(2) Subsection (1) applies to the following licensed supplies:

1. A casket.
2. An urn.
3. A marker.
4. An outer burial container, including a vault.
5. A grave liner.

(3) The following are the conditions mentioned in subsection (1):

1. The supply is in a substantially completed condition.
2. The purchaser has made full payment for the supply.

3. The operator knows or ought to know that the supply is made of materials designed to withstand prolonged storage without any adverse effect on the structural integrity or aesthetic characteristics of the supply.
 4. The supply is to be stored in a way that does not give rise to a lien on the supply.
 5. In the contract for the provision of the supply, the purchaser has agreed,
 - i. to the operator storing or arranging the storage of the supply, and
 - ii. to treat the supply, for the purposes of section 44 of the Act and section 81 of this Regulation, as being provided at the time the supply is placed in storage.
 6. The contract does not require that the purchaser be responsible for the costs relating to the storage or insuring of the supply.
- (4) An operator who, under section 39 of the Act, agrees to store a supply, or arrange for a supply to be stored by another person, shall not store the supply, or have it stored by another person, within the 30 days after the day the contract for the provision of the supply is made.
- (5) An operator who, under section 39 of the Act, agrees to store a supply, or arrange for a supply to be stored by another person, shall ensure that,
- (a) the supply is and continues to be stored in a manner that will not adversely affect the structural integrity or aesthetic characteristics of the supply; and
 - (b) adequate insurance is purchased and maintained against loss of or damage to the supply while in storage.
- (6) An operator's duties under subsection (5) end at the earlier of,
- (a) the time the supply is removed from storage and provided pursuant to a request under the contract for provision of the supply; and
 - (b) the time specified in the contract.

137. Cancellation of unenforceable contract, operator's obligations — (1) Within 30 days after the day an operator receives a notice of cancellation under subsection 41(1) of the Act for a contract that is not enforceable by the operator under subsection 40(1) of the Act, the operator shall, in addition to refunding to the purchaser all money received by the operator under the contract as required by subsection 41(2) of the Act, pay to the purchaser the greater of the following amounts:

1. The income earned on the money.
 2. The income that would have been earned on the money had it been deposited as required under the Act and the regulations.
- (2) An operator who has delivered or performed some or all of the licensed supplies and services provided for under a contract before the purchaser cancels the contract under subsection 41(1) of the Act is exempt from subsections 41(2) and (3) of the Act and this section in respect of the licensed supplies and services that have been delivered or performed, if,
- (a) the purchaser does not comply with subsections 41(4) and (5) of the Act, read with section 138 of this Regulation;
 - (b) the grounds on which the contract is not enforceable by the operator under subsection 40(1) of the Act have not caused any disadvantage to the purchaser; or
 - (c) it would otherwise be inequitable for the operator to be subject to subsections 41(2) and (3) of the Act in respect of the licensed supplies and services that have been delivered or performed.

(3) If an operator receives written notice of cancellation from a purchaser under subsection 41(1) of the Act after having provided to the purchaser some or all of the licensed supplies under the contract, the operator shall give the purchaser forthwith a written notice setting out,

- (a) the purchaser's obligation under subsection 41(5) of the Act and subsection 138(3) of this Regulation to take reasonable care of the supplies; and
- (b) the effect, set out in subsection (2), that the purchaser's failure to comply with the obligation mentioned in clause (a) will have on the purchaser's right to a refund under subsection 41(2) of the Act.

138. Cancellation of unenforceable contract, purchaser's obligations — **(1)** For the purposes of subsection 41(4) of the Act, if a purchaser cancels a contract under subsection 41(1) of the Act after licensed supplies have been delivered to the purchaser under the contract,

- (a) subject to clause (b), the purchaser shall permit the supplies to be repossessed by the operator or return the supplies to the operator, unless,
 - (i) the operator fails to pay the costs of the repossession or return,
 - (ii) the supplies contain human remains, whether interred or not, or
 - (iii) the supplies are perishable, consumable, have been distributed or cannot be reused;
- (b) if, under the contract, the purchaser took possession of the supplies from the operator instead of the operator sending the supplies to the purchaser, the purchaser shall return the supplies to the operator at the purchaser's expense and the operator shall not be required to repossess them.

(2) The purchaser shall perform the purchaser's obligations under subsection 41(4) of the Act, read subject to subsection (1) of this section,

- (a) within 30 days after the day the purchaser gives the operator written notice of cancellation of the contract; and
- (b) during the operator's normal business hours.

(3) For the purposes of subsection 41(5) of the Act, if a purchaser cancels a contract under subsection 41(1) of the Act after licensed supplies have been delivered to the purchaser under the contract, the purchaser shall take reasonable care of the supplies, other than supplies mentioned in subclause (1)(a)(ii) or (iii), for the period that begins at the time the purchaser gives the operator written notice of cancellation of the contract and ends at the earlier of,

- (a) the time the supplies are returned to the operator; and
- (b) in the case of licensed supplies other than supplies mentioned in clause (1)(b),
 - (i) the time the supplies are repossessed by the operator, or
 - (ii) the end of the 30th day after the day the purchaser gives the operator written notice of cancellation of the contract, if the purchaser has provided the operator with a reasonable opportunity to repossess the supplies and the supplies have not been repossessed.

139. Delivery within 30 days — **(1)** For the purposes of subsection 43(1) of the Act, a purchaser under a contract for the provision of licensed supplies or services may request that

the operator provide, within 30 days after the day the contract is made, any of the supplies or services if,

- (a) they are required for the disposition of human remains within the 30-day period;
- (b) they are required for the co-ordination and provision of rites or ceremonies in relation to human remains within the 30-day period; or
- (c) the contract is a contract to which subsection 122(1) applies.

(2) If, under section 42 of the Act, a purchaser cancels a contract for the provision of a customized supply before the provision of the supply but after requesting, for the purposes of subsection 43(1) of the Act, the operator to provide the supply within 30 days after the day the contract is made, the activities of the operator in relation to the supply before the cancellation of the contract are deemed to be services that the operator has provided to the purchaser and the operator may deduct the expenses incurred for them from the refund to the purchaser paid under subsection 43(4) of the Act.

(3) When making the refund mentioned in subsection (2), the operator shall give the purchaser orally or, if requested, in writing, an itemized list of all expenses deducted under that subsection, including amounts deducted for work done by the operator and amounts deducted for payments made or debts incurred by the operator to third parties, and the list shall set out, for each expense, its purpose, and its amount.

(4) A purchaser may withdraw a request described in subsection (1) by giving the operator a written notice of the withdrawal that meets the following requirements:

1. It shall be signed and dated by the purchaser.
2. It shall set out,
 - i. the date of the contract,
 - ii. the unique identification number or code of the contract, and
 - iii. a description of the licensed supplies and services for which the purchaser is withdrawing the request, unless the purchaser is withdrawing the request for all of the licensed supplies and services that the purchaser requested the operator to provide.

(5) An operator who is a party to a contract for the provision of interment rights or scattering rights is exempt from section 43 of the Act with respect to the provision of those rights.

140. Cancellation after cooling-off period — (1) If a purchaser cancels a contract under subsection 44(1) of the Act, the amount that the operator shall refund to the purchaser under subsection 44(4) of the Act, in addition to all money received by the operator under the contract, is the greater of the following amounts:

1. The income earned on the money.
 2. The income that would have been earned on the money had it been deposited as required under the Act and the regulations.
- (2) If a purchaser cancels a contract under subsection 44(1) of the Act, in calculating the refund to be made to the purchaser, the operator may, in addition to deducting under clause 44(4)(b) of the Act the value of any supplies and services that have been provided, deduct under clause 44(4)(a) of the Act the lesser of the following amounts less the amount that the

operator has retained under subsection 78(1) as not being prepaid trust money, if the balance is positive:

1. 10 per cent of the sum of the money received by the operator under the contract and the additional amounts that the operator is required to refund to the purchaser as determined under subsection (1).
2. \$350.

(3) If a purchaser cancels a contract under subsection 44(1) of the Act for the provision of a customized supply, the amount of the refund to which the purchaser is entitled with respect to that supply under subsection 44(6) of the Act is,

- (a) nil, if the customization of the supply has been completed at the time the contract is cancelled; or
- (b) if the customization of the supply has not been completed at the time the contract is cancelled, the amount of the refund as determined under subsection 44(4) of the Act less the amount of the expenses incurred by the operator in relation to the supply before the cancellation of the contract.

(4) When making the refund mentioned in clause (3)(b), the operator shall give the purchaser orally or, if requested, in writing, an itemized list of all expenses deducted under that clause, including amounts deducted for work done by the operator and amounts deducted for payments made or debts incurred by the operator to third parties, and the list shall set out, for each expense, its purpose, and its amount.

141. Deemed cancellation under s. 44 of the Act — **(1)** A purchaser under a contract for the provision of licensed supplies or services, other than interment rights or scattering rights, shall be deemed to have cancelled the contract under section 44 of the Act if,

- (a) the operator has reasonable grounds to believe that the recipient under the contract is or, if he or she were alive, would be at least 120 years old;
- (b) none, or only part, of the licensed supplies and services under the contract have been provided, and no request has been made to the operator to provide the licensed supplies or services that have not yet been provided; and
- (c) the operator is unable to locate the recipient or the purchaser after making reasonable efforts to do so.

(2) Subsection (1) does not apply in the circumstances in which section 49 of the Act applies.

142. Cancellation where cemetery prohibits resale — **(1)** If an interment rights holder or a scattering rights holder cancels a contract under subsection 47(5) of the Act, the amount that the operator may deduct under subsection 47(6) of the Act in calculating the payment to be made to the rights holder under that subsection is the amount of the operator's contribution to the cemetery's care and maintenance fund under section 87 of this Regulation in connection with the sale of such rights under the contract being cancelled.

(2) For the purposes of clause 47(7)(b) of the Act, if the price for the interment rights or scattering rights is not set out on the operator's price list, their market value mentioned in

paragraph 2 of subsection 47(6) of the Act shall be deemed to be equal to the market value of interment rights or scattering rights, as the case may be, with respect to a lot that,

- (a) is equivalent to or better than the lot in respect of which the rights holder purchased the rights under the contract; and
- (b) is located in the cemetery to which the cancelled contract relates or, if there is no equivalent or better lot in the cemetery to which the cancelled contract relates, is located in another cemetery that,
 - (i) is in the same geographic location as the cemetery to which the cancelled contract relates, and
 - (ii) is similar to the cemetery to which the cancelled contract relates in terms of its size, its religious or ethnic affiliation and whether it is for profit or not for profit.

143. Reimbursement order after resale of abandoned rights — For the purposes of subclause 50(2)(a)(iii) of the Act, the prescribed amount is the purchase price charged by the operator on the resale of the interment rights or scattering rights, less the amount of the operator's contribution to the cemetery's care and maintenance fund under section 87 of this Regulation in connection with the resale of the interment rights or scattering rights.

144. Transfer of rights to cancel and receive refund — (1) A purchaser under a contract for the provision of a licensed supply or service may, in the contract, transfer the purchaser's rights to cancel the contract and receive a refund under sections 41, 42, 43 and 44 of the Act to,

- (a) one person designated in the contract; or
- (b) more than one person designated in the contract, as long as not more than one person is designated for any set of circumstances or any point in time.

(2) Subject to subsection (1), the following rules apply to contracts to which section 123 applies:

1. Before the death of the recipient, the purchaser or a person designated in the contract by the purchaser may cancel the contract at any time and receive the refund under sections 41, 42, 43 and 44 of the Act.
 2. Before the death of the recipient but after the death of the purchaser, the recipient or the recipient's personal representative may cancel the contract at any time, and the recipient is entitled to receive the refund under sections 41, 42, 43 and 44 of the Act.
 3. After the death of the recipient, the recipient's personal representative may cancel the contract at any time, and the recipient is entitled to receive the refund under sections 41, 42, 43 and 44 of the Act.
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PART IV — COMPENSATION FUND

Definitions

192. Definitions — In this Part,

“approved securities” means investments authorized under sections 26 and 27 of the *Trustee Act*;

“Authority” means the administrative authority designated under the *Safety and Consumer Statutes Administration Act, 1996* for the purpose of administering this section;

“Board” [Repealed O. Reg. 288/15, s. 2(2).]

“Committee” means the Compensation Fund Committee established by the Authority;

“Fund” means the compensation fund mentioned in section 193;

“participant” means an operator of a funeral establishment or an operator of a transfer service;

“Trustee” includes any successor Trustee appointed under subsection 207(4).

O. Reg. 288/15, s. 2

Compensation Fund

[Heading amended O. Reg. 288/15, s. 3.]

193. Compensation fund — The compensation fund known as the Funeral Services Compensation Fund in English and Fonds d’indemnisation des services funéraires in French is the compensation fund for the purposes of subsection 61(1) of the Act.

O. Reg. 48/15, s. 17; 288/15, s. 3

Committee

194. Management of Fund — Except for the duties of the Trustee and the Authority under this Part, the Committee shall manage the affairs of the Fund.

O. Reg. 288/15, s. 4, item 1

195. Disqualification of Committee members — A member of the Committee is disqualified from participating and shall not participate in any deliberation or decision of the Committee with respect to any claim against a participant if the member is the participant or an officer or director of the participant or has a financial interest in the participant.

196. Employees and contractors — (1) The Committee may employ or retain or authorize the employment or retention of the counsel, accountants, appraisers or other experts or advisors that it reasonably requires to assist in administering the Fund.

(2) The Committee may act and shall be protected if it acts in good faith on the opinion or advice of or information from any of the persons employed or retained under subsection (1) and shall not be responsible for any misconduct on the part of any of them.

(3) The Committee may employ or authorize the employment of those persons that it reasonably requires to assist in the efficient consideration and resolution of claims and operation of the Fund.

(4) All fees, costs and expenses incurred by the Committee in employing or retaining persons under this section shall be paid by the Trustee and shall be deducted first from the income of the Fund and, if there is any deficiency, from the capital of the Fund.

Fund

197. Location of Fund — The Fund shall be located in Ontario at all times and the Trustee shall hold the capital and income comprising the Fund at all times in Ontario.

198. Capital of Fund — (1) The capital of the Fund shall be composed of the payments that the participants are required to contribute under this section and all money received from others.

(2) Every operator of a funeral establishment and every transfer service operator shall participate in the Fund.

(3) Each participant shall make an initial payment of \$250 into the Fund at the time the participant applies for a licence.

(4) If the book value of the Fund is less or is anticipated to be less than \$1,000,000 by reason of any proposed payments by the Fund to one or more claimants, the Committee may require each participant to pay the amount that the Committee determines is necessary to bring the level of the Fund up to at least \$1,000,000, to be paid within the time period and in relation to the time period that the Committee determines.

199. Administration of Fund — (1) All money received from participants or others and held in the Fund and all income on the money, including any rights or benefits accruing from the investment of the money, shall constitute the Fund to be dealt with and distributed in accordance with this Part.

(2) The Trustee shall hold the Fund in trust for the benefit of the holders of claims that the Committee approves under section 202.

(3) No payment shall be made out of the Fund to satisfy or settle any claim or judgment or other court order resulting from the fraud, negligence or wilful misconduct of the Trustee.

(4) The Committee shall maintain a record of payments or other amounts received from, on behalf of or in respect of each participant and shall credit the payments and amounts to one or more participants.

(5) The Committee's decision in respect of crediting under subsection (4) is final.

(6) No credit of a payment or amount to the Fund with respect to a participant gives the participant any right to that payment or amount or any part of it.

(7) The Trustee shall keep the Fund invested in approved securities.

(8) The Trustee shall collect and receive all income from the Fund.

(9) The Trustee shall maintain books and records that clearly identify all approved securities and property howsoever held by it that are part of the Fund.

(10) Records of all transactions mentioned in this section with respect to the administration of the Fund shall be based on a fiscal year ending March 31.

O. Reg. 122/16, s. 1

200. Financial statements — (1) The Committee shall deliver a copy of the financial statements of the Fund certified by the Committee to each member of the Authority and to

S. 200(1)

Ont. Reg. 30/11 — General

the registrar within 30 days after the end of each fiscal year or as soon after that as is reasonably practicable.

(2) The financial statements of the Fund shall include, where applicable, at least the following information:

1. The amount owing under section 198 by any participant to the Fund that has not been paid when due.
2. The amount of all receipts and the sources of them.
3. The amount of all payments on behalf of participants.
4. A statement of all receipts and disbursements for claims in respect of each participant who failed to meet any of the participant's obligations or liabilities under section 198 during the fiscal period to which the statements relate.
5. A statement of all credits and debits to the capital of the Fund.
6. A statement of all fees, costs, charges and expenses paid from the income or capital of the Fund or owing by the Fund for expenses incurred during the fiscal period to which the statements relate.
7. All other information with respect to the Fund, in addition to that described in paragraphs 1 to 6, that the Authority or the registrar requires.

(3) The Trustee shall provide a quarterly statement to the Committee of the assets of the Fund at book value and fair market value and a statement of any acquisitions and dispositions of investments during the quarter to which the statement relates.

(4) The Authority shall ensure that the financial statements of the Fund are available to any participant for inspection upon request during the normal office hours of the Authority.

O. Reg. 288/15, s. 4, items 2-4

201. Reporting — (1) The Committee shall, when required by the Minister, provide to the Minister the information, books, records or documents respecting the affairs of the Fund that the Minister specifies.

(2) If the Authority considers it advisable, it may direct that the affairs of the Fund be audited.

(3) The Committee shall assist the Authority in performing an audit mentioned in subsection (2) and shall provide all books and records and other information that are required in that connection.

O. Reg. 288/15, s. 4, items 5, 6

Claims against Fund

202. Claims against Fund — (1) Subject to subsection (8), a person is entitled to payment of compensation from the Fund if the person makes a claim in accordance with this section and satisfies the Committee that the person has suffered a financial loss and has not otherwise been fully compensated because,

- (a) a prepaid contract the person had with a participant, who was an operator licensed under the *Funeral Directors and Establishments Act*, was cancelled and all the funds and accrued income that were owing to the person were not paid in accordance with section 34 of that Act;

- (b) a prepaid contract the person had with a participant, who was an operator licensed under the *Funeral Directors and Establishments Act*, was not fulfilled and as a result it was necessary for the person to obtain funeral services, funeral supplies or transfer services other than under the prepaid contract;
 - (c) a payment was not made to the person by a participant, who was an operator licensed under the *Funeral Directors and Establishments Act*, in accordance with section 35 of that Act;
 - (d) a refund was not made to the person by a participant, who was an operator licensed under the *Funeral Directors and Establishments Act*, in accordance with section 36 of that Act;
 - (e) a contract with a participant was cancelled and all the funds and accrued income that were owing to the person were not paid in accordance with Part V of the *Funeral, Burial and Cremation Services Act, 2002*;
 - (f) a contract with a participant was not fulfilled and as a result it was necessary for the person to obtain supplies or services other than under the contract; or
 - (g) a refund was not made to the person by a participant in accordance with Part V of the *Funeral, Burial and Cremation Services Act, 2002*.
- (2) References in subsection (1) to the *Funeral Directors and Establishments Act* are references to that Act as it read on the day before this Part comes into force.
- (3) A claimant may make a claim under this section within six months of the date that the person could have reasonably been expected to have known that payment was due.
- (4) A claimant may make a claim by giving written notice of the claim to the registrar who shall give a copy of the claim to the Committee.
- (5) As a condition precedent to making payment of a claim or any part of it, the Committee may require the delivery and execution of those documents that the Committee, in its discretion, considers necessary, including documents that are necessary for transferring to the Committee the interest of the claimant in the claim so as to subrogate the Committee to the position of the claimant against the participant.
- (6) Despite subsection (3), if circumstances warrant it, the Committee may grant an extension of time for making a claim against the Fund and the decision of the Committee as to any extension is final and not subject to review.
- (7) The Committee shall determine the eligibility and the amount of any claim made by a claimant and shall direct the Trustee to pay any claim or any part of it that meets the requirements of this section and, subject to section 203, the decision of the Committee is final.
- (8) No amount shall be paid out of the Fund until the claimant assigns to the Fund any judgment or other right of any kind that the claimant has against the participant or any other person in respect of the claimant's claim.
- (9) Despite subsection (7) and subsection 203(6), the Trustee shall not pay out of the Fund more than \$40,000, exclusive of costs, to each claimant in respect of each transaction for one or more claims against any one participant.
- (10) For the purposes of subsection (8), a partnership and the members of it are deemed to be one participant and a corporation and the officers of it are deemed to be one participant.

S. 202(11)

Ont. Reg. 30/11 — General

(11) If an amount is recovered from any source in partial satisfaction of the total claim against a participant, the maximum amount authorized by subsection (8) is reduced by the amount so recovered.

(12) If it appears to the Authority or the Committee that a person will be entitled to claim against the Fund, and that the person has been placed in circumstances where immediate funds or service are necessary to alleviate undue inconvenience of the person, the Committee, with the concurrence of the Authority, may direct the Trustee to pay out of the Fund an amount sufficient to alleviate the immediate inconvenience.

(13) If the Committee approves a claim, the Trustee shall pay the claim out of the Fund to the persons entitled.

(14) If the Trustee makes a payment out of the Fund, the Committee is subrogated, for the amount of the payment, to all rights and remedies to which the person receiving the payment is entitled in respect of the claim for which the payment was made, including rights and remedies that the person has,

- (a) as judgment creditor or execution creditor in respect of any judgment that has been assigned under subsection (8) against the participant or any other person; or
- (b) in the event of the death, insolvency, bankruptcy or other disability of the participant or other person, against the personal representative or other person administering the estate of the participant.

O. Reg. 288/15, s. 4, item 7

203. Hearing by Tribunal and decision — (1) If the Committee determines that a claim or any part of it made under section 202 is not a proper claim, it shall serve notice of its decision, together with written reasons, on the claimant.

(2) The notice of the Committee's decision shall inform the claimant that the claimant is entitled to a hearing by the Tribunal if the claimant mails or delivers to the registrar and the Tribunal within 15 days after the notice is served on the claimant, notice in writing requiring a hearing.

(3) If a claimant who is served with a notice of the Committee's decision does not request a hearing, the decision of the Committee is final.

(4) If a claimant requests a hearing before the Tribunal with respect to a determination of the Committee, the Tribunal shall appoint a time for and hold the hearing.

(5) The claimant who requests the hearing and such other persons as the Tribunal may specify are parties to the hearing.

(6) After holding the hearing, the Tribunal may confirm the determination of the Committee or may set aside the determination of the Committee with respect to all or any part of a claim and direct the Trustee to pay the amount determined by the Tribunal.

(7) The Committee shall report to the registrar with respect to the determination of each claim.

Termination of Participation in the Fund

204. Voluntary cancellation of licence — A participant whose licence the registrar cancels under section 21 of the Act shall be deemed to be no longer participating in the Fund on the day that the registrar cancels the licence.

205. Default of participant — (1) If a participant fails to meet an obligation or liability under section 198, the Committee shall forward notice in writing of the failure to the participant and the registrar.

(2) A participant who receives a notice under subsection (1) shall satisfy the failure or make arrangements satisfactory to the registrar within 10 days from the date of the notice.

(3) This section does not apply where the failure is due to insolvency, bankruptcy or a voluntary or compulsory winding up of a participant.

206. Documents to file — A participant who ceases to participate in the Fund shall file with the Committee and the registrar the financial statements and other evidence that the Committee in its discretion requires to establish that,

(a) the affairs of the participant are settled;

(b) there are no claims against the Fund; and

(c) the participant has made arrangements satisfactory to the Committee to ensure that all liabilities and obligations of the participant that could give rise to claims against the Fund have been met and discharged.

Trustee

207. Appointment — (1) With the approval of the Authority, the Committee shall appoint a trust corporation registered under the *Loan and Trust Corporations Act* as the Trustee.

(2) The Trustee may resign as Trustee by giving 90 days notice in writing to the Authority.

(3) The Committee or the Authority may require the removal of the Trustee on giving 90 days notice in writing to the Trustee.

(4) If the Trustee resigns, is removed or is unable to act, the Committee, with the approval of the Authority, shall appoint another trust corporation registered under the *Loan and Trust Corporations Act* as a successor Trustee.

(5) Upon accepting the appointment as successor Trustee, the successor shall, subject to subsection (6), have vested in it without further act or formality, all rights and powers given under this Part to the Trustee who resigned, was removed or was unable to act.

(6) Upon the written request of the Committee, the Trustee ceasing to act shall execute and deliver an instrument in writing transferring to the successor Trustee all the rights, powers and Fund assets reposing in or with the Trustee ceasing to act and shall do all other acts or things necessary or desirable for the vesting of the Fund assets in the successor Trustee.

(7) A Trustee ceasing to act shall render to the Authority and to the Committee an account of its administration.

S. 207(8)

Ont. Reg. 30/11 — General

(8) The trustee of the compensation fund under the *Funeral Directors and Establishments Act* on the day before the day this Part comes into force shall be deemed to be the Trustee until a new trustee is appointed under this section.

O. Reg. 288/15, s. 4, items 8–12

208. General powers — (1) The Trustee may act upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, letter, telegram, cablegram or other paper or document believed by it on reasonable grounds to be genuine and to have been signed, sent or delivered by or on behalf of the proper parties.

(2) The Trustee may employ or retain the counsel, accountants, appraisers or other experts or advisors that it may reasonably require for the purpose of discharging its duties under this Part and may act on the opinion or advice of or information obtained from any of them and shall not be responsible for any misconduct on the part of any of them.

209. Investments — (1) In administering the Fund, the Trustee shall deal with the property of the Fund in accordance with the *Trustee Act*.

(2) The Trustee shall not be required to give any bond or other security for the performance of its duties.

(3) Except if the loss results from its own fraud, negligence or wilful misconduct, the Trustee shall not be responsible for any loss in the property of the Fund of whatever character, including a loss resulting from,

- (a) the making of any investments;
- (b) the retention in good faith for any length of time of securities or other property of whatsoever character purchased or acquired by it, even if the securities or property are not income producing; or
- (c) any mistake in judgment made in good faith.

210. Fees and expenses — (1) The Trustee's fee for performing its duties under this Part shall be the fee that is mutually agreed upon between the Authority and the Trustee.

(2) In addition to the fee mentioned in subsection (1), the Trustee is entitled to be reimbursed for all expenses that the Trustee reasonably incurs in the performance of its duties under this Part.

(3) All fees and expenses of the Trustee and the expenses that the Committee directs be paid from the Fund shall be deducted first from the income of the Fund and, if there is any deficiency, from the capital of the Fund.

O. Reg. 288/15, s. 4, item 13

211. Reports to Committee — The Trustee shall furnish the Committee with all information, records and documents in its possession in connection with this Part and its administration of the Fund that the Committee reasonably requests.

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PART VI — TRANSITIONAL MATTERS

Enforcement

225. Inspections — (1) A person authorized to conduct an inspection under section 67 of the Act may conduct an inspection for the purposes of determining whether a person,

- (a) has contravened or failed to comply with a former Act or a regulation made under a former Act if no final determination has been made in respect of the contravention or failure to comply;
- (b) has contravened or failed to comply with a term or condition of a licence issued under a former Act if no final determination has been made in respect of the contravention or failure to comply; or
- (c) is complying with an order made under a former Act.

(2) During an inspection under subsection (1), an inspector may exercise any of the powers of inspection available under section 67 of the Act.

226. Investigators — An investigator may conduct an investigation with respect to matters described in clause 225(1)(a), (b) or (c) of this Regulation and for that purpose may exercise any of the powers of investigation available under section 70, 70.1 or 71 of the Act.

227. Receivers, managers and trustees — (1) A manager or a receiver and manager appointed under a former Act no later than the day before the day on which section 77 of the Act comes into force is deemed to be a receiver and manager appointed under that section.

(2) A trustee of a care and maintenance fund or account appointed under a former Act no later than the day before the day on which section 53 of the Act comes into force is deemed to be a trustee appointed under that section.

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HEALTH CARE CONSENT ACT, 1996

S.O. 1996, c. 2, Sched. A, as am. S.O. 1998, c. 26, s. 104; 2000, c. 9, ss. 31–48; 2002, c. 18, Sched. A, s. 10; 2004, c. 3, Sched. A, s. 84(1)–(5), (6) (Fr.), (7)–(11); 2006, c. 19, Sched. L, s. 2; 2006, c. 21, Sched. C, s. 111; 2006, c. 26, s. 14; 2006, c. 34, s. 34; 2006, c. 35, Sched. C, s. 52; 2007, c. 8, s. 207 [s. 207(2)–(8), (11)–(14), (18) not in force at date of publication. Repealed 2017, c. 25, Sched. 5, s. 53. Not in force at date of publication.]; 2007, c. 10, Sched. O, s. 13, Sched. P, s. 15, Sched. Q, s. 13, Sched. R, s. 14 [Cannot be applied.]; 2009, c. 26, s. 10; 2009, c. 33, Sched. 18, s. 10; 2010, c. 1, Sched. 9; 2015, c. 36, s. 17; 2016, c. 23, s. 51(1) (Fr.), (2); 2017, c. 14, Sched. 4, s. 16; 2017, c. 25, Sched. 5, ss. 54–68, Sched. 9, s. 95 [Not in force at date of publication.]; 2018, c. 8, Sched. 15, s. 10; 2020, c. 11, Sched. 15, s. 55 [Not in force at date of publication.]; 2020, c. 13, Sched. 3, s. 3 [Not in force at date of publication.].

PART I — GENERAL (SS. 1–7)

1. Purposes — The purposes of this Act are,

- (a) to provide rules with respect to consent to treatment that apply consistently in all settings;
- (b) to facilitate treatment, admission to care facilities, and personal assistance services, for persons lacking the capacity to make decisions about such matters;

Proposed Amendment — 1(b)

- (b) to facilitate treatment, admission to or confining in care facilities, and personal assistance services, for persons lacking the capacity to make decisions about such matters;

2017, c. 25, Sched. 5, s. 54(1) [Not in force at date of publication.]

- (c) to enhance the autonomy of persons for whom treatment is proposed, persons for whom admission to a care facility is proposed and persons who are to receive personal assistance services by,

- (i) allowing those who have been found to be incapable to apply to a tribunal for a review of the finding;
- (ii) allowing incapable persons to request that a representative of their choice be appointed by the tribunal for the purpose of making decisions on their behalf concerning treatment, admission to a care facility or personal assistance services, and
- (iii) requiring that wishes with respect to treatment, admission to a care facility or personal assistance services, expressed by persons while capable and after attaining 16 years of age, be adhered to;

S. 1(c)

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Proposed Amendment — 1(c)

(c) to enhance the autonomy of persons for whom treatment is proposed, persons for whom admission to or confining in a care facility is proposed and persons who are to receive personal assistance services by,

- (i) allowing those who have been found to be incapable to apply to a tribunal for a review of the finding;
- (ii) allowing incapable persons to request that a representative of their choice be appointed by the tribunal for the purpose of making decisions on their behalf concerning treatment, admission to or confining in a care facility or personal assistance services, and
- (iii) requiring that wishes with respect to treatment, admission to or confining in a care facility or personal assistance services, expressed by persons while capable and after attaining 16 years of age, be adhered to;

2017, c. 25, Sched. 5, s. 54(2) [Not in force at date of publication.]

- (d) to promote communication and understanding between health practitioners and their patients or clients;
- (e) to ensure a significant role for supportive family members when a person lacks the capacity to make a decision about a treatment, admission to a care facility or a personal assistance service; and

Proposed Amendment — 1(e)

(e) to ensure a significant role for supportive family members when a person lacks the capacity to make a decision about a treatment, an admission to or a confining in a care facility or a personal assistance service; and

2017, c. 25, Sched. 5, s. 54(2) [Not in force at date of publication.]

(f) to permit intervention by the Public Guardian and Trustee only as a last resort in decisions on behalf of incapable persons concerning treatment, admission to a care facility or personal assistance services.

Proposed Amendment — 1(f)

(f) to permit intervention by the Public Guardian and Trustee only as a last resort in decisions on behalf of incapable persons concerning treatment, admission to or confining in a care facility or personal assistance services.

2017, c. 25, Sched. 5, s. 54(2) [Not in force at date of publication.]

2. (1) Definitions — In this Act,

“attorney for personal care” means an attorney under a power of attorney for personal care given under the *Substitute Decisions Act, 1992*;

“Board” means the Consent and Capacity Board;

“capable” means mentally capable, and “capacity” has a corresponding meaning;

“care facility” means,

- (a) a long-term care home as defined in the *Long-Term Care Homes Act, 2007*, or
- (b) a facility prescribed by the regulations as a care facility;
- (c) [Repealed 2007, c. 8, s. 207(1).]

(d) [Repealed 2007, c. 8, s. 207(1).]

“**community treatment plan**” has the same meaning as in the *Mental Health Act*;

Proposed Addition — 2(1) “confining in a care facility”

“**confining in a care facility**” and related expressions when used in this Part and Part III.1 have the meaning or meanings provided for in the regulations;

2017, c. 25, Sched. 5, s. 55(1) [Not in force at date of publication.]

“**course of treatment**” means a series or sequence of similar treatments administered to a person over a period of time for a particular health problem;

“**evaluator**” means, in the circumstances prescribed by the regulations,

- (a) a member of the College of Audiologists and Speech-Language Pathologists of Ontario,
- (b) a member of the College of Dietitians of Ontario,
- (c) a member of the College of Nurses of Ontario,
- (d) a member of the College of Occupational Therapists of Ontario,
- (e) a member of the College of Physicians and Surgeons of Ontario,
- (f) a member of the College of Physiotherapists of Ontario,
- (g) a member of the College of Psychologists of Ontario, or
- (h) a member of a category of persons prescribed by the regulations as evaluators;

“**guardian of the person**” means a guardian of the person appointed under the *Substitute Decisions Act, 1992*;

“**health practitioner**” means a member of a College under the *Regulated Health Professions Act, 1991*, or a member of a category of persons prescribed by the regulations as health practitioners;

“**hospital**” means a private hospital as defined in the *Private Hospitals Act* or a hospital as defined in the *Public Hospitals Act*;

Proposed Amendment — 2(1) “hospital”

“**hospital**” means,

- (a) a hospital as defined in the *Public Hospitals Act*, or
 - (b) a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*;
- 2017, c. 25, Sched. 9, s. 95 [Not in force at date of publication.]

“**incapable**” means mentally incapable, and “**incapacity**” has a corresponding meaning;

“**mental disorder**” has the same meaning as in the *Mental Health Act*;

“**personal assistance service**” means assistance with or supervision of hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulation, positioning or any other routine activity of living, and includes a group of personal assistance services or a plan setting out personal assistance services to be provided to a person, but does not include anything prescribed by the regulations as not constituting a personal assistance service;

S. 2(1) pla

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“plan of treatment” means a plan that,

- (a) is developed by one or more health practitioners,
- (b) deals with one or more of the health problems that a person has and may, in addition, deal with one or more of the health problems that the person is likely to have in the future given the person’s current health condition, and
- (c) provides for the administration to the person of various treatments or courses of treatment and may, in addition, provide for the withholding or withdrawal of treatment in light of the person’s current health condition;

“psychiatric facility” has the same meaning as in the *Mental Health Act*;

“recipient” means a person who is to be provided with one or more personal assistance services,

- (a) in a long-term care home as defined in the *Long-Term Care Homes Act, 2007*,
- (b) in a place prescribed by the regulations in the circumstances prescribed by the regulations,
- (c) under a program prescribed by the regulations in the circumstances prescribed by the regulations, or
- (d) by a provider prescribed by the regulations in the circumstances prescribed by the regulations;
- (e) [Repealed 2007, c. 8, s. 207(1).]
- (f) [Repealed 2007, c. 8, s. 207(1).]

“regulations” means the regulations made under this Act;

“treatment” means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose, and includes a course of treatment, plan of treatment or community treatment plan, but does not include,

- (a) the assessment for the purpose of this Act of a person’s capacity with respect to a treatment, admission to a care facility or a personal assistance service, the assessment for the purpose of the *Substitute Decisions Act, 1992* of a person’s capacity to manage property or a person’s capacity for personal care, or the assessment of a person’s capacity for any other purpose,

Proposed Amendment — 2(1) “treatment” (a)

- (a) the assessment for the purpose of this Act of a person’s capacity with respect to a treatment, admission to or confining in a care facility or a personal assistance service, the assessment for the purpose of the *Substitute Decisions Act, 1992* of a person’s capacity to manage property or a person’s capacity for personal care, or the assessment of a person’s capacity for any other purpose,
2017, c. 25, Sched. 5, s. 55(2)(a) [Not in force at date of publication.]

- (b) the assessment or examination of a person to determine the general nature of the person’s condition,
- (c) the taking of a person’s health history,
- (d) the communication of an assessment or diagnosis,
- (e) the admission of a person to a hospital or other facility,

Proposed Addition — 2(1) “treatment” (e.1)

(e.1) a person’s confining in a care facility,
2017, c. 25, Sched. 5, s. 55(2)(b) [Not in force at date of publication.]

- (f) a personal assistance service,
- (g) a treatment that in the circumstances poses little or no risk of harm to the person,
- (h) anything prescribed by the regulations as not constituting treatment.

(2) Refusal of consent — A reference in this Act to refusal of consent includes withdrawal of consent.

2000, c. 9, s. 31; 2007, c. 8, s. 207(1); 2009, c. 26, s. 10(1), (2); 2009, c. 33, Sched. 18, s. 10(1)

3. (1) Meaning of “excluded act” — In this section,

“excluded act” means,

- (a) anything described in clause (b) or (g) of the definition of “treatment” in subsection 2(1), or
- (b) anything described in clause (h) of the definition of “treatment” in subsection 2(1) and prescribed by the regulations as an excluded act.

(2) Excluded act considered treatment — If a health practitioner decides to proceed as if an excluded act were a treatment for the purpose of this Act, this Act and the regulations apply as if the excluded act were a treatment within the meaning of this Act.

4. (1) Capacity — A person is capable with respect to a treatment, admission to a care facility or a personal assistance service if the person is able to understand the information that is relevant to making a decision about the treatment, admission or personal assistance service, as the case may be, and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

(2) Presumption of capacity — A person is presumed to be capable with respect to treatment, admission to a care facility and personal assistance services.

(3) Exception — A person is entitled to rely on the presumption of capacity with respect to another person unless he or she has reasonable grounds to believe that the other person is incapable with respect to the treatment, the admission or the personal assistance service, as the case may be.

Proposed Amendment — 4

4. (1) Capacity — A person is capable with respect to a treatment, admission to or confining in a care facility or a personal assistance service if the person is able to understand the information that is relevant to making a decision about the treatment, admission, confining or personal assistance service, as the case may be, and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

(2) Presumption of capacity — A person is presumed to be capable with respect to treatment, admission to or confining in a care facility and personal assistance services.

(3) Exception — A person is entitled to rely on the presumption of capacity with respect to another person unless he or she has reasonable grounds to believe that the other person is

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incapable with respect to the treatment, the admission, the confining or the personal assistance service, as the case may be.

2017, c. 25, Sched. 5, s. 56 [Not in force at date of publication.]

5. (1) Wishes — A person may, while capable, express wishes with respect to treatment, admission to a care facility or a personal assistance service.

Proposed Amendment — 5(1)

(1) Wishes — A person may, while capable, express wishes with respect to treatment, admission to or confining in a care facility or a personal assistance service.

2017, c. 25, Sched. 5, s. 57 [Not in force at date of publication.]

(2) Manner of expression — Wishes may be expressed in a power of attorney, in a form prescribed by the regulations, in any other written form, orally or in any other manner.

(3) Later wishes prevail — Later wishes expressed while capable prevail over earlier wishes.

6. Research, sterilization, transplants — This Act does not affect the law relating to giving or refusing consent on another person's behalf to any of the following procedures:

1. A procedure whose primary purpose is research.
2. Sterilization that is not medically necessary for the protection of the person's health.
3. The removal of regenerative or non-regenerative tissue for implantation in another person's body.

7. Restraint, confinement — This Act does not affect the common law duty of a caregiver to restrain or confine a person when immediate action is necessary to prevent serious bodily harm to the person or to others.

PART II — TREATMENT (SS. 8–37.1)***General***

8. (1) Application of Part — Subject to section 3, this Part applies to treatment.

(2) Law not affected — Subject to section 3, this Part does not affect the law relating to giving or refusing consent to anything not included in the definition of “**treatment**” in subsection 2(1).

9. Meaning of “substitute decision-maker” — In this Part,

“**substitute decision-maker**” means a person who is authorized under section 20 to give or refuse consent to a treatment on behalf of a person who is incapable with respect to the treatment.

Consent to Treatment

10. (1) No treatment without consent — A health practitioner who proposes a treatment for a person shall not administer the treatment, and shall take reasonable steps to ensure that it is not administered, unless,

- (a) he or she is of the opinion that the person is capable with respect to the treatment, and the person has given consent; or
- (b) he or she is of the opinion that the person is incapable with respect to the treatment, and the person's substitute decision-maker has given consent on the person's behalf in accordance with this Act.

(2) Opinion of Board or court governs — If the health practitioner is of the opinion that the person is incapable with respect to the treatment, but the person is found to be capable with respect to the treatment by the Board on an application for review of the health practitioner's finding, or by a court on an appeal of the Board's decision, the health practitioner shall not administer the treatment, and shall take reasonable steps to ensure that it is not administered, unless the person has given consent.

11. (1) Elements of consent — The following are the elements required for consent to treatment:

1. The consent must relate to the treatment.
2. The consent must be informed.
3. The consent must be given voluntarily.
4. The consent must not be obtained through misrepresentation or fraud.

(2) Informed consent — A consent to treatment is informed if, before giving it,

- (a) the person received the information about the matters set out in subsection (3) that a reasonable person in the same circumstances would require in order to make a decision about the treatment; and
- (b) the person received responses to his or her requests for additional information about those matters.

(3) Same — The matters referred to in subsection (2) are:

1. The nature of the treatment.
2. The expected benefits of the treatment.
3. The material risks of the treatment.
4. The material side effects of the treatment.
5. Alternative courses of action.
6. The likely consequences of not having the treatment.

(4) Express or implied — Consent to treatment may be express or implied.

12. Included consent — Unless it is not reasonable to do so in the circumstances, a health practitioner is entitled to presume that consent to a treatment includes,

- (a) consent to variations or adjustments in the treatment, if the nature, expected benefits, material risks and material side effects of the changed treatment are not signifi-

S. 12(a)

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cantly different from the nature, expected benefits, material risks and material side effects of the original treatment; and

(b) consent to the continuation of the same treatment in a different setting, if there is no significant change in the expected benefits, material risks or material side effects of the treatment as a result of the change in the setting in which it is administered.

13. Plan of treatment — If a plan of treatment is to be proposed for a person, one health practitioner may, on behalf of all the health practitioners involved in the plan of treatment,

- (a) propose the plan of treatment;
- (b) determine the person's capacity with respect to the treatments referred to in the plan of treatment; and
- (c) obtain a consent or refusal of consent in accordance with this Act,
 - (i) from the person, concerning the treatments with respect to which the person is found to be capable, and
 - (ii) from the person's substitute decision-maker, concerning the treatments with respect to which the person is found to be incapable.

14. Withdrawal of consent — A consent that has been given by or on behalf of the person for whom the treatment was proposed may be withdrawn at any time,

- (a) by the person, if the person is capable with respect to the treatment at the time of the withdrawal;
- (b) by the person's substitute decision-maker, if the person is incapable with respect to the treatment at the time of the withdrawal.

Capacity

15. (1) Capacity depends on treatment — A person may be incapable with respect to some treatments and capable with respect to others.

(2) Capacity depends on time — A person may be incapable with respect to a treatment at one time and capable at another.

16. Return of capacity — If, after consent to a treatment is given or refused on a person's behalf in accordance with this Act, the person becomes capable with respect to the treatment in the opinion of the health practitioner, the person's own decision to give or refuse consent to the treatment governs.

17. Information — A health practitioner shall, in the circumstances and manner specified in guidelines established by the governing body of the health practitioner's profession, provide to persons found by the health practitioner to be incapable with respect to treatment such information about the consequences of the findings as is specified in the guidelines.

18. (1) Treatment must not begin — This section applies if,

- (a) a health practitioner proposes a treatment for a person and finds that the person is incapable with respect to the treatment;
- (b) before the treatment is begun, the health practitioner is informed that the person intends to apply, or has applied, to the Board for a review of the finding; and

(c) the application to the Board is not prohibited by subsection 32(2).

(2) Same — This section also applies if,

(a) a health practitioner proposes a treatment for a person and finds that the person is incapable with respect to the treatment;

(b) before the treatment is begun, the health practitioner is informed that,

(i) the incapable person intends to apply, or has applied, to the Board for appointment of a representative to give or refuse consent to the treatment on his or her behalf, or

(ii) another person intends to apply, or has applied, to the Board to be appointed as the representative of the incapable person to give or refuse consent to the treatment on his or her behalf; and

(c) the application to the Board is not prohibited by subsection 33(3).

(3) Same — In the circumstances described in subsections (1) and (2), the health practitioner shall not begin the treatment, and shall take reasonable steps to ensure that the treatment is not begun,

(a) until 48 hours have elapsed since the health practitioner was first informed of the intended application to the Board without an application being made;

(b) until the application to the Board has been withdrawn;

(c) until the Board has rendered a decision in the matter, if none of the parties to the application before the Board has informed the health practitioner that he or she intends to appeal the Board's decision; or

(d) if a party to the application before the Board has informed the health practitioner that he or she intends to appeal the Board's decision,

(i) until the period for commencing the appeal has elapsed without an appeal being commenced, or

(ii) until the appeal of the Board's decision has been finally disposed of.

(4) Emergency — This section does not apply if the health practitioner is of the opinion that there is an emergency within the meaning of subsection 25(1).

19. (1) Order authorizing treatment pending appeal — If an appeal is taken from a Board or court decision that has the effect of authorizing a person to consent to a treatment, the treatment may be administered before the final disposition of the appeal, despite section 18, if the court to which the appeal is taken so orders and the consent is given.

(2) Criteria for order — The court may make the order if it is satisfied,

(a) that,

(i) the treatment will or is likely to improve substantially the condition of the person to whom it is to be administered, and the person's condition will not or is not likely to improve without the treatment, or

(ii) the person's condition will or is likely to deteriorate substantially, or to deteriorate rapidly, without the treatment, and the treatment will or is likely to prevent the deterioration or to reduce substantially its extent or its rate;

(b) that the benefit the person is expected to obtain from the treatment outweighs the risk of harm to him or her;

- (c) that the treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a) and (b); and
- (d) that the person's condition makes it necessary to administer the treatment before the final disposition of the appeal.

Consent on Incapable Person's Behalf

20. (1) List of persons who may give or refuse consent — If a person is incapable with respect to a treatment, consent may be given or refused on his or her behalf by a person described in one of the following paragraphs:

1. The incapable person's guardian of the person, if the guardian has authority to give or refuse consent to the treatment.
2. The incapable person's attorney for personal care, if the power of attorney confers authority to give or refuse consent to the treatment.
3. The incapable person's representative appointed by the Board under section 33, if the representative has authority to give or refuse consent to the treatment.
4. The incapable person's spouse or partner.
5. A child or parent of the incapable person, or a children's aid society or other person who is lawfully entitled to give or refuse consent to the treatment in the place of the parent. This paragraph does not include a parent who has only a right of access. If a children's aid society or other person is lawfully entitled to give or refuse consent to the treatment in the place of the parent, this paragraph does not include the parent.
6. A parent of the incapable person who has only a right of access.
7. A brother or sister of the incapable person.
8. Any other relative of the incapable person.

(2) Requirements — A person described in subsection (1) may give or refuse consent only if he or she,

- (a) is capable with respect to the treatment;
- (b) is at least 16 years old, unless he or she is the incapable person's parent;
- (c) is not prohibited by court order or separation agreement from having access to the incapable person or giving or refusing consent on his or her behalf;
- (d) is available; and
- (e) is willing to assume the responsibility of giving or refusing consent.

(3) Ranking — A person described in a paragraph of subsection (1) may give or refuse consent only if no person described in an earlier paragraph meets the requirements of subsection (2).

(4) Same — Despite subsection (3), a person described in a paragraph of subsection (1) who is present or has otherwise been contacted may give or refuse consent if he or she believes that no other person described in an earlier paragraph or the same paragraph exists, or that although such a person exists, the person is not a person described in paragraph 1, 2 or 3 and would not object to him or her making the decision.

(5) No person in subs. (1) to make decision — If no person described in subsection (1) meets the requirements of subsection (2), the Public Guardian and Trustee shall make the decision to give or refuse consent.

(6) Conflict between persons in same paragraph — If two or more persons who are described in the same paragraph of subsection (1) and who meet the requirements of subsection (2) disagree about whether to give or refuse consent, and if their claims rank ahead of all others, the Public Guardian and Trustee shall make the decision in their stead.

(7) Meaning of “spouse” — Subject to subsection (8), two persons are spouses for the purpose of this section if,

- (a) they are married to each other; or
- (b) they are living in a conjugal relationship outside marriage and,
 - (i) have cohabited for at least one year,
 - (ii) are together the parents of a child, or
 - (iii) have together entered into a cohabitation agreement under section 53 of the *Family Law Act*.

(8) Not spouse — Two persons are not spouses for the purpose of this section if they are living separate and apart as a result of a breakdown of their relationship.

(9) Meaning of “partner” — For the purpose of this section,

“partner” means,

- (a) [Repealed 2004, c. 3, Sched. A, s. 84(5).]
- (b) either of two persons who have lived together for at least one year and have a close personal relationship that is of primary importance in both persons’ lives.

(10) Meaning of “relative” — For the purposes of this section, a relative includes a person related to another person by marriage or adoption.

(11) Meaning of “available” — For the purpose of clause (2)(d), a person is available if it is possible, within a time that is reasonable in the circumstances, to communicate with the person and obtain a consent or refusal.

2002, c. 18, Sched. A, s. 10; 2004, c. 3, Sched. A, s. 84(1)–(5); 2016, c. 23, s. 51(2)

21. (1) Principles for giving or refusing consent — A person who gives or refuses consent to a treatment on an incapable person’s behalf shall do so in accordance with the following principles:

1. If the person knows of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, the person shall give or refuse consent in accordance with the wish.
2. If the person does not know of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the incapable person’s best interests.

(2) Best interests — In deciding what the incapable person’s best interests are, the person who gives or refuses consent on his or her behalf shall take into consideration,

- (a) the values and beliefs that the person knows the incapable person held when capable and believes he or she would still act on if capable;
- (b) any wishes expressed by the incapable person with respect to the treatment that are not required to be followed under paragraph 1 of subsection (1); and

(c) the following factors:

1. Whether the treatment is likely to,
 - i. improve the incapable person's condition or well-being,
 - ii. prevent the incapable person's condition or well-being from deteriorating, or
 - iii. reduce the extent to which, or the rate at which, the incapable person's condition or well-being is likely to deteriorate.
2. Whether the incapable person's condition or well-being is likely to improve, remain the same or deteriorate without the treatment.
3. Whether the benefit the incapable person is expected to obtain from the treatment outweighs the risk of harm to him or her.
4. Whether a less restrictive or less intrusive treatment would be as beneficial as the treatment that is proposed.

22. (1) Information — Before giving or refusing consent to a treatment on an incapable person's behalf, a substitute decision-maker is entitled to receive all the information required for an informed consent as described in subsection 11(2).

(2) Conflict — Subsection (1) prevails despite anything to the contrary in the *Personal Health Information Protection Act, 2004*.

2004, c. 3, Sched. A, s. 84(7)

23. Ancillary treatment — Authority to consent to a treatment on an incapable person's behalf includes authority to consent to another treatment that is necessary and ancillary to the treatment, even if the incapable person is capable with respect to the necessary and ancillary treatment.

24. (1) Admission to hospital, etc. — Subject to subsection (2), a substitute decision-maker who consents to a treatment on an incapable person's behalf may consent to the incapable person's admission to a hospital or psychiatric facility or to another health facility prescribed by the regulations, for the purpose of the treatment.

(2) Objection, psychiatric facility — If the incapable person is 16 years old or older and objects to being admitted to a psychiatric facility for treatment of a mental disorder, consent to his or her admission may be given only by,

- (a) his or her guardian of the person, if the guardian has authority to consent to the admission; or
- (b) his or her attorney for personal care, if the power of attorney contains a provision authorizing the attorney to use force that is necessary and reasonable in the circumstances to admit the incapable person to the psychiatric facility and the provision is effective under subsection 50(1) of the *Substitute Decisions Act, 1992*.

Emergency Treatment

25. (1) Meaning of “emergency” — For the purpose of this section and section 27, there is an emergency if the person for whom the treatment is proposed is apparently experiencing severe suffering or is at risk, if the treatment is not administered promptly, of sustaining serious bodily harm.

(2) Emergency treatment without consent: incapable person — Despite section 10, a treatment may be administered without consent to a person who is incapable with respect to the treatment, if, in the opinion of the health practitioner proposing the treatment,

- (a) there is an emergency; and
- (b) the delay required to obtain a consent or refusal on the person's behalf will prolong the suffering that the person is apparently experiencing or will put the person at risk of sustaining serious bodily harm.

(3) Emergency treatment without consent: capable person — Despite section 10, a treatment may be administered without consent to a person who is apparently capable with respect to the treatment, if, in the opinion of the health practitioner proposing the treatment,

- (a) there is an emergency;
- (b) the communication required in order for the person to give or refuse consent to the treatment cannot take place because of a language barrier or because the person has a disability that prevents the communication from taking place;
- (c) steps that are reasonable in the circumstances have been taken to find a practical means of enabling the communication to take place, but no such means has been found;
- (d) the delay required to find a practical means of enabling the communication to take place will prolong the suffering that the person is apparently experiencing or will put the person at risk of sustaining serious bodily harm; and
- (e) there is no reason to believe that the person does not want the treatment.

(4) Examination without consent — Despite section 10, an examination or diagnostic procedure that constitutes treatment may be conducted by a health practitioner without consent if,

- (a) the examination or diagnostic procedure is reasonably necessary in order to determine whether there is an emergency; and
- (b) in the opinion of the health practitioner,
 - (i) the person is incapable with respect to the examination or diagnostic procedure, or
 - (ii) clauses (3)(b) and (c) apply to the examination or diagnostic procedure.

(5) Record — After administering a treatment in reliance on subsection (2) or (3), the health practitioner shall promptly note in the person's record the opinions held by the health practitioner that are required by the subsection on which he or she relied.

(6) Continuing treatment — Treatment under subsection (2) may be continued only for as long as is reasonably necessary to find the incapable person's substitute decision-maker and to obtain from him or her a consent, or refusal of consent, to the continuation of the treatment.

(7) Same — Treatment under subsection (3) may be continued only for as long as is reasonably necessary to find a practical means of enabling the communication to take place so that the person can give or refuse consent to the continuation of the treatment.

(8) Search — When a treatment is begun under subsection (2) or (3), the health practitioner shall ensure that reasonable efforts are made for the purpose of finding the substitute decision-maker, or a means of enabling the communication to take place, as the case may be.

(9) Return of capacity — If, after a treatment is begun under subsection (2), the person becomes capable with respect to the treatment in the opinion of the health practitioner, the person's own decision to give or refuse consent to the continuation of the treatment governs.

26. No treatment contrary to wishes — A health practitioner shall not administer a treatment under section 25 if the health practitioner has reasonable grounds to believe that the person, while capable and after attaining 16 years of age, expressed a wish applicable to the circumstances to refuse consent to the treatment.

27. Emergency treatment despite refusal — If consent to a treatment is refused on an incapable person's behalf by his or her substitute decision-maker, the treatment may be administered despite the refusal if, in the opinion of the health practitioner proposing the treatment,

- (a) there is an emergency; and
- (b) the substitute decision-maker did not comply with section 21.

28. Admission to hospital, etc. — The authority to administer a treatment to a person under section 25 or 27 includes authority to have the person admitted to a hospital or psychiatric facility for the purpose of the treatment, unless the person objects and the treatment is primarily treatment of a mental disorder.

Protection from Liability

29. (1) Apparently valid consent to treatment — If a treatment is administered to a person with a consent that a health practitioner believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the health practitioner is not liable for administering the treatment without consent.

(2) Apparently valid refusal of treatment — If a treatment is not administered to a person because of a refusal that a health practitioner believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the health practitioner is not liable for failing to administer the treatment.

(3) Apparently valid consent to withholding or withdrawal — If a treatment is withheld or withdrawn in accordance with a plan of treatment and with a consent to the plan of treatment that a health practitioner believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the health practitioner is not liable for withholding or withdrawing the treatment.

(4) Emergency: treatment administered — A health practitioner who, in good faith, administers a treatment to a person under section 25 or 27 is not liable for administering the treatment without consent.

(5) Emergency: treatment not administered — A health practitioner who, in good faith, refrains from administering a treatment in accordance with section 26 is not liable for failing to administer the treatment.

(6) Reliance on assertion — If a person who gives or refuses consent to a treatment on an incapable person's behalf asserts that he or she,

- (a) is a person described in subsection 20(1) or clause 24(2)(a) or (b) or an attorney for personal care described in clause 32(2)(b);

- (b) meets the requirement of clause 20(2)(b) or (c); or
- (c) holds the opinions required under subsection 20(4),

a health practitioner is entitled to rely on the accuracy of the assertion, unless it is not reasonable to do so in the circumstances.

30. Person making decision on another's behalf — A person who gives or refuses consent to a treatment on another person's behalf, acting in good faith and in accordance with this Act, is not liable for giving or refusing consent.

31. (1) Admission to hospital, etc. — Sections 29 and 30, except subsection 29(4), apply, with necessary modifications, to admission of the incapable person to a hospital, psychiatric facility or other health facility referred to in section 24, for the purpose of treatment.

(2) Same — A health practitioner who, in good faith, has a person admitted to a hospital or psychiatric facility under section 28 is not liable for having the person admitted without consent.

Applications to Board

32. (1) Application for review of finding of incapacity — A person who is the subject of a treatment may apply to the Board for a review of a health practitioner's finding that he or she is incapable with respect to the treatment.

(2) Exception — Subsection (1) does not apply to,

- (a) a person who has a guardian of the person, if the guardian has authority to give or refuse consent to the treatment;
- (b) a person who has an attorney for personal care, if the power of attorney contains a provision waiving the person's right to apply for the review and the provision is effective under subsection 50(1) of the *Substitute Decisions Act, 1992*.

(3) Parties — The parties to the application are:

1. The person applying for the review.
2. The health practitioner.
3. Any other person whom the Board specifies.

(4) Powers of Board — The Board may confirm the health practitioner's finding or may determine that the person is capable with respect to the treatment, and in doing so may substitute its opinion for that of the health practitioner.

(5) Restriction on repeated applications — If a health practitioner's finding that a person is incapable with respect to a treatment is confirmed on the final disposition of an application under this section, the person shall not make a new application for a review of a finding of incapacity with respect to the same or similar treatment within six months after the final disposition of the earlier application, unless the Board gives leave in advance.

(6) Same — The Board may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the person's capacity.

(7) Decision effective while application for leave pending — The Board's decision under subsection (5) remains in effect pending an application for leave under subsection (6).
2000, c. 9, s. 32

33. (1) Application for appointment of representative — A person who is 16 years old or older and who is incapable with respect to a proposed treatment may apply to the Board for appointment of a representative to give or refuse consent on his or her behalf.

(2) Application by proposed representative — A person who is 16 years old or older may apply to the Board to have himself or herself appointed as the representative of a person who is incapable with respect to a proposed treatment, to give or refuse consent on behalf of the incapable person.

(3) Exception — Subsections (1) and (2) do not apply if the incapable person has a guardian of the person who has authority to give or refuse consent to the proposed treatment, or an attorney for personal care under a power of attorney conferring that authority.

(4) Parties — The parties to the application are:

1. The incapable person.
2. The proposed representative named in the application.
3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 20(1).
4. The health practitioner who proposed the treatment.
5. Any other person whom the Board specifies.

(5) Appointment — In an appointment under this section, the Board may authorize the representative to give or refuse consent on the incapable person's behalf,

- (a) to the proposed treatment;
- (b) to one or more treatments or kinds of treatment specified by the Board, whenever a health practitioner proposing that treatment or a treatment of that kind finds that the person is incapable with respect to it; or
- (c) to treatment of any kind, whenever a health practitioner proposing a treatment finds that the person is incapable with respect to it.

(6) Criteria for appointment — The Board may make an appointment under this section if it is satisfied that the following requirements are met:

1. The incapable person does not object to the appointment.
2. The representative consents to the appointment, is at least 16 years old and is capable with respect to the treatments or the kinds of treatment for which the appointment is made.
3. The appointment is in the incapable person's best interests.

(7) Powers of Board — Unless the incapable person objects, the Board may,

- (a) appoint as representative a different person than the one named in the application;
- (b) limit the duration of the appointment;
- (c) impose any other condition on the appointment;
- (d) on any person's application, remove, vary or suspend a condition imposed on the appointment or impose an additional condition on the appointment.

(8) Termination — The Board may, on any person's application, terminate an appointment made under this section if,

- (a) the incapable person or the representative requests the termination of the appointment;
- (b) the representative is no longer capable with respect to the treatments or the kinds of treatment for which the appointment was made;
- (c) the appointment is no longer in the incapable person's best interests; or
- (d) the incapable person has a guardian of the person who has authority to consent to the treatments or the kinds of treatment for which the appointment was made, or an attorney for personal care under a power of attorney conferring that authority.

34. (1) Application with respect to place of treatment — A person may apply to the Board for a review of a decision to consent on the person's behalf to the person's admission to a hospital, psychiatric facility or other health facility referred to in section 24 for the purpose of treatment.

(2) Exception — Subsection (1) does not apply to a decision to consent on the person's behalf to the person's admission to a psychiatric facility as an informal patient, as defined in the *Mental Health Act*, if the person is at least 12 years old but less than 16 years old.

(3) Admission and treatment despite application — The decision to admit the person to the hospital, psychiatric facility or health facility may take effect, and the treatment may be administered, even if the person indicates that he or she intends to apply to the Board under subsection (1) or under subsection 13(1) of the *Mental Health Act* and even if the application to the Board has been made and has not yet been finally disposed of.

(4) Parties — The parties to the application are:

1. The person applying for the review.
2. The person who consented to the admission.
3. The health practitioner who proposed the treatment.
4. Any other person whom the Board specifies.

(5) Considerations — In reviewing the decision to admit the person to the hospital, psychiatric facility or health facility for the purpose of treatment, the Board shall consider,

- (a) whether the hospital, psychiatric facility or health facility can provide the treatment;
- (b) whether the hospital, psychiatric facility or health facility is the least restrictive setting available in which the treatment can be administered;
- (c) whether the person's needs could more appropriately be met if the treatment were administered in another place and whether space is available for the person in the other place;
- (d) the person's views and wishes, if they can be reasonably ascertained; and
- (e) any other matter that the Board considers relevant.

(6) Order — The Board may,

- (a) direct that the person be discharged from the hospital, psychiatric facility or health facility; or
- (b) confirm the decision to admit the person to the hospital, psychiatric facility or health facility.

(7) Restriction on repeated applications — If the decision to admit the person is confirmed on the final disposition of an application under this section, the person shall not make a new application for a review of the decision to admit within six months after the final disposition of the earlier application, unless the Board gives leave in advance.

(8) Same — The Board may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the decision to admit.

(9) Application under *Mental Health Act* — For the purpose of subsection (7), a final disposition of an application made under section 13 of the *Mental Health Act* shall be deemed to be a final disposition of an application under this section.

35. (1) Application for directions — A substitute decision-maker or a health practitioner who proposed a treatment may apply to the Board for directions if the incapable person expressed a wish with respect to the treatment, but,

- (a) the wish is not clear;
- (b) it is not clear whether the wish is applicable to the circumstances;
- (c) it is not clear whether the wish was expressed while the incapable person was capable; or
- (d) it is not clear whether the wish was expressed after the incapable person attained 16 years of age.

(1.1) Notice to substitute decision-maker — A health practitioner who intends to apply for directions shall inform the substitute decision-maker of his or her intention before doing so.

(2) Parties — The parties to the application are:

1. The substitute decision-maker.
2. The incapable person.
3. The health practitioner who proposed the treatment.
4. Any other person whom the Board specifies.

(3) Directions — The Board may give directions and, in doing so, shall apply section 21.
2000, c. 9, s. 33(1)-(3)

36. (1) Application to depart from wishes — If a substitute decision-maker is required by paragraph 1 of subsection 21(1) to refuse consent to a treatment because of a wish expressed by the incapable person while capable and after attaining 16 years of age,

- (a) the substitute decision-maker may apply to the Board for permission to consent to the treatment despite the wish; or
- (b) the health practitioner who proposed the treatment may apply to the Board to obtain permission for the substitute decision-maker to consent to the treatment despite the wish.

(1.1) Notice to substitute decision-maker — A health practitioner who intends to apply under clause (1)(b) shall inform the substitute decision-maker of his or her intention before doing so.

(2) Parties — The parties to the application are:

1. The substitute decision-maker.
2. The incapable person.
3. The health practitioner who proposed the treatment.
4. Any other person whom the Board specifies.

(3) Criteria for permission — The Board may give the substitute decision-maker permission to consent to the treatment despite the wish if it is satisfied that the incapable person, if capable, would probably give consent because the likely result of the treatment is significantly better than would have been anticipated in comparable circumstances at the time the wish was expressed.

2000, c. 9, s. 34(1), (2)

37. (1) Application to determine compliance with s. 21 — If consent to a treatment is given or refused on an incapable person's behalf by his or her substitute decision-maker, and if the health practitioner who proposed the treatment is of the opinion that the substitute decision-maker did not comply with section 21, the health practitioner may apply to the Board for a determination as to whether the substitute decision-maker complied with section 21.

(2) Parties — The parties to the application are:

1. The health practitioner who proposed the treatment.
2. The incapable person.
3. The substitute decision-maker.
4. Any other person whom the Board specifies.

(3) Power of Board — In determining whether the substitute decision-maker complied with section 21, the Board may substitute its opinion for that of the substitute decision-maker.

(4) Directions — If the Board determines that the substitute decision-maker did not comply with section 21, it may give him or her directions and, in doing so, shall apply section 21.

(5) Time for compliance — The Board shall specify the time within which its directions must be complied with.

(6) Deemed not authorized — If the substitute decision-maker does not comply with the Board's directions within the time specified by the Board, he or she shall be deemed not to meet the requirements of subsection 20(2).

(6.1) Subsequent substitute decision-maker — If, under subsection (6), the substitute decision-maker is deemed not to meet the requirements of subsection 20(2), any subsequent substitute decision-maker shall, subject to subsections (6.2) and (6.3), comply with the directions given by the Board on the application within the time specified by the Board.

(6.2) Application for directions — If a subsequent substitute decision-maker knows of a wish expressed by the incapable person with respect to the treatment, the substitute decision-maker may, with leave of the Board, apply to the Board for directions under section 35.

(6.3) Inconsistent directions — Directions given by the Board under section 35 on a subsequent substitute decision-maker's application brought with leave under subsection (6.2)

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prevail over inconsistent directions given under subsection (4) to the extent of the inconsistency.

(7) **P.G.T.** — If the substitute decision-maker who is given directions is the Public Guardian and Trustee, he or she is required to comply with the directions, and subsection (6) does not apply to him or her.

2000, c. 9, s. 35

37.1 Deemed application concerning capacity — An application to the Board under section 33, 34, 35, 36 or 37 shall be deemed to include an application to the Board under section 32 with respect to the person's capacity to consent to treatment proposed by a health practitioner unless the person's capacity to consent to such treatment has been determined by the Board within the previous six months.

2000, c. 9, s. 36

PART III — ADMISSION TO CARE FACILITIES (SS. 38–54.1)***General***

38. Application of Part — This Part applies to admission to a care facility.

Proposed Amendment — 38

38. Application of Part — This Part applies to admission to a care facility, including admission to a secure unit of a care facility.

2007, c. 8, s. 207(2) [Not in force at date of publication. Repealed 2017, c. 25, Sched. 5, s. 53, item 1. Not in force at date of publication.]

39. Definitions — In this Part,

“crisis” means a crisis relating to the condition or circumstances of the person who is to be admitted to the care facility;

Proposed Amendment — 39 “crisis”

“crisis” means a situation prescribed by the regulations as a crisis;

2007, c. 8, s. 207(3) [Not in force at date of publication. Repealed 2017, c. 25, Sched. 5, s. 53, item 2. Not in force at date of publication.]

Proposed Amendment — 39 “crisis”

“crisis” means,

(a) a crisis relating to the condition or circumstances of the person who is to be admitted to the care facility, and

(b) a situation prescribed by the regulations as a crisis;

2017, c. 25, Sched. 5, s. 58 [Not in force at date of publication.]

Proposed Addition — 39 “secure unit”

“**secure unit**” means a secure unit within the meaning of the *Long-Term Care Homes Act, 2007*; 2007, c. 8, s. 207(4) [Not in force at date of publication. Repealed 2017, c. 25, Sched. 5, s. 53, item 3. Not in force at date of publication.]

“**substitute decision-maker**” means a person who is authorized under section 41 to give or refuse consent to admission to a care facility on behalf of a person who is incapable with respect to the admission.

Consent on Incapable Person’s Behalf

40. (1) Consent on incapable person’s behalf — If a person’s consent to his or her admission to a care facility is required by law and the person is found by an evaluator to be incapable with respect to the admission, consent may be given or refused on the person’s behalf by his or her substitute decision-maker in accordance with this Act.

Proposed Amendment — 40(1)

(1) Consent on incapable person’s behalf — If a person’s consent to his or her admission to a care facility is required by law and the person is found by an evaluator to be incapable with respect to the admission,

- (a) consent may be given or refused on the person’s behalf by his or her substitute decision-maker in accordance with this Act; and
- (b) the person responsible for authorizing admissions to the care facility shall take reasonable steps to ensure that the person’s admission is not authorized unless the person’s substitute decision-maker has given consent on the person’s behalf in accordance with this Act.

2007, c. 8, s. 207(5) [Not in force at date of publication. Repealed 2017, c. 25, Sched. 5, s. 53, item 4. Not in force at date of publication.]

Proposed Amendment — 40(1)

(1) Consent on incapable person’s behalf — If a person is found by an evaluator to be incapable with respect to the admission,

- (a) consent may be given or refused on the person’s behalf by his or her substitute decision-maker in accordance with this Act; and
- (b) the person responsible for authorizing admissions to the care facility shall take reasonable steps to ensure that the person’s admission is not authorized unless the person responsible for authorizing admissions is of the opinion that the substitute decision-maker has given consent on the person’s behalf in accordance with this Act.

2017, c. 25, Sched. 5, s. 59 [Not in force at date of publication.]

(2) Opinion of Board or court governs — If a person who is found by an evaluator to be incapable with respect to his or her admission to a care facility is found to be capable with respect to the admission by the Board on an application for review of the evaluator’s finding, or by a court on an appeal of the Board’s decision, subsection (1) does not apply.

41. Determining who may give or refuse consent — Section 20 applies, with necessary modifications, for the purpose of determining who is authorized to give or refuse con-

sent to admission to a care facility on behalf of a person who is incapable with respect to the admission.

42. (1) Principles for giving or refusing consent — A person who gives or refuses consent on an incapable person's behalf to his or her admission to a care facility shall do so in accordance with the following principles:

1. If the person knows of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, the person shall give or refuse consent in accordance with the wish.
2. If the person does not know of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the incapable person's best interests.

(2) Best interests — In deciding what the incapable person's best interests are, the person who gives or refuses consent on his or her behalf shall take into consideration,

- (a) the values and beliefs that the person knows the incapable person held when capable and believes he or she would still act on if capable;
- (b) any wishes expressed by the incapable person with respect to admission to a care facility that are not required to be followed under paragraph 1 of subsection (1); and
- (c) the following factors:
 1. Whether admission to the care facility is likely to,
 - i. improve the quality of the incapable person's life,
 - ii. prevent the quality of the incapable person's life from deteriorating, or
 - iii. reduce the extent to which, or the rate at which, the quality of the incapable person's life is likely to deteriorate.
 2. Whether the quality of the incapable person's life is likely to improve, remain the same or deteriorate without admission to the care facility.
 3. Whether the benefit the incapable person is expected to obtain from admission to the care facility outweighs the risk of negative consequences to him or her.
 4. Whether a course of action that is less restrictive than admission to the care facility is available and is appropriate in the circumstances.

Proposed Addition — 42(3)

(3) Admission to secure units — Subject to paragraph 1 of subsection (1), the person shall not give consent on the incapable person's behalf to his or her admission to a secure unit of a care facility, unless the admission is essential to prevent serious bodily harm to the incapable person or to others, or allows the incapable person greater freedom or enjoyment.
2007, c. 8, s. 207(6) [Not in force at date of publication. Repealed 2017, c. 25, Sched. 5, s. 53, item 5. Not in force at date of publication.]

43. (1) Information — Before giving or refusing consent on an incapable person's behalf to his or her admission to a care facility, a substitute decision-maker is entitled to receive all the information required in order to make the decision.

(2) Conflict — Subsection (1) prevails despite anything to the contrary in the *Personal Health Information Protection Act, 2004*.

2004, c. 3, Sched. A, s. 84(8)

44. (1) Ancillary decisions — Authority to consent on an incapable person's behalf to his or her admission to a care facility includes authority to make decisions that are necessary and ancillary to the admission.

(2) Collection and disclosure of information — A decision concerning the collection and disclosure of information relating to the incapable person is a decision that is necessary and ancillary to the admission, if the information is required for the purpose of the admission and is not personal health information within the meaning of the *Personal Health Information Protection Act, 2004*.

(3) Exception — Subsection (1) does not authorize the making of a decision concerning the incapable person's property.

2004, c. 3, Sched. A, s. 84(9)

45. Withdrawal of consent — Authority to consent on an incapable person's behalf to his or her admission to a care facility includes authority to withdraw the consent at any time before the admission.

46. (1) Admission must not be authorized — This section applies if,

- (a) an evaluator finds that a person is incapable with respect to his or her admission to a care facility;
- (b) before the admission takes place, the person responsible for authorizing admissions to the care facility is informed that the person who was found to be incapable intends to apply, or has applied, to the Board for a review of the finding; and
- (c) the application to the Board is not prohibited by subsection 50(2).

(2) Same — This section also applies if,

- (a) an evaluator finds that a person is incapable with respect to his or her admission to a care facility;
- (b) before the admission takes place, the person responsible for authorizing admissions to the care facility is informed that,
 - (i) the incapable person intends to apply, or has applied, to the Board for appointment of a representative to give or refuse consent to the admission on his or her behalf, or
 - (ii) another person intends to apply, or has applied, to the Board to be appointed as the representative of the incapable person to give or refuse consent to the admission on his or her behalf; and
- (c) the application to the Board is not prohibited by subsection 51(3).

Proposed Addition — 46(2.1)

(2.1) Same — This section also applies if,

- (a) an evaluator finds that a person is incapable with respect to admission to a care facility;

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- (b) consent to the incapable person's admission to a secure unit of a care facility is given on the person's behalf by his or her substitute decision-maker; and
(c) before the admission takes place, the person responsible for authorizing admissions to the care facility is informed that the incapable person intends to apply, or has applied, to the Board for a determination as to whether the substitute decision-maker complied with section 42.

2007, c. 8, s. 207(7) [Not in force at date of publication. Repealed 2017, c. 25, Sched. 5, s. 53, item 6. Not in force at date of publication.]

(3) Same — In the circumstances described in subsections (1) and (2), the person responsible for authorizing admissions to the care facility shall take reasonable steps to ensure that the person's admission is not authorized and that the person is not admitted,

Proposed Amendment — 46(3) opening words

(3) Same — In the circumstances described in subsections (1), (2) and (2.1), the person responsible for authorizing admissions to the care facility shall take reasonable steps to ensure that the person's admission is not authorized and that the person is not admitted,
2007, c. 8, s. 207(8) [Not in force at date of publication. Repealed 2017, c. 25, Sched. 5, s. 53, item 7. Not in force at date of publication.]

- (a) until 48 hours have elapsed since the person responsible for authorizing admissions to the care facility was first informed of the intended application to the Board without an application being made;
(b) until the application to the Board has been withdrawn;
(c) until the Board has rendered a decision in the matter, if none of the parties to the application before the Board has informed the person responsible for authorizing admissions to the care facility that he or she intends to appeal the Board's decision;

or

- (d) if a party to the application before the Board has informed the person responsible for authorizing admissions to the care facility that he or she intends to appeal the Board's decision,
(i) until the period for commencing the appeal has elapsed without an appeal being commenced, or
(ii) until the appeal of the Board's decision has been finally disposed of.

(4) Crisis — This section does not apply if the person responsible for authorizing admissions to the care facility is of the opinion that the incapable person requires immediate admission to a care facility as a result of a crisis.

(5) Admission for definite stay — This section does not apply to a person's admission, or the authorization of a person's admission, to a care facility for a stay of a definite number of days not exceeding 90.

Crisis Admission

47. (1) Authorization of admission without consent — Despite any law to the contrary, if a person is found by an evaluator to be incapable with respect to his or her admission to a care facility, the person's admission may be authorized, and the person may be admitted,

without consent, if in the opinion of the person responsible for authorizing admissions to the care facility,

- (a) the incapable person requires immediate admission to a care facility as a result of a crisis; and
- (b) it is not reasonably possible to obtain an immediate consent or refusal on the incapable person's behalf.

(2) Consent or refusal to be obtained — When an admission to a care facility is authorized under subsection (1), the person responsible for authorizing admissions to the care facility shall obtain consent, or refusal of consent, from the incapable person's substitute decision-maker promptly after the person's admission.

2007, c. 8, s. 207(9)

Incapacity

[Heading added 2007, c. 8, s. 207(10).]

47.1 Information — An evaluator shall, in the circumstances and manner specified in guidelines established by the governing body of the evaluator's profession, provide to persons found by the evaluator to be incapable with respect to admission to a care facility such information about the consequences of the findings as is specified in the guidelines.

2007, c. 8, s. 207(10)

Protection from Liability

48. (1) Apparently valid consent to admission — If the person responsible for authorizing admissions to a care facility admits, or authorizes the admission of, a person to the care facility with a consent that he or she believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, he or she is not liable for admitting the person, or authorizing the person's admission, without consent.

(2) Apparently valid refusal of admission — If the person responsible for authorizing admissions to a care facility does not admit, or does not authorize the admission of, a person to the care facility because of a refusal that he or she believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, he or she is not liable for failing to admit the person or failing to authorize the person's admission.

(3) Crisis admission — If the person responsible for authorizing admissions to a care facility admits, or authorizes the admission of, a person to the care facility under section 47 in good faith, he or she is not liable for admitting the person, or authorizing the person's admission, without consent.

(4) Reliance on assertion — If a person who gives or refuses consent to admission to a care facility on an incapable person's behalf asserts that he or she,

- (a) is a person described in subsection 20(1), as it applies for the purpose of section 41, or an attorney for personal care described in clause 50(2)(b);
- (b) meets the requirement of clause 20(2)(b) or (c), as it applies for the purpose of section 41; or
- (c) holds the opinions required under subsection 20(4), as it applies for the purpose of section 41,

the person responsible for authorizing admissions to the care facility is entitled to rely on the accuracy of the assertion, unless it is not reasonable to do so in the circumstances.

49. Person making decision on another's behalf — A person who gives or refuses consent on another person's behalf to his or her admission to a care facility, acting in good faith and in accordance with this Act, is not liable for giving or refusing consent.

Applications to Board

50. (1) Application for review of finding of incapacity — A person may apply to the Board for a review of an evaluator's finding that he or she is incapable with respect to his or her admission to a care facility.

(2) Exception — Subsection (1) does not apply to,

- (a) a person who has a guardian of the person, if the guardian has authority to give or refuse consent to the person's admission to a care facility;
- (b) a person who has an attorney for personal care, if the power of attorney contains a provision waiving the person's right to apply for the review and the provision is effective under subsection 50(1) of the *Substitute Decisions Act, 1992*.

(3) Parties — The parties to the application are:

1. The person applying for the review.
2. The evaluator.
3. The person responsible for authorizing admissions to the care facility.
4. Any other person whom the Board specifies.

(4) Subss. 32(4) to (7) apply — Subsections 32(4) to (7) apply, with necessary modifications, to an application under this section.

2000, c. 9, s. 37

51. (1) Application for appointment of representative — A person who is 16 years old or older and who is incapable with respect to his or her admission to a care facility may apply to the Board for appointment of a representative to give or refuse consent on his or her behalf.

(2) Application by proposed representative — A person who is 16 years old or older may apply to the Board to have himself or herself appointed as the representative of a person who is incapable with respect to his or her admission to a care facility, to give or refuse consent on behalf of the incapable person.

(3) Exception — Subsections (1) and (2) do not apply if the incapable person has a guardian of the person who has authority to give or refuse consent to the person's admission to a care facility, or an attorney for personal care under a power of attorney conferring that authority.

(4) Parties — The parties to the application are:

1. The incapable person.
2. The proposed representative named in the application.
3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 20(1), as it applies for the purpose of section 41.

4. The person responsible for authorizing admissions to the care facility.
5. Any other person whom the Board specifies.

(5) Appointment — In an appointment under this section, the Board may authorize the representative to give or refuse consent on the incapable person's behalf,

- (a) to his or her admission to the care facility; or
- (b) to his or her admission to any care facility, or to any of several care facilities specified by the Board, whenever an evaluator finds that the person is incapable with respect to the admission.

(6) Subss. 33(6) to (8) apply — Subsections 33(6) to (8) apply, with necessary modifications, to an appointment under this section.

52. (1) Application for directions — A substitute decision-maker or the person responsible for authorizing admissions to a care facility may apply to the Board for directions if the incapable person expressed a wish with respect to his or her admission to the care facility, but,

- (a) the wish is not clear;
- (b) it is not clear whether the wish is applicable to the circumstances;
- (c) it is not clear whether the wish was expressed while the incapable person was capable; or
- (d) it is not clear whether the wish was expressed after the incapable person attained 16 years of age.

(1.1) Notice to substitute decision-maker — If the person responsible for authorizing admissions to the care facility intends to apply for directions, the person shall inform the substitute decision-maker of his or her intention before doing so.

(2) Parties — The parties to the application are:

1. The substitute decision-maker.
2. The incapable person.
3. The person responsible for authorizing admissions to the care facility.
4. Any other person whom the Board specifies.

(3) Directions — The Board may give directions and, in doing so, shall apply section 42. 2000, c. 9, s. 38(1)–(3)

53. (1) Application to depart from wishes — If a substitute decision-maker is required by paragraph 1 of subsection 42(1) to refuse consent to the incapable person's admission to a care facility because of a wish expressed by the incapable person while capable and after attaining 16 years of age,

- (a) the substitute decision-maker may apply to the Board for permission to consent to the admission despite the wish; or
- (b) the person responsible for authorizing admissions to the care facility may apply to the Board to obtain permission for the substitute decision-maker to consent to the admission despite the wish.

(1.1) Notice to substitute decision-maker — If the person responsible for authorizing admissions to the care facility intends to apply under subsection (1), the person shall inform the substitute decision-maker of his or her intention before doing so.

(2) Parties — The parties to the application are:

1. The substitute decision-maker.
2. The incapable person.
3. The person responsible for authorizing admissions to the care facility.
4. Any other person whom the Board specifies.

(3) Criteria for permission — The Board may give the substitute decision-maker permission to consent to the admission despite the wish if it is satisfied that the incapable person, if capable, would probably give consent because the likely result of the admission is significantly better than would have been anticipated in comparable circumstances at the time the wish was expressed.

2000, c. 9, s. 39(1), (2)

Proposed Addition — 53.1

53.1 (1) Application with respect to admission to secure units — If consent to a person's admission to a secure unit of a care facility is given on an incapable person's behalf by a substitute decision-maker, the person may apply to the Board for a determination as to whether his or her substitute decision-maker complied with section 42.

(2) Applicable provisions — Subsections 54(2) to (7) apply with respect to an application under this section.

(3) Restriction on repeated applications — If the decision to consent to the admission of the person is confirmed on the final disposition of an application under this section, the person shall not make a new application for a review of the decision to consent within six months after the final disposition of the earlier application, unless the Board gives leave in advance.

(4) Restriction where other applications — A person shall not make an application under this section for a review of a decision to consent to the admission within six months after any of the following, unless the Board gives leave in advance:

1. A final disposition of an application under section 52 if the result of the final disposition was that directions were given with respect to a wish, applicable to the circumstances, expressed by the person while capable and after attaining 16 years of age.
2. A final disposition of an application under section 53 if the result of the final disposition was that permission was given to the substitute decision-maker to consent to the admission despite a wish expressed by the person while capable and after attaining 16 years of age.
3. A final disposition of an application under section 54 if the result of the final disposition was that directions were given with respect to the consent to the admission.

(5) Same — The Board may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the decision to consent to the admission.

2007, c. 8, s. 207(11) [Not in force at date of publication. Repealed 2017, c. 25, Sched. 5, s. 53, item 8. Not in force at date of publication.]

54. (1) Application to determine compliance with s. 42 — If consent to admission to a care facility is given or refused on an incapable person's behalf by his or her substitute decision-maker, and if the person responsible for authorizing admissions to the care facility is of the opinion that the substitute decision-maker did not comply with section 42, the person responsible for authorizing admissions to the care facility may apply to the Board for a determination as to whether the substitute decision-maker complied with section 42.

(2) Parties — The parties to the application are:

1. The person responsible for authorizing admissions to the care facility.
2. The incapable person.
3. The substitute decision-maker.
4. Any other person whom the Board specifies.

(3) Power of Board — In determining whether the substitute decision-maker complied with section 42, the Board may substitute its opinion for that of the substitute decision-maker.

(4) Directions — If the Board determines that the substitute decision-maker did not comply with section 42, it may give him or her directions and, in doing so, shall apply section 42.

(5) Time for compliance — The Board shall specify the time within which its directions must be complied with.

(6) Deemed not authorized — If the substitute decision-maker does not comply with the Board's directions within the time specified by the Board, he or she shall be deemed not to meet the requirements of subsection 20(2), as it applies for the purpose of section 41.

(6.1) Subsequent substitute decision-maker — If, under subsection (6), the substitute decision-maker is deemed not to meet the requirements of subsection 20(2), any subsequent substitute decision-maker shall, subject to subsections (6.2) and (6.3), comply with the directions given by the Board on the application within the time specified by the Board.

(6.2) Application for directions — If a subsequent substitute decision-maker knows of a wish expressed by the incapable person with respect to the admission to a care facility, the substitute decision-maker may, with leave of the Board, apply to the Board for directions under section 52.

(6.3) Inconsistent directions — Directions given by the Board under section 52 on a subsequent substitute decision-maker's application brought with leave under subsection (6.2) prevail over inconsistent directions given under subsection (4) to the extent of the inconsistency.

(7) P.G.T. — If the substitute decision-maker who is given directions is the Public Guardian and Trustee, he or she is required to comply with the directions, and subsection (6) does not apply to him or her.

2000, c. 9, s. 40

54.1 Deemed application concerning capacity — An application to the Board under section 51, 52, 53 or 54 shall be deemed to include an application to the Board under section 50 with respect to the person's capacity to consent to his or her admission to a care facility unless the person's capacity to consent to such admission has been determined by the Board within the previous six months.

Proposed Amendment — 54.1

54.1 Deemed application concerning capacity — An application to the Board under section 51, 52, 53, 53.1 or 54 shall be deemed to include an application to the Board under section 50 with respect to the person's capacity to consent to his or her admission to a care facility unless the person's capacity to consent to such admission has been determined by the Board within the previous six months.

2007, c. 8, s. 107(12) [Not in force at date of publication. Repealed 2017, c. 25, Sched. 5, s. 53, item 9. Not in force at date of publication.]

2000, c. 9, s. 41

Proposed Addition — 54.2

54.2 (1) Application to transfer to a secure unit — This Part applies to the transfer of a resident of a long-term care home to a secure unit in the home as though the resident were being admitted to the secure unit, with the following modifications set out in paragraphs 1 and 2 and any other necessary modifications:

1. References to the person responsible for authorizing admissions to a care facility shall be deemed to be references to the licensee of the home.
2. References to admission to a care facility shall be deemed to be references to transfer to the secure unit.

(2) Definition of certain terms — In this section,

“licensee”, “long-term care home” and “resident” have the same meaning as in the *Long-Term Care Homes Act, 2007*.

2007, c. 8, s. 207(13) [Not in force at date of publication. Repealed 2017, c. 25, Sched. 5, s. 53, item 10. Not in force at date of publication.]

Proposed Addition — 54.3–54.21

PART III.1 — CONFINING IN A CARE FACILITY (SS.

54.3–54.21)

[Heading added 2017, c. 25, Sched. 5, s. 60. Not in force at date of publication.]

General

[Heading added 2017, c. 25, Sched. 5, s. 60. Not in force at date of publication.]

54.3 Application of Part — This Part applies to confining in a care facility.

2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

54.4 Definitions — In this Part,

“licensee” means,

- (a) a licensee within the meaning of the *Long-Term Care Homes Act, 2007*, and
- (b) any other person prescribed by the regulations as a licensee for the purposes of this Part;

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Part III.1 — Confining in a Care Facility (ss. 54.3–54.28), 54.7(2)(c)(i)(A)

“substitute decision-maker” means a person who is authorized under section 54.6 to give or refuse consent to confining in a care facility on behalf of a person who is incapable with respect to the confining.

2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

Consent on Incapable Person’s Behalf

[Heading added 2017, c. 25, Sched. 5, s. 60. Not in force at date of publication.]

54.5 (1) Consent on incapable person’s behalf — If a person is found by an evaluator to be incapable with respect to confining in a care facility,

- (a) consent to confining may be given or refused on the person’s behalf by his or her substitute decision-maker in accordance with this Act; and
- (b) the licensee shall take reasonable steps to ensure that the person is not confined in the care facility unless the licensee is of the opinion that the person’s substitute decision-maker has given consent on the person’s behalf in accordance with this Act.

(2) Opinion of Board or court governs — If a person who is found by an evaluator to be incapable with respect to his or her confining in a care facility is found to be capable with respect to the confining by the Board on an application for review of the evaluator’s finding, or by a court on an appeal of the Board’s decision, subsection (1) does not apply.

2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

54.6 Determining who may give or refuse consent — Section 20 applies, with necessary modifications, for the purpose of determining who is authorized to give or refuse consent to confining in a care facility on behalf of a person who is incapable with respect to the confining.

2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

54.7 (1) Principles for giving or refusing consent — A person who gives or refuses consent on an incapable person’s behalf to his or her confining in a care facility shall do so in accordance with the following principles:

1. If the person knows of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, the person shall give or refuse consent in accordance with the wish.
2. If the person does not know of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the incapable person’s best interests.

(2) Best interests — In deciding what the incapable person’s best interests are, the person who gives or refuses consent on the incapable person’s behalf shall take into consideration,

- (a) the values and beliefs that the person knows the incapable person held when capable and believes that the incapable person would still act on if capable;
- (b) any wishes expressed by the incapable person with respect to confining in a care facility that are not required to be followed under paragraph 1 of subsection (1); and
- (c) the following factors:
 - (i) whether confining in the care facility is likely to,
 - (A) improve the quality of the incapable person’s life,

(B) prevent the quality of the incapable person's life from deteriorating, or
(C) reduce the extent to which, or the rate at which, the quality of the incapable person's life is likely to deteriorate,

- (ii) whether the quality of the incapable person's life is likely to improve, remain the same or deteriorate without confining in the care facility,
- (iii) whether the benefit the incapable person is expected to obtain from confining in the care facility outweighs the risk of negative consequences to the incapable person,
- (iv) whether a course of action that is less restrictive than confining in the care facility is available and is appropriate in the circumstances.

(3) Confining — Subject to paragraph 1 of subsection (1), the person shall not give consent on the incapable person's behalf to the incapable person's confining in a care facility, unless the confining is essential to prevent serious bodily harm to the incapable person or to others, or allows the incapable person greater freedom or enjoyment.

(4) Withdrawal of consent — Authority to consent on an incapable person's behalf to the person's confining in a care facility includes authority to withdraw the consent at any time.
2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

54.8 (1) Information — Before giving or refusing consent on an incapable person's behalf to the incapable person's confining in a care facility, a substitute decision-maker is entitled to receive all the information required in order to make the decision.

(2) Conflict — Subsection (1) prevails despite anything to the contrary in the *Personal Health Information Protection Act, 2004*.
2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

54.9 (1) Ancillary decisions — Authority to consent on an incapable person's behalf to the incapable person's confining in a care facility includes authority to make decisions that are necessary and ancillary to the confining.

(2) Collection and disclosure of information — A decision concerning the collection, use and disclosure of information relating to the incapable person is a decision that is necessary and ancillary to the confining, if the information is required for the purpose of the confining and is not personal health information within the meaning of the *Personal Health Information Protection Act, 2004*.

(3) Exception — Subsection (1) does not authorize the making of a decision concerning the incapable person's property.
2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

54.10 Obligation when application is being made — (1) Application — This section applies if,

- (a) an evaluator finds that a person is incapable with respect to his or her confining in a care facility;
- (b) before the confining takes place, the licensee is informed that the person who was found to be incapable, or a person acting on the person's behalf, intends to apply, or has applied, to the Board for a review of the finding; and
- (c) the application to the Board is not prohibited by subsection 54.14(2).

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Part III.1 — Confining in a Care Facility (ss. 54.3–54.21) **S. 54.10(6)**

(2) Same — This section also applies if,

- (a) an evaluator finds that a person is incapable with respect to his or her confining in a care facility;
- (b) before the confining takes place, the licensee is informed that,
 - (i) the incapable person intends to apply, or has applied, to the Board for appointment of a representative to give or refuse consent to the confining on his or her behalf, or
 - (ii) another person intends to apply, or has applied, to the Board to be appointed as the representative of the incapable person to give or refuse consent to the confining on his or her behalf; and
- (c) the application to the Board is not prohibited by subsection 54.15(3).

(3) Same — This section also applies if,

- (a) an evaluator finds that a person is incapable with respect to his or her confining in a care facility;
- (b) consent to the incapable person's confining in a care facility is given on the person's behalf by his or her substitute decision-maker; and
- (c) before the confining takes place, the licensee is informed that the incapable person, or a person acting on the incapable person's behalf, intends to apply, or has applied, to the Board for a determination as to whether the substitute decision-maker complied with section 54.7.

(4) Shall not confine — In the circumstances described in subsections (1), (2) and (3), the licensee shall take reasonable steps to ensure that the person is not confined in the care facility,

- (a) until 48 hours have elapsed since the licensee was first informed of the intended application to the Board without an application being made;
- (b) until the application to the Board has been withdrawn;
- (c) until the Board has rendered a decision in the matter, if none of the parties to the application before the Board has informed the licensee that he or she intends to appeal the Board's decision; or
- (d) if a party to the application before the Board has informed the licensee that he or she intends to appeal the Board's decision,
 - (i) until the period for commencing the appeal has elapsed without an appeal being commenced, or
 - (ii) until the appeal of the Board's decision has been finally disposed of.

(5) Where confining has taken place — For greater certainty, subsection (4) does not apply if the licensee is not informed of a matter described in clause (1)(b), (2)(b) or (3)(c) until after the confining has taken place.

(6) Non-application — This section does not apply if the licensee is of the opinion that the incapable person requires confining under the common law duty of a caregiver to confine a person when immediate action is necessary to prevent serious bodily harm to the person or to others.

2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

S. 54.11

Health Care Consent Act, 1996

54.11 Incapacity information — An evaluator shall, in the circumstances and manner specified in guidelines established by the governing body of the evaluator's profession, provide to persons found by the evaluator to be incapable with respect to confining in a care facility such information about the consequences of the findings as is specified in the guidelines.

2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

54.12 (1) Apparently valid consent to confining — If a licensee confines a person in a care facility with a consent that the licensee believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the licensee is not liable for confining the person without consent.

(2) Apparently valid refusal of confining — If a licensee does not confine a person in a care facility because of a refusal that the licensee believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the licensee is not liable for failing to confine the person.

(3) Reliance on assertion — If a person who gives or refuses consent to confining in a care facility on an incapable person's behalf asserts that he or she,

- (a) is a person described in subsection 20(1), as it applies for the purpose of section 54.6, or an attorney for personal care described in clause 54.14(2)(b);
- (b) meets the requirement of clause 20(2)(b) or (c), as it applies for the purpose of section 54.6; or
- (c) holds the opinions required under subsection 20(4), as it applies for the purpose of section 54.6;

the licensee is entitled to rely on the accuracy of the assertion, unless it is not reasonable to do so in the circumstances.

2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

54.13 Person making decision on another's behalf — A person who gives or refuses consent on another person's behalf to the other person's confining in a care facility, acting in good faith and in accordance with this Act, is not liable for giving or refusing consent.

2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

Applications to Board

[Heading added 2017, c. 25, Sched. 5, s. 60. Not in force at date of publication.]

54.14 (1) Application for review of finding of incapacity — A person, or any person acting on that person's behalf, may apply to the Board for a review of an evaluator's finding that the person is incapable with respect to the person's confining in a care facility.

(2) Exception — Subsection (1) does not apply to,

- (a) a person who has a guardian of the person, if the guardian has authority to give or refuse consent to the person's confining in a care facility; or
- (b) a person who has an attorney for personal care, if the power of attorney contains a provision waiving the person's right to apply for the review and the provision is effective under subsection 50(1) of the *Substitute Decisions Act, 1992*.

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Part III.1 — Confining in a Care Facility (ss. 54.3–54.21) **S. 54.16(1)(c)**

(3) Parties — The parties to the application are:

1. The person found to be incapable.
2. The evaluator.
3. The licensee.
4. Any other person whom the Board specifies.

(4) Subss. 32(4) to (7) apply — Subsections 32(4) to (7) apply, with necessary modifications, to an application under this section.

2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

54.15 (1) Application for appointment of representative — A person who is 16 years old or older and who is incapable with respect to his or her confining in a care facility may apply to the Board for appointment of a representative to give or refuse consent on his or her behalf.

(2) Application by proposed representative — A person who is 16 years old or older may apply to the Board to be appointed as the representative of a person who is incapable with respect to his or her confining in a care facility, in order to give or refuse consent on behalf of the incapable person.

(3) Exception — Subsections (1) and (2) do not apply if the incapable person has a guardian of the person who has authority to give or refuse consent to the person's confining in a care facility, or an attorney for personal care under a power of attorney conferring that authority.

(4) Parties — The parties to the application are:

1. The incapable person.
2. The proposed representative named in the application.
3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 20(1), as it applies for the purpose of section 54.6.
4. The licensee.
5. Any other person whom the Board specifies.

(5) Appointment — In an appointment under this section, the Board may authorize the representative to give or refuse consent on the incapable person's behalf to his or her confining in a care facility.

(6) Subss. 33(6) to (8) apply — Subsections 33(6) to (8) apply, with necessary modifications, to an appointment under this section.

2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

54.16 (1) Application for directions — A substitute decision-maker or the licensee may apply to the Board for directions if the incapable person expressed a wish with respect to the incapable person's confining in the care facility, but,

- (a) the wish is not clear;
- (b) it is not clear whether the wish is applicable to the circumstances;
- (c) it is not clear whether the wish was expressed while the incapable person was capable; or

S. 54.16(1)(d)

Health Care Consent Act, 1996

(d) it is not clear whether the wish was expressed after the incapable person attained 16 years of age.

(2) Notice to substitute decision-maker — A licensee who intends to apply for directions shall inform the substitute decision-maker of the intention before applying.

(3) Parties — The parties to the application are:

1. The substitute decision-maker.
2. The incapable person.
3. The licensee.
4. Any other person whom the Board specifies.

(4) Directions — The Board may give directions and, in doing so, shall apply section 54.7. 2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

54.17 (1) Application to depart from wishes — If a substitute decision-maker is required by paragraph 1 of subsection 54.7(1) to refuse consent to the incapable person's confining in a care facility because of a wish expressed by the incapable person while capable and after attaining 16 years of age,

- (a) the substitute decision-maker may apply to the Board for permission to consent to the confining despite the wish; or
- (b) the licensee may apply to the Board to obtain permission for the substitute decision-maker to consent to the confining despite the wish.

(2) Notice to substitute decision-maker — If the licensee intends to apply under subsection (1), the licensee shall inform the substitute decision-maker of the licensee's intention before applying.

(3) Parties — The parties to the application are:

1. The substitute decision-maker.
2. The incapable person.
3. The licensee.
4. Any other person whom the Board specifies.

(4) Criteria for permission — The Board may give the substitute decision-maker permission to consent to the confining despite the wish if it is satisfied that the incapable person, if capable, would probably give consent because the likely result of the confining is significantly better than would have been anticipated in comparable circumstances at the time the wish was expressed.

2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

54.18 (1) Application with respect to confining — If consent to a person's confining in a care facility is given on an incapable person's behalf by a substitute decision-maker, the person, or any other person acting on the incapable person's behalf, may apply to the Board for a determination as to whether the substitute decision-maker complied with section 54.7.

(2) Parties — The parties to the application are:

1. The substitute decision-maker.
2. The incapable person.

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Part III.1 — Confining in a Care Facility (ss. 54.3–54.21) **S. 54.18(11)**

3. The licensee.
4. Any other person whom the Board specifies.

(3) Restriction on repeated applications — If the decision to consent to the confining of the person is confirmed on the final disposition of an application under this section, the person or another person acting on that person's behalf shall not make a new application for a review of the decision to consent within six months after the final disposition of the earlier application, unless the Board gives leave in advance.

(4) Restriction where other applications — A person shall not make an application under this section for a review of a decision to consent to the confining within six months after any of the following, unless the Board gives leave in advance:

1. A final disposition of an application under section 54.16 if the result of the final disposition was that directions were given with respect to a wish, applicable to the circumstances, expressed by the person while capable and after attaining 16 years of age.
2. A final disposition of an application under section 54.17 if the result of the final disposition was that permission was given to the substitute decision-maker to consent to the confining despite a wish expressed by the person while capable and after attaining 16 years of age.
3. A final disposition of an application under section 54.18 if the result of the final disposition was that directions were given with respect to the consent to the confining.

(5) Same — The Board may give leave for the new application to be made under subsection (3) or (4) if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the decision to consent to the confining.

(6) Power of Board — In determining whether the substitute decision-maker complied with section 54.7, the Board may substitute its opinion for that of the substitute decision-maker.

(7) Directions — If the Board determines that the substitute decision-maker did not comply with section 54.7, it may give the substitute decision-maker directions and, in doing so, shall apply section 54.7.

(8) Time for compliance — The Board shall specify the time within which its directions must be complied with.

(9) Deemed not authorized — If the substitute decision-maker does not comply with the Board's directions within the time specified by the Board, the substitute decision-maker shall be deemed not to meet the requirements of subsection 20(2), as it applies for the purpose of section 54.6.

(10) Subsequent substitute decision-maker — If, under subsection (9), the substitute decision-maker is deemed not to meet the requirements of subsection 20(2), any subsequent substitute decision-maker shall, subject to subsections (11) and (12), comply with the directions given by the Board on the application within the time specified by the Board.

(11) Application for directions — If a subsequent substitute decision-maker knows of a wish expressed by the incapable person with respect to confining in a care facility, the substitute decision-maker may, with leave of the Board, apply to the Board for directions under section 54.16.

(12) Inconsistent directions — Directions given by the Board under section 54.16 on a subsequent substitute decision-maker's application brought with leave under subsection (11) prevail over inconsistent directions given under subsection (7) to the extent of the inconsistency.

(13) P.G.T. — If the substitute decision-maker who is given directions is the Public Guardian and Trustee, the Public Guardian and Trustee is required to comply with the directions, and subsection (9) does not apply to him or her.

2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

54.19 (1) Application by licensee to determine compliance with s. 54.7 — If consent to confining in a care facility is given or refused on an incapable person's behalf by his or her substitute decision-maker, and if the licensee is of the opinion that the substitute decision-maker did not comply with section 54.7, the licensee may apply to the Board for a determination as to whether the substitute decision-maker complied with section 54.7.

(2) Parties — The parties to the application are:

1. The licensee.
2. The incapable person.
3. The substitute decision-maker.
4. Any other person whom the Board specifies.

(3) Power of Board — In determining whether the substitute decision-maker complied with section 54.7, the Board may substitute its opinion for that of the substitute decision-maker.

(4) Directions — If the Board determines that the substitute decision-maker did not comply with section 54.7, it may give the substitute decision-maker directions and, in doing so, shall apply section 54.7.

(5) Time for compliance — The Board shall specify the time within which its directions must be complied with.

(6) Deemed not authorized — If the substitute decision-maker does not comply with the Board's directions within the time specified by the Board, the substitute decision-maker shall be deemed not to meet the requirements of subsection 20(2), as it applies for the purpose of section 54.6.

(7) Subsequent substitute decision-maker — If, under subsection (6), the substitute decision-maker is deemed not to meet the requirements of subsection 20(2), any subsequent substitute decision-maker shall, subject to subsections (8) and (9), comply with the directions given by the Board on the application within the time specified by the Board.

(8) Application for directions — If a subsequent substitute decision-maker knows of a wish expressed by the incapable person with respect to the confining in a care facility, the substitute decision-maker may, with leave of the Board, apply to the Board for directions under section 54.16.

(9) Inconsistent directions — Directions given by the Board under section 54.16 on a subsequent substitute decision-maker's application brought with leave under subsection (8) prevail over inconsistent directions given under subsection (4) to the extent of the inconsistency.

(10) P.G.T. — If the substitute decision-maker who is given directions is the Public Guardian and Trustee, the Public Guardian and Trustee is required to comply with the directions, and subsection (6) does not apply to him or her.

2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

54.20 Deemed application concerning capacity — An application to the Board under section 54.15, 54.16, 54.17, 54.18 or 54.19 shall be deemed to include an application to the Board under section 54.14 with respect to the person’s capacity to consent to his or her confining in a care facility unless the person’s capacity to consent to such confining has been determined by the Board within the previous six months.

2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

54.21 Transition, applications to the Board under Part III.1 — Despite subsection 75(2), the hearing of an application made under this Part before the day on which this section has been in force for eight months shall begin within 14 days after the day the Board receives the application, unless the parties agree to a postponement.

2017, c. 25, Sched. 5, s. 60 [Not in force at date of publication.]

PART IV — PERSONAL ASSISTANCE SERVICES (SS. 55–69.1)

General

55. Application of Part — This Part applies to personal assistance services.

56. Meaning of “substitute decision-maker” — In this Part,

“substitute decision-maker” means a person who is authorized under section 58 to make a decision concerning a personal assistance service on behalf of a recipient who is incapable with respect to the service.

Decision on Incapable Recipient’s Behalf

57. (1) Decision on incapable recipient’s behalf — If a recipient is found by an evaluator to be incapable with respect to a personal assistance service, a decision concerning the service may be made on the recipient’s behalf by his or her substitute decision-maker in accordance with this Act.

Proposed Amendment — 57(1)

(1) Decision on incapable recipient’s behalf — If a recipient is found by an evaluator to be incapable with respect to a personal assistance service,

(a) a decision concerning the service may be made on the recipient’s behalf by his or her substitute decision-maker in accordance with this Act; and

(b) the person who provides the service shall not rely on the consent of the substitute decision-maker unless the person has taken reasonable steps to ensure that the substi-

S. 57(1)(b)

Health Care Consent Act, 1996

tute decision-maker has given consent on the recipient's behalf in accordance with this Act.

2007, c. 8, s. 207(14) [Not in force at date of publication. Repealed 2017, c. 25, Sched. 5, s. 53, item 11. Not in force at date of publication.]

Proposed Amendment — 57(1)

(1) Decision on incapable recipient's behalf — If a recipient is found by an evaluator to be incapable with respect to a personal assistance service,

(a) a decision concerning the service may be made on the recipient's behalf by the recipient's substitute decision-maker in accordance with this Act; and

(b) the person who is proposing to provide the service shall not rely on the consent of the substitute decision-maker unless the person is of the opinion that the recipient's substitute decision-maker has given consent on the recipient's behalf in accordance with this Act.

2017, c. 25, Sched. 5, s. 61 [Not in force at date of publication.]

(2) Opinion of Board or court governs — If a recipient who is found by an evaluator to be incapable with respect to a personal assistance service is found to be capable with respect to the service by the Board on an application for review of the evaluator's finding, or by a court on an appeal of the Board's decision, subsection (1) does not apply.

58. Determining who may make decision — For the purpose of determining who is authorized to make a decision concerning a personal assistance service on behalf of a recipient who is incapable with respect to the service,

(a) section 20, except subsections 20(5) and (6), applies with necessary modifications;

(b) if no person described in subsection 20(1) meets the requirements of subsection 20(2), the Public Guardian and Trustee may make the decision concerning the personal assistance service; and

(c) if two or more persons who are described in the same paragraph of subsection 20(1) and who meet the requirements of subsection 20(2) disagree about the decision to be made concerning the personal assistance service, and if their claims rank ahead of all others, the Public Guardian and Trustee may make the decision in their stead.

59. (1) Principles for making decision — A person who makes a decision on an incapable recipient's behalf concerning a personal assistance service shall do so in accordance with the following principles:

1. If the person knows of a wish applicable to the circumstances that the recipient expressed while capable and after attaining 16 years of age, the person shall make the decision in accordance with the wish.

2. If the person does not know of a wish applicable to the circumstances that the recipient expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the recipient's best interests.

(2) Best interests — In deciding what the recipient's best interests are, the person shall take into consideration,

(a) the values and beliefs that the person knows the recipient held when capable and believes he or she would still act on if capable;

(b) any wishes expressed by the recipient with respect to the personal assistance service that are not required to be followed under paragraph 1 of subsection (1); and
(c) the following factors:

1. Whether the personal assistance service is likely to,
 - i. improve the quality of the recipient's life,
 - ii. prevent the quality of the recipient's life from deteriorating, or
 - iii. reduce the extent to which, or the rate at which, the quality of the recipient's life is likely to deteriorate.
2. Whether the quality of the recipient's life is likely to improve, remain the same or deteriorate without the personal assistance service.
3. Whether the benefit the recipient is expected to obtain from the personal assistance service outweighs the risk of harm to him or her.
4. Whether a less restrictive or less intrusive personal assistance service would be as beneficial as the personal assistance service that is the subject of the decision.
5. Whether the personal assistance service fosters the recipient's independence.

(3) Confinement, monitoring devices, restraint — Subject to paragraph 1 of subsection (1), the person shall not give consent on the recipient's behalf to the use of confinement, monitoring devices or means of restraint, unless the practice is essential to prevent serious bodily harm to the recipient or to others, or allows the recipient greater freedom or enjoyment.

(4) Participation — The person shall encourage the recipient to participate, to the best of his or her abilities, in the person's decision concerning the personal assistance service.

60. (1) Information — Before making a decision on an incapable recipient's behalf concerning a personal assistance service, a substitute decision-maker is entitled to receive all the information required in order to make the decision.

(2) Conflict — Subsection (1) prevails despite anything to the contrary in the *Personal Health Information Protection Act, 2004*.

2004, c. 3, Sched. A, s. 84(10)

61. Change of decision — Authority to make a decision on an incapable recipient's behalf concerning a personal assistance service includes authority to change the decision at any time.

62. Included consent — Unless it is not reasonable to do so in the circumstances, a person who provides a personal assistance service to a recipient is entitled to presume that consent to a personal assistance service includes consent to variations or adjustments in the service, if the nature and risks of the changed service are not significantly different from the nature and risks of the original service.

62.1 Information — An evaluator shall, in the circumstances and manner specified in guidelines established by the governing body of the evaluator's profession, provide to persons found by the evaluator to be incapable with respect to a personal assistance service such information about the consequences of the findings as is specified in the guidelines.

2007, c. 8, s. 207(15)

Protection from Liability

63. (1) Personal assistance service provided — If a person provides a personal assistance service to a recipient in accordance with a decision made on the recipient's behalf that the person believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the person is not liable for providing the personal assistance service without consent.

(2) Personal assistance service not provided — If a person does not provide a personal assistance service to a recipient because of a decision made on the recipient's behalf that the person believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the person is not liable for failing to provide the personal assistance service.

(3) Reliance on assertion — If a person who makes a decision on an incapable recipient's behalf concerning a personal assistance service asserts that he or she,

- (a) is a person described in subsection 20(1), as it applies for the purpose of section 58;
- (b) meets the requirement of clause 20(2)(b) or (c), as it applies for the purpose of section 58; or
- (c) holds the opinions required under subsection 20(4), as it applies for the purpose of section 58,

a person who provides a personal assistance service to the recipient is entitled to rely on the accuracy of the assertion, unless it is not reasonable to do so in the circumstances.

64. Person making decision on recipient's behalf — A person who makes a decision on a recipient's behalf concerning a personal assistance service, acting in good faith and in accordance with this Act, is not liable for making the decision.

Applications to Board

65. (1) Application for review of finding of incapacity — A recipient may apply to the Board for a review of an evaluator's finding that he or she is incapable with respect to a personal assistance service.

(2) Exception — Subsection (1) does not apply to,

- (a) a recipient who has a guardian of the person, if the guardian has authority to make a decision concerning the personal assistance service;
- (b) a recipient who has an attorney for personal care, if the power of attorney contains a provision waiving the recipient's right to apply for the review and the provision is effective under subsection 50(1) of the *Substitute Decisions Act, 1992*.

(3) Parties — The parties to the application are:

1. The recipient applying for the review.
2. The evaluator.
3. The member of the service provider's staff who is responsible for the personal assistance service.
4. Any other person whom the Board specifies.

(4) Subss. 32(4) to (7) apply — Subsections 32(4) to (7) apply, with necessary modifications, to an application under this section.

2000, c. 9, s. 42

66. (1) Application for appointment of representative — A recipient who is 16 years old or older and who is incapable with respect to a personal assistance service may apply to the Board for appointment of a representative to make a decision on his or her behalf concerning the service.

(2) Application by proposed representative — A person who is 16 years old or older may apply to the Board to have himself or herself appointed as the representative of a recipient who is incapable with respect to a personal assistance service, to make a decision on behalf of the recipient concerning the service.

(3) Exception — Subsections (1) and (2) do not apply if the recipient has a guardian of the person who has authority to make decisions concerning the personal assistance service, or an attorney for personal care under a power of attorney conferring that authority.

(4) Parties — The parties to the application are:

1. The recipient.
2. The proposed representative named in the application.
3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 20(1), as it applies for the purpose of section 58.
4. The member of the service provider's staff who is responsible for the personal assistance service.
5. Any other person whom the Board specifies.

(5) Appointment — In an appointment under this section, the Board may authorize the representative to make a decision on the recipient's behalf,

- (a) concerning the personal assistance service; or
- (b) concerning any personal assistance service, or any of several personal assistance services or kinds of personal assistance services specified by the Board, whenever a decision is sought concerning that service or a service of that kind and an evaluator finds that the recipient is incapable with respect to it.

(6) Subss. 33(6) to (8) apply — Subsections 33(6) to (8) apply, with necessary modifications, to an appointment under this section.

67. (1) Application for directions — A substitute decision-maker or the member of a service provider's staff who is responsible for the personal assistance service may apply to the Board for directions if the incapable recipient expressed a wish with respect to the personal assistance service, but,

- (a) the wish is not clear;
- (b) it is not clear whether the wish is applicable to the circumstances;
- (c) it is not clear whether the wish was expressed while the recipient was capable; or
- (d) it is not clear whether the wish was expressed after the recipient attained 16 years of age.

S. 67(1.1)

Health Care Consent Act, 1996

(1.1) Notice to substitute decision-maker — If the member of the service provider's staff responsible for the personal assistance service intends to apply under subsection (1), the member shall inform the substitute decision-maker of his or her intention before doing so.

(2) Parties — The parties to the application are:

1. The substitute decision-maker.
2. The recipient.
3. The member of the service provider's staff who is responsible for the personal assistance service.
4. Any other person whom the Board specifies.

(3) Directions — The Board may give directions and, in doing so, shall apply section 59.
2000, c. 9, s. 43(1)–(3)

68. (1) Application to depart from wishes — If a substitute decision-maker is required by paragraph 1 of subsection 59(1) to refuse consent to a personal assistance service because of a wish expressed by the incapable recipient while capable and after attaining 16 years of age,

- (a) the substitute decision-maker may apply to the Board for permission to consent to the personal assistance service despite the wish; or
- (b) the member of the service provider's staff who is responsible for the personal assistance service may apply to the Board to obtain permission for the substitute decision-maker to consent to the personal assistance service despite the wish.

(1.1) Notice to substitute decision-maker — If the member of the service provider's staff who is responsible for the personal assistance service intends to apply under subsection (1), the member shall inform the substitute decision-maker of his or her intention before doing so.

(2) Parties — The parties to the application are:

1. The substitute decision-maker.
2. The recipient.
3. The member of the service provider's staff who is responsible for the personal assistance service.
4. Any other person whom the Board specifies.

(3) Criteria for permission — The Board may give the substitute decision-maker permission to consent to the personal assistance service despite the wish if it is satisfied that the recipient, if capable, would probably give consent because the likely result of the personal assistance service is significantly better than would have been anticipated in comparable circumstances at the time the wish was expressed.

2000, c. 9, s. 44(1), (2)

69. (1) Application to determine compliance with s. 59 — If a decision concerning a personal assistance service is made on an incapable recipient's behalf by his or her substitute decision-maker and, if the member of the service provider's staff who is responsible for the personal assistance service is of the opinion that the substitute decision-maker did not comply with section 59, the member of the service provider's staff who is responsible for the

personal assistance service may apply to the Board for a determination as to whether the substitute decision-maker complied with section 59.

(2) Parties — The parties to the application are:

1. The member of the service provider's staff who is responsible for the personal assistance service.
2. The recipient.
3. The substitute decision-maker.
4. Any other person whom the Board specifies.

(3) Power of Board — In determining whether the substitute decision-maker complied with section 59, the Board may substitute its opinion for that of the substitute decision-maker.

(4) Directions — If the Board determines that the substitute decision-maker did not comply with section 59, it may give him or her directions and, in doing so, shall apply section 59.

(5) Time for compliance — The Board shall specify the time within which its directions must be complied with.

(6) Deemed not authorized — If the substitute decision-maker does not comply with the Board's directions within the time specified by the Board, he or she shall be deemed not to meet the requirements of subsection 20(2), as it applies for the purpose of section 58.

(6.1) Subsequent substitute decision-maker — If, under subsection (6), the substitute decision-maker is deemed not to meet the requirements of subsection 20(2), any subsequent substitute decision-maker shall, subject to subsections (6.2) and (6.3), comply with the directions given by the Board on the application within the time specified by the Board.

(6.2) Application for directions — If a subsequent substitute decision-maker knows of a wish expressed by the incapable person with respect to the personal assistance service, the substitute decision-maker may, with leave of the Board, apply to the Board for directions under section 67.

(6.3) Inconsistent directions — Directions given by the Board under section 67 on a subsequent substitute decision-maker's application brought with leave under subsection (6.2) prevail over inconsistent directions given under subsection (4) to the extent of the inconsistency.

(7) P.G.T. — If the substitute decision-maker who is given directions is the Public Guardian and Trustee, he or she is required to comply with the directions, and subsection (6) does not apply to him or her.

2000, c. 9, s. 45

69.1 Deemed application concerning capacity — An application to the Board under section 66, 67, 68 or 69 shall be deemed to include an application to the Board under section 65 with respect to the person's capacity to consent to a personal assistance service unless the person's capacity to consent to such service has been determined by the Board within the previous six months.

2000, c. 9, s. 46

PART V — CONSENT AND CAPACITY BOARD (SS. 70—81)

70. (1) Consent and Capacity Board — The board known as the Consent and Capacity Review Board in English and as Commission de révision du consentement et de la capacité in French is continued under the name Consent and Capacity Board in English and Commission du consentement et de la capacité in French.

(2) Composition — The members of the Board shall be appointed by the Lieutenant Governor in Council.

(3) [Repealed 2006, c. 34, s. 34.]

(4) Remuneration and expenses — The members of the Board shall be paid the remuneration fixed by the Lieutenant Governor in Council and the reasonable expenses incurred in the course of their duties under this Act.

2006, c. 34, s. 34

70.1 (1) Limit on jurisdiction — The Board shall not inquire into or make a decision concerning the constitutional validity of a provision of an Act or a regulation.

(2) Same — Subsection (1) shall be deemed always to have applied to the Board, but its enactment does not affect any proceeding that was finally determined before the date on which this section came into force.

2006, c. 19, Sched. L, s. 2

71. (1) Chair and vice-chairs — The Lieutenant Governor in Council shall designate one of the members of the Board as chair and one or more others as vice-chairs.

(2) Role of chair — The chair is the chief executive officer of the Board.

(3) Power to specify qualifications — The chair may specify, qualifications, for the purpose of clause 73(2)(d) or (2.1)(b), that must be met by members of the Board before they may be assigned to sit alone to deal with particular applications.

(4) Role of vice-chair — If the chair is unable to act as such for any reason, the vice-chair (if there are two or more vice-chairs, the one whom the chair designates to replace him or her or, in the absence of a designation, the one who was appointed to the Board first) shall act in the chair's place.

(5) Same — A vice-chair also has the powers and duties that the chair delegates to him or her in writing.

2006, c. 26, s. 14(1)

71.1 Immunity — No proceeding for damages shall be commenced against the Board, a member, employee or agent of the Board or anyone acting under the authority of the chair of the Board for any act done in good faith in the performance or intended performance of the person's duty or for any alleged neglect or default in the performance in good faith of the person's duty.

2000, c. 9, s. 47

72. (1) Staff — Such employees as are necessary for the proper conduct of the Board's work may be appointed under Part III of the *Public Service of Ontario Act, 2006*.

(2) Government services and facilities — The Board shall, if appropriate, use the services and facilities of a ministry or agency of the Government of Ontario.

2006, c. 35, Sched. C, s. 52

73. (1) Assignment of Board members to deal with applications — The chair shall assign the members of the Board to sit alone or in panels of three or five members to deal with particular applications.

(2) Qualifications of member sitting alone — A member of the Board may be assigned to sit alone to deal with an application only if,

(a) throughout the two-year period immediately preceding the assignment, he or she has been a member of the Board or of the review board established by section 37 of the *Mental Health Act*, as it read before the day subsection 20(23) of the *Consent and Capacity Statute Law Amendment Act, 1992* came into force;

(b) he or she is a person licensed under the *Law Society Act* to practise law in Ontario as a barrister and solicitor and, throughout the 10-year period immediately preceding the assignment, he or she has been,

(i) a person licensed under the *Law Society Act* to practise law in Ontario as a barrister and solicitor, or

(ii) a member of the Law Society of Ontario and, subsequently, a person licensed under the *Law Society Act* to practise law in Ontario as a barrister and solicitor;

(c) in the case of an application for a review of a finding of incapacity, he or she has experience that, in the opinion of the chair, is relevant to adjudicating capacity; and

(d) he or she meets all of the other qualifications specified by the chair under subsection 71(3).

(2.1) Same — Despite subsection (2), in the case of an application referred to the Board under the *Mandatory Blood Testing Act, 2006*, a member of the Board may be assigned to sit alone to deal with the application if,

(a) he or she has expertise, in the opinion of the chair, in blood-borne pathogens; and

(b) he or she meets all of the other qualifications specified by the chair under subsection 71(3).

(3) Panel proceedings — If a panel is assigned to deal with an application,

(a) the chair shall designate one member of the panel to preside over the hearing to be conducted by the panel in relation to the application; and

(b) a majority of the members of the panel constitutes a quorum.

(4) Decision of Board — If a member of the Board is assigned to sit alone to deal with an application, the decision of the member is the decision of the Board, and if a panel is assigned to deal with an application, the decision of a majority of the members of the panel is the decision of the Board.

2006, c. 21, Sched. C, s. 111(1); 2006, c. 26, s. 14(2); 2018, c. 8, Sched. 15, s. 10

74. (1) Disqualification — A member of the Board shall not take part in the hearing of a matter that concerns a person who is or was the member's patient or client.

(2) Same — A member of the Board who is an officer or employee of a hospital or other facility or has a direct financial interest in such a facility shall not take part in the hearing of a matter that concerns a person who is a patient of the facility or who resides in the facility.

75. (1) Board to fix time and place of hearing — When the Board receives an application, it shall promptly fix a time and place for a hearing.

(2) Hearing to begin within seven days — The hearing shall begin within seven days after the day the Board receives the application, unless the parties agree to a postponement.

(2.1) [Repealed 2015, c. 36, s. 17.]

(3) Decision — The Board shall render its decision and provide a copy of the decision to each party or the person who represented the party within one day after the day the hearing ends.

(4) Reasons — If, within 30 days after the day the hearing ends, the Board receives a request from any of the parties for reasons for its decision, the Board shall, within four business days after the day the request is received,

- (a) issue written reasons for its decision; and
- (b) provide a copy of the reasons to each person who received a copy of the decision under subsection (3).

(5) Notice of right to request reasons — The Board shall advise all parties to the application that each party has a right to request reasons for the Board's decision.

(6) Method of sending decision and reasons — Despite subsection 18(1) of the *Statutory Powers Procedure Act*, the Board shall send the copy of the decision and, if reasons are required to be issued under subsection (4), the copy of the reasons,

- (a) by electronic transmission;
- (b) by telephone transmission of a facsimile; or
- (c) by some other method that allows proof of receipt, in accordance with the tribunal's rules made under section 25.1 of the *Statutory Powers Procedure Act*.

(7) Deemed day of receipt — Despite subsection 18(3) of the *Statutory Powers Procedure Act*, if the copy is sent by electronic transmission or by telephone transmission of a facsimile, it shall be deemed to be received on the day that it was sent, unless that day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday.

(8) Exception — If a party that acts in good faith does not, through absence, accident, illness or other cause beyond the party's control, receive the copy until a date that is later than the deemed day of receipt, the actual date of receipt governs.

(9) Meaning of "business day" — In subsection (4),

"business day" means any day other than Saturday or a holiday.

2006, c. 21, Sched. C, s. 111(2); 2009, c. 33, Sched. 18, s. 10(2); 2010, c. 1, Sched. 9, s. 1; 2015, c. 36, s. 17

76. (1) Examination of documents — Before the hearing, the parties shall be given an opportunity to examine and copy any documentary evidence that will be produced and any report whose contents will be given in evidence.

(2) Health record — The party who is the subject of the treatment, the admission or the personal assistance service, as the case may be, and the person authorized under the *Law Society Act* to represent him or her are entitled to examine and to copy, at their own expense, any medical or other health record prepared in respect of the party, subject to subsections 35(6) and (7) of the *Mental Health Act* (withholding record of personal health information), subsections 33(2), (3) and (4) of the *Home Care and Community Services Act, 1994* (withholding record of personal health information) and subsections 294(2) to (6) of the *Child, Youth and Family Services Act, 2017* (withholding record of mental disorder).

Proposed Amendment — 76(2)

(2) Health record — The party who is the subject of the treatment, the admission or the personal assistance service, as the case may be, and the person authorized under the *Law Society Act* to represent him or her are entitled to examine and to copy, at their own expense, any medical or other health record prepared in respect of the party, subject to subsections 35(6) and (7) of the *Mental Health Act* (withholding record of personal health information) and subsections 294(2) to (6) of the *Child, Youth and Family Services Act, 2017* (withholding record of mental disorder).

2020, c. 13, Sched. 3, s. 3 [Not in force at date of publication.]

2004, c. 3, Sched. A, s. 84(11); 2006, c. 21, Sched. C, s. 111(3); 2007, c. 8, s. 207(16); 2017, c. 14, Sched. 4, s. 16(1)

77. (1) Communication re subject-matter of hearing — The member or members of the Board conducting a hearing shall not communicate about the subject-matter of the hearing directly or indirectly with any person, unless all the parties and the persons representing the parties under the authority of the *Law Society Act* receive notice and have an opportunity to participate.

(2) Exception — However, the member or members of the Board conducting the hearing may seek advice from an adviser independent of the parties, and in that case the nature of the advice shall be communicated to all the parties and the persons representing the parties under the authority of the *Law Society Act* so that they may make submissions as to the law.

2006, c. 21, Sched. C, s. 111(4), (5)

78. Only members at hearing to participate in decision — No member of the Board shall participate in a decision unless he or she was present throughout the hearing and heard the parties' evidence and argument.

79. (1) Release of evidence — Within a reasonable time after the final disposition of the proceeding, documents and things put in evidence at the hearing shall, on request, be released to the person who produced them.

(2) Return of original record — If an original clinical record respecting a person's care or treatment was put in evidence, it shall be returned to the place from which it was obtained as soon as possible after the final disposition of the proceeding.

80. (1) Appeal — A party to a proceeding before the Board may appeal the Board's decision to the Superior Court of Justice on a question of law or fact or both.

(2) Time for filing notice of appeal — The appellant shall serve his or her notice of appeal on the other parties and shall file it with the court, with proof of service, within seven days after he or she receives the Board's decision.

(3) Notice to Board — The appellant shall give a copy of the notice of appeal to the Board.

(4) Record — On receipt of the copy of the notice of appeal, the Board shall promptly serve the parties with the record of the proceeding before the Board, including a transcript of the oral evidence given at the hearing, and shall promptly file the record and transcript, with proof of service, with the court.

(5) Time for filing appellant's factum — Within 14 days after being served with the record and transcript, the appellant shall serve his or her factum on the other parties and shall file it, with proof of service, with the court.

(6) Time for filing respondent's factum — Within 14 days after being served with the appellant's factum, the respondent shall serve his or her factum on the other parties and shall file it, with proof of service, with the court.

(7) Extension of time — The court may extend the time for filing the notice of appeal, the appellant's factum or the respondent's factum, even after the time has expired.

(8) Early date for appeal — The court shall fix for the hearing of the appeal the earliest date that is compatible with its just disposition.

(9) Appeal on the record, exception — The court shall hear the appeal on the record, including the transcript, but may receive new or additional evidence as it considers just.

(10) Powers of court on appeal — On the appeal, the court may,

- (a) exercise all the powers of the Board;
- (b) substitute its opinion for that of a health practitioner, an evaluator, a substitute decision-maker or the Board;
- (c) refer the matter back to the Board, with directions, for rehearing in whole or in part.

2000, c. 9, s. 48

81. (1) Counsel for incapable person — If a person who is or may be incapable with respect to a treatment, managing property, admission to a care facility or a personal assistance service is a party to a proceeding before the Board and does not have legal representation,

Proposed Amendment — 81(1) opening words

(1) Counsel for incapable person — If a person who is or may be incapable with respect to a treatment, managing property, admission to or confining in a care facility or a personal assistance service is a party to a proceeding before the Board and does not have legal representation,

2017, c. 25, Sched. 5, s. 62 [Not in force at date of publication.]

- (a) the Board may direct Legal Aid Ontario to arrange for legal representation to be provided for the person; and
- (b) the person shall be deemed to have capacity to retain and instruct counsel.

(2) Responsibility for legal fees — If legal representation is provided for a person in accordance with clause (1)(a) and no certificate is issued under the *Legal Aid Services Act*, 1998 in connection with the proceeding, the person is responsible for the legal fees.

Proposed Amendment — 81(2)

(2) Responsibility for legal fees — If legal representation is provided for a person in accordance with clause (1)(a) and the person is not eligible to receive comparable legal aid services under the *Legal Aid Services Act, 2020* in connection with the proceeding, the person is responsible for the legal fees.

2020, c. 11, Sched. 15, s. 55 [Not in force at date of publication.]

(2.1) Same — Nothing in subsection (2) affects any right of the person to an assessment of a solicitor's bill under the *Solicitors Act* or other review of the legal fees and, if it is determined that the person is incapable of managing property, the assessment or other review may be sought on behalf of the person by,

- (a) the person's guardian of property appointed under the *Substitute Decisions Act, 1992*; or
- (b) the person's attorney under a continuing power of attorney for property given under the *Substitute Decisions Act, 1992*.

(3) Child in secure treatment program — If a child who has been admitted to a secure treatment program under section 171 of the *Child, Youth and Family Services Act, 2017* is a party to a proceeding before the Board, the Children's Lawyer shall provide legal representation for the child unless the Children's Lawyer is satisfied that another person will provide legal representation for the child.

1998, c. 26, s. 104; 2009, c. 33, Sched. 18, s. 10(3)–(5); 2017, c. 14, Sched. 4, s. 16(2)

PART VI — MISCELLANEOUS (SS. 82–95)

82. (1) Offence: false assertion — No person who gives or refuses consent to a treatment on an incapable person's behalf shall make an assertion referred to in subsection 29(6), knowing that it is untrue.

(2) Same — No person who gives or refuses consent to admission to a care facility on an incapable person's behalf shall make an assertion referred to in subsection 48(4), knowing that it is untrue.

Proposed Addition — 82(2.1)

(2.1) Same — No person who gives or refuses consent to confining in a care facility on an incapable person's behalf shall make an assertion referred to in subsection 54.12(3), knowing that it is untrue.

2017, c. 25, Sched. 5, s. 63(1) [Not in force at date of publication.]

(3) Same — No person who makes a decision concerning a personal assistance service on an incapable recipient's behalf shall make an assertion referred to in subsection 63(3), knowing that it is untrue.

(4) Penalty — A person who contravenes subsection (1), (2) or (3) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000.

Proposed Amendment — 82(4)

(4) Penalty — A person who contravenes subsection (1), (2), (2.1) or (3) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000.

2017, c. 25, Sched. 5, s. 63(2) [Not in force at date of publication.]

S. 83(1)

Health Care Consent Act, 1996

83. (1) Offence: misrepresentation of wishes — No person shall knowingly misrepresent wishes someone has expressed with respect to treatment, admission to a care facility or a personal assistance service.

Proposed Amendment — 83(1)

(1) Offence: misrepresentation of wishes — No person shall knowingly misrepresent wishes someone has expressed with respect to treatment, admission to or confining in a care facility or a personal assistance service.

2017, c. 25, Sched. 5, s. 64 [Not in force at date of publication.]

(2) Penalty — A person who contravenes subsection (1) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000.

84. (1) Offence: decision contrary to wishes — A person who knowingly contravenes paragraph 1 of subsection 21(1), paragraph 1 of subsection 42(1) or paragraph 1 of subsection 59(1) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000.

(2) Exception — Subsection (1) does not apply if the person acts in accordance with permission given under section 36, 53 or 68 or in accordance with directions given under section 35, 37, 52, 54, 67 or 69.

Proposed Amendment — 84

84. (1) Offence: decision contrary to wishes — A person who knowingly contravenes paragraph 1 of subsection 21(1), paragraph 1 of subsection 42(1), paragraph 1 of subsection 54.7(1) or paragraph 1 of subsection 59(1) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000.

(2) Exception — Subsection (1) does not apply if the person acts in accordance with permission given under section 36, 53, 54.17 or 68 or in accordance with directions given under section 35, 37, 52, 54, 54.16, 54.18, 67 or 69.

2017, c. 25, Sched. 5, s. 65 [Not in force at date of publication.]

Proposed Addition — 84.1

84.1 (1) Protection of information — In a prosecution for an offence under this Act or where documents or materials are filed with a court under sections 158 to 160 of the *Provincial Offences Act* in relation to an investigation into an offence under this Act, the court may, at any time, take precautions to avoid the disclosure by the court or any person of any personal health information about an individual, including, where appropriate,

- (a) removing the identifying information of any person whose personal health information is referred to in any documents or materials;
- (b) receiving representations without notice;
- (c) conducting hearings or parts of hearings in private; or
- (d) sealing all or part of the court files.

(2) Definition of personal health information — In this section,

“personal health information” means personal health information as defined in the *Personal Health Information Protection Act, 2004*.

2017, c. 25, Sched. 5, s. 66 [Not in force at date of publication.]

85. (1) Regulations — The Lieutenant Governor in Council may make regulations,

- (a) prescribing facilities as care facilities for the purpose of clause (b) of the definition of “care facility” in subsection 2(1) and providing transitional rules for the application of the Act to such facilities;
- (b) for the purpose of the definition of “evaluator” in subsection 2(1), prescribing categories of persons as evaluators and prescribing the circumstances in which those persons or other persons described in the definition may act as evaluators;
- (c) prescribing categories of persons as health practitioners for the purpose of the definition of “health practitioner” in subsection 2(1);
- (d) prescribing things that do not constitute a personal assistance service for the purpose of the definition of “personal assistance service” in subsection 2(1);
- (e) prescribing places, programs, providers and circumstances for the purpose of the definition of “recipient” in subsection 2(1);
- (f) prescribing things that do not constitute treatment for the purpose of the definition of “treatment” in subsection 2(1);
- (g) prescribing excluded acts for the purpose of clause 3(1)(b);
- (h) governing determinations by health practitioners of capacity with respect to treatment and governing determinations by evaluators of capacity with respect to admission to a care facility or a personal assistance service;

Proposed Amendment — 85(1)(h)

- (h) governing determinations by health practitioners of capacity with respect to treatment and governing determinations by evaluators of capacity with respect to admission to or confining in a care facility or a personal assistance service;

2017, c. 25, Sched. 5, s. 67(1) [Not in force at date of publication.]

- (i) prescribing health facilities for the purpose of subsection 24(1);

Proposed Addition — 85(1)(i.1), (i.2)

- (i.1) prescribing a situation as a crisis for the purposes of the definition of “crisis” in section 39;
- (i.2) clarifying the modifications necessary in the application of Part III under section 54.2;

2007, c. 8, s. 207(18) [Not in force at date of publication. Repealed 2017, c. 25, Sched. 5, s. 53, item 12. Not in force at date of publication.]

- (j) regulating the amounts that a person who is entitled to copy medical or other health records under subsection 76(2) may be charged for copies of the records;

- (k) governing the transfer of information between an evaluator and the person responsible for authorizing admissions to a care facility, or between an evaluator and the member of a service provider’s staff who is responsible for a personal assistance service;

Proposed Amendment — 85(1)(k)

- (k) governing the transfer of information between an evaluator and the person responsible for authorizing admissions to a care facility or between the evaluator and a licensee

S. 85(1)(k)

Health Care Consent Act, 1996

within the meaning of Part III.1, or between an evaluator and the member of a service provider's staff who is responsible for a personal assistance service;

2017, c. 25, Sched. 5, s. 67(2) [Not in force at date of publication.]

(l) governing the transfer of information that is relevant to the making of a decision under this Act concerning a treatment, admission to a care facility or a personal assistance service, including regulating the disclosure of such information to the person who is the subject of the decision or to his or her substitute decision-maker and requiring or permitting the disclosure of such information with the consent of the person or his or her substitute decision-maker;

Proposed Amendment — 85(1)(l)

(l) governing the transfer of information that is relevant to the making of a decision under this Act concerning a treatment, admission to or confining in a care facility or a personal assistance service, including regulating the disclosure of such information to the person who is the subject of the decision or to his or her substitute decision-maker and requiring or permitting the disclosure of such information with the consent of the person or his or her substitute decision-maker;

2017, c. 25, Sched. 5, s. 67(2) [Not in force at date of publication.]

(m) prescribing forms for the purpose of this Act or the regulations.

Proposed Amendment — 85(1)(m)

(m) providing for and governing anything that under this Act is to be prescribed in the regulations or provided for in the regulations;

2017, c. 25, Sched. 5, s. 67(2) [Not in force at date of publication.]

Proposed Addition — 85(1)(n)–(p)

(n) governing confining in a care facility, including clarifying the application of this Act or any provision of this Act to confining in a care facility;

(o) providing for additional or alternate rules with respect to confining in a care facility or a class of care facilities;

(p) prescribing and governing forms for the purpose of this Act or the regulations.

2017, c. 25, Sched. 5, s. 67(2) [Not in force at date of publication.]

(2) Application — A regulation may be general or specific in its application.

2007, c. 8, s. 207(17); 2009, c. 26, s. 10(3)

86. (1) [Repealed 1996, c. 2, Sched. A, s. 86(2).]

(2) Repeal — Subsection (1) is repealed on the first anniversary of the day this Act comes into force.

87. (1) Transition, treatment — This Act applies to a treatment that is begun after the day this Act comes into force, even if a finding as to capacity was made or consent was given before that day.

(2) Same — This Act does not apply to a treatment that is begun on or before the day this Act comes into force.

88. (1) Transition, admission — This Act applies to the admission to a care facility of a person who is placed on the waiting list for the facility after the day this Act comes into force, even if a finding as to capacity was made or consent was given before that day.

(2) Same — This Act does not apply to the admission to a care facility of a person who is placed on the waiting list for the facility on or before the day this Act comes into force.

(3) Application of section — This section does not apply to a care facility described in clause (d) of the definition of “care facility” in subsection 2(1).

Proposed Amendment — 88(3)

(3) Application of section — This section does not apply to a care facility described in clause (b) of the definition of “care facility” in subsection 2(1).

2017, c. 25, Sched. 5, s. 68 [Not in force at date of publication.]

89. Transition, section 19 — Section 19 applies to an appeal commenced before the day this Act comes into force if, on the day this Act comes into force, the appeal has not been finally disposed of and an order authorizing administration of the treatment before the final disposition of the appeal has not been made.

90. (1) Transition, section 32 — If, on the day this Act comes into force, an application commenced under section 28 of the *Consent to Treatment Act, 1992* has not been finally disposed of,

- (a) subsections 32(3) and (4) of this Act apply to the application;
- (b) subsection 32(2) of this Act does not apply to the application; and
- (c) subsection 28(6) of the *Consent to Treatment Act, 1992*, as it read immediately before the day this Act comes into force, continues to apply to the application.

(2) Same — For the purpose of subsection 32(5) of this Act, a final disposition of the following applications shall be deemed to be a final disposition of an application under section 32 of this Act:

1. An application commenced under section 28 of the *Consent to Treatment Act, 1992* before the day this Act comes into force.
2. An application commenced under section 51 of the *Mental Health Act* before the day subsection 20(40) of the *Consent and Capacity Statute Law Amendment Act, 1992* came into force.

91. (1) Transition, section 33 — If, on the day this Act comes into force, an application commenced under section 29 of the *Consent to Treatment Act, 1992* has not been finally disposed of,

- (a) subsections 33(5) and (6) and clauses 33(7)(a), (b) and (c) of this Act apply to the application;
- (b) subsections 33(3) and (4) of this Act do not apply to the application; and
- (c) subsections 29(3) and (7) of the *Consent to Treatment Act, 1992*, as they read immediately before the day this Act comes into force, continue to apply to the application.

(2) Same — Clause 33(7)(d) and subsection 33(8) of this Act apply to an appointment made pursuant to an application commenced under section 29 of the *Consent to Treatment Act, 1992* before the day this Act comes into force.

92. (1) Transition, section 34 — If, on the day this Act comes into force, an application commenced under section 32 of the *Consent to Treatment Act, 1992* has not been finally disposed of,

- (a) subsections 34(3), (4), (5) and (6) of this Act apply to the application; and
- (b) subsection 34(2) of this Act does not apply to the application.

(2) Same — For the purpose of subsection 34(7) of this Act, a final disposition of an application commenced under section 32 of the *Consent to Treatment Act, 1992* before the day this Act comes into force shall be deemed to be a final disposition of an application under section 34 of this Act.

93. Transition, section 35 — If, on the day this Act comes into force, an application commenced under section 30 of the *Consent to Treatment Act, 1992* has not been finally disposed of, subsections 35(2) and (3) of this Act apply to the application if it was commenced by a person who is a substitute decision-maker as defined in Part II of this Act.

94. Transition, section 36 — If, on the day this Act comes into force, an application commenced under section 31 of the *Consent to Treatment Act, 1992* has not been finally disposed of, subsections 36(2) and (3) of this Act apply to the application if it was commenced by a person who is a substitute decision-maker as defined in Part II of this Act.

95. Short title — The short title of this Act is the *Health Care Consent Act, 1996*.

Form A — Application to the Board to Review a Finding of Incapacity under Subsection 32(1), 50(1) or 65(1) of the Act

Health Care Consent Act

[Editor's Note: The forms have been editorially added by ~~Carswell~~ and do not form part of the text. They are available through www.ccboard.on.ca/scripts/english/forms/index.asp. For your convenience, the government form is reproduced below.]

1

Thomson Reuters
Canada

My name is: (print full name), I apply to the Board for a review of:
 an evaluator's finding that I am incapable with respect to my admission to a care facility.
 an evaluator's finding that I am incapable with respect to a personal assistance service.
 a health practitioner's finding that I am incapable with respect to the following treatment, course of treatment, plan of treatment or community treatment plan:

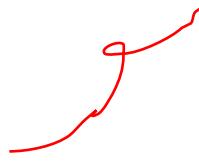
Note: An application may only be made if a Health Practitioner or evaluator has made a relevant finding of incapacity.

Please provide the name, address, telephone and fax numbers of the health practitioner or evaluator who made the finding of incapacity:

.....
.....

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<http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/FormDetail?OpenForm&ACT=RDR&TAB=PROFILE&SRCH=1&ENV=WWE&TIT=health+care+consent+act&NO=014-2973-04E>



Form A — Application to the Board to Review a Finding of Incapacity **Form A**

Are you currently an in-patient or resident at a health or residential facility?

no

yes

name, address and telephone number of facility

.....
.....

Your home address and telephone number or other way to contact you:

..... ()
(address) (telephone no.)

Name, address, telephone number and fax number of your lawyer or agent (*if any*):

..... (name) (address)
() ()
(telephone no.) (fax no.)

If this application refers to admission to a care facility, please provide the name, address, telephone and fax numbers of the person responsible for authorizing admissions to the facility:

..... (name) (address)
() ()
(telephone no.) (fax no.)

If this application refers to a personal assistance service, please provide the name, address, telephone and fax numbers of the staff member responsible for the service:

..... (name) (address)
() ()
(telephone no.) (fax no.)

If someone helped you to fill out this application form, please provide his / her name, address, telephone and fax numbers:

..... (name) (address)
() ()
(telephone no.) (fax no.)

Have you applied to the Board during the past year for a review of a finding regarding your capacity to consent to treatment, admission to a long term care facility or personal care services?

no

yes

if know, provide place and date of last hearing

..... (date) (location)

.....
.....

Form A

Health Care Consent Act, 1996

(date)

(signature)

can the highlighted
be moved up to the
previous page? If
not, please move
the lines down
to this page

Collection of this information is for the purpose of conducting a proceeding before this Board. It is collected/used for this purpose under the authority of subsection 32(1) / 50(1) / 65(1) of the *Health Care Consent Act*. For information about collection practices, contact the Board or call toll free at 1 800 461-2036

Fax completed form to the Board at (416) 924-8873 or call toll free at 1 800 461-2036 for assistance.

For your information

What will happen if I don't apply to the Board? If you have been found incapable of consenting to a treatment, admission to a long term care facility or a personal assistance service, someone else will be asked to make the decision for you. This is usually a close family member. If you have a court-appointed guardian or an attorney for personal care with the authority to make the decision, that person will make it for you.

Who may apply to the Board? Anyone who has been found incapable of consenting to a treatment, admission to a long term care facility or a personal assistance service may apply unless:

- they have either a court-appointed guardian for personal care with authority to make the required decision, or
- they have signed a special kind of power of attorney for personal care in which they waive their right to apply to the Board and which meets specific procedural requirements found in Section 50(1) the *Substitute Decision Act*.
- may not reapply within six months of a final determination of a previous application except with Board permission.

When & Where will the hearing be? The hearing will be held somewhere close to where you are. It will probably take place within a week after the Board receives your application.

How will the Board make its decision? The Board will base its decision on whether or not it believes that you are:

- able to understand the information that is relevant to making a decision concerning the treatment, admission to a long term care facility or personal assistance service, and
- able to appreciate the reasonable foreseeable consequences of a decision or lack of decision.

Form B — Application to the Board to Appoint a Representative under Subsection 33(1), 51(1) or 66(1) of the Act

Health Care Consent Act

2

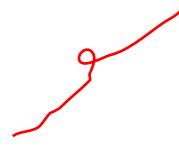
[Editor's Note: The forms have been editorially added by Carswell and do not form part of the text. They are available through www.ccboard.on.ca/scripts/english/forms/index.asp. For your convenience, the government form is reproduced below.]

Thomson Reuters
Canada

My name is: (print full name of patient)

I apply to the Board to have a representative appointed to give or refuse consent on my behalf.

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Form B — Application to the Board to Appoint a Representative ~~under~~ ...**Form B**

a health practitioner's finding that I am incapable with respect to the following treatment, course of treatment, plan of treatment or community treatment plan that has been proposed for me:

.....

an evaluator has found that I am not capable with respect to my admission to a care facility.

an evaluator has found that I am not capable with respect to a personal assistance service.

Note: An application may only be made if a health practitioner or evaluator has made a relevant finding of incapacity.

The name of the proposed representative is: (print full name of the proposed representative)

His or her address, telephone and fax numbers are:

.....

(address)

().....

().....

(telephone no.)

(fax no.)

The name of the person who made the finding of incapacity is: (print full name of the person)

His or her address and telephone and fax number are:

.....

(address)

().....

().....

(telephone no.)

(fax no.)

Are you currently an in-patient or resident at a health or residential facility?

no

yes

provide name, address and telephone number of facility

.....

Your home address and telephone number or other way to contact you:

.....

().....

(address)

(telephone no.)

You must list your spouse, partner, parent, brothers and sisters and your children. If you are under 18 years old, you must also list any agency or person legally authorised to make treatment decisions on your behalf.

| Name | Relationship | Address | Telephone no. |
|------|--------------|---------|---------------|
| 1. | | | () |
| 2. | | | () |
| 3. | | | () |
| 4. | | | () |
| 5. | | | () |

(If further room is required, check here and add another sheet)

Form B

Health Care Consent Act, 1996

If you were unable to provide a complete and accurate list, please explain:

.....

WARNING: All persons in the required categories together with correct and complete contact information must be listed unless you are unable to do so and have so indicated. Intentional omissions or misinformation may result in a cost award against you, dismissal of your application or other sanctions.

Name, address, telephone number and fax number of your lawyer or agent (if any):

.....

(name) (address)
() ()
(telephone no.) (fax no.)

If this application refers to admission to a care facility, provide the name, address, telephone and fax numbers of the person responsible for authorizing admissions to the facility. (Often, this will be an official from the local Community Care Access Centre.)

.....

(name) (address)
() ()
(telephone no.) (fax no.)

If this application refers to a personal assistance service, provide the name, address, telephone and fax numbers of the staff member responsible for the service:

.....

(name) (address)
() ()
(telephone no.) (fax no.)

If this application refers to a treatment, provide the name, address, telephone and fax numbers of the health practitioner who proposed it:

.....

(name) (address)
() ()
(telephone no.) (fax no.)

If someone helped you to fill out this application form, provide his / her name, and contact information:

.....

(name) (address)
() ()
(telephone no.) (fax no.)

I confirm that the proposed representative and I both are at least sixteen years of age.

.....

(date) (signature)

Whenever an application of this type is received, the law provides that the patient is deemed to have applied for a review of his or her capacity to make the relevant decision. This does not apply if the Board has determined this issue of capacity within the previous six months.

3

Form C — Application to the Board to Appoint a Representative under ...**Form C**

Collection of this information is for the purpose of conducting a proceeding before this board. It is collected/used for this purpose under the authority of subsection 33(1) / 51(1) / 66(1) of the *Health Care Consent Act*. For information about collection practices, contact the Board or call toll free at 1 800 461-2036.

Fax completed form to the Board at (416) 924-8873 or call toll free at 1 800 461-2036 for assistance.

Form C — Application to the Board to Appoint a Representative under Subsection 33(2), 51(2) or 66(2) of the *Health Care Consent Act*

Health Care Consent Act

[Editor's Note: The forms have been editorially added by Carswell and do not form part of the text. They are available through www.ccboard.on.ca/scripts/english/forms/index.asp. For your convenience, the government form is reproduced below.]

Consent and Capacity Board

3

**Thomson Reuters
Canada**

Section 1 — Applicant (Proposed Representative)

| | | | | |
|--|---------------------|------------------------|-------------------|----------------------|
| Last Name | First Name | | | |
| Unit No. | Street No. | Street Name | PO Box | |
| City/Town | | | Province | Postal Code |
| Telephone No. (including area code) | Fax No. | Email Address | | |

Section 2 — Application Type

I apply to the Board to be appointed as a representative for the person named below. This application is made with respect to:

a health practitioner's finding that this person is incapable with respect to the following treatment.

Specify:

an evaluator's finding that this person is incapable with respect to my admission to a care facility.

an evaluator's finding that this person is incapable with respect to a personal assistance service.

Note: Patient/Resident must be a resident in a Long-Term Care Facility.

Section 3 — Patient/Resident

| | |
|--------------------|---------------------|
| Last Name | First Name |
|--------------------|---------------------|

← 395

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Form C

Health Care Consent Act, 1996

| | | | |
|--|---------------------|------------------------|----------------------|
| Unit No. | Street No. | Street Name | PO Box |
| City/Town | | Province | Postal Code |
| Telephone No. (including area code) | Fax No. | Email Address | |

Section 4 — Person Who Made the Finding of Incapacity

Note: An application may only be made if a health practitioner or evaluator has made a relevant finding of incapacity.

| | | | |
|--|---------------------|------------------------|----------------------|
| Last Name | First Name | | |
| Unit No. | Street No. | Street Name | PO Box |
| City/Town | | Province | Postal Code |
| Telephone No. (including area code) | Fax No. | Email Address | |

Section 5 — Health Practitioner Who Proposed the Treatment

If this application refers to *treatment*, provide the contact information about the person proposing treatment.

Same as Section 4

| | | | |
|--|---------------------|------------------------|----------------------|
| Last Name | First Name | | |
| Unit No. | Street No. | Street Name | PO Box |
| City/Town | | Province | Postal Code |
| Telephone No. (including area code) | Fax No. | Email Address | |

Section 6 — Person Responsible for Authorizing Admission to Long-Term Care

If this application refers to *admission to a care facility*, provide the contact information about the person responsible for authorizing admission to the facility. This will often be an official from the local Community Care Access Centre.

Same as Section 4

Form C — Application to the Board to Appoint a Representative under ...**Form C**

| | | | |
|--|---------------------|------------------------|----------------------|
| Last Name | | First Name | |
| Unit No. | Street No. | Street Name | PO Box |
| City/Town | | Province | Postal Code |
| Telephone No. (including area code) | Fax No. | Email Address | |

Section 7 — Person Responsible for Providing a Personal Assistance Service

If this application refers to a *personal assistance service*, provide the contact information of the staff member responsible for the service.

Same as Section 4

| | | | |
|--|---------------------|------------------------|----------------------|
| Last Name | | First Name | |
| Unit No. | Street No. | Street Name | PO Box |
| City/Town | | Province | Postal Code |
| Telephone No. (including area code) | Fax No. | Email Address | |

Section 8 — Information About the Facility

Is the Patient/Resident currently an in-patient or resident at a health or residential facility
No Yes, provide information about the facility

| | | | |
|---|--|----------------------|----------------------|
| Name of Facility | Ward | | |
| Unit No. | Street No. | Street Name | PO Box |
| City/Town | | Province | Postal Code |
| Contact Name (First Name, Last Name) | Telephone No. (including area code) | Fax No. | |

Section 9 — List Spouse, Partner, Parents, Siblings and Children of Patient/Resident

WARNING:

All persons in the required categories together with correct and complete contact information must be listed unless you are unable to do so and have so indicated below.*

Form C

Health Care Consent Act, 1996

If the Patient/Resident is under 18 years old, you must also list any agency or person legally authorized to make treatment/admission/personal assistance decisions on his or her behalf. Intentional omissions or misinformation may result in a cost award against you, dismissal of your application or sanctions.

| | | | | |
|--|---------------------|------------------------|------------------------|----------------------|
| Last Name | | First Name | Relationship | |
| Unit No. | Street No. | Street Name | PO Box | |
| City/Town | | | Prov- ince | Postal Code |
| Telephone No. (including area code) | Fax No. | Email Address | | |
| Unit No. | Street No. | Street Name | PO Box | |
| City/Town | | | Prov- ince | Postal Code |
| Telephone No. (including area code) | Fax No. | Email Address | | |
| Last Name | | First Name | Relationship | |
| Unit No. | Street No. | Street Name | PO Box | |
| City/Town | | | Prov- ince | Postal Code |
| Telephone No. (including area code) | Fax No. | Email Address | | |
| Last Name | | First Name | Relationship | |
| Unit No. | Street No. | Street Name | PO Box | |
| City/Town | | | Prov- ince | Postal Code |
| Telephone No. (including area code) | Fax No. | Email Address | | |

Form C — Application to the Board to Appoint a Representative under ...**Form C**

| | | | | |
|--|---------------------|------------------------|------------------------|----------------------|
| Last Name | First Name | Relationship | | |
| Unit No. | Street No. | Street Name | PO Box | |
| City/Town | | | Prov- ince | Postal Code |
| Telephone No. (including area code) | Fax No. | Email Address | | |

If further room is required, check here and add another page.

*If you are unable to provide a complete and accurate list, please explain (attach a separate page if necessary):

.....
.....
.....
.....
.....

Section 10—Person Who Will Represent the Applicant (Proposed Representative) at the Hearing (e.g. lawyer)

| | | | | |
|--|---------------------|------------------------|-------------------|----------------------|
| Last Name | First Name | | | |
| Unit No. | Street No. | Street Name | PO Box | |
| City/Town | | | Province | Postal Code |
| Telephone No. (including area code) | Fax No. | Email Address | | |

Section 11—Person Who Will Represent the Patient/Resident at the Hearing (e.g. lawyer)

| | | | | |
|--|---------------------|------------------------|-------------------|----------------------|
| Last Name | First Name | | | |
| Unit No. | Street No. | Street Name | PO Box | |
| City/Town | | | Province | Postal Code |
| Telephone No. (including area code) | Fax No. | Email Address | | |

move highlighted down to next page please

**Section 12 — Other Information That Will Assist Us in Arranging the Hearing
(i.e. Interpreter, Special Assistance)**

Date of Application (yyyy/mm/dd)

Collection of this information is for the purpose of conducting a proceeding before this Board. It is collected/used for this purpose under the authority of subsection 33(2) / 51(2) / 66(2) of the *Health Care Consent Act*. For information about collection practices, contact the Board. Fax completed application to the Board at 1-866-777-7273 or send by email to ccb@ontario.ca For assistance, call: 1-866-777-7391 or 1-877-301-0889 (TTY).

2017/09

**Form D — Application to the Board for Directions under
Subsection 35(1), 52(1) or 67(1) of the Act**

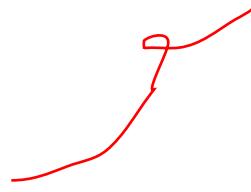
Health Care Consent Act

[Editor's Note: The forms have been editorially added by Carswell and do not form part of the text. They are available through www.ccbboard.on.ca/scripts/english/forms/index.asp. For your convenience, the government form is reproduced below.]

Re: a person who has been found incapable with respect to:

- admission to a care facility
- a personal assistance service
- the following kind of treatment:

Note: An application may only be made if there has been a relevant finding of incapacity.



Form D — Application to the Board for Directions ~~under Subsection...~~ **Form D**

My name is: (print full name of person)

- I am the person's substitute decision maker, or
 I am the health care professional who proposed the treatment, or*
 I am the Official at the Community Care Access Centre responsible for authorizing admission to the care facility, or*
 I am the member of the service provider's staff responsible for providing personal assistance service.*

**Note: Persons in these categories may only bring an application if they have given prior notice to the substitute decision maker of their intention to do so.*

The person named above has previously expressed a wish with respect to this matter but (mark as many as are applicable):

- the wish is not clear.
 it is not clear if the wish is applicable in the circumstances.
 it is not clear if the wish was expressed when the person was capable.
 it is not clear if the wish was expressed after the person attained sixteen years of age.

I apply to the Board for directions in this matter.

The name, address, telephone and fax numbers of the substitute decision maker are:

.....
.....
(name) (address)
()..... ().....
(telephone no.) (fax no.)

If this application refers to admission to a care facility, provide the name, address, telephone and fax numbers of the person responsible for authorizing admissions to the facility. (This will be an official from the local Community Care Access Centre.)

.....
.....
(name) (address)
()..... ().....
(telephone no.) (fax no.)

If this application refers to a personal assistance service, provide the name, address, telephone and fax numbers of the staff member responsible for the service:

.....
.....
(name) (address)
()..... ().....
(telephone no.) (fax no.)

If this application refers to a treatment, provide the name, address, telephone and fax numbers of the health practitioner who proposed it:

.....
.....
(name) (address)
()..... ().....
(telephone no.) (fax no.)

Form D

Health Care Consent Act, 1996

Is the person who has been found incapable with respect to this matter currently an in-patient or resident at a health or residential facility?

no

yes

provide name, address and telephone number of facility

.....
.....

His or her address and telephone and fax number are:

.....
(name)
() ()
(telephone no.) (fax no.)

Name, address, telephone number and fax number of the lawyer or agent (*if any*) for the person who has been found incapable with respect to this matter:

.....
(name)
() ()
(telephone no.) (fax no.)

Name, address, telephone number and fax number of your lawyer or agent (*if any*):

.....
(name)
() ()
(telephone no.) (fax no.)

Name, address, telephone number and fax number of your lawyer or agent (*if any*) for the substitute decision maker if you are not the substitute decision maker:

.....
(name)
() ()
(telephone no.) (fax no.)

Whenever an application of this type is received, the law provides that the patient is deemed to have applied for a review of his or her capacity to make the relevant decision. This does not apply if the Board has determined this issue of capacity within the previous six months.

Collection of this information is for the purpose of conducting a proceeding before this board. It is collected/used for this purpose under the authority of subsection 35(1) / 52(1) / 67(1) of the *Health Care Consent Act*. For information about collection practices, contact the office of the Regional Vice-Chair of the Board or call toll free at 1 800 461-2036. For information about collection practices, contact the Board or call toll free at 1 800 461-2036.

Fax completed form to the Board at (416) 924-8873 or call toll free at 1 800 461-2036 for assistance.

9

Form E — Application to the Board for Permission to Depart from ... **Form E**

**Form E — Application to the Board for Permission to
Depart from Wishes under Subsection 36(1), 53(1) or 68(1)
of the Act**

Health Care Consent Act

5

[Editor's Note: The forms have been editorially added by Carswell and do not form part of the text. They are available through www.ccboard.on.ca/scripts/english/forms/index.asp. For your convenience, the government form is reproduced below.]

**Thomson Reuters
Canada**

Re: a person who has been found incapable with respect to:

- admission to a care facility
- a personal assistance service
- the following kind of treatment:
.....

Note: An application may only be made if a health practitioner or evaluator has made a relevant finding of incapacity.

My name is: (print full name of person)

- I am the person's substitute decision maker, or
- I am the health care professional who proposed the treatment, or*
- I am the Official at the Community Care Access Centre responsible for authorizing admission to the care facility, or*

I am the member of the service provider's staff responsible for providing personal assistance service.*

**Note: Persons in these categories may only bring an application if they have given prior notice to the substitute decision maker of their intention to do so.*

I apply to the Board for permission to consent to the proposed action despite a contrary wish expressed by the person named above at a time when the person was capable and at least sixteen years of age. I believe that he / she would probably, if capable today, give consent because the likely result of consenting is significantly better than would have been anticipated in comparable circumstances at the time the wish was expressed.

The name, address, telephone and fax numbers of the substitute decision maker are:

.....
(name)
()
(telephone no.)
()
(address)
(fax no.)

If this application refers to admission to a care facility, provide the name, address, telephone and fax numbers of the person responsible for authorizing admissions to the facility:

.....
(name)
()
(telephone no.)
()
(address)
(fax no.)

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subject to change without notice. For the most
current version, please visit:
[http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/
ssbforms.nsf/FormDetail?
OpenForm&ACT=RDR&TAB=PROFILE&SRCH=
1&ENV=WWE&TIT=health+care+consent
+act&NO=014-2978-04E.](http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/FormDetail?OpenForm&ACT=RDR&TAB=PROFILE&SRCH=1&ENV=WWE&TIT=health+care+consent+act&NO=014-2978-04E)

←

Form E

Health Care Consent Act, 1996

If this application refers to a personal assistance service, provide the name, address, telephone and fax numbers of the staff member responsible for the service:

.....
.....
()..... (name) (address)
()..... (telephone no.) (fax no.)

If this application refers to a treatment, provide the name, address, telephone and fax numbers of the health practitioner who proposed it:

.....
.....
()..... (name) (address)
()..... (telephone no.) (fax no.)

Is the person who has been found incapable with respect to this matter currently an in-patient or resident at a health or residential facility?

no

yes

provide name, address and telephone number of facility

.....
.....
His or her address and telephone and fax number are:

.....
.....
()..... (name) (address)
()..... (telephone no.) (fax no.)

Name, address, telephone number and fax number of the lawyer or agent (if any) for the person who has been found incapable with respect to this matter:

.....
.....
()..... (name) (address)
()..... (telephone no.) (fax no.)

Name, address, telephone number and fax number of your lawyer or agent (if any):

.....
.....
()..... (name) (address)
()..... (telephone no.) (fax no.)
.....
.....
(date) (signature)

Name, address, telephone number and fax number of your lawyer or agent (if any) for the substitute decision maker if you are not the substitute decision maker.

.....
.....
()..... (name)
()..... (signature)

← move down to next page, please

9

Form F — Application to the Board with Respect to Place of Treatment **Form F**

(telephone no.)

(fax no.)

.....
(date)

.....
(signature)

Whenever an application of this type is received, the law provides that the patient is deemed to have applied for a review of his or her capacity to make the relevant decision. This does not apply if the Board has determined this issue of capacity within the previous six months.

Collection of this information is for the purpose of conducting a proceeding before this board. It is collected/used for this purpose under the authority of subsection 35(1) / 52(1) / 67(1) of the *Health Care Consent Act*. For information about collection practices, contact the Board or call toll free at 1 800 461-2036.

Fax completed form to the Board at (416) 924-8873 or call toll free at 1 800 461-2036 for assistance.

**Form F — Application to the Board with Respect to Place
of Treatment under Subsection 34(1) of the Act**

6

Health Care Consent Act

[Editor's Note: The forms have been editorially added by Carswell and do not form part of the text. They are available through www.ccboard.on.ca/scripts/english/forms/index.asp. For your convenience, the government form is reproduced below.]

Thomson Reuters
Canada

My name is: (print full name of person) I apply to the Board for a review of a decision, made on my behalf, to consent to my admission to a hospital, psychiatric facility or other health facility for the purpose of treatment.

A health practitioner has found that I am incapable with respect to the following treatment, course of treatment or plan of treatment:

.....
.....

and a substitute decision maker has consented to my admission to the following hospital, psychiatric facility or other health facility for the purpose of receiving that treatment, course of treatment or plan of treatment.

Note: An application may only be made if a health practitioner has made a relevant finding of incapacity to consent to a treatment, course of treatment or plan of treatment.

Provide the name, address, telephone and fax numbers of the health practitioner who proposed the treatment:

.....
(name)
()
(telephone no.)
()
(fax no.)

Name, address, telephone and fax numbers of the substitute decision maker:

.....
(name)
()
(telephone no.)
()
(fax no.)

40

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<http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/FormDetail?OpenForm&ACT=RDR&TAB=PROFILE&SRCH=1&ENV=WWE&TIT=health+care+consent+act&NO=014-2980-04E>

Form F

Health Care Consent Act, 1996

Are you currently an in-patient or resident at a health or residential facility?

no

yes

provide name, address and telephone number of facility

Your home address and telephone number:

..... ()
(address) (telephone no.)

Name, address, telephone number and fax number of your lawyer or agent (*if any*):

..... (name) (address)
() ()
(telephone no.) (fax no.)

If someone helped you to fill out this application form, provide his / her name, address, telephone and fax numbers:

..... (name) (address)
() ()
(telephone no.) (fax no.)

..... (date) (signature)

Whenever an application of this type is received, the law provides that the patient is deemed to have applied for a review of his or her capacity to make the relevant decision. This does not apply if the Board has determined this issue of capacity within the previous six months.

Collection of this information is for the purpose of conducting a proceeding before this board. It is collected/used for this purpose under the authority of subsection 34(1) of the *Health Care Consent Act*. For information about collection practices, contact the Board or call toll free at 1 800 461-2036

Fax completed form to the Board at (416) 924-8873 or call toll free at 1 800 461-2036 for assistance

Form G — Application to the Board to Determine Compliance under Subsection 37(1), 54(1) or 69(1) of the**Act**

Health Care Consent Act

7

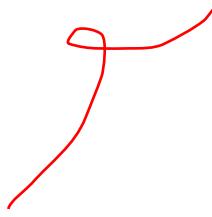
[Editor's Note: The forms have been editorially added by Carswell and do not form part of the text. They are available through www.ccboard.on.ca/scripts/english/forms/index.asp. For your convenience, the government form is reproduced below.]

**Thomson Reuters
Canada**

This application is made with respect to (print full name of incapable person), a person whom

an evaluator has found to be incapable with respect to admission to a care facility

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Form G — Application to the Board to Determine Compliance ~~under~~... **Form G**

- an evaluator has found to be incapable with respect to a personal assistance service
 a health practitioner has found to be incapable with respect to the following treatment:

.....

- *You may only bring an application with regards to a treatment if you are the health practitioner who proposed the treatment.*
- *You may only bring an application with regards to admission to a care facility if you are the official of the Community Care access Centre responsible for authorising the admission.*
- *You may only bring an application with regards to personal assistance if you are the member of the service providers staff responsible for providing the service and only if the person is a resident in a nursing home or home for the aged.*

My name is: (print full name of applicant). I am the

- person responsible for authorizing admissions to the care facility
 staff person responsible for the personal assistance service
 health practitioner who proposed the treatment

I apply to the Board for a determination as to whether or not the substitute decision-maker in this case has complied with the principles for substitute decision-making as they are set out in the Act.

My address and telephone number(s) are:

.....
(address)
()..... ().....
(telephone no.) (fax no.)

The name of the substitute decision-maker is: (print full name of person)

His or her address, telephone and fax numbers are:

.....
(address)
()..... ().....
(telephone no.) (fax no.)

Is the person who has been found incapable currently an in-patient or resident at a health or residential facility?

no

yes

provide name, address and telephone number of facility

.....
.....

His or her home address and telephone number are:

.....
(address) ().....
(telephone no.)

Form G

Health Care Consent Act, 1996

Name, address, telephone number and fax number of the lawyer or agent (if any) for the person who has been found incapable with respect to this matter:

.....
.....
().....
(name) (address)
(telephone no.) (fax no.)

Name, address, telephone number and fax number of your lawyer or agent (*if any*):

.....
.....
().....
(name) (address)
(telephone no.) (fax no.)

.....
.....
(date) (signature)

Whenever an application of this type is received, the law provides that the patient is deemed to have applied for a review of his or her capacity to make the relevant decision. This does not apply if the Board has determined this issue of capacity within the previous six months.

Collection of this information is for the purpose of conducting a proceeding before this board. It is collected/used for this purpose under the authority of subsection 37(1) / 54(1) / 69(1) of the *Health Care Consent Act*. For information about collection practices, contact the Board or call toll free at 1 800 461-2036. Fax completed form to the Board at (416) 924-8873 or call toll free at 1 800 461-2036 for assistance.

Fax completed form to the Board at (416) 924-8873 or call toll free at 1 800 461-2036 for assistance.

**Form H — Application to the Board to Amend the
Conditions of or Terminate the Appointment of a
Representative under Subsection 33(7) and (8), 51(6) or
66(6) of the Act**

8

Health Care Consent Act

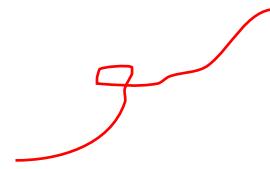
[Editor's Note: The forms have been editorially added by Carswell and do not form part of the text. They are available through www.ccboard.on.ca/scripts/english/forms/index.asp. For your convenience, the government form is reproduced below.]

Thomson Reuters
Canada

..... (print full name of representative) has been appointed by the Consent and Capacity Board to be the representative of (print full name of incapable person), for the purpose of making decision with respect to:

- admission to a care facility
- a personal assistance service
- the following kind of treatment:

Note: Any person may bring this application.



Form H — Application to the Board to Amend the Conditions ~~of or ...~~ **Form H**

My name is: (print full name of applicant) I apply to the Board to

- remove a condition imposed on the appointment of the representative named above
- vary a condition imposed on the appointment of the representative named above
- suspend a condition imposed on the appointment of the representative named above
- impose an additional condition on the appointment of the representative named above
- terminate the appointment of the representative named above

→ *The Board may only terminate the appointment of a representative if one or more of the following condition are met (check those that apply)*

- the incapable person or the representative requests the termination
- the representative is no longer capable with respect to the matter;
- the appointment is no longer in the incapable person's best interests; or
- the incapable person has a guardian of the person or attorney for personal care with the authority to make decision with respect to the matter

My address and telephone number(s) are:

.....
()..... (address)
()..... (telephone no.) ()..... (fax no.)

The Board-appointed representative's address, telephone and fax numbers are:

.....
()..... (address)
()..... (telephone no.) ()..... (fax no.)

Is the person who has been found incapable currently an in-patient or resident at a health or residential facility?

no

yes

provide name, address and telephone number of facility

.....
His or her home address and telephone number are:

.....
()..... (address) ()..... (telephone no.)

If this application refers to *admission to a care facility*, provide the name, address, telephone and fax numbers of the person responsible for authorizing admissions to the facility. (Often, this will be an official from the local Community Care Access Centre.)

.....
()..... (name) ()..... (address)
()..... (telephone no.) ()..... (fax no.)

Form H

Health Care Consent Act, 1996

If this application refers to a *personal assistance service*, provide the name, address, telephone and fax numbers of the staff member responsible for the service:

.....
.....
()..... (name) (address)
()..... (telephone no.) (fax no.)

If this application refers to a *treatment*, provide the name, address, telephone and fax numbers of the health practitioner who proposed it:

.....
.....
()..... (name) (address)
()..... (telephone no.) (fax no.)

Name, address, telephone number and fax number of the lawyer or agent (*if any*) for the person who has been found incapable with respect to this matter:

.....
.....
()..... (name) (address)
()..... (telephone no.) (fax no.)

Name, address, telephone number and fax number of your lawyer or agent (*if any*):

.....
.....
()..... (name) (address)
()..... (telephone no.) (fax no.)

When and where did the Board appoint the representative?

.....
.....
(date) (city)
.....
(location)

If possible, please attach a copy of the Board's order/decision from the original hearing.

.....
.....
(date) (signature)

Whenever an application of this type is received, the law provides that the patient is deemed to have applied for a review of his or her capacity to make the relevant decision. This does not apply if the Board has determined this issue of capacity within the previous six months.

Collection of this information is for the purpose of conducting a proceeding before this board. It is collected/used for this purpose under the authority of subsection 37(1) / 54(1) / 69(1) of the *Health Care Consent Act*. For information about collection practices, contact the Board or call toll free at 1 800 461-2036.

Fax completed form to the Board at (416) 924-8873 or call toll free at 1 800 461-2036 for assistance.

ONT. REG. 104/96 — EVALUATORS

made under the *Health Care Consent Act, 1996*

O. Reg. 104/96, as am. O. Reg. 264/00; 517/10.

1. (1) Social workers are evaluators for the purposes of subsection 2(1) of the Act.

(2) In this section,

“**social worker**” means a member of the Ontario College of Social Workers and Social Service Workers who holds a certificate of registration for social work.

O. Reg. 264/00, ss. 1, 2; 517/10, s. 1

2. Social workers and persons described in clauses (a) to (g) of the definition of “evaluator” in subsection 2(1) of the Act may act as evaluators in the following circumstances:

1. For the purpose of determining whether a person is capable with respect to his or her admission to a care facility.
2. For the purpose of determining whether a person is capable with respect to a personal assistance service.

O. Reg. 517/10, s. 1

INCOME TAX ACT

An Act Respecting Income Taxes

REVISED STATUTES OF CANADA 1985, c. 1 (5TH SUPPLEMENT), AS AMENDED BY 1994, cc. 7, 8, 13, 21, 28, 29, 38, 41; 1995, cc. 1, 3, 11, 17, 18, 21, 38, 46; 1996, cc. 6, 11, 21, 23; 1997, cc. 10, 12, 25, 26; 1998, cc. 19, 21, 34; 1999, cc. 10, 17, 22, 26, 31; 2000, cc. 9, 12, 14, 19, 30; 2001, cc. 16, 17, 27, 41; 2002, cc. 8, 9; 2003, cc. 15, 19, 28; 2004, cc. 11, 22, 24, 25, 26; 2005, cc. 19, 21, 30, 33, 34, 35, 38, 47, 49; 2006, cc. 1, 4, 9, 12; 2007, cc. 2, 16, 29, 35, 36; 2008, c. 28; 2009, cc. 2, 31; 2010, cc. 12, 25; 2011, cc. 15, 24; 2012, cc. 19, 27, 31; 2013, cc. 33, 34, 40; 2014, cc. 12, 13, 20, 39; 2015, cc. 20, 36, 41; 2016, cc. 7, 11, 12, 14; 2017, cc. 12, 20, 33; 2018, cc. 12, 27; 2019, cc. 13, 29; 2020, cc. 5, 6, 11.

change back to single column here to end

.....

PART I — INCOME TAX

.....

DIVISION B — COMPUTATION OF INCOME

.....

.....

.....

Subdivision f — Rules Relating to Computation of Income

.....

70. (1) Death of a taxpayer — In computing the income of a taxpayer for the taxation year in which the taxpayer died,

(a) an amount of interest, rent, royalty, annuity (other than an amount with respect to an interest in an annuity contract to which paragraph 148(2)(b) applies), remuneration from an office or employment, or other amount payable periodically, that was not paid before the taxpayer's death, shall be deemed to have accrued in equal daily amounts in the period for or in respect of which

the amount was payable, and the value of the portion thereof so deemed to have accrued to the day of death shall be included in computing the taxpayer's income for the year in which the taxpayer died; and

(b) paragraph 12(1)(t) shall be read as follows:

“(t) the amount deducted under subsection 127(5) or (6) in computing the taxpayer's tax payable for the year or a preceding taxation year to the extent that it was not included in computing the taxpayer's income for a preceding taxation year under this paragraph or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e) or subparagraph 53(2)(c)(vi) or (h)(ii) or for I in the definition “undepreciated capital cost” in subsection 13(21) or L in the definition “cumulative Canadian exploration expense” in subsection 66.1(6);”

(2) Amounts receivable [“rights or things” separate return] — If a taxpayer who has died had at the time of death rights or things (other than any capital property or

any amount included in computing the taxpayer's income by virtue of subsection (1), the amount of which when realized or disposed of would have been included in computing the taxpayer's income, the value of the rights or things at the time of death shall be included in computing the taxpayer's income for the taxation year in which the taxpayer died, unless the taxpayer's legal representative has, not later than the later of the day that is one year after the date of death of the taxpayer and the day that is 90 days after the sending of any notice of assessment in respect of the tax of the taxpayer for the year of death, elected otherwise, in which case the legal representative shall file a separate return of income for the year under this Part and pay the tax for the year under this Part as if

- (a) the taxpayer were another person;
- (b) that other person's only income for the year were the value of the rights or things; and
- (c) subject to sections 114.2 and 118.93, that other person were entitled to the deductions to which the taxpayer was entitled under sections 110, 118 to 118.7 and 118.9 for the year in computing the taxpayer's taxable income or tax payable under this Part, as the case may be, for the year.

(3) Rights or things transferred to beneficiaries — Where before the time for making an election under subsection (2) has expired, a right or thing to which that subsection would otherwise apply has been transferred or distributed to beneficiaries or other persons beneficially interested in the estate or trust,

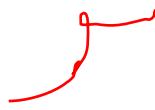
- (a) subsection (2) is not applicable to that right or thing; and
- (b) an amount received by one of the beneficiaries or persons on the realization or disposition of the right or thing shall be included in computing the income of the beneficiary or person for the taxation year in which the beneficiary or person received it.

(3.1) Exception — For the purposes of this section, "rights or things" do not include an interest in a life insurance policy (other than an annuity contract of a taxpayer where the payment therefor was deductible in computing the taxpayer's income because of paragraph 60(l) or was made in circumstances in which subsection 146(21) applied), land included in the inventory of a business, a Canadian resource property or a foreign resource property.

(4) Revocation of election — An election made under subsection (2) may be revoked by a notice of revocation signed by the legal representative of the taxpayer and filed with the Minister within the time that an election under that subsection may be made.

(5) Capital property of a deceased taxpayer — Where in a taxation year a taxpayer dies,

- (a) the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of each capital property of the taxpayer and received proceeds of disposition therefor equal to the fair market value of the property immediately before the death;
- (b) any person who as a consequence of the taxpayer's death acquires any property that is deemed by paragraph (a) to have been disposed of by the taxpayer shall be deemed to have acquired it at the time of the death at a cost equal to its fair market value immediately before the death;
- (c) where any depreciable property of the taxpayer of a prescribed class that is deemed by paragraph (a) to have been disposed of is acquired by any person as a consequence of the taxpayer's death (other than where the taxpayer's proceeds of disposition of the property under paragraph (a) are redetermined under subsection 13(21.1)) and the amount that was the capital cost to the taxpayer of the property exceeds the amount determined



Subdivision f — Rules Relating to Computation of Income S. 70(5.1)(d)

under paragraph (b) to be the cost to the person thereof, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

- (i) the capital cost to the person of the property shall be deemed to be the amount that was the capital cost to the taxpayer of the property, and
- (ii) the excess shall be deemed to have been allowed to the person in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the person acquired the property; and
- (d) where a property of the taxpayer that was deemed by paragraph (a) to have been disposed of is acquired by any person as a consequence of the taxpayer's death and the taxpayer's proceeds of disposition of the property under paragraph (a) are redetermined under subsection 13(21.1), notwithstanding paragraph (b),
 - (i) where the property was depreciable property of a prescribed class and the amount that was the capital cost to the taxpayer of the property exceeds the amount so redetermined under subsection 13(21.1), for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),
 - (A) its capital cost to the person shall be deemed to be the amount that was its capital cost to the taxpayer, and
 - (B) the excess shall be deemed to have been allowed to the person in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the person acquired the property, and
 - (ii) where the property is land (other than land to which subparagraph (i) applies), its cost to the person shall be deemed to be the amount that was the taxpayer's proceeds of disposition of the land as redetermined under subsection 13(21.1).

(5.1) Transfer or distribution — Class

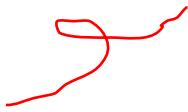
14.1 — Notwithstanding subsection (6), if property included in Class 14.1 of Schedule II to the *Income Tax Regulations* of the taxpayer in respect of a business carried on by the taxpayer immediately before the taxpayer's death that is a property to which subsection (5) would otherwise apply is, as a consequence of the death, transferred or distributed (otherwise than by way of a distribution of property by a trust that claimed a deduction under paragraph 20(1)(a) or (b) in respect of the property or in circumstances to which subsection 24(2) applies) to any person (in this subsection referred to as the "beneficiary"), the following rules apply:

- (a) paragraphs (5)(a) and (b) do not apply in respect of the property;
- (b) the taxpayer is deemed to have, immediately before the taxpayer's death, disposed of the property and received proceeds of disposition equal to the lesser of the capital cost and the cost amount to the taxpayer of the property immediately before the death;
- (c) the beneficiary is deemed to have acquired the property at the time of the death at a cost equal to those proceeds; and
- (d) paragraph (5)(c) applies as if the references to "paragraph (a)" were read as references to "paragraph (5.1)(b)" and the reference to "paragraph (b)" were read as reference to "paragraph (5.1)(c)".

(5.2) Resource property and land inventory—If in a taxation year a taxpayer dies,

- (a) the taxpayer is deemed
 - (i) to have disposed, at the time that is immediately before the taxpayer's death, of each
 - (A) Canadian resource property of the taxpayer,
 - (B) foreign resource property of the taxpayer, and
 - (C) property that was land included in the inventory of a business of the taxpayer, and
 - (ii) subject to paragraph (c), to have received at that time proceeds of disposition for each such property equal to its fair market value at that time;
- (b) any person who, as a consequence of the taxpayer's death, acquires a property that is deemed by paragraph (a) to have been disposed of by the taxpayer is, subject to paragraph (c), deemed to have acquired the property at the time of the death at a cost equal to its fair market value at the time that is immediately before the death; and
- (c) where the taxpayer was resident in Canada at the time that is immediately before the taxpayer's death, a particular property described in clause (a)(i)(A), (B) or (C) is, on or after the death and as a consequence of the death, transferred or distributed to a spouse or common-law partner of the taxpayer described in paragraph (6)(a) or a trust described in paragraph (6)(b), and it can be shown within the period that ends 36 months after the death (or, where written application has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances) that the particular property has, within that period, vested indefeasibly in the spouse, common-law partner or trust, as the case may be,
- (i) the taxpayer is deemed to have received, at the time that is immediately before the taxpayer's death, proceeds of disposition of the particular property equal to
 - (A) if the particular property is Canadian resource property of the taxpayer or foreign resource property of the taxpayer, the amount specified by the taxpayer's legal representative in the taxpayer's return of income filed under paragraph 150(1)(b), not exceeding its fair market value at that time, and
 - (B) if the particular property was land included in the inventory of a business of the taxpayer, its cost amount to the taxpayer at that time, and
- (ii) the spouse, common-law partner or trust, as the case may be, is deemed to have acquired at the time of the death the particular property at a cost equal to the amount determined under subparagraph (i) in respect of the disposition of it under paragraph (a).

(5.3) Fair market value [of life insurance policy]—For the purposes of subsections (5) and 104(4) and section 128.1, the fair market value at any time of any property deemed to have been disposed of at that time as a consequence of a particular individual's death or as a consequence of the particular individual becoming or ceasing to be resident in Canada shall be determined as though the fair market value at that time of any life insurance policy, under which the particular individual (or any other individual not dealing at arm's length with the particular individual at that time or at the time the policy was issued) was a person



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whose life was insured, were the cash surrender value (as defined in subsection 148(9)) of the policy immediately before the particular individual died or became or ceased to be resident in Canada, as the case may be.

(5.31) Fair market value [leveraged insurance annuity] — For the purposes of subsections (5) and 104(4), the fair market value at any time of any property deemed to have been disposed of at that time as a consequence of a particular individual's death is to be determined as though the fair market value at that time of any annuity contract were the total of all amounts each of which is the amount of a premium paid on or before that time under the contract if

- (a) the contract is, in respect of an LIA policy, a contract referred to in subparagraph (b)(ii) of the definition "LIA policy" in subsection 248(1); and
- (b) the particular individual is the individual, in respect of the LIA policy, referred to in that subparagraph.

(5.4) NISA on death — Where a taxpayer who dies has at the time of death a net income stabilization account, all amounts held for or on behalf of the taxpayer in the taxpayer's NISA Fund No. 2 shall be deemed to have been paid out of that fund to the taxpayer immediately before that time.

(6) Where transfer or distribution to spouse [or common-law partner] or spouse trust — Where any property of a taxpayer who was resident in Canada immediately before the taxpayer's death that is a property to which subsection (5) would otherwise apply is, as a consequence of the death, transferred or distributed to

- (a) the taxpayer's spouse or common-law partner who was resident in Canada immediately before the taxpayer's death, or
- (b) a trust, created by the taxpayer's will, that was resident in Canada immediately after the time the property

vested indefeasibly in the trust and under which

- (i) the taxpayer's spouse or common-law partner is entitled to receive all of the income of the trust that arises before the spouse's or common-law partner's death, and
- (ii) no person except the spouse or common-law partner may, before the spouse's or common-law partner's death, receive or otherwise obtain the use of any of the income or capital of the trust,

if it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has become vested indefeasibly in the spouse or common-law partner or trust, as the case may be, the following rules apply:

- (c) paragraphs (5)(a) and (b) do not apply in respect of the property,
- (d) subject to paragraph (d.1), the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of the property and received proceeds of disposition therefor equal to
 - (i) where the property was depreciable property of a prescribed class, the lesser of the capital cost and the cost amount to the taxpayer of the property immediately before the death, and
 - (ii) in any other case, its adjusted cost base to the taxpayer immediately before the death,

and the spouse or common-law partner or trust, as the case may be, shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds,

(d.1) where the property is an interest in a partnership (other than an interest in a partnership to which subsection 100(3) applies),

(i) the taxpayer shall, except for the purposes of paragraph 98(5)(g), be deemed not to have disposed of the property as a consequence of the taxpayer's death,

(ii) the spouse or common-law partner or the trust, as the case may be, shall be deemed to have acquired the property at the time of the death at a cost equal to its cost to the taxpayer, and

(iii) each amount added or deducted in computing the adjusted cost base to the taxpayer of the property shall be deemed to be required by subsection 53(1) or (2) to be added or deducted, as the case may be, in computing the adjusted cost base to the spouse or common-law partner or the trust, as the case may be, of the property; and

(e) where the property was depreciable property of the taxpayer of a prescribed class, paragraph (5)(c) applies as if the references therein to "paragraph (a)" and to "paragraph (b)" were read as references to "paragraph (6)(d)".

(6.1) Transfer or distribution of NISA to spouse [or common-law partner] or trust — Where a property that is a net income stabilization account of a taxpayer is, on or after the taxpayer's death and as a consequence thereof, transferred or distributed to

(a) the taxpayer's spouse or common-law partner, or

(b) a trust, created by the taxpayer's will, under which

(i) the taxpayer's spouse or common-law partner is entitled to receive all of the income of the trust that arises before the

spouse's or common-law partner's death, and

(ii) no person except the spouse or common-law partner may, before the spouse's or common-law partner's death, receive or otherwise obtain the use of any of the income or capital of the trust,

subsections (5.4) and 73(5) do not apply in respect of the taxpayer's NISA Fund No. 2 if it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has vested indefeasibly in the spouse or common-law partner or trust, as the case may be.

(6.2) Election — Subsection (5.1), (6) or (6.1) does not apply to any property of a deceased taxpayer in respect of which the taxpayer's legal representative elects, in the taxpayer's return of income under this Part (other than a return of income filed under subsection (2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) for the year in which the taxpayer died, to have subsection (5) or (5.4), as the case may be, apply.

(7) Special rules applicable in respect of trust for benefit of spouse [or common-law partner] — Where a trust created by a taxpayer's will would, but for the payment of, or provision for payment of, any particular testamentary debts in respect of the taxpayer, be a trust to which subsection (6) or (6.1) applies,

(a) for the purpose of determining the day on or before which a return (in this subsection referred to as the "taxpayer's return") of the taxpayer's income for the taxation year in which the taxpayer died is required to be filed by the taxpayer's legal representatives, subsection 150(1) shall be read without reference to paragraph 150(1)(b) and

70(7)(b)(iv)(B)(II)

Subdivision f — Rules Relating to Computation of Income

as if paragraph 150(1)(d) read as follows:

(d) in the case of any other person, by the person's legal representative within 18 months after the person's death; or"; and
(b) where the taxpayer's legal representative so elects in the taxpayer's return (other than a return of income filed under subsection (2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) and lists therein one or more properties (other than a net income stabilization account) that were, on or after the taxpayer's death and as a consequence thereof, transferred or distributed to the trust, the total fair market value of which properties immediately after the taxpayer's death was not less than the total of the non-qualifying debts in respect of the taxpayer,

(i) subsection (6) does not apply in respect of the properties so listed, and

(ii) notwithstanding the payment of, or provision for payment of, any such particular testamentary debts, the trust shall be deemed to be a trust described in subsection (6),

except that, where the fair market value, immediately after the taxpayer's death, of all of the properties so listed exceeds the total of the non-qualifying debts in respect of the taxpayer (the amount of which excess is referred to in this subsection as the "listed value excess") and the taxpayer's legal representative designates in the taxpayer's return one property so listed (other than money) that is capital property other than depreciable property,

(iii) the amount of the taxpayer's capital gain or capital loss, as the case may be, from the disposition of that property deemed by subsection (5) to have been made by

the taxpayer is that proportion of that capital gain or capital loss otherwise determined that

(A) the amount, if any, by which the fair market value of that property immediately after the taxpayer's death exceeds the listed value excess,

is of

(B) the fair market value of that property immediately after the taxpayer's death, and

(iv) the cost to the trust of that property is

(A) where the taxpayer has a capital gain from the disposition of that property deemed by subsection (5) to have been made by the taxpayer, the total of

(I) its adjusted cost base to the taxpayer immediately before the taxpayer's death, and

(II) the amount determined under subparagraph (iii) to be the taxpayer's capital gain from the disposition of that property, or

(B) where the taxpayer has a capital loss from the disposition of that property deemed by subsection (5) to have been made by the taxpayer, the amount by which

(I) its adjusted cost base to the taxpayer immediately before the taxpayer's death

exceeds

(II) the amount determined under subparagraph (iii) to be the

taxpayer's capital loss from the disposition of that property.

(8) Meaning of certain expressions in subsec. (7) — In subsection (7),

(a) the “fair market value” at any time of any property subject to a mortgage or hypothec is the amount, if any, by which the fair market value at that time of the property otherwise determined exceeds the amount outstanding at that time of the debt secured by the mortgage or hypothec, as the case may be;

(b) “non-qualifying debt” in respect of a taxpayer who has died and by whose will any trust has been created that would, but for the payment of, or provision for payment of, any particular testamentary debts in respect of the taxpayer, be a trust described in subsection (6), means any such particular testamentary debt in respect of the taxpayer other than

(i) any estate, legacy, succession or inheritance duty payable, in consequence of the taxpayer's death, in respect of any property of, or interest in, the trust, or

(ii) any debt secured by a mortgage or hypothec on property owned by the taxpayer immediately before the taxpayer's death; and

(c) “testamentary debt”, in respect of a taxpayer who has died, means

(i) any debt owing by the taxpayer, or any other obligation of the taxpayer to pay an amount, that was outstanding immediately before the taxpayer's death, and

(ii) any amount payable (other than any amount payable to any person as a beneficiary of the taxpayer's estate) by the taxpayer's estate in consequence of the taxpayer's death,

including any income or profits tax payable by or in respect of the taxpayer for the taxation year in which the taxpayer died or for any previous taxation year, and any estate, legacy, succession or inheritance duty payable in consequence of the taxpayer's death.

(9) When subsec. (9.01) applies —

Subsection (9.01) applies to a taxpayer and a child of the taxpayer in respect of land in Canada or depreciable property in Canada of a prescribed class of the taxpayer in respect of which subsection (5) would, if this Act were read without reference to this subsection, apply if

(a) the property was, before the death of the taxpayer, used principally in a farming or fishing business carried on in Canada in which the taxpayer, the spouse or common-law partner of the taxpayer or a child or a parent of the taxpayer was actively engaged on a regular and continuous basis (or, in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot);

(b) the child of the taxpayer was resident in Canada immediately before the day on which the taxpayer died; and

(c) as a consequence of the death of the taxpayer, the property is transferred to and becomes vested indefeasibly in the child within the period ending 36 months after the death of the taxpayer or, if written application has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances.

**Possible Future Amendments —
70(9)–(9.31)**

**Federal Budget, March 19, 2019,
Chapter 4, Part 7: Intergenerational Business Transfers**

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Subdivision f — Rules Relating to Computation of ~~Section~~^{of} 70(2)(B)(II)

The Government understands the importance Canadian farmers, fishers and other business owners place on being able to pass their businesses on to their children. The Government will continue its outreach to farmers, fishers and other business owners throughout 2019 to develop new proposals to better accommodate intergenerational transfers of businesses while protecting the integrity and fairness of the tax system.

Prime Minister's mandate letter to Minister of Finance, Dec. 2019: I will expect you to work with your colleagues and through established legislative, regulatory and Cabinet processes to deliver on your top priorities. In particular, you will: . . .

- Work with the Minister of Agriculture and Agri-Food on tax measures to facilitate the intergenerational transfer of farms.

Liberal.ca election platform, Oct. 2019: We will also continue to work with farmers on tax measures to facilitate the intergenerational transfer of farms, making it easier for farmers to transfer or sell family farms to family members or others.

(9.01) Transfer of farming and fishing property to child — If, because of subsection (9), this subsection applies to the taxpayer and a child of the taxpayer in respect of a property of the taxpayer that has been transferred to the child as a consequence of the death of the taxpayer, the following rules apply:

(a) where the taxpayer's legal representative does not elect in the taxpayer's return of income under this Part for the year in which the taxpayer died, to have paragraph (b) apply to the taxpayer and the child in respect of the property,

(i) paragraphs (5)(a) and (b) and section 69 do not apply to the taxpayer and the child in respect of the property,

(ii) the taxpayer is deemed to have

(A) disposed of the property immediately before the taxpayer's death, and

(B) received, at the time of the disposition of the property, proceeds of disposition in respect of that disposition of the property equal to

(I) where the property was depreciable property of a prescribed class, the lesser of

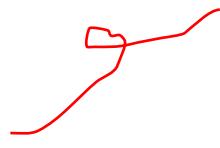
1. the capital cost to the taxpayer of the property, and

2. the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of property of that class to the taxpayer that the capital cost to the taxpayer of the property is of the capital cost to the taxpayer of all property of that class that had not, at or before that time, been disposed of, and

(II) where the property is land (other than land to which subclause (I) applies), the adjusted cost base to the taxpayer of the

S. 70(9.01)(a)(ii)(B)(II) Income Tax Act, Part I, Division B

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| <p>property immediately before the time of the disposition of the property,</p> <p>(iii) the child is, immediately after the time of the disposition of the property, deemed to have acquired the property at a cost equal to the taxpayer's proceeds of disposition in respect of the disposition of the property determined under subparagraph (ii), and</p> <p>(iv) where the property was depreciable property of a prescribed class, paragraphs (5)(c) and (d) apply to the taxpayer and the child in respect of the property as if the references in those paragraphs to "paragraph (a)" and "paragraph (b)" were read as "subparagraph (9.01)(a)(ii)" and "subparagraph (9.01)(a)(iii)", respectively; and</p> <p>(b) where the taxpayer's legal representative elects, in the taxpayer's return of income under this Part for the taxation year in which the taxpayer died, to have this paragraph apply to the taxpayer in respect of the property,</p> <p>(i) paragraphs (5)(a) and (b) and section 69 do not apply to the taxpayer and the child in respect of the property,</p> <p>(ii) the taxpayer is deemed to have</p> <p style="margin-left: 2em;">(A) disposed of the property immediately before the taxpayer's death, and</p> <p style="margin-left: 2em;">(B) received, at the time of the disposition of the property, proceeds of disposition in respect of that disposition of the property equal to</p> <p style="margin-left: 2em;">(I) where the property was depreciable property of a prescribed</p> | <p>class, the amount that the legal representative designates, which must not be greater than the greater of nor less than the lesser of</p> <ol style="list-style-type: none">1. the fair market value of the property immediately before the time of the disposition of the property, and2. the lesser of the capital cost to the taxpayer of the property and the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of property of that class to the taxpayer that the capital cost to the taxpayer of the property is of the capital cost to the taxpayer of all property of that class that had not, at or before that time, been disposed of, and <p>(II) where the property is land (other than land to which subclause (I) applies), the amount that the legal representative designates, which must not be greater</p> |
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Subdivision f — Rules Relating to Computation of Income **S. 70(9.1)**

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| than the greater of nor less than the lesser of | to the greater of those amounts, and |
| 1. the fair market value of the property immediately before the time of the disposition of the property, and | (B) where the amount designated by the taxpayer's legal representative under subclause (ii)(B)(II) exceeds the greater of the amounts determined under sub-subclauses (ii)(B)(II)1 and 2 in respect of the property, the amount designated is deemed to be equal to the greater of those amounts, and |
| 2. the adjusted cost base to the taxpayer of the property immediately before the time of the disposition of the property, | (vi) except for the purpose of this subparagraph, |
| (iii) the child is, immediately after the time of the disposition of the property, deemed to have acquired the property at a cost equal to the taxpayer's proceeds of disposition in respect of the disposition of the property determined under subparagraph (ii), | (A) where the amount designated by the taxpayer's legal representative under subclause (ii)(B)(I) is less than the lesser of the amounts determined under sub-subclauses (ii)(B)(I)1 and 2 in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts, and |
| (iv) where the property was depreciable property of a prescribed class, paragraphs (5)(c) and (d) apply to the taxpayer in respect of the property as if the references in those paragraphs to "paragraph (a)" and "paragraph (b)" were read as "subparagraph (9.01)(b)(ii)" and "subparagraph (9.01)(b)(iii)", respectively, | (B) where the amount designated by the taxpayer's legal representative under subclause (ii)(B)(II) is less than the lesser of the amounts determined under sub-subclauses (ii)(B)(II)1 and 2 in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts. |
| (v) except for the purpose of this subparagraph, | |
| (A) where the amount designated by the taxpayer's legal representative under subclause (ii)(B)(I), exceeds the greater of the amounts determined under sub-subclauses (ii)(B)(I)1 and 2 in respect of the property, the amount designated is deemed to be equal | |
| <p>(9.1) When subsec. (9.11) applies — Subsection (9.11) applies to a trust and a child of the settlor of the trust in respect of a property in respect of which subsection 104(4) or (5) would, if this Act were read without reference to this subsection, apply to the trust as a consequence of the death of the</p> | |

beneficiary under the trust who was a spouse or a common-law partner of the settlor if

- (a) the property (or property for which the property was substituted) was transferred to the trust by the settlor;
- (b) subsection (6), subsection 73(1) (as that subsection applied to transfers before 2000) or subparagraph 73(1.01)(c)(i) applied to the settlor and the trust in respect of the transfer referred to in paragraph (a);
- (c) the property is, immediately before the beneficiary's death, land or a depreciable property of a prescribed class of the trust that was used in a farming or fishing business carried on in Canada;
- (d) the child of the settlor is, immediately before the beneficiary's death, resident in Canada; and
- (e) as a consequence of the beneficiary's death, the property is transferred to and becomes vested indefeasibly in the child of the settlor within the period ending 36 months after that beneficiary's death or, if written application has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances.

(9.11) Transfer of farming and fishing property from trust to settlor's children — If, because of subsection (9.1), this subsection applies to the trust and a child of the settlor of the trust in respect of a property of the trust that has been distributed to the child as a consequence of the death of the beneficiary under the trust who was the spouse or common-law partner of the settlor, the following rules apply:

- (a) where the trust does not elect, in its return of income under this Part for the taxation year in which the beneficiary died, to have paragraph (b) apply to the trust in respect of the property,
 - (i) subsections 104(4) and (5) and section 69 do not apply to the

trust and the child in respect of the property,

- (ii) the trust is deemed to have
 - (A) disposed of the property immediately before that beneficiary's death, and
 - (B) received, at the time of the disposition, proceeds of disposition in respect of that disposition of the property equal to

(I) where the property was depreciable property of a prescribed class, the lesser of

- 1. the capital cost to the trust of the property, and
- 2. the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of property of that class to the trust that the capital cost to the trust of the property is of the capital cost to the trust of all property of that class that had not, at or before that time, been disposed of, and

(II) where the property is land (other than land to which subclause (I) applies), the adjusted cost base to the trust of the pro-

S.170(9)(1)(b)(ii)(B)(II)2

Subdivision f — Rules Relating to Computation of ~~S.170(9)(1)(b)(ii)(B)(II)2~~

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| <p>property immediately before the time of the disposition of the property, and</p> <p>(iii) the child is, immediately after the time of the disposition of the property, deemed to have acquired the property at a cost equal to the trust's proceeds of disposition in respect of the disposition of the property determined under subparagraph (ii);</p> <p>(b) where the trust elects, in the trust's return of income under this Part for the taxation year in which the beneficiary died, to have this paragraph apply to the trust in respect of the property,</p> <p>(i) subsections 104(4) and (5) do not apply to the trust in respect of the property,</p> <p>(ii) the trust is deemed to have</p> <p style="margin-left: 2em;">(A) disposed of the property immediately before that beneficiary's death, and</p> <p style="margin-left: 2em;">(B) received, at the time of the disposition of the property, proceeds of disposition in respect of the disposition of the property equal to</p> <p style="margin-left: 2em;">(I) where the property was depreciable property of a prescribed class, the amount that the trust designates, which must not be greater than the greater of nor less than the lesser of</p> <p style="margin-left: 3em;">1. the fair market value of the property immediately before the time of the disposition of the property, and</p> <p style="margin-left: 3em;">2. the lesser of the capital cost</p> | <p>to the trust of the property and the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of property of that class to the trust that the capital cost to the trust of the property is of the capital cost to the trust of all property of that class that had not, at or before that time, been disposed of, and</p> <p>(II) where the property is land (other than land to which subclause (I) applies), the amount that the trust designates, which must not be greater than the greater of nor less than the lesser of</p> <ol style="list-style-type: none">1. the fair market value of the property immediately before the time of the disposition of the property, and2. the adjusted cost base to the trust of the property immediately before the time of the dis- |
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S. 70(9.11)(b)(ii)(B)(II)2 Income Tax Act, Part I, Division B

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| <p>position of the property,</p> <p>(iii) the child is, immediately after the time of the disposition of the property, deemed to have acquired the property at a cost equal to the trust's proceeds of disposition in respect of the disposition of the property determined under subparagraph (ii),</p> <p>(iv) except for the purpose of this subparagraph,</p> <p style="margin-left: 20px;">(A) where the amount designated by the trust under subclause (ii)(B)(I) exceeds the greater of the amounts determined under sub-subclauses (ii)(B)(I)1 and 2 in respect of the property, the amount designated is deemed to be equal to the greater of those amounts, and</p> <p style="margin-left: 20px;">(B) where the amount designated by the trust under subclause (ii)(B)(II) exceeds the greater of the amounts determined under sub-subclauses (ii)(B)(II)1 and 2 in respect of the property, the amount designated is deemed to be equal to the greater of those amounts, and</p> <p>(v) except for the purpose of this subparagraph,</p> <p style="margin-left: 20px;">(A) where the amount designated by the trust under subclause (ii)(B)(I) is less than the lesser of the amounts determined under sub-subclauses (ii)(B)(I)1 and 2 in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts, and</p> | <p>(B) where the amount designated by the trust under subclause (ii)(B)(II), is less than the lesser of the amounts determined under sub-subclauses (ii)(B)(II)1 and 2 in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts;</p> <p>(c) where paragraph (a) or (b) (each of which is referred to in this subsection as the "relevant provision") applied to the trust in respect of a property that was depreciable property of a prescribed class (other than where the trust's proceeds of disposition of the property under the relevant provision are redetermined under subsection 13(21.1)),</p> <p style="margin-left: 20px;">(i) the capital cost to the child of the property, immediately after the time of the disposition, is deemed to be the amount that was the capital cost to the trust of the property, immediately before the time of the disposition, and</p> <p style="margin-left: 20px;">(ii) the amount, if any, by which the capital cost to the trust of the property, immediately before the time of the disposition, exceeds the amount determined under the relevant provision to be the cost of the property to the child, immediately after the time of the disposition, is, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a), deemed to have been allowed to the child in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the child acquired the property; and</p> <p>(d) where the relevant provision applied to the trust in respect of a pro-</p> |
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Subdivision f — Rules Relating to Computation of Income **S. 70(9.21)(a)(ii)**

property and the trust's proceeds of disposition in respect of the disposition of the property determined under the relevant provision are redetermined under subsection 13(21.1), notwithstanding the relevant provision,

(i) where the capital cost to the trust of the property, immediately before the time of the disposition, exceeds the amount redetermined under subsection 13(21.1), for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(A) the capital cost to the child of the property, immediately after the time of the disposition, is deemed to be the amount that was the capital cost to the trust of the property, immediately before the time of the disposition, and

(B) the amount, if any, by which the capital cost to the trust of the property, immediately before the time of the disposition, exceeds the amount redetermined under subsection 13(21.1) is deemed to have been allowed to the child in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the child acquired the property, and

(ii) where the property is land, the cost to the child of the property is deemed to be the amount that was the trust's proceeds of disposition as redetermined under subsection 13(21.1).

(9.2) When subsec. (9.21) applies —
Subsection (9.21) applies to a taxpayer and a child of the taxpayer in respect of a property

of the taxpayer in respect of which subsection (5) would, if this Act were read without reference to this subsection, apply to the taxpayer and the child if

(a) the property was, immediately before the death of the taxpayer, a share of the capital stock of a family farm or fishing corporation of the taxpayer or an interest in a family farm or fishing partnership of the taxpayer;

(b) the child of the taxpayer was resident in Canada immediately before the day on which taxpayer died; and

(c) as a consequence of the death of the taxpayer, the property is transferred to and becomes vested indefeasibly in the child within the period ending 36 months after the death of the taxpayer or, if written application has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances.

(9.21) Transfer of family farm and fishing corporations and partnerships — If, because of subsection (9.2), this subsection applies to the taxpayer and a child of the taxpayer in respect of a property of the taxpayer that has been transferred to the child as a consequence of the death of the taxpayer, the following rules apply:

(a) where the taxpayer's legal representative does not elect, in the taxpayer's return of income under this Part for the taxation year in which the taxpayer died, to have paragraph (b) apply to the taxpayer in respect of the property,

(i) paragraphs (5)(a) and (b) and section 69 do not apply to the taxpayer and the child in respect of the property,

(ii) where the property is, immediately before the death of the taxpayer, a share of the capital

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| <p>stock of a family farm or fishing corporation of the taxpayer,</p> <p>(A) the taxpayer is deemed to have</p> <ul style="list-style-type: none"> (I) disposed of the property immediately before the taxpayer's death, and (II) received proceeds of disposition in respect of that disposition equal to the adjusted cost base to the taxpayer, immediately before the time of that disposition, of the property, and <p>(B) the child is, immediately after the time of the disposition, deemed to have acquired the property at a cost equal to the taxpayer's proceeds of disposition in respect of that disposition determined under clause (A), and</p> <p>(iii) where the property is, immediately before the death of the taxpayer, a partnership interest described in paragraph (9.2)(a) (other than a partnership interest to which subsection 100(3) applies),</p> <p>(A) the taxpayer is, except for the purpose of paragraph 98(5)(g), deemed not to have disposed of the property as a consequence of the taxpayer's death,</p> <p>(B) the child is deemed to have acquired the property at the time of the taxpayer's death at a cost equal to the cost to the taxpayer of the interest immediately before the time that is immediately before the time of the taxpayer's death, and</p> | <p>(C) each amount required by subsection 53(1) or (2) to be added or deducted in computing the adjusted cost base to the taxpayer, immediately before the time of the taxpayer's death, of the property is deemed to be an amount required by subsection 53(1) or (2) to be added or deducted in computing, at any time at or after the time of the taxpayer's death, the adjusted cost base to the child of the property; and</p> <p>(b) where the taxpayer's legal representative elects, in the taxpayer's return of income under this Part for the taxation year in which the taxpayer died, to have this paragraph apply to the taxpayer in respect of the property,</p> <ul style="list-style-type: none"> (i) paragraphs (5)(a) and (b) and section 69 do not apply to the taxpayer and the child in respect of the property, (ii) subject to subparagraph (iii), where the property is, immediately before the taxpayer's death, a share of the capital stock of a family farm or fishing corporation of the taxpayer or an interest in a family farm or fishing partnership of the taxpayer, <p>(A) the taxpayer is deemed to have</p> <ul style="list-style-type: none"> (I) disposed of the property immediately before the taxpayer's death, and (II) received, at the time of the disposition of the property, proceeds of disposition in respect of the disposition of the property equal to the amount that the taxpayer's legal representative |
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| <p>designates, which must not be greater than the greater of nor less than the lesser of</p> <ol style="list-style-type: none">1. the fair market value of the property immediately before the taxpayer's death, and2. the adjusted cost base to the taxpayer of the property immediately before the time of the disposition, <p>(B) the child is, immediately after the time of the disposition, deemed to have acquired the property at a cost equal to the taxpayer's proceeds of disposition in respect of the disposition of the property determined under clause (A),</p> <p>(C) except for the purpose of this clause, where the amount designated by the taxpayer's legal representative under subclause (A)(II) exceeds the greater of the amounts determined under sub-subclauses (A)(II)1 and 2 in respect of the property, the amount designated is deemed to be equal to the greater of those amounts, and</p> <p>(D) except for the purpose of this clause, where the amount designated by the taxpayer's legal representative under subclause (A)(II) is less than the lesser of the amounts determined under sub-subclauses (A)(II)1 and 2 in respect of the property, the amount designated is</p> | <p>deemed to be equal to the lesser of those amounts, and</p> <p>(iii) where the property is, immediately before the death of the taxpayer, a partnership interest described in paragraph (9.2)(a) (other than a partnership interest to which subsection 100(3) applies), and the taxpayer's legal representative further elects, in the taxpayer's return of income under this Part for the taxation year in which the taxpayer died, to have this subparagraph apply to the taxpayer in respect of the property,</p> <p>(A) the taxpayer is, except for the purpose of paragraph 98(5)(g), deemed not to have disposed of the property as a consequence of the taxpayer's death,</p> <p>(B) the child is deemed to have acquired the property at the time of the taxpayer's death at a cost equal to the cost to the taxpayer of the interest immediately before the time that is immediately before the death of the taxpayer, and</p> <p>(C) each amount required by subsection 53(1) or (2) to be added or deducted in computing the adjusted cost base to the taxpayer, immediately before the time of the taxpayer's death, of the property is deemed to be an amount required by subsection 53(1) or (2) to be added or deducted in computing, at any time at or after the taxpayer's death, the adjusted cost base to the child of the property.</p> <p>(9.3) When subsec. (9.31) applies — Subsection (9.31) applies to a trust and a child of the settlor of the trust in respect of a</p> |
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property in respect of which subsection 104(4) would, if this Act were read without reference to this subsection, apply to the trust as a consequence of the death of the beneficiary under the trust who was a spouse or a common-law partner of the settlor of the trust if

(a) the property (or property for which the property was substituted) was transferred to the trust by the settlor and was, immediately before that transfer, a share of the capital stock of a family farm or fishing corporation of the settlor or an interest in a family farm or fishing partnership of the settlor;

(b) subsection (6), subsection 73(1) (as that subsection applied to transfers before 2000) or subparagraph 73(1.01)(c)(i) applied to the settlor and the trust in respect of the transfer referred to in paragraph (a);

(c) the property is, immediately before the beneficiary's death,

(i) a share of the capital stock of a Canadian corporation that would, immediately before that beneficiary's death, be a share of the capital stock of a family farm or fishing corporation of the settlor, if the settlor owned the share at that time and paragraph (a) of the definition "share of the capital stock of a family farm or fishing corporation" in subsection (10) were read without the words "in which the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual was actively engaged on a regular and continuous basis (or, in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot)", or

(ii) [Repealed]

(iii) a partnership interest in a partnership that carried on in Canada a farming or fishing business in which it used all or substantially all of the property;

(d) the child of the settlor was, immediately before that beneficiary's death, resident in Canada; and

(e) as a consequence of that beneficiary's death, the property is transferred to and becomes vested indefeasibly in the child within the period ending 36 months after that beneficiary's death or, if written application has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances.

(9.31) Transfer of family farm or fishing corporation or family farm or fishing partnership from trust to children of settlor—If, because of subsection (9.3), this subsection applies to the trust and a child of the settlor of the trust in respect of a property of the trust that has been distributed to the child as a consequence of the death of the beneficiary under the trust who was a spouse or common-law partner of the settlor of the trust, the following rules apply:

(a) where the trust does not elect, in its return of income under this Part for the taxation year in which the beneficiary died, to have paragraph (b) apply to the trust in respect of the property

(i) section 69 and subsection 104(4) do not apply to the trust and the child in respect of the property,

(ii) where the property is, immediately before the beneficiary's death, a share described in subparagraph (9.3)(c)(i),

(A) the trust is deemed to have

(I) disposed of the property immediately

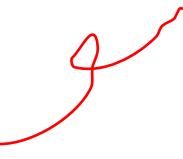
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| <p>before the beneficiary's death, and</p> <p>(II) received proceeds of disposition in respect of that disposition equal to the adjusted cost base to the trust of the property immediately before the time of that disposition, and</p> <p>(B) the child is, immediately after the time of the disposition, deemed to have acquired the property at a cost equal to the trust's proceeds of disposition in respect of that disposition of the property determined under clause (A), and</p> <p>(iii) where the property is, immediately before the beneficiary's death, a partnership interest described in subparagraph (9.3)(c)(iii) (other than a partnership interest to which subsection 100(3) applies),</p> <p>(A) the trust is, except for the purpose of paragraph 98(5)(g), deemed not to have disposed of the property as a consequence of the beneficiary's death,</p> <p>(B) the child is deemed to have acquired the property, at the time of the beneficiary's death, at a cost equal to the cost to the trust of the interest immediately before the time that is immediately before the time of the beneficiary's death, and</p> <p>(C) each amount required by subsection 53(1) or (2) to be added or deducted in computing the adjusted cost base to the trust, immediately before the beneficiary's death, of the property</p> | <p>is deemed to be an amount required by subsection 53(1) or (2) to be added or deducted in computing, at or after the time of the beneficiary's death, the adjusted cost base to the child of the property; and</p> <p>(b) where the trust elects, in its return of income under this Part for the taxation year in which the beneficiary died, to have this paragraph apply to the trust in respect of the property</p> <p>(i) subsection 104(4) does not apply to the trust in respect of the property and section 69 does not apply to the trust or the child in respect of the transfer of the property,</p> <p>(ii) subject to subparagraph (iii), where the property is, immediately before the beneficiary's death, a share described in subparagraph (9.3)(c)(i) or a partnership interest described in subparagraph (9.3)(c)(iii),</p> <p>(A) the trust is deemed to have</p> <p>(I) disposed of the property immediately before the beneficiary's death, and</p> <p>(II) received, at the time of the disposition of property, proceeds of disposition in respect of the disposition of the property equal to the amount that the trust designates, which must not be greater than the greater of nor less than the lesser of</p> <p>1. the fair market value of the property immediately before the</p> |
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| <p>beneficiary's death, and</p> <p>2. the adjusted cost base to the trust of the property immediately before the beneficiary's death, and</p> <p>(B) the child is, immediately after the time of the disposition of the property, deemed to have acquired the property at a cost equal to the trust's proceeds of disposition in respect of that disposition of the property determined under clause (A),</p> <p>(iii) where the property is, immediately before that beneficiary's death, a partnership interest described in subparagraph (9.3)(c)(iii) (other than a partnership interest to which subsection 100(3) applies), and the trust further elects, in its return of income under this Part for the taxation year in which the beneficiary died, to have this subparagraph apply to the trust in respect of the property,</p> <p>(A) the trust is, except for the purpose of paragraph 98(5)(g), deemed not to have disposed of the property as a consequence of the beneficiary's death,</p> <p>(B) the child is deemed to have acquired the property, at the time of the beneficiary's death, at a cost equal to the cost to the trust of the property immediately before the time that is immediately before the beneficiary's death, and</p> <p>(C) each amount required by subsection 53(1) or (2)</p> | <p>to be added or deducted in computing, immediately before the beneficiary's death, the adjusted cost base to the trust of the property is deemed to be an amount required by subsection 53(1) or (2) to be added or deducted in computing, at or after the time of the beneficiary's death, the adjusted cost base to the child of the property,</p> <p>(iv) except for the purpose of this subparagraph, where the amount designated by the trust under sub-clause (ii)(A)(II) exceeds the greater of the amounts determined under sub-subclauses (ii)(A)(II)1 and 2 in respect of the property, the amount designated is deemed to be equal to the greater of those amounts, and</p> <p>(v) except for the purpose of this subparagraph, where the amount designated by the trust under sub-clause (ii)(A)(II) is less than the lesser of the amounts determined under sub-subclauses (ii)(A)(II)1 and 2 in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts.</p> <p>(9.6) Transfer to a parent — Subsection (9.01) or (9.21), as the case may be, applies in respect of a transfer of a property as if the references in those subsections to "child" were read as references to "parent" if</p> <p>(a) the property was acquired by a taxpayer in circumstances where any of subsections (9.01), (9.11), (9.21), (9.31) and 73(3.1) and (4.1) applied in respect of the acquisition;</p> <p>(b) as a consequence of the death of the taxpayer the property is transferred to a parent of the taxpayer; and</p> <p>(c) the taxpayer's legal representative has elected, in the taxpayer's return of</p> |
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income under this Part for the taxation year in which the taxpayer died, that this subsection apply in respect of the transfer.

(9.7) [Repealed under former Act]

(9.8) **Leased farm or fishing property**— For the purposes of subsections (9) and 73(3) and paragraph (d) of the definition “qualified farm or fishing property” in subsection 110.6(1), a property of an individual is, at a particular time, deemed to be used by the individual in a farming or fishing business carried on in Canada if, at that particular time, the property is being used, principally in the course of carrying on a farming or fishing business in Canada, by

- (a) a corporation, a share of the capital stock of which is a share of the capital stock of a family farm or fishing corporation of the individual, the individual’s spouse or common-law partner, a child of the individual or a parent of the individual; or
- (b) a partnership, a partnership interest in which is an interest in a family farm or fishing partnership of the individual, the individual’s spouse or common-law partner, a child of the individual or a parent of the individual.

(10) **Definitions**— In this section,

“child” of a taxpayer includes

- (a) a child of the taxpayer’s child,
- (b) a child of the taxpayer’s child’s child,
- (b.1) a person who was a child of the taxpayer immediately before the death of the person’s spouse or common-law partner, and
- (c) a person who, at any time before the person attained the age of 19 years, was wholly dependent on the taxpayer for support and of whom the taxpayer had, at that time, in law or in fact, the custody and control;

“interest in a family farm or fishing partnership”, of an individual at any time,

means a partnership interest owned by the individual at that time if, at that time, all or substantially all of the fair market value of the property of the partnership was attributable to

(a) property that has been used principally in the course of carrying on a farming or fishing business in Canada in which the individual, the individual’s spouse or common-law partner, a child of the individual or a parent of the individual was actively engaged on a regular and continuous basis (or, in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot), by

- (i) the partnership,
- (ii) a corporation, a share of the capital stock of which was a share of the capital stock of a family farm or fishing corporation of the individual, the individual’s spouse or common-law partner, a child of the individual or a parent of the individual,
- (iii) a partnership, a partnership interest in which was an interest in a family farm or fishing partnership of the individual, the individual’s spouse or common-law partner, a child of the individual or a parent of the individual, or
- (iv) the individual, the individual’s spouse or common-law partner, a child of the individual or a parent of the individual,

(b) shares of the capital stock or indebtedness of one or more corporations of which all or substantially all of the fair market value of the property was attributable to property described in paragraph (d),

(c) partnership interests or indebtedness of one or more partnerships of which all or substantially all of the fair

market value of the property was attributable to property described in paragraph (d), or

(d) properties described in any of paragraphs (a) to (c);

“interest in a family farm partnership” — [Repealed]

“interest in a family fishing partnership” — [Repealed]

“share of the capital stock of a family farm corporation” — [Repealed]

“share of the capital stock of a family farm or fishing corporation”, of an individual at any time, means a share of the capital stock of a corporation owned by the individual at that time if, at that time, all or substantially all of the fair market value of the property owned by the corporation was attributable to

(a) property that has been used principally in the course of carrying on a farming or fishing business in Canada in which the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual was actively engaged on a regular and continuous basis (or, in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot), by

(i) the corporation,

(ii) a corporation, a share of the capital stock of which was a share of the capital stock of a family farm or fishing corporation of the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual,

(iii) a corporation controlled by a corporation described in subparagraph (i) or (ii),

(iv) a partnership, a partnership interest in which was an interest

in a family farm or fishing partnership of the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual, or

(v) the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual,

(b) shares of the capital stock or indebtedness of one or more corporations of which all or substantially all of the fair market value of the property was attributable to property described in paragraph (d),

(c) partnership interests or indebtedness of one or more partnerships of which all or substantially all of the fair market value of the property was attributable to property described in paragraph (d), or

(d) properties described in any of paragraphs (a) to (c).

“share of the capital stock of a family fishing corporation” — [Repealed]

(11) Application of subsec. 138(12) — The definitions in subsection 138(12) apply to this section.

(12) Value of NISA — For the purpose of the definition “share of the capital stock of a family farm or fishing corporation” in subsection (10), the fair market value of a net income stabilization account is deemed to be nil.

(13) Capital cost of certain depreciable property — For the purposes of this section and, where a provision of this section (other than this subsection) applies, for the purposes of sections 13 and 20 (but not for the purposes of any regulation made for the purpose of paragraph 20(1)(a)),

(a) the capital cost to a taxpayer of depreciable property of a prescribed class disposed of immediately before the taxpayer's death, or

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(b) the capital cost to a trust, to which subsection (9.1) applies, of depreciable property of a prescribed class disposed of immediately before the death of the spouse or common-law partner described in that subsection,

shall, in respect of property that was not disposed of by the taxpayer or the trust before that time, be the amount that it would be if subsection 13(7) were read without reference to

(c) the expression “the lesser of” in paragraph (b) and clause (d)(i)(A) thereof, and

(d) subparagraph (b)(ii), subclause (d)(i)(A)(II), clause (d)(i)(B) and paragraph (e) thereof.

(14) Order of disposal of depreciable property — Where 2 or more depreciable properties of a prescribed class are disposed of at the same time as a consequence of a taxpayer’s death, this section and paragraph (a) of the definition “cost amount” in subsection 248(1) apply as if each property so disposed of were separately disposed of in the order designated by the taxpayer’s legal representative or, in the case of a trust described in subsection (9.1), by the trust and, where the taxpayer’s legal representative or the trust, as the case may be, does not designate an order, in the order designated by the Minister.

71. [Repealed under former Act]

72. (1) Reserves, etc., for year of death — Where in a taxation year a taxpayer has died,

(a) paragraph 20(1)(n) does not apply to allow, in computing the income of the taxpayer for the year from a business, the deduction of any amount as a reserve in respect of property sold in the course of the business;

(b) no amount is deductible under subsection 32(1) as a reserve in respect of unearned commissions in computing the taxpayer’s income for the year;

(c) no amount may be claimed under subparagraph 40(1)(a)(iii), paragraph 40(1.01)(c) or subparagraph 44(1)(e)(iii) in computing any gain of the taxpayer for the year;

(2) Election by legal representative and transferee re reserves — Where property of a taxpayer that is a right to receive any amount has, on or after the death of the taxpayer and as a consequence thereof, been transferred or distributed to the taxpayer’s spouse or common-law partner described in paragraph 70(6)(a) or to a trust described in paragraph 70(6)(b) (in this subsection referred to as the “transferee”), if the taxpayer was resident in Canada immediately before the taxpayer’s death and the taxpayer’s legal representative and the transferee have executed jointly an election in respect of the property in prescribed form,

(a) any amount in respect of the property that would, but for paragraph (1)(a), (b), (d) or (e), as the case may be, have been deductible as a reserve in computing the taxpayer’s income for the taxation year in which the taxpayer died shall,

(i) notwithstanding subsection (1), be deducted in computing the taxpayer’s income for the taxation year in which the taxpayer died,

(ii) be included in computing the transferee’s income for the transferee’s first taxation year ending after the death of the taxpayer, and

(iii) be deemed to be

(A) an amount that has been included in computing the transferee’s income from a business for a previous year in respect of property sold in the course of the business,

(B) an amount that has been included in computing the transferee’s income for a

previous year as a commission in respect of an insurance contract, other than a life insurance contract,

(C) an amount that by virtue of subsection 59(1) has been included in computing the transferee's income for a preceding taxation year, or

(D) for the purposes of subsection 64(1.1), an amount that by virtue of paragraph 59(3.2)(c) has been included in computing the transferee's income for a preceding taxation year and to be an amount deducted by the transferee pursuant to paragraph 64(1.1)(a)¹ in computing the transferee's income for the transferee's last taxation year ending before the death,

as the case may be;

(b) any amount in respect of the property that could, but for paragraph (1)(c), have been claimed under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in computing the amount of any gain of the taxpayer for the year shall,

(i) notwithstanding paragraph (1)(c), be deemed to have been so claimed, and

(ii) for the purpose of computing the transferee's income for the transferee's first taxation year ending after the death of the taxpayer and any subsequent taxation year, be deemed to have been

(A) proceeds of the disposition of capital property dis-

posed of by the transferee in that first taxation year, and

(B) the amount determined under subparagraph 40(1)(a)(i) or 44(1)(e)(i), as the case may be, in respect of the capital property referred to in clause (A); and

(c) notwithstanding paragraphs (a) and (b), where any property had been disposed of by the taxpayer, in computing the income of the transferee for any taxation year ending after the death of the taxpayer,

(i) the amount of the transferee's deduction under paragraph 20(1)(n) as a reserve in respect of the property sold in the course of business,

(ii) the amount of the transferee's claim under subparagraph 40(1)(a)(iii) or 44(1)(e)(iii) in respect of the disposition of the property, and

(iii) the amount of the transferee's deduction under section 64² as a reserve in respect of the disposition of the property

shall be computed as if the transferee were the taxpayer who had disposed of the property and as if the property were disposed of by the transferee at the time it was disposed of by the taxpayer.

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¹ The section 64 meant to be referred to is s. 64 of R.S.C. 1952, c. 148 — ed.

² The section 64 meant to be referred to is s. 64 of R.S.C. 1952, c. 148 — ed.

**Subdivision h —
Corporations Resident in
Canada and Their
Shareholders**

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85. (1) Transfer of property to corporation by shareholders [rollover] — Where a taxpayer has, in a taxation year, disposed of any of the taxpayer's property that was eligible property to a taxable Canadian corporation for consideration that includes shares of the capital stock of the corporation, if the taxpayer and the corporation have jointly elected in prescribed form and in accordance with subsection (6), the following rules apply:

(a) **[elected amount deemed to be proceeds and cost]** — the amount that the taxpayer and the corporation have agreed on in their election in respect of the property shall be deemed to be the taxpayer's proceeds of disposition of the property and the corporation's cost of the property;

(b) **[elected amount not less than boot]** — subject to paragraph (c), where the amount that the taxpayer and the corporation have agreed on in their election in respect of the property is less than the fair market value, at the time of the disposition, of the consideration therefor (other than any shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer, the amount so agreed on shall, irrespective of the amount actually so agreed on by them, be deemed to be an amount equal to that fair market value;

(c) **[elected amount not more than FMV of property transferred]** — where the amount that the taxpayer and the corporation have agreed on in their election in respect of the property is greater than the fair market value, at the time of the disposition, of the property so disposed of,

the amount so agreed on shall, irrespective of the amount actually so agreed on, be deemed to be an amount equal to that fair market value;

(c.1) **[elected amount minimum — most property]** — where the property was inventory, capital property (other than depreciable property of a prescribed class), a NISA Fund No. 2 or a property that is eligible property because of paragraph (1.1)(g) or (g.1), and the amount that the taxpayer and corporation have agreed on in their election in respect of the property is less than the lesser of

- (i) the fair market value of the property at the time of the disposition, and
- (ii) the cost amount to the taxpayer of the property at the time of the disposition,

the amount so agreed on shall, irrespective of the amount actually so agreed on by them, be deemed to be an amount equal to the lesser of the amounts described in subparagraphs (i) and (ii);

(c.2) **[elected amount — farm inventory]** — subject to paragraphs (b) and (c) and notwithstanding paragraph (c.1), where the taxpayer carries on a farming business the income from which is computed in accordance with the cash method and the property was inventory owned in connection with that business immediately before the particular time the property was disposed of to the corporation,

- (i) the amount that the taxpayer and the corporation agreed on in their election in respect of inventory purchased by the taxpayer shall be deemed to be equal to the amount determined by the formula

$$\left(A \times \frac{B}{C} \right) + D$$

where

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| <p>A is the amount that would be included because of paragraph 28(1)(c) in computing the taxpayer's income for the taxpayer's last taxation year beginning before the particular time if that year had ended immediately before the particular time,</p> <p>B is the value (determined in accordance with subsection 28(1.2)) to the taxpayer immediately before the particular time of the purchased inventory in respect of which the election is made,</p> <p>C is the value (determined in accordance with subsection 28(1.2)) of all of the inventory purchased by the taxpayer that was owned by the taxpayer in connection with that business immediately before the particular time, and</p> <p>D is such additional amount as the taxpayer and the corporation designate in respect of the property,</p> <p>(ii) for the purpose of subparagraph 28(1)(a)(i), the disposition of the property and the receipt of proceeds of disposition therefor shall be deemed to have occurred at the particular time and in the course of carrying on the business, and</p> <p>(iii) where the property is owned by the corporation in connection with a farming business and the income from that business is computed in accordance with the cash method, for the purposes of section 28,</p> <p style="margin-left: 2em;">(A) an amount equal to the cost to the corporation of the property shall be deemed to have been paid by the corporation, and</p> | <p>(B) the corporation shall be deemed to have purchased the property for an amount equal to that cost, at the particular time and in the course of carrying on that business;</p> <p>(e) [elected amount minimum — depreciable property] — where the property was depreciable property of a prescribed class of the taxpayer and the amount that, but for this paragraph, would be the proceeds of disposition thereof is less than the least of</p> <ul style="list-style-type: none"> (i) the undepreciated capital cost to the taxpayer of all property of that class immediately before the disposition, (ii) the cost to the taxpayer of the property, and (iii) the fair market value of the property at the time of the disposition, <p>the amount agreed on by the taxpayer and the corporation in their election in respect of the property shall, irrespective of the amount actually so agreed on by them, be deemed to be the least of the amounts described in subparagraphs (i) to (iii);</p> <p>(e.1) [order of dispositions] — where two or more properties, each of which is a property described in paragraph (e), are disposed of at the same time, paragraph (e) applies as if each property so disposed of had been separately disposed of in the order designated by the taxpayer before the time referred to in subsection (6) for the filing of an election in respect of those properties or, if the taxpayer does not so designate any such order, in the order designated by the Minister;</p> <p>(e.2) [where excess is benefit to related person] — where the fair market value of the property immedi-</p> |
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ately before the disposition exceeds the greater of

- (i) the fair market value, immediately after the disposition, of the consideration received by the taxpayer for the property disposed of by the taxpayer, and
- (ii) the amount that the taxpayer and the corporation have agreed on in their election in respect of the property, determined without reference to this paragraph,

and it is reasonable to regard any part of the excess as a benefit that the taxpayer desired to have conferred on a person related to the taxpayer (other than a corporation that was a wholly owned corporation of the taxpayer immediately after the disposition), the amount that the taxpayer and the corporation agreed on in their election in respect of the property shall, regardless of the amount actually so agreed on by them, be deemed (except for the purposes of paragraphs (g) and (h)) to be an amount equal to the total of the amount referred to in subparagraph (ii) and that part of the excess;

(e.3) [conflict between deeming rules and para. (b)] — where, under any of paragraphs (c.1) and (e), the amount that the taxpayer and the corporation have agreed on in their election in respect of the property (in this paragraph referred to as the “elected amount”) would be deemed to be an amount that is greater or less than the amount that would be deemed, subject to paragraph (c), to be the elected amount under paragraph (b), the elected amount is deemed to be the greater of

- (i) the amount deemed by paragraph (c.1) or (e), as the case may be, to be the elected amount, and
- (ii) the amount deemed by paragraph (b) to be the elected amount;

(e.4) [transfer of automobile costing over \$30,000] — where

- (i) the property is depreciable property of a prescribed class of the taxpayer and is a passenger vehicle the cost to the taxpayer of which was more than \$20,000 or such other amount as may be prescribed, and
- (ii) the taxpayer and the corporation do not deal at arm’s length,

the amount that the taxpayer and the corporation have agreed on in their election in respect of the property shall be deemed to be an amount equal to the undepreciated capital cost to the taxpayer of the class immediately before the disposition, except that, for the purposes of subsection 6(2), the cost to the corporation of the vehicle shall be deemed to be an amount equal to its fair market value immediately before the disposition;

(e.5) [transfer of zero-emission automobile costing over \$55,000] — if the property is depreciable property of a prescribed class of the taxpayer that is a zero-emission passenger vehicle to which paragraph 13(7)(i) applies and the taxpayer and the corporation do not deal at arm’s length,

- (i) the amount that the taxpayer and the corporation have agreed on in their election in respect of the vehicle is deemed to be an amount equal to the cost amount to the taxpayer of the vehicle immediately before the disposition, and
- (ii) for the purposes of subsection 6(2), the cost to the corporation of the vehicle is deemed to be an amount equal to its fair market value immediately before the disposition;

(f) [deemed cost of boot] — the cost to the taxpayer of any particular

property (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer as consideration for the disposition shall be deemed to be an amount equal to the lesser of

- (i) the fair market value of the particular property at the time of the disposition, and
- (ii) that proportion of the fair market value, at the time of the disposition, of the property disposed of by the taxpayer to the corporation that

(A) the amount determined under subparagraph (i)

is of

(B) the fair market value, at the time of the disposition, of all properties (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer as consideration for the disposition;

(g) **[deemed cost of preferred shares]** — the cost to the taxpayer of any preferred shares of any class of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition shall be deemed to be the lesser of the fair market value of those shares immediately after the disposition and that proportion of the amount, if any, by which the proceeds of the disposition exceed the fair market value of the consideration (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer for the disposition, that

- (i) the fair market value, immediately after the disposition, of those preferred shares of that class,

is of

(ii) the fair market value, immediately after the disposition, of all preferred shares of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition;

(h) **[deemed cost of common shares]** — the cost to the taxpayer of any common shares of any class of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition shall be deemed to be that proportion of the amount, if any, by which the proceeds of the disposition exceed the total of the fair market value, at the time of the disposition, of the consideration (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the taxpayer for the disposition and the cost to the taxpayer of all preferred shares of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition, that

(i) the fair market value, immediately after the disposition, of those common shares of that class,

is of

(ii) the fair market value, immediately after the disposition, of all common shares of the capital stock of the corporation receivable by the taxpayer as consideration for the disposition; and

(i) **[transfer of taxable Canadian property]** — where the property so disposed of is taxable Canadian property of the taxpayer, all of the shares of the capital stock of the Canadian corporation received by the taxpayer as consideration for the property are deemed to be, at any time that is within 60 months after the disposition, taxable Canadian property of the taxpayer.

(1.1) Definition of “eligible property” — For the purposes of subsection (1), “eligible property” means

- (a) a capital property (other than real or immovable property, an option in respect of such property, or an interest in real property or a real right in an immovable, owned by a non-resident person);
- (b) a capital property that is real or immovable property, an option in respect of such property, or an interest in real property or a real right in an immovable, owned by a non-resident insurer if that property and the property received as consideration for that property are designated insurance property for the year;
- (c) a Canadian resource property;
- (d) a foreign resource property;
- (e) [Repealed]
- (f) an inventory (other than real or immovable property, an option in respect of such property, or an interest in real property or a real right in an immovable);
- (g) a property that is a security or debt obligation used by the taxpayer in the year in, or held by it in the year in the course of, carrying on the business of insurance or lending money, other than
 - (i) a capital property,
 - (ii) inventory, or
 - (iii) where the taxpayer is a financial institution in the year, a mark-to-market property for the year;
- (g.1) where the taxpayer is a financial institution in the year, a specified debt obligation (other than a mark-to-market property of the taxpayer for the year);
- (h) a capital property that is real or immovable property, an option in respect of such property, or an interest in real property or a real right in an immovable, owned by a non-resident person

(other than a non-resident insurer) and used in the year in a business carried on in Canada by that person; or

- (i) a NISA Fund No. 2, if that property is owned by an individual.

(1.11) Exception — Notwithstanding subsection (1.1), a foreign resource property, or an interest in a partnership that derives all or part of its value from one or more foreign resource properties, is not an eligible property of a taxpayer in respect of a disposition by the taxpayer to a corporation where

- (a) the taxpayer and the corporation do not deal with each other at arm’s length; and
- (b) it is reasonable to conclude that one of the purposes of the disposition, or a series of transactions or events of which the disposition is a part, is to increase the extent to which any person may claim a deduction under section 126.

(1.12) Eligible derivatives [where mark-to-market election made] — Notwithstanding subsection (1.1), an “eligible derivative” (as defined in subsection 10.1(5)) of a taxpayer to which subsection 10.1(6) applies is not an eligible property of the taxpayer in respect of a disposition by the taxpayer to a corporation.**(1.2) Application of subsec. (1) [to non-resident vendor]** — Subsection (1) does not apply to a disposition by a taxpayer to a corporation of a property referred to in paragraph (1.1)(h) unless

- (a) immediately after the disposition, the corporation is controlled by the taxpayer, a person or persons related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the taxpayer or the taxpayer and a person or persons so related to the taxpayer;
- (b) the disposition is part of a transaction or series of transactions in which all or substantially all of the property used in the business referred to in para-

graph (1.1)(h) is disposed of by the taxpayer to the corporation; and

(c) the disposition is not part of a series of transactions that result in control of the corporation being acquired by a person or group of persons after the time that is immediately after the disposition.

(1.3) Meaning of “wholly owned corporation” — For the purposes of this subsection and paragraph (1)(e.2), “wholly owned corporation” of a taxpayer means a corporation all the issued and outstanding shares of the capital stock of which (except directors’ qualifying shares) belong to

- (a) the taxpayer;
- (b) a corporation that is a wholly owned corporation of the taxpayer; or
- (c) any combination of persons described in paragraph (a) or (b).

(1.4) Definitions — For the purpose of subsection (1.1), “financial institution”, “mark-to-market property” and “specified debt obligation” have the meanings assigned by subsection 142.2(1).

(2) Transfer of property to corporation from partnership — Where

(a) a partnership has disposed, to a taxable Canadian corporation for consideration that includes shares of the corporation’s capital stock, of any partnership property (other than an “eligible derivative”, as defined in subsection 10.1(5), of the partnership if subsection 10.1(6) applies to the partnership) that was

(i) a capital property (other than real or immovable property, an option in respect of such property, or an interest in real property or a real right in an immovable, if the partnership was not a Canadian partnership at the time of the disposition),

(ii) a property described in any of paragraphs (1.1)(c) to (f), or

(iii) a property that would be described in paragraph (1.1)(g) or (g.1) if the references in those paragraphs to “taxpayer” were read as “partnership”, and

(b) the corporation and all the members of the partnership have jointly so elected, in prescribed form and within the time referred to in subsection (6),

paragraphs (1)(a) to (i) are applicable, with such modifications as the circumstances require, in respect of the disposition as if the partnership were a taxpayer resident in Canada who had disposed of the property to the corporation.

(2.1) Computing paid-up capital — Where subsection (1) or (2) applies to a disposition of property (other than a disposition of property to which section 84.1 or 212.1 applies) to a corporation by a person or partnership (in this subsection referred to as the “taxpayer”),

(a) in computing the paid-up capital in respect of any particular class of shares of the capital stock of the corporation at the time of, and at any time after, the issue of shares of the capital stock of the corporation in consideration for the disposition of the property, there shall be deducted an amount determined by the formula

$$(A - B) \times \frac{C}{A}$$

where

A is the increase, if any, determined without reference to this section as it applies to the disposition of the property, in the paid-up capital in respect of all the shares of the capital stock of the corporation as a result of the acquisition by the corporation of the property,

B is the amount, if any, by which the corporation’s cost of the property, immediately after the acquisition, determined under sub-

section (1) or (2), as the case may be, exceeds the fair market value, immediately after the acquisition, of any consideration (other than shares of the capital stock of the corporation) received by the taxpayer from the corporation for the property, and

C is the increase, if any, determined without reference to this section as it applies to the disposition of the property, in the paid-up capital in respect of the particular class of shares as a result of the acquisition by the corporation of the property; and

(b) in computing the paid-up capital, at any time after November 21, 1985, in respect of any class of shares of the capital stock of a corporation, there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid after November 21, 1985 and before that time by the corporation

exceeds

(B) the total of such dividends that would be determined under clause (A) if the Act were read without reference to paragraph (a), and

(ii) the total of all amounts required by paragraph (a) to be deducted in computing the paid-up capital in respect of that class of shares after November 21, 1985 and before that time.

(3) Where partnership wound up —
Where,

(a) in respect of any disposition of partnership property of a partnership to a corporation, subsection (2) applies,

(b) the affairs of the partnership were wound up within 60 days after the disposition, and

(c) immediately before the winding-up there was no partnership property other than money or property received from the corporation as consideration for the disposition,

the following rules apply:

(d) the cost to any member of the partnership of any property (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the member as consideration for the disposition of the member's partnership interest on the winding-up shall be deemed to be the fair market value of the property at the time of the winding-up,

(e) the cost to any member of the partnership of any preferred shares of any class of the capital stock of the corporation receivable by the member as consideration for the disposition of the member's partnership interest on the winding-up shall be deemed to be

(i) where any common shares of the capital stock of the corporation were also receivable by the member as consideration for the disposition of the interest, the lesser of

(A) the fair market value, immediately after the winding-up, of the preferred shares of that class so receivable by the member, and

(B) that proportion of the amount, if any, by which the adjusted cost base to the member of the member's partnership interest immedi-

ately before the winding-up exceeds the total of the fair market value, at the time of the winding-up, of the consideration (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the member for the disposition of the interest, that

(I) the fair market value, immediately after the winding-up, of the preferred shares of that class so receivable by the member,

is of

(II) the fair market value, immediately after the winding-up, of all preferred shares of the capital stock of the corporation receivable by the member as consideration for the disposition, and

(ii) in any other case, the amount determined under clause (i)(B),

(f) the cost to any member of the partnership of any common shares of any class of the capital stock of the corporation receivable by the member as consideration for the disposition of the member's partnership interest on the winding-up shall be deemed to be that proportion of the amount, if any, by which the adjusted cost base to the member of the member's partnership interest immediately before the winding-up exceeds the total of the fair market value, at the time of the winding-up, of the consideration (other than shares of the capital stock of the corporation or a right to receive any such shares) received by the member for the disposition of the interest and the cost to the member of all preferred shares of the capital stock of the corporation

receivable by the member as consideration for the disposition of the interest, that

(i) the fair market value, immediately after the winding-up, of the common shares of that class so receivable by the member,

is of

(ii) the fair market value, immediately after the winding-up, of all common shares of the capital stock of the corporation so receivable by the member as consideration for the disposition,

(g) the proceeds of disposition of the partnership interest of any member of the partnership shall be deemed to be the cost to the member of all shares and property receivable or received by the member as consideration for the disposition of the interest plus the amount of any money received by the member as consideration for the disposition, and

(h) where the partnership has distributed partnership property referred to in paragraph (c) to a member of the partnership, the partnership shall be deemed to have disposed of that property for proceeds equal to the cost amount to the partnership of the property immediately before its distribution.

(4) [Repealed]

(5) Rules on transfers of depreciable property — Where subsection (1) or (2) has applied to a disposition at any time of depreciable property to a person (in this subsection referred to as the “transferee”) and the capital cost to the transferor of the property exceeds the transferor’s proceeds of disposition of the property, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(a) the capital cost to the transferee of the property is deemed to be the

amount that was its capital cost to the transferor; and

(b) the excess is deemed to have been deducted by the transferee under paragraph 20(1)(a) in respect of the property in computing income for taxation years that ended before that time.

(5.1) Acquisition of certain tools — capital cost and deemed depreciation — If subsection (1) has applied in respect of the acquisition at any particular time of any depreciable property by a corporation from an individual, the cost of the property to the individual was included in computing an amount under paragraph 8(1)(r) or (s) in respect of the individual, and the amount that would be the cost of the property to the individual immediately before the transfer if this Act were read without reference to subsection 8(7) (which amount is in this subsection referred to as the “individual’s original cost”) exceeds the individual’s proceeds of disposition of the property,

(a) the capital cost to the corporation of the property is deemed to be equal to the individual’s original cost; and

(b) the amount by which the individual’s original cost exceeds the individual’s proceeds of disposition in respect of the property is deemed to have been deducted by the corporation under paragraph 20(1)(a) in respect of the property in computing income for taxation years that ended before that particular time.

(6) Time for election — Any election under subsection (1) or (2) shall be made on or before the day that is the earliest of the days on or before which any taxpayer making the election is required to file a return of income pursuant to section 150 for the taxation year in which the transaction to which the election relates occurred.

(7) Late filed election — Where the election referred to in subsection (6) was not made on or before the day on or before which the election was required by that sub-

section to be made and that day is after May 6, 1974, the election shall be deemed to have been made on that day if, on or before the day that is 3 years after that day,

(a) the election is made in prescribed form; and

(b) an estimate of the penalty in respect of that election is paid by the taxpayer or the partnership, as the case may be, when that election is made.

(7.1) Special cases — Where, in the opinion of the Minister, the circumstances of a case are such that it would be just and equitable

(a) to permit an election under subsection (1) or (2) to be made after the day that is 3 years after the day on or before which the election was required by subsection (6) to be made, or

(b) to permit an election made under subsection (1) or (2) to be amended,

the election or amended election shall be deemed to have been made on the day on or before which the election was so required to be made if

(c) the election or amended election is made in prescribed form, and

(d) an estimate of the penalty in respect of the election or amended election is paid by the taxpayer or partnership, as the case may be, when the election or amended election is made,

and where this subsection applies to the amendment of an election, that election shall be deemed not to have been effective.

(8) Penalty for late filed election — For the purposes of this section, the penalty in respect of an election or an amended election referred to in paragraph (7)(a) or (7.1)(c) is an amount equal to the lesser of

(a) $\frac{1}{4}$ of 1% of the amount, if any, by which

(i) the fair market value of the property in respect of which that election or amended election was

made, at the time the property was disposed of,
exceeds

(ii) the amount agreed on in the election or amended election by the taxpayer or partnership, as the case may be, and the corporation,

for each month or part of a month during the period commencing with the day on or before which the election is required by subsection (6) to be made and ending on the day the election or amended election is made, and

(b) an amount, not exceeding \$8,000, equal to the product obtained by multiplying \$100 by the number of months each of which is a month all or part of which is during the period referred to in paragraph (a).

(9) Unpaid balance of penalty — The Minister shall, with all due dispatch, examine each election and amended election referred to in paragraph (7)(a) or (7.1)(c), assess the penalty payable and send a notice of assessment to the taxpayer or partnership, as the case may be, and the taxpayer or partnership, as the case may be, shall pay forthwith to the Receiver General the amount, if any, by which the penalty so assessed exceeds the total of all amounts previously paid on account of that penalty.

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Subdivision k — Trusts and Their Beneficiaries

104. (1) Reference to trust or estate — In this Act, a reference to a trust or estate (in this subdivision referred to as a “trust”) shall, unless the context otherwise requires, be read to include a reference to the trustee, executor, administrator, liquidator of a succession, heir or other legal representative having ownership or control of the trust pro-

perty, but, except for the purposes of this subsection, subsection (1.1), subparagraph (b)(v) of the definition “disposition” in subsection 248(1) and paragraph (k) of that definition, a trust is deemed not to include an arrangement under which the trust can reasonably be considered to act as agent for all the beneficiaries under the trust with respect to all dealings with all of the trust’s property unless the trust is described in any of paragraphs (a) to (e.1) of the definition “trust” in subsection 108(1).

(1.1) Restricted meaning of “beneficiary” — Notwithstanding subsection 248(25), for the purposes of subsection (1), paragraph (4)(a.4), subparagraph 73(1.02)(b)(ii) and paragraph 107.4(1)(e), a person or partnership is deemed not to be a beneficiary under a trust at a particular time if the person or partnership is beneficially interested in the trust at the particular time solely because of

- (a) a right that may arise as a consequence of the terms of the will or other testamentary instrument of an individual who, at the particular time, is a beneficiary under the trust;
- (b) a right that may arise as a consequence of the law governing the intestacy of an individual who, at that time, is a beneficiary under the trust;
- (c) a right as a shareholder under the terms of the shares of the capital stock of a corporation that, at the particular time, is a beneficiary under the trust;
- (d) a right as a member of a partnership under the terms of the partnership agreement, where, at the particular time, the partnership is a beneficiary under the trust; or
- (e) any combination of rights described in paragraphs (a) to (d).

(2) Taxed as individual — A trust shall, for the purposes of this Act, and without affecting the liability of the trustee or legal representative for that person’s own income tax, be deemed to be in respect of the trust

property an individual, but where there is more than one trust and

- (a) substantially all of the property of the various trusts has been received from one person, and
- (b) the various trusts are conditioned so that the income thereof accrues or will ultimately accrue to the same beneficiary, or group or class of beneficiaries,

such of the trustees as the Minister may designate shall, for the purposes of this Act, be deemed to be in respect of all the trusts an individual whose property is the property of all the trusts and whose income is the income of all the trusts.

(3) [Repealed under former Act]

(4) Deemed disposition by trust [every 21 years or on death] — Every trust is, at the end of each of the following days, deemed to have disposed of each property of the trust (other than exempt property) that was capital property (other than depreciable property) or land included in the inventory of a business of the trust for proceeds equal to its fair market value (determined with reference to subsection 70(5.3)) at the end of that day and to have reacquired the property immediately after that day for an amount equal to that fair market value, and for the purposes of this Act those days are

- (a) where the trust

(i) is a trust that was created by the will of a taxpayer who died after 1971 and that, at the time it was created, was a trust,

(i.1) is a trust that was created by the will of a taxpayer who died after 1971 to which property was transferred in circumstances to which paragraph 70(5.2)(c) (or, in the case of a transfer that occurred in a taxation year before 2007, (b) or (d), as those paragraphs read in their application to that taxation year) or (6)(d) applied, and that, immedi-

ately after any such property vested indefeasibly in the trust as a consequence of the death of the taxpayer, was a trust,

(ii) is a trust that was created after June 17, 1971 by a taxpayer during the taxpayer's lifetime that, at any time after 1971, was a trust, or

(ii.1) is a trust (other than a trust the terms of which are described in clause (iv)(A) that elects in its return of income under this Part for its first taxation year that this subparagraph not apply) that was created after 1999 by a taxpayer during the taxpayer's lifetime and that, at any time after 1999, was a trust

under which

(iii) the taxpayer's spouse or common-law partner was entitled to receive all of the income of the trust that arose before the spouse's or common-law partner's death and no person except the spouse or common-law partner could, before the spouse's or common-law partner's death, receive or otherwise obtain the use of any of the income or capital of the trust, or

(iv) in the case of a trust described in subparagraph (ii.1) created by a taxpayer who had attained 65 years of age at the time the trust was created,

(A) the taxpayer was entitled to receive all of the income of the trust that arose before the taxpayer's death and no person except the taxpayer could, before the taxpayer's death, receive or otherwise obtain the use of any of the income or capital of the trust,

(B) the taxpayer or the taxpayer's spouse was, in combination with the spouse or the taxpayer, as the case may be, entitled to receive all of the income of the trust that arose before the later of the death of the taxpayer and the death of the spouse and no other person could, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust, or

(C) the taxpayer or the taxpayer's common-law partner was, in combination with the common-law partner or the taxpayer, as the case may be, entitled to receive all of the income of the trust that arose before the later of the death of the taxpayer and the death of the common-law partner and no other person could, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust,

the day on which the death or the later death, as the case may be, occurs;

(a.1) where the trust is a pre-1972 spousal trust on January 1, 1993 and the spouse or common-law partner referred to in the definition "pre-1972 spousal trust" in subsection 108(1) in respect of the trust was

(i) in the case of a trust created by the will of a taxpayer, alive on January 1, 1976, and

(ii) in the case of a trust created by a taxpayer during the taxpayer's lifetime, alive on May 26, 1976,

the day that is the later of

- (iii) the day on which that spouse or common-law partner dies, and
- (iv) January 1, 1993;

(a.2) where the trust makes a distribution to a beneficiary in respect of the beneficiary's capital interest in the trust, it is reasonable to conclude that the distribution was financed by a liability of the trust and one of the purposes of incurring the liability was to avoid taxes otherwise payable under this Part as a consequence of the death of any individual, the day on which the distribution is made (determined as if a day ends for the trust immediately after the time at which each distribution is made by the trust to a beneficiary in respect of the beneficiary's capital interest in the trust);

(a.3) where property (other than property described in any of subparagraphs 128.1(4)(b)(i) to (iii)) has been transferred by a taxpayer after December 17, 1999 to the trust in circumstances to which subsection 73(1) applied, it is reasonable to conclude that the property was so transferred in anticipation that the taxpayer would subsequently cease to reside in Canada and the taxpayer subsequently ceases to reside in Canada, the first day after that transfer during which the taxpayer ceases to reside in Canada (determined as if a day ends for the trust immediately after each time at which the taxpayer ceases to be resident in Canada);

(a.4) where the trust is a trust to which property was transferred by a taxpayer who is an individual (other than a trust) in circumstances in which section 73 or subsection 107.4(3) applied, the transfer did not result in a change in beneficial ownership of that property and no person (other than the taxpayer) or partnership has any absolute or contingent right as a beneficiary under the trust (determined with refer-

ence to subsection (1.1)), the day on which the death of the taxpayer occurs;

(b) the day that is 21 years after the latest of

- (i) January 1, 1972,
- (ii) the day on which the trust was created, and
- (iii) where applicable, the day determined under paragraph (a), (a.1) or (a.4) as those paragraphs applied from time to time after 1971; and

(c) the day that is 21 years after any day (other than a day determined under any of paragraphs (a) to (a.4)) that is, because of this subsection, a day on which the trust is deemed to have disposed of each such property.

(5) Depreciable property [deemed disposition] — Every trust is, at the end of each day determined under subsection (4) in respect of the trust, deemed to have disposed of each property of the trust (other than exempt property) that was a depreciable property of a prescribed class of the trust for proceeds equal to its fair market value at the end of that day and to have reacquired the property immediately after that day at a capital cost (in this subsection referred to as the “deemed capital cost”) equal to that fair market value, except that

(a) where the amount that was the capital cost to the trust of the property immediately before the end of the day (in this paragraph referred to as the “actual capital cost”) exceeds the deemed capital cost to the trust of the property, for the purpose of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a) as they apply in respect of the property at any subsequent time,

(i) the capital cost to the trust of the property on its reacquisition shall be deemed to be the amount that was the actual capital cost to the trust of the property, and

(ii) the excess shall be deemed to have been allowed under paragraph 20(1)(a) to the trust in respect of the property in computing its income for taxation years that ended before the trust reacquired the property;

(b) for the purposes of this subsection, the reference to “at the end of a taxation year” in subsection 13(1) shall be read as a reference to “at the particular time a trust is deemed by subsection 104(5) to have disposed of depreciable property of a prescribed class”; and

(c) for the purpose of computing the excess, if any, referred to in subsection 13(1) at the end of the taxation year of a trust that included a day on which the trust is deemed by this subsection to have disposed of a depreciable property of a prescribed class, any amount that, on that day, was included in the trust’s income for the year under subsection 13(1) as it reads because of paragraph (b), shall be deemed to be an amount included under section 13 in the trust’s income for a preceding taxation year.

(5.1) NISA Fund No. 2 [deemed disposition] — Every trust that holds an interest in a NISA Fund No. 2 that was transferred to it in circumstances to which paragraph 70(6.1)(b) applied is deemed, at the end of the day on which the spouse or common-law partner referred to in that paragraph dies, to have been paid an amount out of the fund equal to the balance at the end of that day in the fund so transferred.

(5.2) Resource property [deemed disposition] — Where at the end of a day determined under subsection (4) in respect of a trust, the trust owns a Canadian resource property (other than an exempt property) or a foreign resource property (other than an exempt property),

(a) for the purposes of determining the amounts under subsection 59(1), paragraphs 59(3.2)(c) and (c.1), sub-

sections 66(4) and 66.2(1), the definition “cumulative Canadian development expense” in subsection 66.2(5), the definition “cumulative foreign resource expense” in subsection 66.21(1), subsection 66.4(1) and the definition “cumulative Canadian oil and gas property expense” in subsection 66.4(5), the trust is deemed

- (i) to have a taxation year (in this subsection referred to as the “old taxation year”) that ended at the end of that day and a new taxation year that begins immediately after that day, and
- (ii) to have disposed, immediately before the end of the old taxation year, of each of those properties for proceeds that became receivable at that time equal to its fair market value at that time and to have reacquired, at the beginning of the new taxation year, each such property for an amount equal to that fair market value; and
- (b) for the particular taxation year of the trust that included that day, the trust shall

(i) include in computing its income for the particular taxation year the amount, if any, determined under paragraph 59(3.2)(c) in respect of the old taxation year and the amount so included shall, for the purposes of the determination of B in the definition “cumulative Canadian development expense” in subsection 66.2(5), be deemed to have been included in computing its income for a preceding taxation year,

(i.1) include in computing its income for the particular taxation year the amount, if any, determined under paragraph 59(3.2)(c.1) in respect of the old taxation year and the amount so included is, for the purpose of de-

termining the value of B in the definition “cumulative foreign resource expense” in subsection 66.21(1), deemed to have been included in computing its income for a preceding taxation year, and

- (ii) deduct in computing its income for the particular taxation year the amount, if any, determined under subsection 66(4) in respect of the old taxation year and the amount so deducted shall, for the purposes of paragraph 66(4)(a), be deemed to have been deducted for a preceding taxation year.

(5.8) Trust transfers — Where capital property, land included in inventory, Canadian resource property or foreign resource property is transferred at a particular time by a trust (in this subsection referred to as the “transferor trust”) to another trust (in this subsection referred to as the “transferee trust”) in circumstances in which subsection 107(2) or 107.4(3) or paragraph (f) of the definition “disposition” in subsection 248(1) applies,

- (a) for the purposes of applying subsections (4) to (5.2) after the particular time,
 - (i) subject to paragraphs (b) to (b.3), the first day (in this subsection referred to as the “disposition day”) that ends at or after the particular time that would, if this section were read without reference to paragraph (4)(a.2) and (a.3), be determined in respect of the transferee trust is deemed to be the earliest of
 - (A) the first day ending at or after the particular time that would be determined under subsection (4) in respect of the transferor trust without regard to the transfer and any transaction or event occurring after the particular time,

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| <p>(B) the first day ending at or after the particular time that would otherwise be determined under subsection (4) in respect of the transferee trust without regard to any transaction or event occurring after the particular time,</p> <p>(C) the first day that ends at or after the particular time, where</p> <ul style="list-style-type: none"> (I) the transferor trust is a joint spousal or common-law partner trust, a post-1971 spousal or common-law partner trust or a trust described in the definition “pre-1972 spousal trust” in subsection 108(1), and (II) the spouse or common-law partner referred to in paragraph (4)(a) or in the definition “pre-1972 spousal trust” in subsection 108(1) is alive at the particular time, <p>(C.1) the first day that ends at or after the particular time, where</p> <ul style="list-style-type: none"> (I) the transferor trust is an <i>alter ego</i> trust, a trust to which paragraph (4)(a.4) applies or a joint spousal or common-law partner trust; and (II) the taxpayer referred to in paragraph (4)(a) or (a.4), as the case may be, is alive at the particular time, and | <p>(D) where</p> <ul style="list-style-type: none"> (I) the disposition day would, but for the application of this subsection to the transfer, be determined under paragraph (5.3)(a) in respect of the transferee trust, and (II) the particular time is after the day that would, but for subsection (5.3), be determined under paragraph (4)(b) in respect of the transferee trust, <p>the first day ending at or after the particular time, and</p> <ul style="list-style-type: none"> (ii) where the disposition day determined in respect of the transferee trust under subparagraph (i) is earlier than the day referred to in clause (i)(B) in respect of the transferee trust, subsections (4) to (5.2) do not apply to the transferee trust on the day referred to in clause (i)(B) in respect of the transferee trust; <p>(b) paragraph (a) does not apply in respect of the transfer where</p> <ul style="list-style-type: none"> (i) the transferor trust is a post-1971 spousal or common-law partner trust or a trust described in the definition “pre-1972 spousal trust” in subsection 108(1), (ii) the spouse or common-law partner referred to in paragraph (4)(a) or in the definition “pre-1972 spousal trust” in subsection 108(1) is alive at the particular time, and (iii) the transferee trust is a post-1971 spousal or common-law partner trust or a trust described in the definition “pre-1972 spousal trust” in subsection 108(1); |
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| <p>(b.1) paragraph (a) does not apply in respect of the transfer where</p> <ul style="list-style-type: none">(i) the transferor trust is an <i>alter ego</i> trust;(ii) the taxpayer referred to in paragraph (4)(a) is alive at the particular time, and(iii) the transferee trust is an <i>alter ego</i> trust; <p>(b.2) paragraph (a) does not apply in respect of the transfer where</p> <ul style="list-style-type: none">(i) the transferor trust is a joint spousal or common-law partner trust;(ii) either the taxpayer referred to in paragraph (4)(a), or the spouse or common-law partner referred to in that paragraph, is alive at the particular time, and(iii) the transferee trust is a joint spousal or common-law partner trust; <p>(b.3) paragraph (a) does not apply in respect of the transfer where</p> <ul style="list-style-type: none">(i) the transferor trust is a trust to which paragraph (4)(a.4) applies;(ii) the taxpayer referred to in paragraph (4)(a.4) is alive at the particular time, and(iii) the transferee trust is a trust to which paragraph (4)(a.4) applies; and <p>(c) for the purposes of subsection (5.3), unless a day ending before the particular time has been determined under paragraph (4)(a.1) or (b) or would, but for subsection (5.3), have been so determined, a day determined under subparagraph (a)(i) shall be deemed to be a day determined under paragraph (4)(a.1) or (b), as the case may be, in respect of the transferee trust.</p> | <p>deducted in computing the income of a trust for a taxation year</p> <p>(a) in the case of an employee trust, the amount by which the amount that would, but for this subsection, be its income for the year exceeds the amount, if any, by which</p> <ul style="list-style-type: none">(i) the total of all amounts each of which is its income for the year from a business exceeds(ii) the total of all amounts each of which is its loss for the year from a business; <p>(a.1) in the case of a trust governed by an employee benefit plan, such part of the amount that would, but for this subsection, be its income for the year as was paid in the year to a beneficiary;</p> <p>(a.2) where the taxable income of the trust for the year is subject to tax under this Part because of paragraph 146(4)(c) or subsection 146.3(3.1), the part of the amount that, but for this subsection, would be the income of the trust for the year that was paid in the year to a beneficiary;</p> <p>(a.3) in the case of a trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, such part of its income for the year as became payable in the year to a beneficiary;</p> <p>(a.4) in the case of an employee life and health trust, an amount that became payable by the trust in the year as a designated employee benefit (as defined in subsection 144.1(1)); and</p> <p>(b) in any other case, the amount that the trust claims not exceeding the amount, if any, determined by the formula</p> |
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A – B

where

A is the part of its income (determined without reference to this

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| <p>subsection and subsection (12)) for the year that became payable in the year to, or that was included under subsection 105(2) in computing the income of, a beneficiary, and</p> <p>B is</p> <ul style="list-style-type: none"> (i) if the trust is a trust for which a day is to be determined under paragraph (4)(a) or (a.4) by reference to a death or later death, as the case may be, that has not occurred before the beginning of the year, the total of (A) the part of its income (determined without reference to this subsection and subsection (12)) for the year that became payable in the year to, or that was included under subsection 105(2) in computing the income of, a beneficiary (other than an individual whose death is that death or later death, as the case may be), and (B) the total of all amounts each of which <p>(I) is included in its income (determined without reference to this subsection and subsection (12)) for the year — if the year is the year in which that death or later death, as the case may be, occurs and paragraph (13.4)(b)</p> | <p>does not apply in respect of the trust for the year — because of the application of subsection (4), (5), (5.1) or (5.2) or 12(10.2), and</p> <p>(II) is not included in the amount determined for clause (A) for the year, and</p> <p>(ii) if the trust is a SIFT trust for the year, the amount, if any, by which</p> <p>(A) the amount determined for A for the trust for the year exceeds</p> <p>(B) the amount, if any, by which the amount determined for A for the trust for the year exceeds its non-portfolio earnings for the year.</p> |
| <p>(7) Non-resident beneficiary — No deduction may be made under subsection (6) in computing the income for a taxation year of a trust in respect of such part of an amount that would otherwise be its income for the year as became payable in the year to a beneficiary who was, at any time in the year, a designated beneficiary of the trust (as that expression applies for the purposes of section 210.3) unless, throughout the year, the trust was resident in Canada.</p> <p>(7.01) Trusts deemed to be resident in Canada [— limitation on deduction] — If a trust is deemed by subsection 94(3) to be resident in Canada for a taxation year for the purpose of computing the trust's income for the year, the maximum amount deductible under subsection (6) in comput-</p> | |

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ing its income for the year is the amount, if any, by which

(a) the maximum amount that, if this Act were read without reference to this subsection, would be deductible under subsection (6) in computing its income for the year,

exceeds

(b) the total of

(i) the portion of the trust's designated income for the year (within the meaning assigned by section 210) that became payable in the year to a non-resident beneficiary under the trust in respect of an interest of the non-resident as a beneficiary under the trust, and

(ii) all amounts each of which is determined by the formula

$$A \times B$$

where

A is an amount (other than an amount described in subparagraph (i)) that

(A) is paid or credited (having the meaning assigned by Part XIII) in the year to the trust,

(B) would, if this Act were read without reference to subparagraph 94(3)(a)(viii), paragraph 212(2)(b) and sections 216 and 217, be an amount as a consequence of the payment or crediting of which the trust would have been liable to tax under Part XIII, and

(C) becomes payable in the year by the trust to a non-resident beneficiary under the trust

in respect of an interest of the non-resident as a beneficiary under the trust, and

B is

(A) 0.35, if the trust can establish to the satisfaction of the Minister that the non-resident beneficiary to whom the amount described in the description of A is payable is resident in a country with which Canada has a tax treaty under which the income tax that Canada may impose on the beneficiary in respect of the amount is limited, and

(B) 0.6, in any other case.

(7.02) Limitation — amount claimed as gift — No deduction may be made under subsection (6) in computing the income for a taxation year of an estate that arose on and as a consequence of an individual's death in respect of a payment to the extent that the payment is a gift in respect of which an amount is deducted under section 118.1 for any taxation year in computing the individual's tax payable under this Part.

(7.1) Capital interest greater than income interest — Where it is reasonable to consider that one of the main purposes for the existence of any term, condition, right or other attribute of an interest in a trust (other than a personal trust) is to give a beneficiary a percentage interest in the property of the trust that is greater than the beneficiary's percentage interest in the income of the trust, no amount may be deducted under paragraph (6)(b) in computing the income of the trust.

(7.2) Avoidance of subsec. (7.1) — Notwithstanding any other provision of this Act, where

(a) a taxpayer has acquired a right to or to acquire an interest in a trust, or a right to or to acquire a property of a trust, and

(b) it is reasonable to consider that one of the main purposes of the acquisition was to avoid the application of subsection (7.1) in respect of the trust,

on a disposition of the right (other than pursuant to the exercise thereof), the interest or the property, there shall be included in computing the income of the taxpayer for the taxation year in which the disposition occurs the amount, if any, by which

(c) the proceeds of disposition of the right, interest or property, as the case may be,

exceed

(d) the cost amount to the taxpayer of the right, interest or property, as the case may be.

(12) Deduction of amounts included in preferred beneficiaries' incomes —

There may be deducted in computing the income of a trust for a taxation year the lesser of

(a) the total of all amounts designated under subsection (14) by the trust in respect of the year, and

(b) the accumulating income of the trust for the year.

(13) Income of beneficiary — There shall be included in computing the income for a particular taxation year of a beneficiary under a trust such of the following amounts as are applicable:

(a) in the case of a trust (other than a trust referred to in paragraph (a) of the definition "trust" in subsection 108(1)), such part of the amount that, but for subsections (6) and (12), would be the trust's income for the trust's taxation year that ended in the particu-

lar year as became payable in the trust's year to the beneficiary; and

(b) in the case of a trust governed by an employee benefit plan to which the beneficiary has contributed as an employer, such part of the amount that, but for subsections (6) and (12), would be the trust's income for the trust's taxation year that ended in the particular year as was paid in the trust's year to the beneficiary.

(13.1) Amounts deemed not paid —

Where a trust, in its return of income under this Part for a taxation year throughout which it was resident in Canada and not exempt from tax under Part I by reason of subsection 149(1), designates an amount in respect of a beneficiary under the trust, not exceeding the amount determined by the formula

$$\frac{A}{B} \times (C - D - E)$$

where

A is the beneficiary's share of the income of the trust for the year computed without reference to this Act,

B is the total of all amounts each of which is a beneficiary's share of the income of the trust for the year computed without reference to this Act,

C is the total of all amounts each of which is an amount that, but for this subsection or subsection (13.2), would be included in computing the income of a beneficiary under the trust by reason of subsection (13) or 105(2) for the year,

D is the amount deducted under subsection (6) in computing the income of the trust for the year, and

E is equal to the amount determined by the trust for the year and used as the value of C for the purposes of the formula in subsection (13.2) or, if no amount is so determined, nil,

the amount so designated shall be deemed, for the purposes of subsections (13) and

105(2), not to have been paid or to have become payable in the year to or for the benefit of the beneficiary or out of income of the trust.

(13.2) *Idem* — Where a trust, in its return of income under this Part for a taxation year throughout which it was resident in Canada and not exempt from tax under Part I by reason of subsection 149(1), designates an amount in respect of a beneficiary under the trust, not exceeding the amount determined by the formula

$$\frac{A}{B} \times C$$

where

- A is the amount designated by the trust for the year in respect of the beneficiary under subsection (21),
- B is the total of all amounts each of which has been designated for the year in respect of a beneficiary of the trust under subsection (21), and
- C is the amount determined by the trust and used in computing all amounts each of which is designated by the trust for the year under this subsection, not exceeding the amount by which
 - (i) the total of all amounts each of which is an amount that, but for this subsection or subsection (13.1), would be included in computing the income of a beneficiary under the trust by reason of subsection (13) or 105(2) for the year

exceeds

- (ii) the amount deducted under subsection (6) in computing the income of the trust for the year,

the amount so designated shall

- (a) for the purposes of subsections (13) and 105(2) (except in the application of subsection (13) for the purposes of subsection (21)), be deemed not to have been paid or to have become payable in the year to or for the benefit of

the beneficiary or out of income of the trust; and

(b) except for the purposes of subsection (21) as it applies for the purposes of subsections (21.1) and (21.2), reduce the amount of the taxable capital gains of the beneficiary otherwise included in computing the beneficiary's income for the year by reason of subsection (21).

(13.3) *Invalid designation* — Any designation made under subsection (13.1) or (13.2) by a trust in its return of income under this Part for a taxation year is invalid if the trust's taxable income for the year, determined without reference to this subsection, is greater than nil.

(13.4) *Death of beneficiary — spousal and similar trusts* — If an individual's death occurs on a day in a particular taxation year of a trust and the death is the death or later death, as the case may be, referred to in paragraph (4)(a), (a.1) or (a.4) in respect of the trust,

(a) the particular year is deemed to end at the end of that day, a new taxation year of the trust is deemed to begin immediately after that day and, for the purpose of determining the trust's fiscal period after the new taxation year began, the trust is deemed not to have established a fiscal period before the new taxation year began;

(b) subject to paragraph (b.1), the trust's income (determined without reference to subsections (6) and (12)) for the particular year is, notwithstanding subsection (24), deemed

(i) to have become payable in the year to the individual, and

(ii) not

- (A) to have become payable to another beneficiary, or
- (B) to be included under subsection 105(2) in computing the individual's income;

(b.1) paragraph (b) does not apply in respect of the trust for the particular year, unless

(i) the individual is resident in Canada immediately before the death,

(ii) the trust is, immediately before the death, a testamentary trust that

(A) is a post-1971 spousal or common-law partner trust, and

(B) was created by the will of a taxpayer who died before 2017, and

(iii) an election — made jointly between the trust and the legal representative administering the individual's graduated rate estate in prescribed form — that paragraph (b) applies is filed with

(A) the individual's return of income under this Part for the individual's year, and

(B) the trust's return of income under this Part for the particular year; and

(c) in respect of the particular year

(i) the references in paragraph 150(1)(c) to "year" and in subparagraph (a)(ii) of the definition "balance-due day" in subsection 248(1) to "taxation year" are to be read as "calendar year in which the taxation year ends", and

(ii) the reference in subsection 204(2) of the *Income Tax Regulations* to "end of the taxation year" is to be read as "end of the calendar year in which the taxation year ends".

(14) Election by trust and preferred beneficiary — Where a trust and a preferred beneficiary under the trust for a particular taxation year of the trust jointly so

elect in respect of the particular year in prescribed manner, such part of the accumulating income of the trust for the particular year as is designated in the election, not exceeding the allocable amount for the preferred beneficiary in respect of the trust for the particular year, shall be included in computing the income of the preferred beneficiary for the beneficiary's taxation year in which the particular year ended and shall not be included in computing the income of any beneficiary of the trust for a subsequent taxation year.

(14.1) [Repealed]

(15) Allocable amount for preferred beneficiary — For the purpose of subsection (14), the allocable amount for a preferred beneficiary under a trust in respect of the trust for a taxation year is

(a) where the trust is an *alter ego* trust, a joint spousal or common-law partner trust, a post-1971 spousal or common-law partner trust or a trust described in the definition "pre-1972 spousal trust" in subsection 108(1) at the end of the year and a beneficiary, referred to in paragraph (4)(a) or in that definition, is alive at the end of the year, an amount equal to

(i) if the preferred beneficiary is a beneficiary so referred to, the trust's accumulating income for the year, and

(ii) in any other case, nil;

(b) where paragraph (a) does not apply and the preferred beneficiary's interest in the trust is not solely contingent on the death of another beneficiary who has a capital interest in the trust and who does not have an income interest in the trust, the trust's accumulating income for the year; and

(c) in any other case, nil.

(16) SIFT deemed dividend — If an amount (in this subsection and section 122 referred to as the trust's "non-deductible distributions amount" for the taxation year) is

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determined under subparagraph (ii) of the description of B in paragraph (6)(b) in respect of a SIFT trust for a taxation year

- (a) each beneficiary under the SIFT trust to whom at any time in the taxation year an amount became payable by the trust is deemed to have received at that time a taxable dividend that was paid at that time by a taxable Canadian corporation;
- (b) the amount of a dividend described in paragraph (a) as having been received by a beneficiary at any time in a taxation year is equal to the amount determined by the formula

$$A/B \times C$$

where

- A is the amount that became payable at that time by the SIFT trust to the beneficiary;
- B is the total of all amounts, each of which became payable in the taxation year by the SIFT trust to a beneficiary under the SIFT trust, and
- C is the SIFT trust's non-deductible distributions amount for the taxation year;
- (c) the amount of a dividend described in paragraph (a) in respect of a beneficiary under the SIFT trust is deemed for the purpose of subsection (13) not to be an amount payable to the beneficiary; and
- (d) for the purposes of applying Part XIII in respect of each dividend described in paragraph (a), the SIFT trust is deemed to be a corporation resident in Canada that paid the dividend.

(18) Trust for minor [under 21]—Where any part of the amount that, but for subsections (6) and (12), would be the income of a trust for a taxation year throughout which it was resident in Canada

- (a) has not become payable in the year,

(b) was held in trust for an individual who did not attain 21 years of age before the end of the year,

- (c) the right to which vested at or before the end of the year otherwise than because of the exercise by any person of, or the failure of any person to exercise, any discretionary power, and
- (d) the right to which is not subject to any future condition (other than a condition that the individual survive to an age not exceeding 40 years),

notwithstanding subsection (24), that part of the amount is, for the purposes of subsections (6) and (13), deemed to have become payable to the individual in the year.

(19) Designation in respect of taxable dividends—A portion of a taxable dividend received by a trust, in a particular taxation year of the trust, on a share of the capital stock of a taxable Canadian corporation is, for the purposes of this Act other than Part XIII, deemed to be a taxable dividend on the share received by a taxpayer, in the taxpayer's taxation year in which the particular taxation year ends, and is, for the purposes of paragraphs 82(1)(b) and 107(1)(c) and (d) and section 112, deemed not to have been received by the trust, if

- (a) an amount equal to that portion
 - (i) is designated by the trust, in respect of the taxpayer, in the trust's return of income under this Part for the particular taxation year, and
 - (ii) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that, because of paragraph (13)(a), subsection (14) or section 105, was included in computing the income for that taxation year of the taxpayer;
- (b) the taxpayer is in the particular taxation year a beneficiary under the trust;

(c) the trust is, throughout the particular taxation year, resident in Canada; and

(d) the total of all amounts each of which is an amount designated, under this subsection, by the trust in respect of a beneficiary under the trust in the trust's return of income under this Part for the particular taxation year is not greater than the total of all amounts each of which is the amount of a taxable dividend, received by the trust in the particular taxation year, on a share of the capital stock of a taxable Canadian corporation.

(20) Designation in respect of non-taxable dividends — The portion of the total of all amounts, each of which is the amount of a dividend (other than a taxable dividend) paid on a share of the capital stock of a corporation resident in Canada to a trust during a taxation year of the trust throughout which the trust was resident in Canada, that can reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of an amount that became payable in the year to a particular beneficiary under the trust shall be designated by the trust in respect of the particular beneficiary in the return of the trust's income for the year for the purposes of subclause 53(2)(h)(i.1)(B)(II), paragraphs 107(1)(c) and (d) and subsections 112(3.1), (3.2), (3.31) and (4.2).

(21) Designation in respect of taxable capital gains — For the purposes of sections 3 and 111, except as they apply for the purposes of section 110.6, and subject to paragraph 132(5.1)(b), an amount in respect of a trust's net taxable capital gains for a particular taxation year of the trust is deemed to be a taxable capital gain, for the taxation year of a taxpayer in which the particular taxation year ends, from the disposition by the taxpayer of capital property if

(a) the amount

(i) is designated by the trust, in respect of the taxpayer, in the

trust's return of income under this Part for the particular taxation year, and

(ii) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that, because of paragraph (13)(a), subsection (14) or section 105, was included in computing the income for that taxation year of the taxpayer;

(b) the taxpayer is

(i) in the particular taxation year, a beneficiary under the trust, and

(ii) resident in Canada, unless the trust is, throughout the particular taxation year, a mutual fund trust;

(c) the trust is, throughout the particular taxation year, resident in Canada; and

(d) the total of all amounts each of which is an amount designated, under this subsection, by the trust in respect of a beneficiary under the trust in the trust's return of income under this Part for the particular taxation year is not greater than the trust's net taxable capital gains for the particular taxation year.

(21.1) [Repealed]

(21.2) Beneficiaries' taxable capital gain — Where, for the purposes of subsection (21), a personal trust or a trust referred to in subsection 7(2) designates an amount in respect of a beneficiary in respect of its net taxable capital gains for a taxation year (in this subsection referred to as the "designation year"),

(a) the trust shall in its return of income under this Part for the designation year designate an amount in respect of its eligible taxable capital gains, if any, for the designation year in respect of the beneficiary equal to the amount determined in respect of

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the beneficiary under each of subparagraphs (b)(i) and (ii); and

(b) the beneficiary is, for the purposes of section 120.4 and for the purposes of sections 3, 74.3 and 111 as they apply for the purposes of section 110.6,

(i) deemed to have disposed of the capital property referred to in clause (ii)(A), (B) or (C) if a taxable capital gain is determined in respect of the beneficiary for the beneficiary's taxation year in which the designation year ends under those clauses, and

(ii) deemed to have a taxable capital gain for the beneficiary's taxation year in which the designation year ends

(A) from a disposition of a capital property that is qualified farm or fishing property (as defined for the purpose of section 110.6) of the beneficiary equal to the amount determined by the formula

$$(A \times B \times C)/(D \times E)$$

and

(B) from a disposition of a capital property that is a qualified small business corporation share (as defined for the purpose of section 110.6) of the beneficiary equal to the amount determined by the formula

$$(A \times B \times F)/(D \times E)$$

(C) [Repealed]

where

A is the lesser of

(I) the amount determined by the formula

$$G - H$$

where

G is the total of amounts designated under subsection (21) for the designation year by the trust, and

H is the total of amounts designated under subsection (13.2) for the designation year by the trust, and

(II) the trust's eligible taxable capital gains for the designation year,

B is the amount, if any, by which the amount designated under subsection (21) for the designation year by the trust in respect of the beneficiary exceeds the amount designated under subsection (13.2) for the year by the trust in respect of the beneficiary for the taxation year,

C is the amount, if any, that would be determined under paragraph 3(b) for the designation year in respect of the trust's capital gains and capital losses if the only properties referred to in that paragraph were properties that, at the time they were disposed of, were qualified farm properties, qualified fishing properties or qualified farm or fishing properties of the trust,

D is the total of all amounts each of which is the amount determined for B for the designation year in respect of a beneficiary under the trust,

- | | |
|--|--|
| <p>E is the total of the amounts determined for C and F for the designation year in respect of the beneficiary, and</p> <p>F is the amount, if any, that would be determined under paragraph 3(b) for the designation year in respect of the trust's capital gains and capital losses if the only properties referred to in that paragraph were properties that, at the time they were disposed of, were qualified small business corporation shares of the trust, other than qualified farm property, qualified fishing property or qualified farm or fishing property,</p> <p>I [Repealed]</p> | <p>B is, if the designation year of the trust ends on or after April 21, 2015, the amount that would be determined in respect of the trust for the designation year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified farm or fishing properties of the trust that were disposed of by the trust on or after April 21, 2015; and</p> <p>C is, if the designation year of the trust ends on or after April 21, 2015, the amount that would be determined in respect of the trust for the designation year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in that paragraph were qualified farm or fishing properties.</p> |
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and for the purposes of section 110.6, those capital properties shall be deemed to have been disposed of by the beneficiary in that taxation year of the beneficiary.

(21.21) Beneficiaries QFFP taxable capital gain — If clause (21.2)(b)(ii)(A) applies to deem, for the purposes of section 110.6, the beneficiary under a trust to have a taxable capital gain (referred to in this subsection as the "QFFP taxable capital gain") from a disposition of capital property that is qualified farm or fishing property of the beneficiary, for the beneficiary's taxation year that ends on or after April 21, 2015, and in which the designation year of the trust ends, for the purposes of subsection 110.6(2.2), the beneficiary is, if the trust complies with the requirements of subsection (21.22), deemed to have a taxable capital gain from the disposition of qualified farm or fishing property of the beneficiary on or after April 21, 2015 equal to the amount determined by the formula

$$A \times B/C$$

where

A is the amount of the QFFP taxable capital gain;

(21.22) Trusts to designate amounts [for (21.21)] — A trust shall determine and designate, in its return of income under this Part for a designation year of the trust, the amount that is determined under subsection (21.21) to be the beneficiary's taxable capital gain from the disposition on or after April 21, 2015 of qualified farm or fishing property of the beneficiary.

(21.3) Net taxable capital gains of trust determined — For the purposes of this section, the net taxable capital gains of a trust for a taxation year is the amount, if any, determined by the formula

$$A + B - C - D$$

where

- | |
|--|
| <p>A is the total of all amounts each of which is a taxable capital gain of the trust for the year from the disposition of a capital property that was held by the trust immediately before the disposition,</p> <p>B is the total of all amounts each of which is deemed by subsection (21) to be a taxable capital gain of the trust for the year,</p> |
|--|

- C is the total of all amounts each of which is an allowable capital loss (other than an allowable business investment loss) of the trust for the year from the disposition of a capital property, and
- D is the amount, if any, deducted under paragraph 111(1)(b) in computing the trust's taxable income for the year.

(22) Designation in respect of foreign source income — For the purposes of this subsection, subsection (22.1) and section 126, an amount in respect of a trust's income for a particular taxation year of the trust from a source in a country other than Canada is deemed to be income of a taxpayer, for the taxation year of the taxpayer in which the particular taxation year ends, from that source if

(a) the amount

- (i) is designated by the trust, in respect of the taxpayer, in the trust's return of income under this Part for the particular taxation year, and
- (ii) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust) to be part of the amount that, because of paragraph (13)(a) or subsection (14), was included in computing the income for that taxation year of the taxpayer;

(b) the taxpayer is in the particular taxation year a beneficiary under the trust;

(c) the trust is, throughout the particular taxation year, resident in Canada; and

(d) the total of all amounts each of which is an amount designated, under this subsection in respect of that source, by the trust in respect of a beneficiary under the trust in the trust's return of income under this Part for the particular taxation year is not greater than the trust's income for the particular taxation year from that source.

(22.1) Foreign tax deemed paid by beneficiary — Where a taxpayer is a beneficiary under a trust, for the purposes of this subsection and section 126, the taxpayer shall be deemed to have paid as business-income tax or non-business-income tax, as the case may be, for a particular taxation year in respect of a source the amount determined by the formula

$$A \times B / C$$

where

- A is the amount that, but for subsection (22.3), would be the business-income tax or non-business-income tax, as the case may be, paid by the trust in respect of the source for a taxation year (in this subsection referred to as "that year") of the trust that ends in the particular year;
- B is the amount deemed, because of a designation under subsection (22) for that year by the trust, to be the taxpayer's income from the source; and
- C is the trust's income for that year from the source.

(22.2) Recalculation of trust's foreign source income — For the purpose of section 126, there shall be deducted in computing a trust's income from a source for a taxation year the total of all amounts deemed, because of designations under subsection (22) by the trust for the year, to be income of beneficiaries under the trust from that source.

(22.3) Recalculation of trust's foreign tax — For the purpose of section 126, there shall be deducted in computing the business-income tax or non-business-income tax paid by a trust for a taxation year in respect of a source the total of all amounts deemed, because of designations under subsection (22) by the trust for the year, to be paid by beneficiaries under the trust as business-income tax or non-business-income tax, as the case may be, in respect of the source.

(22.4) Definitions — For the purposes of subsections (22) to (22.3), the expressions

“business-income tax” and “non-business-income tax” have the meanings assigned by subsection 126(7).

(23) Deceased beneficiary of graduated rate estate — In the case of a trust that is a graduated rate estate,

(a) [Repealed]

(b) [Repealed]

(c) the income of a person for a taxation year from the trust shall be deemed to be the person’s benefits from or under the trust for the taxation year or years of the trust that ended in the year determined as provided by this section and section 105; and

(d) where an individual having income from the trust died after the end of a taxation year of the trust but before the end of the calendar year in which the taxation year ended, the individual’s income from the trust for the period commencing immediately after the end of the taxation year and ending at the time of death shall be included in computing the individual’s income for the individual’s taxation year in which the individual died unless the individual’s legal representative has elected otherwise, in which case the legal representative shall file a separate return of income for the period under this Part and pay the tax for the period under this Part as if

(i) the individual were another person,

(ii) the period were a taxation year,

(iii) that other person’s only income for the period were the individual’s income from the trust for that period, and

(iv) subject to sections 114.2 and 118.93, that other person were entitled to the deductions to which the individual was entitled under sections 110, 118 to 118.7 and 118.9 for the period in com-

puting the individual’s taxable income or tax payable under this Part, as the case may be, for the period.

(e) [Repealed]

(24) Amount payable — For the purposes of subsections (6), (7), (7.01), (13), (16) and (20), subparagraph 53(2)(h)(i.1) and subsections 94(5.2) and (8), an amount is deemed not to have become payable to a beneficiary in a taxation year unless it was paid in the year to the beneficiary or the beneficiary was entitled in the year to enforce payment of it.

(25), (25.1), (26) [Repealed under former Act]

(27) Pension benefits [flowed through estate] — If a trust, in a taxation year in which it is resident in Canada and is the graduated rate estate of an individual, receives a superannuation or pension benefit or a benefit out of or under a foreign retirement arrangement and designates, in its return of income for the year under this Part, an amount in respect of a beneficiary under the trust equal to the portion (in this subsection referred to as the “beneficiary’s share”) of the benefit that

(a) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by reason of subsection (13), was included in computing the income for a particular taxation year of the beneficiary, and

(b) was not designated by the trust in respect of any other beneficiary under the trust,

the following rules apply:

(c) where

(i) the benefit is an amount described in subparagraph (a)(i) of the definition “pension income” in subsection 118(7), and

(ii) the beneficiary was a spouse or common-law partner of the individual,

the beneficiary's share of the benefit shall be deemed, for the purposes of subsections 118(3) and (7), to be a payment described in subparagraph (a)(i) of the definition "pension income" in subsection 118(7) that is included in computing the beneficiary's income for the particular year,

(d) where the benefit

(i) is a single amount (as defined in subsection 147.1(1)), other than an amount that relates to an actuarial surplus, paid by a registered pension plan to the trust as a consequence of the individual's death and the individual was, at the time of death, a spouse or common-law partner of the beneficiary, or

(ii) would be an amount included in the total determined under paragraph 60(j) in respect of the beneficiary for the taxation year of the beneficiary in which the benefit was received by the trust if the benefit had been received by the beneficiary at the time it was received by the trust,

the beneficiary's share of the benefit is, for the purposes of paragraph 60(j), an eligible amount in respect of the beneficiary for the particular year, and

(e) where the benefit is a single amount (as defined in subsection 147.1(1)) paid by a registered pension plan to the trust as a consequence of the individual's death,

(i) if the beneficiary was, immediately before the death, a child or grandchild of the individual who, because of mental or physical infirmity, was financially dependent on the individual for support, the beneficiary's share of the benefit (other than any por-

tion of it that relates to an actuarial surplus) is deemed, for the purposes of paragraph 60(l), to be an amount from a registered pension plan included in computing the beneficiary's income for the particular year as a payment described in clause 60(l)(v)(B.01), and

(ii) if the beneficiary was, at the time of the death, under 18 years of age and a child or grandchild of the individual, the beneficiary's share of the benefit (other than any portion of it that relates to an actuarial surplus) is deemed, for the purposes of paragraph 60(l), to be an amount from a registered pension plan included in computing the beneficiary's income for the particular year as a payment described in subclause 60(l)(v)(B.1)(II).

(27.1) DPSP benefits [flowed through estate] — Where

(a) a trust, in a taxation year (in this subsection referred to as the "trust year") in which it is resident in Canada and is the graduated rate estate of an individual, receives an amount from a deferred profit sharing plan as a consequence of the individual's death,

(b) the individual was an employee of an employer who participated in the plan on behalf of the individual, and

(c) the amount is not part of a series of periodic payments,

such portion of the amount as

(d) is included under subsection 147(10) in computing the income of the trust for the trust year,

(e) can reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that was included under subsection (13) in computing the income for a particular taxation year of a bene-

ficiary under the trust who was, at the time of the death, the individual's spouse or common-law partner, and

(f) is designated by the trust in respect of the beneficiary in the trust's return of income under this Part for the trust year

is, for the purposes of paragraph 60(j), an eligible amount in respect of the beneficiary for the particular year.

(28) Death benefit [flowed through estate] — If the graduated rate estate of an individual receives an amount on or after the individual's death in recognition of the individual's service in an office or employment, the portion of the amount that can reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be paid or payable at any time to a beneficiary under the estate is deemed

(a) to be an amount received by the beneficiary at that time on or after the death in recognition of the individual's service in an office or employment; and

(b) except for purposes of this subsection, not to have been received by the estate.

(29) [Repealed]

(30) Tax under Part XII.2 — For the purposes of this Part, there shall be deducted in computing the income of a trust for a taxation year the tax paid by the trust for the year under Part XII.2.

(31) Idem — The amount in respect of a taxation year of a trust that is deemed under subsection 210.2(3) to have been paid by a beneficiary under the trust on account of the beneficiary's tax under this Part shall, for the purposes of subsection (13), be deemed to be an amount in respect of the income of the trust for the year that has become payable by the trust to the beneficiary at the end of the year.

105. (1) Benefits under trust — The value of all benefits to a taxpayer during a taxation year from or under a trust, irrespective of when created, shall, subject to subsection (2), be included in computing the taxpayer's income for the year except to the extent that the value

(a) is otherwise required to be included in computing the taxpayer's income for a taxation year; or

(b) has been deducted under paragraph 53(2)(h) in computing the adjusted cost base of the taxpayer's interest in the trust or would be so deducted if that paragraph

(i) applied in respect of the taxpayer's interest in the trust, and

(ii) were read without reference to clause 53(2)(h)(i.1)(B).

(2) Upkeep, etc. — Such part of an amount paid by a trust out of income of the trust for the upkeep, maintenance or taxes of or in respect of property that, under the terms of the trust arrangement, is required to be maintained for the use of a tenant for life or a beneficiary as is reasonable in the circumstances shall be included in computing the income of the tenant for life or other beneficiary from the trust for the taxation year for which it was paid.

106. (1) Income interest in trust — Where an amount in respect of a taxpayer's income interest in a trust has been included in computing the taxpayer's income for a taxation year by reason of subsection (2) or 104(13), except to the extent that an amount in respect of that income interest has been deducted in computing the taxpayer's taxable income pursuant to subsection 112(1) or 138(6), there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the amount so included in computing the taxpayer's income for the year, and

(b) the amount, if any, by which the cost to the taxpayer of the income in-

terest exceeds the total of all amounts in respect of the interest that were deductible under this subsection in computing the taxpayer's income for previous taxation years.

(1.1) Cost of income interest in a trust— The cost to a taxpayer of an income interest of the taxpayer in a trust is deemed to be nil unless

(a) any part of the interest was acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before that acquisition; or

(b) the cost of any part of the interest would otherwise be determined not to be nil under paragraph 128.1(1)(c) or (4)(c).

(2) Disposition by taxpayer of income interest— Where in a taxation year a taxpayer disposes of an income interest in a trust,

(a) except where subsection (3) applies to the disposition, there shall be included in computing the taxpayer's income for the year the amount, if any, by which

(i) the proceeds of disposition exceed

(ii) where that interest includes a right to enforce payment of an amount by the trust, the amount in respect of that right that has been included in computing the taxpayer's income for a taxation year because of subsection 104(13);

(b) any taxable capital gain or allowable capital loss of the taxpayer from the disposition shall be deemed to be nil; and

(c) for greater certainty, the cost to the taxpayer of each property received by the taxpayer as consideration for the disposition is the fair market value of the property at the time of the disposition.

(3) Proceeds of disposition of income interest

— For greater certainty, where at any time any property of a trust has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's income interest in the trust, the trust shall be deemed to have disposed of the property for proceeds of disposition equal to the fair market value of the property at that time.

107. (1) Disposition by taxpayer of capital interest— Where a taxpayer has disposed of all or any part of the taxpayer's capital interest in a trust,

(a) where the trust is a personal trust or a prescribed trust, for the purpose of computing the taxpayer's capital gain, if any, from the disposition, the adjusted cost base to the taxpayer of the interest or the part of the interest, as the case may be, immediately before the disposition is, unless any part of the interest has ever been acquired for consideration and, at the time of the disposition, the trust is non-resident, deemed to be the greater of

(i) its adjusted cost base, otherwise determined, to the taxpayer immediately before the disposition, and

(ii) the amount, if any, by which

(A) its cost amount to the taxpayer immediately before the disposition

exceeds

(B) the total of all amounts deducted under paragraph 53(2)(g.1) in computing its adjusted cost base to the taxpayer immediately before the disposition;

(b) [Repealed]

(c) where the taxpayer is not a mutual fund trust, the taxpayer's loss from the disposition is deemed to be the amount, if any, by which the amount

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of that loss otherwise determined exceeds the amount, if any, by which

(i) the total of all amounts each of which was received or would, but for subsection 104(19), have been received by the trust on a share of the capital stock of a corporation before the disposition (and, where the trust is a unit trust, after 1987) and

(A) where the taxpayer is a corporation,

(I) was a taxable dividend designated under subsection 104(19) by the trust in respect of the taxpayer, to the extent of the amount of the dividend that was deductible under section 112 or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year, or

(II) was an amount designated under subsection 104(20) by the trust in respect of the taxpayer,

(B) where the taxpayer is another trust, was an amount designated under subsection 104(19) or (20) by the trust in respect of the taxpayer, and

(C) where the taxpayer is not a corporation, trust or partnership, was an amount designated under subsection 104(20) by the trust in respect of the taxpayer

exceeds

(ii) the portion of the total determined under subparagraph (i)

that can reasonably be considered to have resulted in a reduction, under this paragraph, of the taxpayer's loss otherwise determined from a previous disposition of an interest in the trust,

(d) where the taxpayer is a partnership, the share of a person (other than another partnership or a mutual fund trust) of any loss of the partnership from the disposition is deemed to be the amount, if any, by which that loss otherwise determined exceeds the amount, if any, by which

(i) the total of all amounts each of which is a dividend that was received or would, but for subsection 104(19), have been received by the trust on a share of the capital stock of a corporation before the disposition (and, where the trust is a unit trust, after 1987) and

(A) where the person is a corporation,

(I) was a taxable dividend that was designated under subsection 104(19) by the trust in respect of the taxpayer, to the extent of the amount of the dividend that was deductible under section 112 or subsection 115(1) or 138(6) in computing the person's taxable income or taxable income earned in Canada for any taxation year, or

(II) was a dividend designated under subsection 104(20) by the trust in respect of the taxpayer and was an amount received by the person,

(B) where the person is an individual other than a trust, was a dividend designated under subsection 104(20) by the trust in respect of the taxpayer and was an amount received by the person, and

(C) where the person is another trust, was a dividend designated under subsection 104(19) or (20) by the trust in respect of the taxpayer and was an amount received by the person (or that would have been received by the person if this Act were read without reference to subsection 104(19)),

exceeds

(ii) the portion of the total determined under subparagraph (i) that can reasonably be considered to have resulted in a reduction, under this paragraph, of the person's loss otherwise determined from a previous disposition of an interest in the trust; and

(e) if the capital interest is not a capital property of the taxpayer, notwithstanding the definition "cost amount" in subsection 108(1), its cost amount is deemed to be the amount, if any, by which

(i) the amount that would, if this Act were read without reference to this paragraph and the definition "cost amount" in subsection 108(1), be its cost amount

exceeds

(ii) the total of all amounts, each of which is an amount in respect of the capital interest that has become payable to the taxpayer before the disposition and that would be described in subparagraph 53(2)(h)(i.1) if that subparagraph were read without reference to its subclause (B)(I).

graph were read without reference to its subclause (B)(I).

(1.1) Cost of capital interest in a trust — The cost to a taxpayer of a capital interest of the taxpayer in a personal trust or a prescribed trust is deemed to be,

(a) where the taxpayer elected under subsection 110.6(19) in respect of the interest and the trust does not elect under that subsection in respect of any property of the trust, the taxpayer's cost of the interest determined under paragraph 110.6(19)(a); and

(b) in any other case, nil, unless

(i) any part of the interest was acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before that acquisition, or

(ii) the cost of any part of the interest would otherwise be determined not to be nil under section 48 as it read in its application before 1993 or under paragraph 111(4)(e) or 128.1(1)(c) or (4)(c).

(1.2) Deemed fair market value — non-capital property — For the purpose of section 10, the fair market value at any time of a capital interest in a trust is deemed to be equal to the amount that is the total of

(a) the amount that would, if this Act were read without reference to this subsection, be its fair market value at that time, and

(b) the total of all amounts, each of which is an amount that would be described, in respect of the capital interest, in subparagraph 53(2)(h)(i.1) if that subparagraph were read without reference to its subclause (B)(I), that has become payable to the taxpayer before that time.

(2) Distribution [rollout] by personal trust — Subject to subsections (2.001), (2.002) and (4) to (5), if at any time a property of a personal trust or a prescribed trust is distributed (otherwise than as a SIFT trust

wind-up event) by the trust to a taxpayer who was a beneficiary under the trust and there is a resulting disposition of all or any part of the taxpayer's capital interest in the trust,

(a) the trust shall be deemed to have disposed of the property for proceeds of disposition equal to its cost amount to the trust immediately before that time;

(b) subject to subsection (2.2), the taxpayer is deemed to have acquired the property at a cost equal to the total of its cost amount to the trust immediately before that time and the specified percentage of the amount, if any, by which

(i) the adjusted cost base to the taxpayer of the capital interest or part of it, as the case may be, immediately before that time (determined without reference to paragraph (1)(a))

exceeds

(ii) the cost amount to the taxpayer of the capital interest or part of it, as the case may be, immediately before that time;

(b.1) for the purpose of paragraph (b), the specified percentage is,

(i) where the property is capital property (other than depreciable property), 100%, and

(ii) [Repealed]

(iii) in any other case, 50%;

(c) the taxpayer's proceeds of disposition of the capital interest in the trust (or of the part of it) disposed of by the taxpayer on the distribution are deemed to be equal to the amount, if any, by which

(i) the cost at which the taxpayer would be deemed by paragraph (b) to have acquired the property if the specified percentage referred to in that paragraph were 100%

exceeds

(ii) the total of all amounts each of which is an eligible offset at that time of the taxpayer in respect of the capital interest or the part of it;

(d) where the property so distributed was depreciable property of a prescribed class of the trust and the amount that was the capital cost to the trust of that property exceeds the cost at which the taxpayer is deemed by this section to have acquired the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a)

(i) the capital cost to the taxpayer of the property shall be deemed to be the amount that was the capital cost of the property to the trust, and

(ii) the excess shall be deemed to have been allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the taxpayer of the property;

(2.001) No rollover on election by a

trust — Where a trust makes a distribution of a property to a beneficiary of the trust in full or partial satisfaction of the beneficiary's capital interest in the trust and so elects in prescribed form filed with the Minister with the trust's return of income for its taxation year in which the distribution occurred, subsection (2) does not apply to the distribution if

(a) the trust is resident in Canada at the time of the distribution;

(b) the property is taxable Canadian property; or

(c) the property is capital property used in, or property described in the inventory of, a business carried on by the trust through a "permanent establishment" (as defined by regulation) in

Canada immediately before the time of the distribution.

(2.002) No rollover on election by a beneficiary — Where a non-resident trust makes a distribution of a property (other than a property described in paragraph (2.001)(b) or (c)) to a beneficiary of the trust in full or partial satisfaction of the beneficiary's capital interest in the trust and the beneficiary makes an election under this subsection in prescribed form filed with the Minister with the beneficiary's return of income for the beneficiary's taxation year in which the distribution occurred,

- (a) subsection (2) does not apply to the distribution; and
- (b) for the purpose of subparagraph (1)(a)(ii), the cost amount of the interest to the beneficiary is deemed to be nil.

(2.01) Distribution of principal residence — Where property that would, if a personal trust had designated the property under paragraph (c.1) of the definition "principal residence" in section 54, be a principal residence (within the meaning of that definition) of the trust for a taxation year, is at any time (in this subsection referred to as "that time") distributed by the trust to a taxpayer in circumstances to which subsection (2) applies and the trust so elects in its return of income for the taxation year that includes that time,

- (a) the trust shall be deemed to have disposed of the property immediately before the particular time that is immediately before that time for proceeds of disposition equal to the fair market value of the property at that time; and
- (b) the trust shall be deemed to have reacquired the property at the particular time at a cost equal to that fair market value.

(2.1) Other distributions — Where at any time a property of a trust is distributed by the trust to a beneficiary under the trust, there would, if this Act were read without

reference to paragraphs (h) and (i) of the definition "disposition" in subsection 248(1), be a resulting disposition of all or any part of the beneficiary's capital interest in the trust (which interest or part, as the case may be, is in this subsection referred to as the "former interest") and the rules in subsections (2) and (3.1) and sections 88.1 and 132.2 do not apply in respect of the distribution,

(a) the trust is deemed to have disposed of the property for proceeds equal to its fair market value at that time;

(b) the beneficiary is deemed to have acquired the property at a cost equal to the proceeds determined under paragraph (a);

(c) subject to paragraph (e), the beneficiary's proceeds of disposition of the portion of the former interest disposed of by the beneficiary on the distribution are deemed to be equal to the amount, if any, by which

(i) the proceeds determined under paragraph (a) (other than the portion, if any, of the proceeds that is a payment to which paragraph (h) or (i) of the definition "disposition" in subsection 248(1) applies),

exceed the total of

(ii) where the property is not a Canadian resource property or foreign resource property, the amount, if any, by which

(A) the fair market value of the property at that time

exceeds the total of

(B) the cost amount to the trust of the property immediately before that time, and

(C) the portion, if any, of the excess that would be determined under this subparagraph if this subparagraph were read without reference

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| <p>to this clause that represents a payment to which paragraph (h) or (i) of the definition “disposition” in subsection 248(1) applies, and</p> <p>(iii) all amounts each of which is an eligible offset at that time of the taxpayer in respect of the former interest;</p> <p>(d) notwithstanding paragraphs (a) to (c), where the trust is non-resident at that time, the property is not described in paragraph (2.001)(b) or (c) and, if this Act were read without reference to this paragraph, there would be no income, loss, taxable capital gain or allowable capital loss of a taxpayer in respect of the property because of the application of subsection 75(2) to the disposition at that time of the property,</p> <p>(i) the trust is deemed to have disposed of the property for proceeds equal to the cost amount of the property,</p> <p>(ii) the beneficiary is deemed to have acquired the property at a cost equal to the fair market value of the property, and</p> <p>(iii) the beneficiary’s proceeds of disposition of the portion of the former interest disposed of by the beneficiary on the distribution are deemed to be equal to the amount, if any, by which</p> <p style="margin-left: 2em;">(A) the fair market value of the property exceeds the total of</p> <p style="margin-left: 2em;">(B) the portion, if any, of the amount of the distribution that is a payment to which paragraph (h) or (i) of the definition “disposition” in subsection 248(1) applies, and</p> <p style="margin-left: 2em;">(C) all amounts each of which is an eligible offset at that time of the taxpayer in</p> | <p>respect of the former interest; and</p> <p>(e) where the trust is a mutual fund trust, the distribution occurs in a taxation year of the trust before its 2003 taxation year, the trust has elected under subsection (2.11) in respect of the year and the trust so elects in respect of the distribution in prescribed form filed with the trust’s return of income for the year,</p> <p>(i) this subsection shall be read without reference to paragraph (c), and</p> <p>(ii) the beneficiary’s proceeds of disposition of the portion of the former interest disposed of by the beneficiary on the distribution are deemed to be equal to the amount determined under paragraph (a).</p> <p>(2.11) Gains not distributed to beneficiaries — If a trust that is resident in Canada for a taxation year makes in the taxation year one or more distributions to which subsection (2.1) applies and the trust elects in prescribed form filed with the trust’s return for the year or a preceding taxation year to have one of the following paragraphs apply, the income of the trust for the year (determined without reference to subsection 104(6)) shall, for the purposes of subsections 104(6) and (13), be computed without regard</p> <p>(a) if the election is to have this paragraph apply, to all of those distributions (other than distributions of cash denominated in Canadian dollars) to non-resident persons (including a partnership other than a Canadian partnership); and</p> <p>(b) if the election is to have this paragraph apply, to all of those distributions (other than distributions of cash denominated in Canadian dollars).</p> <p>(2.12) Election — subsec. (2.11) — An election made under subsection (2.11) by a mutual fund trust is deemed, for the trust’s</p> |
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2003 and subsequent taxation years, not to have been made if

- (a) the election is made after December 20, 2000 and applies to any taxation year that ends before 2003; and
- (b) the proceeds of disposition of a beneficiary's interest in the trust have been determined under paragraph (2.1)(e).

(2.2) Flow-through entity — Where at any time before 2005 a beneficiary under a trust described in paragraph (h), (i) or (j) of the definition "flow-through entity" in subsection 39.1(1) received a distribution of property from the trust in satisfaction of all or a portion of the beneficiary's interests in the trust and the beneficiary files with the Minister on or before the beneficiary's filing-due date for the taxation year that includes that time an election in respect of the property in prescribed form, there shall be included in the cost to the beneficiary of a particular property (other than money) received by the beneficiary as part of the distribution of property the least of

- (a) the amount, if any, by which the beneficiary's exempt capital gains balance (as defined in subsection 39.1(1)) in respect of the trust for the beneficiary's taxation year that includes that time exceeds the total of all amounts each of which is
 - (i) an amount by which a capital gain is reduced under section 39.1 in the year because of the beneficiary's exempt capital gains balance in respect of the trust;
 - (ii) twice an amount by which a taxable capital gain is reduced under section 39.1 in the year because of the beneficiary's exempt capital gains balance in respect of the trust, or
 - (iii) an amount included in the cost to the beneficiary of another

property received by the beneficiary at or before that time in the year because of this subsection,

- (b) the amount by which the fair market value of the particular property at that time exceeds the adjusted cost base to the trust of the particular property immediately before that time, and
- (c) the amount designated in respect of the particular property in the election.

(3) Application of subsec. (3.1) — Subsection (3.1) applies to a trust's distribution of property to a taxpayer if

- (a) the distribution is a SIFT trust wind-up event to which section 88.1 does not apply;
- (b) the property is a share and the only shares distributed on any SIFT trust wind-up event of the trust are of a single class of the capital stock of a taxable Canadian corporation; and
- (c) where the trust is a SIFT wind-up entity, the distribution occurs no more than 60 days after the earlier of
 - (i) the first SIFT trust wind-up event of the trust, and
 - (ii) the first distribution to the trust that is a SIFT trust wind-up event of another trust.

(3.1) SIFT trust wind-up event — If this subsection applies to a trust's distribution of property, the following rules apply:

- (a) the trust is deemed to have disposed of the property for proceeds of disposition equal to the adjusted cost base to the trust of the property immediately before the distribution;
- (b) the taxpayer is deemed to have disposed of the taxpayer's interest as a beneficiary under the trust for proceeds of disposition equal to the cost amount to the taxpayer of the interest immediately before the distribution;

- (c) the taxpayer is deemed to have acquired the property at a cost equal to
- (i) if, at all times at which the trust makes a distribution that is a SIFT trust wind-up event, the taxpayer is the only beneficiary under the trust and is a SIFT wind-up entity or a taxable Canadian corporation, the adjusted cost base to the trust of the property immediately before the distribution, and
 - (ii) in any other case, the cost amount to the taxpayer of the taxpayer's interest as a beneficiary under the trust immediately before the distribution;
- (d) if the taxpayer's interest as a beneficiary under the trust was immediately before the disposition taxable Canadian property of the taxpayer, the property is deemed to be, at any time that is within 60 months after the distribution, taxable Canadian property of the taxpayer; and
- (e) if a liability of the trust becomes as a consequence of the distribution a liability of the corporation described in paragraph (3)(b) in respect of the distribution, and the amount payable by the corporation on the maturity of the liability is the same as the amount that would have been payable by the trust on its maturity,
- (i) the transfer of the liability by the trust to the corporation is deemed not to have occurred, and
 - (ii) the liability is deemed
 - (A) to have been incurred or issued by the corporation at the time at which, and under the agreement under which, it was incurred or issued by the trust, and
 - (B) not to have been incurred or issued by the trust.

(4) Trusts in favour of spouse, common-law partner or self — Subsection (2.1) applies (and subsection (2) does not apply) at any time to property distributed to a beneficiary by a trust described in paragraph 104(4)(a) where

- (a) the beneficiary is not
 - (i) in the case of a post-1971 spousal or common-law partner trust, the spouse or common-law partner referred to in paragraph 104(4)(a),
 - (ii) in the case of an *alter ego* trust, the taxpayer referred to in paragraph 104(4)(a), and
 - (iii) in the case of a joint spousal or common-law partner trust, the taxpayer, spouse or common-law partner referred to in paragraph 104(4)(a); and
- (b) the distribution of the property occurs on or before the earlier of
 - (i) a reacquisition, in respect of any property of the trust, that occurs immediately after the day described by paragraph 104(4)(a), and
 - (ii) the cessation of the trust's existence.

(4.1) Where subsec. 75(2) applicable to trust — Subsection (2.1) applies (and subsection (2) does not apply) in respect of a distribution of any property of a particular personal trust or prescribed trust (other than an excluded property of the particular trust) by the particular trust to a taxpayer who was a beneficiary under the particular trust where

- (a) the distribution was in satisfaction of all or any part of the taxpayer's capital interest in the particular trust;
- (b) subsection 75(2) was applicable (determined without its reference to "while the person is resident in Canada" and as if subsection 75(3) as it read before March 21, 2013 were read without reference to its paragraph (c.2)), or subsection 94(8.2) was appli-

cable (determined without reference to paragraph 94(8.1)(a)), at a particular time in respect of any property of

- (i) the particular trust, or
- (ii) a trust the property of which included a property that, through one or more dispositions to which subsection 107.4(3) applied, became a property of the particular trust, and the property was not, at any time after the particular time and before the distribution, the subject of a disposition for proceeds of disposition equal to the fair market value of the property at the time of the disposition;
- (c) the taxpayer was neither
 - (i) the person (other than a trust described in subparagraph (b)(ii)) from whom the particular trust directly or indirectly received the property, or property for which the property was substituted, nor
 - (ii) an individual in respect of whom subsection 73(1) would be applicable on the transfer of capital property from the person described in subparagraph (i); and
- (d) the person described in subparagraph (c)(i) was in existence at the time the property was distributed.

(4.2) Distribution of property received on qualifying disposition — Subsection (2.1) applies (and subsection (2) does not apply) at any time to property distributed after December 20, 2002 to a beneficiary by a personal trust or a trust prescribed for the purpose of subsection (2), if

- (a) at a particular time before December 21, 2002 there was a qualifying disposition (within the meaning assigned by subsection 107.4(1)) of the property, or of other property for which the property is substituted, by a particular partnership or a particular corporation, as the case may be, to a trust; and

(b) the beneficiary is neither the particular partnership nor the particular corporation.

(5) Distribution to non-resident — Subsection (2.1) applies (and subsection (2) does not apply) in respect of a distribution of a property (other than a share of the capital stock of a non-resident-owned investment corporation or property described in any of subparagraphs 128.1(4)(b)(i) to (iii)) by a trust to a non-resident taxpayer (including a partnership other than a Canadian partnership) in satisfaction of all or part of the taxpayer's capital interest in the trust.

(5.1) Instalment interest — If, solely because of the application of subsection (5), paragraphs (2)(a) to (c) do not apply to a distribution in a taxation year of taxable Canadian property by a trust, in applying sections 155 and 156 and subsections 156.1(1) to (3) and 161(2), (4) and (4.01) and any regulations made for the purposes of those provisions, the trust's tax payable under this Part for the year is deemed to be the lesser of

(a) the trust's tax payable under this Part for the year, determined before taking into consideration the specified future tax consequences for the year, and

(b) the amount that would be determined under paragraph (a) if subsection (5) did not apply to each distribution in the year of taxable Canadian property to which the rules in subsection (2) do not apply solely because of the application of subsection (5).

(6) Loss reduction — Notwithstanding any other provision of this Act, where a person or partnership (in this subsection referred to as the "vendor") has disposed of property and would, but for this subsection, have had a loss from the disposition, the vendor's loss otherwise determined in respect of the disposition shall be reduced by such portion of that loss as may reasonably

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| <p>be considered to have accrued during a period in which</p> <ul style="list-style-type: none"> (a) the property or property for which it was substituted was held by a trust; and (b) either <ul style="list-style-type: none"> (i) the trust was non-resident and the property (or property for which it was substituted) was not taxable Canadian property of the trust, or (ii) neither the vendor — nor a person that would, if section 251.1 were read without reference to the definition “controlled” in subsection 251.1(3), be affiliated with the vendor — had a capital interest in the trust. | <p>(b) in the case of a trust governed by an employee benefit plan,</p> <ul style="list-style-type: none"> (i) the trust shall be deemed to have disposed of the property for proceeds of disposition equal to its cost amount to the trust immediately before that time, and (ii) the taxpayer shall be deemed to have acquired the property at a cost equal to the greater of <ul style="list-style-type: none"> (A) its fair market value at that time, and (B) the adjusted cost base to the taxpayer of the taxpayer’s interest or part thereof, as the case may be, immediately before that time; (c) the taxpayer shall be deemed to have disposed of the taxpayer’s interest or part thereof, as the case may be, for proceeds of disposition equal to the adjusted cost base to the taxpayer of that interest or part thereof immediately before that time; and (d) where the property was depreciable property of a prescribed class of the trust and the amount that was the capital cost to the trust of that property exceeds the cost at which the taxpayer is deemed by this section to have acquired the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a), <ul style="list-style-type: none"> (i) the capital cost to the taxpayer of the property shall be deemed to be the amount that was the capital cost of the property to the trust, and (ii) the excess shall be deemed to have been allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition by the taxpayer of the property. |
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107.2 Distribution by a retirement compensation arrangement — Where, at any time, any property of a trust governed by a retirement compensation arrangement has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's interest in the trust, for the purposes of this Part and Part XI.3, the following rules apply:

- (a) the trust shall be deemed to have disposed of the property for proceeds of disposition equal to its fair market value at that time;
- (b) the trust shall be deemed to have paid to the taxpayer as a distribution an amount equal to that fair market value;
- (c) the taxpayer shall be deemed to have acquired the property at a cost equal to that fair market value;
- (d) the taxpayer shall be deemed to have disposed of the taxpayer's interest or part thereof, as the case may be, for proceeds of disposition equal to the adjusted cost base to the taxpayer of that interest or part thereof immediately before that time; and
- (e) where the property was depreciable property of a prescribed class of the trust and the amount that was the capital cost to the trust of that property exceeds the cost at which the taxpayer is deemed by this section to have acquired the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),
 - (i) the capital cost to the taxpayer of the property shall be deemed to be the amount that was the capital cost of the property to the trust, and
 - (ii) the excess shall be deemed to have been allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(a) in computing the taxpayer's income for tax-

tion years before the acquisition by the taxpayer of the property.

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108. (1) Definitions — In this subdivision, “**accumulating income**” of a trust for a taxation year means the amount that would be the income of the trust for the year if that amount were computed

- (a) without reference to paragraphs 104(4)(a) and (a.1) and subsections 104(5.1), (5.2) and (12) and 107(4),
- (b) as if the greatest amount that the trust was entitled to claim under subsection 104(6) in computing its income for the year were so claimed, and
- (c) without reference to subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust to which paragraph 70(6.1)(b) applies and before the death of the spouse or common-law partner referred to in that paragraph;

“**beneficiary**” under a trust includes a person beneficially interested therein;

“**capital interest**” of a taxpayer in a trust means all rights of the taxpayer as a beneficiary under the trust, and after 1999 includes a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment of an amount by the trust that arises as a consequence of any such right, but does not include an income interest in the trust;

“**cost amount**” to a taxpayer at any time of a capital interest or part of it, as the case may be, in a trust, means (notwithstanding subsection 248(1) and except for the purposes of subsection 107(3.1) and section 107.4 and except in respect of a capital interest in a trust that is at that time a foreign affiliate of the taxpayer),

- (a) where any money or other property of the trust has been distributed by the trust to the taxpayer in satisfaction of all or part of the taxpayer's capital in-

terest (whether on the winding-up of the trust or otherwise), the total of

- (i) the money so distributed, and
- (ii) all amounts each of which is the cost amount to the trust, immediately before the distribution, of each such other property,
- (iii) [Repealed]

(a.1) where that time (in this paragraph referred to as the “particular time”) is immediately before the time that is immediately before the time of the death of the taxpayer and subsection 104(4) or (5) deems the trust to dispose of property at the end of the day that includes the particular time, the amount that would be determined under paragraph (b) if the taxpayer had died on a day that ended immediately before the time that is immediately before the particular time, and

(b) in any other case, the amount determined by the formula

$$(A - B) \times \frac{C}{D}$$

where

A is the total of

- (i) all money of the trust on hand immediately before that time, and
- (ii) all amounts each of which is the cost amount to the trust, immediately before that time, of each other property of the trust,

B is the total of all amounts each of which is the amount of any debt owing by the trust, or of any other obligation of the trust to pay any amount, that was outstanding immediately before that time,

C is the fair market value at that time of the capital interest or part thereof, as the case may be, in the trust, and

D is the fair market value at that time of all capital interests in the trust;

“designated income [para. 108(1)(d.1)]” — [Repealed under former Act]

“eligible offset” at any time of a taxpayer in respect of all or part of the taxpayer’s capital interest in a trust is the portion of any debt or obligation that is assumed by the taxpayer and that can reasonably be considered to be applicable to property distributed at that time in satisfaction of the interest or part of the interest, as the case may be, if the distribution is conditional upon the assumption by the taxpayer of the portion of the debt or obligation;

“eligible taxable capital gains”, of a trust for a taxation year, means the lesser of

- (a) its annual gains limit (within the meaning assigned by subsection 110.6(1)) for the year, and
- (b) the amount determined by the formula

$$A - B$$

where

A is its cumulative gains limit (within the meaning assigned by subsection 110.6(1)) at the end of the year, and

B is the total of all amounts designated under subsection 104(21.2) by the trust in respect of beneficiaries for taxation years before that year;

“excluded property”, of a trust, means property owned by the trust at, and distributed by the trust after, the end of 2016, if

- (a) the trust is not in its first taxation year that begins after 2016 a trust described in subparagraph (c.1)(iii.1) of the definition “principal residence” in section 54, and
- (b) the property is a property that would be the trust’s “principal resi-

dence" (as defined in section 54) for the taxation year in which the distribution occurs if

- (i) that definition were read without reference to its subparagraph (c.1)(iii.1), and
- (ii) the trust designated the property under that definition as its principal residence for the taxation year;

"exempt property" of a taxpayer at any time means property any income or gain from the disposition of which by the taxpayer at that time would, because the taxpayer is non-resident or because of a provision contained in a tax treaty, not cause an increase in the taxpayer's tax payable under this Part;

"income interest" of a taxpayer in a trust means a right (whether immediate or future and whether absolute or contingent) of the taxpayer as a beneficiary under a personal trust to, or to receive, all or any part of the income of the trust and, after 1999, includes a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment of an amount by the trust that arises as a consequence of any such right;

"inter vivos trust" means a trust other than a testamentary trust;

"non-qualifying real property" — [Repealed]

"pre-1972 spousal trust" at a particular time means a trust that was

- (a) created by the will of a taxpayer who died before 1972, or
- (b) created before June 18, 1971 by a taxpayer during the taxpayer's lifetime

that, throughout the period beginning at the time it was created and ending at the earliest of January 1, 1993, the day on which the taxpayer's spouse or common-law partner died and the particular time, was a trust under which the taxpayer's spouse or common-law partner was entitled to receive all

of the income of the trust that arose before the spouse's or common-law partner's death, unless a person other than the spouse or common-law partner received or otherwise obtained the use of any of the income or capital of the trust before the end of that period;

"preferred beneficiary" under a trust for a particular taxation year of the trust means a beneficiary under the trust at the end of the particular year who is resident in Canada at that time if

- (a) the beneficiary is

- (i) an individual in respect of whom paragraphs 118.3(1)(a) to (b) apply for the individual's taxation year (in this definition referred to as the "beneficiary's year") that ends in the particular year, or

- (ii) an individual

- (A) who attained the age of 18 years before the end of the beneficiary's year, was a dependant (within the meaning assigned by subsection 118(6)) of another individual for the beneficiary's year and was dependent on the other individual because of mental or physical infirmity, and

- (B) whose income (computed without reference to subsection 104(14)) for the beneficiary's year does not exceed the amount used under paragraph (c) of the description of B in subsection 118(1) for the year, and

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108(1)"preferred
beneficiary"(a)(ii)(B)**

- (B) whose income (computed without reference to subsection 104(14)) for the

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| <p>beneficiary's year does not exceed the amount determined for F in subsection 118(1.1) for the year, and</p> <p>Application: The Dec. 9, 2019 Notice of Ways and Means Motion, s. 2, will amend cl. (a)(ii)(B) of the definition "preferred beneficiary" in subsec. 108(1) to read as above, applicable to 2020 <i>et seq.</i></p> <p>Technical Notes: Section 108 sets out certain definitions and rules concerning the taxation of trusts and their beneficiaries.</p> <p>Subsection 108(1) contains the definition "preferred beneficiary." Under the preferred beneficiary election in subsection 104(14), certain amounts of income otherwise taxable at the trust level can be allocated to a preferred beneficiary. In general, individuals must qualify for the disability tax credit to be a preferred beneficiary. However, adults not qualifying for the disability tax credit who are nevertheless dependent on another person because of mental or physical infirmity can qualify as preferred beneficiaries if their income (determined before allocations under the preferred beneficiary election) is below the basic personal amount. Consequential on the introduction of the new basic personal amount calculation in new subsection 118(1.1), clause (a)(ii)(B) in this definition is amended to refer to the amount determined for F in subsection 118(1.1) (i.e., the maximum basic personal amount).</p> <p>For more information on the computation of the new basic personal amount, see the commentary on new subsection 118(1.1).</p> | <p>"settlor",</p> <p>(a) in relation to a testamentary trust, means the individual referred to in the definition "testamentary trust" in this subsection, and</p> <p>(b) in relation to an <i>inter vivos</i> trust,</p> <ul style="list-style-type: none"> (i) if the trust was created by the transfer, assignment or other disposition of property thereto (in this paragraph referred to as property "contributed") by not more than one individual and the fair market value of such of the property of the trust as was contributed by the individual at the time of the creation of the trust or at any subsequent time exceeds the fair market value of such of the property of the trust as was contributed by any other person or persons at any subsequent time (such fair market values being determined at the time of the making of any such contribution), means that individual, and (ii) if the trust was created by the contribution of property thereto jointly by an individual and the individual's spouse or common-law partner and by no other person and the fair market value of such of the property of the trust as was contributed by them at the time of the creation of the trust or at any subsequent time exceeds the fair market value of such of the property of the trust as was contributed by any other person or persons at any subsequent time (such fair market values being determined at the time of the making of any such contribution), means that individual and the spouse or common-law partner; <p>"testamentary trust", in a taxation year, means a trust that arose on and as a consequence of the death of an individual (includ-</p> |
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ing a trust referred to in subsection 248(9.1)), other than

- (a) a trust created by a person other than the individual,
- (b) a trust created after November 12, 1981 if, before the end of the taxation year, property has been contributed to the trust otherwise than by an individual on or after the individual's death and as a consequence thereof,
- (c) a trust created before November 13, 1981 if
 - (i) after June 28, 1982 property has been contributed to the trust otherwise than by an individual on or after the individual's death and as a consequence thereof, or
 - (ii) before the end of the taxation year, the total fair market value of the property owned by the trust that was contributed to the trust otherwise than by an individual on or after the individual's death and as a consequence thereof and the property owned by the trust that was substituted for such property exceeds the total fair market value of the property owned by the trust that was contributed by an individual on or after the individual's death and as a consequence thereof and the property owned by the trust that was substituted for such property, and for the purposes of this paragraph the fair market value of any property shall be determined as at the time it was acquired by the trust; and
- (d) a trust that, at any time after December 20, 2002 and before the end of the taxation year, incurs a debt or any other obligation owed to, or guaranteed by, a beneficiary or any other person or partnership (which beneficiary, person or partnership is referred to in this paragraph as the "specified party") with whom any beneficiary of the trust does

not deal at arm's length, other than a debt or other obligation

- (i) incurred by the trust in satisfaction of the specified party's right as a beneficiary under the trust
 - (A) to enforce payment of an amount of the trust's income or capital gains payable at or before that time by the trust to the specified party, or
 - (B) to otherwise receive any part of the capital of the trust,
- (ii) owed to the specified party, if the debt or other obligation arose because of a service (for greater certainty, not including any transfer or loan of property) rendered by the specified party to, for or on behalf of the trust,
- (iii) owed to the specified party, if
 - (A) the debt or other obligation arose because of a payment made by the specified party for or on behalf of the trust,
 - (B) in exchange for the payment (and in full settlement of the debt or other obligation), the trust transfers property, the fair market value of which is not less than the principal amount of the debt or other obligation, to the specified party within 12 months after the payment was made (or, if written application has been made to the Minister by the trust within that 12-month period, within any longer period that the Minister considers reasonable in the circumstances), and

(C) it is reasonable to conclude that the specified party would have been willing to make the payment if the specified party dealt at arm's length with the trust, except where the trust is the individual's estate and that payment was made within the first 12 months after the individual's death (or, if written application has been made to the Minister by the estate within that 12-month period, within any longer period that the Minister considers reasonable in the circumstances), or

(iv) incurred by the trust before October 24, 2012 if, in full settlement of the debt or other obligation the trust transfers property, the fair market value of which is not less than the principal amount of the debt or other obligation, to the person or partnership to whom the debt or other obligation is owed within 12 months after the day on which the *Technical Tax Amendments Act, 2012* receives royal assent (or if written application has been made to the Minister by the trust within that 12-month period, within any longer period that the Minister considers reasonable in the circumstances);

"trust" includes an *inter vivos* trust and a testamentary trust but in subsections 104(4), (5), (5.2), (12), (13.1), (13.2), (14) and (15) and sections 105 to 107 does not include

(a) an amateur athlete trust, an employee life and health trust, an employee trust, a trust described in paragraph 149(1)(o.4) or a trust governed by a deferred profit sharing plan, an employee benefit plan, an employees

profit sharing plan, a foreign retirement arrangement, a pooled registered pension plan, a registered disability savings plan, a registered education savings plan, a registered pension plan, a registered retirement income fund, a registered retirement savings plan, a registered supplementary unemployment benefit plan or a TFSA,

(a.1) a trust (other than a trust described in paragraph (a) or (d), a trust to which subsection 7(2) or (6) applies or a trust prescribed for the purpose of subsection 107(2)) all or substantially all of the property of which is held for the purpose of providing benefits to individuals each of whom is provided with benefits in respect of, or because of, an office or employment or former office or employment of any individual,

(b) a related segregated fund trust (within the meaning assigned by section 138.1),

(c) a trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization,

(d) an RCA trust (within the meaning assigned by subsection 207.5(1)),

(e) a trust each of the beneficiaries under which was at all times after it was created a trust referred to in paragraph (a), (b) or (d) or a person who is a beneficiary of the trust only because of being a beneficiary under a trust referred to in any of those paragraphs, or

(e.1) a cemetery care trust or a trust governed by an eligible funeral arrangement,

and, in applying subsections 104(4), (5), (5.2), (12), (14) and (15) at any time, does not include

(f) a trust that, at that time, is a unit trust, or

(g) a trust all interests in which, at that time, have vested indefeasibly, other than

(i) an *alter ego* trust, a joint spousal or common-law partner trust, a post-1971 spousal or common-law partner trust or a trust to which paragraph 104(4)(a.4) applies,

(ii) [Repealed]

(iii) a trust that has, in its return of income under this Part for its first taxation year that ends after 1992, elected that this paragraph not apply,

(iv) a trust that is at that time resident in Canada where the total fair market value at that time of all interests in the trust held at that time by beneficiaries under the trust who at that time are non-resident is more than 20% of the total fair market value at that time of all interests in the trust held at that time by beneficiaries under the trust,

(v) a trust under the terms of which, at that time, all or part of a person's interest in the trust is to be terminated with reference to a period of time (including a period of time determined with reference to the person's death), otherwise than as a consequence of terms of the trust under which an interest in the trust is to be terminated as a consequence of a distribution to the person (or the person's estate) of property of the trust if the fair market value of the property to be distributed is required to be commensurate with the fair market value of that interest immediately before the distribution, or

(vi) a trust that, before that time and after December 17, 1999, has made a distribution to a benefici-

ary in respect of the beneficiary's capital interest in the trust, if the distribution can reasonably be considered to have been financed by a liability of the trust and one of the purposes of incurring the liability was to avoid taxes otherwise payable under this Part as a consequence of the death of any individual;

(1.1) Testamentary trust not disqualified—For the purpose of the definition “testamentary trust” in subsection (1), a contribution to a particular trust does not include

(a) a “qualifying expenditure” (within the meaning of section 118.04 or 118.041) of a beneficiary under the trust; or

(b) an amount paid to, or on behalf of, the trust by another trust if

(i) the trust is an individual's graduated rate estate (determined without regard to the payment and this subsection),

(ii) paragraph 104(13.4)(b) applies to the other trust, for a taxation year that ends at a time determined by reference to the individual's death, because of a joint election made under subparagraph 104(13.4)(b.1)(iii) by the other trust and the legal representative administering the estate,

(iii) the payment is on account of the tax payable by the individual, for the individual's taxation year that includes the day on which the individual dies, under

(A) this Part, or

(B) the law of the province, in which the individual was resident immediately before the individual's death, that imposes a tax on the taxable income of individuals resident in that province, and

(iv) the amount of the payment does not exceed the amount by which that tax payable is greater than it would have been if paragraph 104(13.4)(b) did not apply to the other trust in respect of the taxation year referred to in subparagraph (ii).

(2) Where trust is a unit trust — For the purposes of this Act, a trust is a unit trust at any particular time if, at that time, it was an *inter vivos* trust the interest of each beneficiary under which was described by reference to units of the trust, and

(a) the issued units of the trust included

(i) units having conditions attached thereto that included conditions requiring the trust to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the units, or fractions or parts thereof, that are fully paid, or

(ii) units qualified in accordance with prescribed conditions relating to the redemption of the units by the trust,

and the fair market value of such of the units as had conditions attached thereto that included such conditions or as were so qualified, as the case may be, was not less than 95% of the fair market value of all of the issued units of the trust (such fair market values being determined without regard to any voting rights attaching to units of the trust),

(b) each of the following conditions was satisfied:

(i) throughout the taxation year that includes the particular time (in this paragraph referred to as the “current year”), the trust was resident in Canada,

(ii) throughout the period or periods (in this paragraph referred to

as the “relevant periods”) that are in the current year and throughout which the conditions in paragraph (a) are not satisfied in respect of the trust, its only undertaking was

(A) the investing of its funds in property (other than real property or an interest in real property or an immovable or a real right in an immovable),

(B) the acquiring, holding, maintaining, improving, leasing or managing of any real property or an interest in real property, or of any immovable or a real right in immovables, that is capital property of the trust, or

(C) any combination of the activities described in clauses (A) and (B),

(iii) throughout the relevant periods at least 80% of its property consisted of any combination of

(A) shares,

(B) any property that, under the terms or conditions of which or under an agreement, is convertible into, is exchangeable for or confers a right to acquire, shares,

(C) cash,

(D) bonds, debentures, mortgages, hypothecary claims, notes and other similar obligations,

(E) marketable securities,

(F) real property situated in Canada, and interests in such real property, or immovables situated in Canada and real rights in such immovables, and

(G) rights to and interests in — or, for civil law, rights

in or to — any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada,

(iv) either

(A) not less than 95% of its income for the current year (computed without regard to subsections 39(2), 49(2.1) and 104(6)) was derived from, or from the disposition of, investments described in subparagraph (iii), or

(B) not less than 95% of its income for each of the relevant periods (computed without regard to subsections 39(2), 49(2.1) and 104(6) and as though each of those periods were a taxation year) was derived from, or from the disposition of, investments described in subparagraph (iii),

(v) throughout the relevant periods, not more than 10% of its property consisted of bonds, securities or shares in the capital stock of any one corporation or debtor other than Her Majesty in right of Canada or a province or a Canadian municipality, and

(vi) where the trust would not be a unit trust at the particular time if this paragraph were read without reference to this subparagraph and subparagraph (iii) were read without reference to clause (F), the units of the trust are listed at any time in the current year or in the following taxation

year on a designated stock exchange in Canada, or

(c) the fair market value of the property of the trust at the end of 1993 was primarily attributable to real property or an interest in real property — or to immovables or a real right in immovables — and the trust was a unit trust throughout any calendar year that ended before 1994 and the fair market value of the property of the trust at the particular time is primarily attributable to property described in paragraph (a) or (b) of the definition “qualified investment” in section 204, real property or an interest in real property — or immovables or a real right in immovables — or any combination of those properties.

(3) Income of a trust in certain provisions — For the purposes of the definitions “income interest” in subsection (1), “lifetime benefit trust” in subsection 60.011(1) and “exempt foreign trust” in subsection 94(1), the income of a trust is its income computed without reference to the provisions of this Act and, for the purposes of the definition “pre-1972 spousal trust” in subsection (1) and paragraphs 70(6)(b) and (6.1)(b), 73(1.01)(c) and 104(4)(a), the income of a trust is its income computed without reference to the provisions of this Act, minus any dividends included in that income

(a) that are amounts not included by reason of section 83 in computing the income of the trust for the purposes of the other provisions of this Act;

(b) that are described in subsection 131(1); or

(c) to which subsection 131(1) applies by reason of subsection 130(2).

(4) Trust not disqualified — For the purposes of the definition “pre-1972 spousal trust” in subsection (1), subparagraphs 70(6)(b)(ii) and (6.1)(b)(ii) and paragraphs 73(1.01)(c) and 104(4)(a), if a trust was created by a taxpayer whether by the taxpayer’s will or otherwise, no person is deemed to

have received or otherwise obtained or to be entitled to receive or otherwise obtain the use of any income or capital of the trust solely because of

(a) the payment, or provision for payment, as the case may be, by the trust of

(i) any estate, legacy, succession or inheritance duty payable, in consequence of the death of the taxpayer, or a spouse or common-law partner of the taxpayer who is a beneficiary under the trust, in respect of any property of, or interest in, the trust, or

(ii) any income or profits tax payable by the trust in respect of any income of the trust; or

(b) the inhabiting at any time by an individual of a housing unit that is, or is in respect of, property that is owned at that time by the trust, if

(i) the property is described in the definition “principal residence” in section 54 in respect of the trust for the trust’s taxation year that includes that time, and

(ii) the individual is

(A) the taxpayer, or

(B) the taxpayer’s

(I) spouse or common-law partner,

(II) former spouse or common-law partner, or

(III) child.

(5) Interpretation — Except as otherwise provided in this Part,

(a) an amount included in computing the income for a taxation year of a beneficiary of a trust under subsection 104(13) or (14) or section 105 shall be deemed to be income of the beneficiary for the year from a property that is an interest in the trust and not from any other source, and

(b) an amount deductible in computing the amount that would, but for subsections 104(6) and (12), be the income of a trust for a taxation year shall not be deducted by a beneficiary of the trust in computing the beneficiary’s income for a taxation year,

but, for greater certainty, nothing in this subsection shall affect the application of subsection 56(4.1), sections 74.1 to 75 and 120.4 and subsection 160(1.2) of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952.

(6) Variation of trusts — Where at any time the terms of a trust are varied

(a) for the purposes of subsections 104(4), (5) and (5.2) and subject to paragraph (b), the trust is, at and after that time, deemed to be the same trust as, and a continuation of, the trust immediately before that time;

(b) for greater certainty, paragraph (a) does not affect the application of paragraph 104(4)(a.1); and

(c) for the purposes of paragraph 53(2)(h), subsection 107(1), paragraph (j) of the definition “excluded right or interest” in subsection 128.1(10) and the definition “personal trust” in subsection 248(1), no interest of a beneficiary under the trust before it was varied is considered to be consideration for the interest of the beneficiary in the trust as varied.

(7) Interests acquired for consideration — For the purposes of paragraph 53(2)(h), subparagraph (c)(i) of the definition “exempt amount” in subsection 94(1), subsection 107(1), paragraph (j) of the definition “excluded right or interest” in subsection 128.1(10) and paragraph (b) of the definition “personal trust” in subsection 248(1),

(a) an interest in a trust is deemed not to be acquired for consideration solely because it was acquired in satisfaction of any right as a beneficiary under the trust to enforce payment of an amount by the trust; and

(b) if all the beneficial interests in a particular trust acquired by way of the transfer, assignment or other disposition of property to the particular trust were acquired by

- (i) one person, or
- (ii) two or more persons who would be related to each other if

(A) a trust and another person were related to each other, where the other person is a beneficiary under the trust or is related to a beneficiary under the trust, and

(B) a trust and another trust were related to each other, where a beneficiary under the trust is a beneficiary under the other trust or is related to a beneficiary under the other trust,

any beneficial interest in the particular trust acquired by such a person is deemed to have been acquired for no consideration.

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DIVISION E — COMPUTATION OF TAX

Subdivision a — Rules Applicable to Individuals

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118.1 (1) Definitions — In this section,

“first-time donor” — [Repealed]

“total charitable gifts”, of an individual for a particular taxation year, means the total of all amounts each of which is the eligible amount — to the extent it is not otherwise included in determining an amount that is deducted under this section in computing any individual’s tax payable under this Part for any taxation year — of a gift (other than

a gift any part of the eligible amount of which is included in the total cultural gifts or the total ecological gifts of any individual for any taxation year) that is made

- (a) to a qualified donee,
- (b) in a taxation year that is not a year for which an amount is deducted under subsection 110(2) in computing the individual’s taxable income, and
- (c) if the individual is

- (i) not a trust,

(A) by the individual, or the individual’s spouse or common-law partner, in the particular year or any of the five preceding taxation years,

(B) by the individual in the year in which the individual dies if the particular year is the taxation year that precedes the taxation year in which the individual dies, or

(C) by the individual’s estate if subsection (5.1) applies to the gift and the particular year is the taxation year in which the individual dies or the preceding taxation year, or

- (ii) a trust

(A) by the trust in the particular year or any of the five preceding taxation years,

- (B) by the trust if

(I) the trust is an individual’s estate,

(II) subsection (5.1) applies to the gift, and

(III) the particular year is a taxation year

1 in which the estate is the individual’s gradu-

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| <p>ated rate estate, and</p> <p>2 that precedes the taxation year in which the gift is made, or</p> <p>(C) by the trust if</p> <ul style="list-style-type: none"> (I) the end of the particular year is determined by paragraph 104(13.4)(a) because of an individual's death, (II) the gift is made after the particular year and on or before the trust's filing-due date for the particular year, and (III) the subject of the gift is property that is held by the trust at the time of the individual's death or is property that was substituted for that property; <p>“total Crown gifts” — [Repealed]</p> <p>“total cultural gifts”, of an individual for a particular taxation year, means the total of all amounts each of which is the eligible amount — to the extent it is not otherwise included in determining an amount that is deducted under this section in computing any individual's tax payable under this Part for any taxation year — of a gift</p> <ul style="list-style-type: none"> (a) of an object that the Canadian Cultural Property Export Review Board has determined meets the criterion set out in paragraph 29(3)(b) of the <i>Cultural Property Export and Import Act</i>, (b) that is made to an institution or a public authority in Canada that is, at the time the gift is made, designated under subsection 32(2) of the <i>Cultural Property Export and Import Act</i> either generally or for a specified purpose related to that object, and | <p>(c) that is made</p> <ul style="list-style-type: none"> (i) if the individual is not a trust, <ul style="list-style-type: none"> (A) by the individual, or the individual's spouse or common-law partner, in the particular year or any of the five preceding taxation years, (B) by the individual in the year in which the individual dies if the particular year is the taxation year that precedes the taxation year in which the individual dies, or (C) by the individual's estate if subsection (5.1) applies to the gift and the particular year is the taxation year in which the individual dies or the preceding taxation year, or <ul style="list-style-type: none"> (ii) if the individual is a trust, <ul style="list-style-type: none"> (A) by the trust in the particular year or any of the five preceding taxation years, (B) by the trust if <ul style="list-style-type: none"> (I) the trust is an individual's estate, (II) subsection (5.1) applies to the gift, and (III) the particular year is a taxation year <ul style="list-style-type: none"> 1 in which the estate is the individual's graduated rate estate, and 2 that precedes the taxation year in which the gift is made, or <ul style="list-style-type: none"> (C) by the trust if <ul style="list-style-type: none"> (I) the end of the particular year is deter- |
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mined by paragraph 104(13.4)(a) because of an individual's death,

(II) the gift is made after the particular year and on or before the trust's filing-due date for the particular year, and

(III) the subject of the gift is property that is held by the trust at the time of the individual's death or is property that was substituted for that property;

(d) [Repealed]

"total ecological gifts", of an individual for a particular taxation year, means the total of all amounts each of which is the eligible amount — to the extent it is not otherwise included in determining an amount that is deducted under this section in computing any individual's tax payable under this Part for any taxation year — of a gift (other than a gift any part of the eligible amount of which is included in the total cultural gifts of any individual for any taxation year)

(a) of land (including a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a personal servitude (the rights to which the land is subject and which has a term of not less than 100 years) or a real servitude)

(i) the fair market value of which is certified by the Minister of the Environment, and

(ii) that is certified by that Minister, or by a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister or the designated person, important to the preservation of Canada's environmental heritage,

(b) that is made to a qualified donee that is

(i) Her Majesty in right of Canada or of a province,

(i.1) a municipality in Canada, or a municipal or public body performing a function of government in Canada, that is approved by that Minister or the designated person in respect of the gift, or

(ii) a registered charity (other than a private foundation) one of the main purposes of which is, in the opinion of that Minister, the conservation and protection of Canada's environmental heritage, and that is approved by that Minister or the designated person in respect of the gift, and

(c) that is made

(i) if the individual is not a trust,

(A) by the individual, or the individual's spouse or common-law partner, in the particular year or any of the 10 preceding taxation years,

(B) by the individual in the year in which the individual dies if the particular year is the taxation year that precedes the taxation year in which the individual dies, or

(C) by the individual's estate if subsection (5.1) applies to the gift and the particular year is the taxation year in which the individual dies or the preceding taxation year, or

(ii) if the individual is a trust,

(A) by the trust in the particular year or any of the 10 preceding taxation years,

(B) by the trust if

(I) the trust is an individual's estate,

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| <p>(II) subsection (5.1) applies to the gift, and</p> <p>(III) the particular year is a taxation year</p> <ul style="list-style-type: none"> 1 in which the estate is the individual's graduated rate estate, and 2 that precedes the taxation year in which the gift is made, or <p>(C) by the trust if</p> <ul style="list-style-type: none"> (I) the end of the particular year is determined by paragraph 104(13.4)(a) because of an individual's death, (II) the gift is made after the particular year and on or before the trust's filing-due date for the particular year, and (III) the subject of the gift is property that is held by the trust at the time of the individual's death or is property that was substituted for that property; <p>"total gifts" of an individual for a taxation year means the total of</p> <ul style="list-style-type: none"> (a) the least of (i) the individual's total charitable gifts for the year, (ii) the individual's income for the year where the individual dies in the year or in the following taxation year, and (iii) in any other case, the lesser of the individual's income for the year and the amount determined by the formula | $0.75A + 0.25(B + C + D - E)$ <p>where</p> <ul style="list-style-type: none"> A is the individual's income for the year, B is the total of all amounts, each of which is that proportion of the individual's taxable capital gain for the taxation year in respect of a gift made by the individual in the taxation year (in respect of which gift an eligible amount is included in the individual's total charitable gifts for the taxation year) that the eligible amount of the gift is of the individual's proceeds of disposition in respect of the gift, C is the total of all amounts each of which is a taxable capital gain of the individual for the year, because of subsection 40(1.01), from a disposition of a property in a preceding taxation year, D is the total of all amounts each of which is determined in respect of the individual's depreciable property of a prescribed class and equal to the lesser of <ul style="list-style-type: none"> (A) the amount included under subsection 13(1) in respect of the class in computing the individual's income for the year, and (B) the total of all amounts each of which is determined in respect of a disposition that is the making of a gift of property of the class made by the individual in the year |
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(in respect of which gift an eligible amount is included in the individual's total charitable gifts for the taxation year) equal to the lesser of

(I) that proportion, of the amount by which the proceeds of disposition of the property exceed any outlays and expenses, to the extent that they were made or incurred by the individual for the purpose of making the disposition, that the eligible amount of the gift is of the individual's proceeds of disposition in respect of the gift, and

(II) that proportion, of the capital cost to the individual of the property, that the eligible amount of the gift is of the individual's proceeds of disposition in respect of the gift, and

E is the total of all amounts each of which is the portion of an amount deducted under section 110.6 in computing the individual's taxable income for the year that can reasonably be considered to be in respect of a

gift referred to in the description of B or C,

- (b) [Repealed]
- (c) the individual's total cultural gifts for the year, and
- (d) the individual's total ecological gifts for the year.

(2) Proof of gift — An eligible amount of a gift is not to be included in the total charitable gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is evidenced by filing with the Minister

- (a) a receipt for the gift that contains prescribed information;
- (b) in the case of a gift described in the definition "total cultural gifts" in subsection (1), the certificate issued under subsection 33(1) of the *Cultural Property Export and Import Act*; and
- (c) in the case of a gift described in the definition "total ecological gifts" in subsection (1), both certificates referred to in that definition.

(2.1) Ordering of gifts — For the purpose of determining an individual's total charitable gifts, total cultural gifts and total ecological gifts for a taxation year, no amount in respect of a gift described in any of the definitions of those expressions and made in a particular taxation year is to be considered to have been included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a taxation year until amounts in respect of such gifts made in taxation years preceding the particular year that can be so considered are so considered.

(3) Deduction by individuals [credit] for gifts — For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted such amount as the individual claims not exceeding the amount determined by the formula

$$A \times B + C \times D + E \times F$$

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where

- A is the appropriate percentage for the year;
- B is the lesser of \$200 and the individual's total gifts for the year;
- C is the highest individual percentage for the year;
- D is
 - (a) in the case of a trust (other than a graduated rate estate or a "qualified disability trust" as defined in subsection 122(3)), the amount, if any, by which its total gifts for the year exceeds \$200, and
 - (b) in any other case, the lesser of
 - (i) the amount, if any, by which the individual's total gifts for the year exceeds \$200, and
 - (ii) the amount, if any, by which the individual's amount taxable for the year for the purposes of subsection 117(2) exceeds the first dollar amount for the year referred to in paragraph 117(2)(e);
- E is 29%; and
- F is the amount, if any, by which the individual's total gifts for the year exceeds the total of \$200 and the amount determined for D.

(3.1) [First-time donor super credit — Repealed]

(3.2) [Repealed]

(4) **Gifts — deaths before 2016** — If an individual dies before 2016 and any of this subsection and subsections (5), (5.2), (5.3), (7) and (7.1) (as they read for the taxation year in which the death occurred) applied to deem the individual to have made a gift at a time before the death, then for the purposes of this section the gift is deemed not to have been made by any other taxpayer or at any other time.

(4.1) **Gifts — deaths after 2015**

[conditions for 118.1(5) to apply] —

Subsection (5) applies to a gift if an estate arises on and as a consequence of the death after 2015 of an individual and the gift is

- (a) made by the individual by the individual's will;
- (b) deemed by subsection (5.2) to have been made in respect of the death; or
- (c) made by the estate.

(5) **Gifts — deaths after 2015** —

If this subsection applies to a gift, then for the purposes of the Act (other than subsections (4.1) and (5.2)) the gift is deemed to be made

- (a) by the estate referred to in subsection (4.1) and not by any other taxpayer; and
- (b) subject to subsection (13), at the time that the property that is the subject of the gift is transferred to the donee and not at any other time.

(5.1) **Gifts by graduated rate estate** —

This subsection applies to a gift made by an individual's graduated rate estate (determined without reference to paragraph (a) of the definition "graduated rate estate" in subsection 248(1)) if the gift is made no more than 60 months after the individual's death, the death occurs after 2015 and either

- (a) the gift is deemed by subsection (5.2) to have been made in respect of the death, or
- (b) the subject of the gift is property that was acquired by the estate on and as a consequence of the death or is property that was substituted for that property.

(5.2) **Deemed gifts — eligible transfers** —

For the purposes of this section, money or a negotiable instrument transferred to a qualified donee is deemed to be property that is the subject of a gift, in respect of an individual's death, made to the

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qualified donee, if the death occurs after 2015 and the transfer is

(a) a transfer — other than a transfer the amount of which is not included in computing the income of the individual or the individual's estate for any taxation year but would have been included in computing the income of the individual or the estate for a taxation year if the transfer had been made to the individual's legal representative for the estate's benefit and this Act were read without reference to subsection 70(3) — made

- (i) as a consequence of the death,
- (ii) solely because of the obligations under a life insurance policy under which, immediately before the death, the individual's life was insured, and the individual's consent would have been required to change the recipient of the transfer, and
- (iii) from an insurer to a person that is the qualified donee and that was, immediately before the death, neither a policyholder under the policy nor an assignee of the individual's interest under the policy; or

(b) a transfer made

- (i) as a consequence of the death,
- (ii) solely because of the qualified donee's interest or, for civil law a right, as a beneficiary under an arrangement (other than an arrangement of which a licensed annuities provider is the issuer or carrier)

(A) that is a registered retirement savings plan or registered retirement income fund or that was, immediately before the death, a TFSA, and

(B) under which the individual was, immediately

before the death, the annuitant or holder, and

- (iii) from the arrangement to the qualified donee.

(5.3) [Repealed]**(5.4) Where subsec. (6) applies** — Subsection (6) applies in circumstances where

(a) an individual

(i) makes a gift at any time of capital property to a qualified donee, or

(ii) who is non-resident, makes a gift at any time of real or immovable property situated in Canada to a prescribed donee who provides an undertaking, in a form satisfactory to the Minister, to the effect that the property will be held for use in the public interest; and

(b) the fair market value of the property otherwise determined at that time exceeds

(i) in the case of depreciable property of a prescribed class, the lesser of the undepreciated capital cost of that class at the end of the taxation year of the individual that includes that time (determined without reference to proceeds of disposition designated in respect of the property under subsection (6)) and the adjusted cost base to the individual of the property immediately before that time, and

(ii) in any other case, the adjusted cost base to the individual of the property immediately before that time.

(6) Gifts of capital property — If this subsection applies in respect of a gift by an individual of property, and the individual or the individual's legal representative designates an amount in respect of the gift in the individual's return of income under section 150 for the year in which the gift is

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made, the amount so designated is deemed to be the individual's proceeds of disposition of the property and, for the purpose of subsection 248(31), the fair market value of the gift, but the amount so designated may not exceed the fair market value of the property otherwise determined and may not be less than the greater of

(a) in the case of a gift made after December 20, 2002, the amount of the advantage, if any, in respect of the gift, and

(b) the amount determined under subparagraph (5.4)(b)(i) or (ii), as the case may be, in respect of the property.

(7) Gift of art [by artist] — Subsection (7.1) applies to a gift made by an individual if the gift is described in the definition "total charitable gifts" or "total cultural gifts" in subsection (1) and the property that is the subject of the gift is a work of art that

(a) was created by the individual and is in the individual's inventory;

(b) was acquired by the individual under circumstances where subsection 70(3) applies; or

(c) if the individual is an estate that arose on and as a consequence of the death of a particular individual who created the work of art, was in the particular individual's inventory immediately before the death.

(7.1) Gift of art — If this subsection applies to a gift made by an individual, the following rules apply:

(a) in the case of a gift described in the definition "total cultural gifts" in subsection (1),

(i) if at the time the gift is made the fair market value of the work of art that is the subject of the gift exceeds its cost amount to the individual, the individual is deemed to receive at that time proceeds of disposition in respect of the work of art equal to the greater of its cost amount to the

individual at that time and the amount of the advantage, if any, in respect of the gift, and

(ii) if the individual is the graduated rate estate of a particular individual who created the work of art that is the subject of the gift and at the time immediately before the particular individual's death the fair market value of the work of art exceeds its cost amount to the particular individual, the particular individual is deemed to receive at that time proceeds of disposition in respect of the work of art equal to the cost amount to the particular individual at that time and the estate is deemed to have acquired the work of art at a cost equal to those proceeds; and

(b) in the case of a gift described in the definition "total charitable gifts" in subsection (1),

(i) if at the time the gift is made the fair market value of the work of art that is the subject of the gift exceeds its cost amount to the individual, then the amount designated in the individual's return of income under section 150 for the taxation year that includes that time is deemed to be

(A) the individual's proceeds of disposition in respect of the work of art, and

(B) the fair market value of the work of art for the purposes of subsection 248(31),

(ii) a designation under subparagraph (i) is of no effect to the extent that the amount designated

(A) exceeds the fair market value of the work of art otherwise determined, or

(B) is less than the greater of the amount of the advan-

tage, if any, in respect of the gift, and the cost amount to the individual of the work of art,

(iii) if the individual is the graduated rate estate of a particular individual who created the work of art that is the subject of the gift and at the time immediately before the particular individual's death the fair market value of the work of art exceeds its cost amount to the particular individual,

(A) the amount designated in the particular individual's return of income under section 150 for the taxation year that includes that time is deemed to be the value of the work of art at the time of the death, and

(B) the estate is deemed to have acquired the work of art at a cost equal to that value, and

(iv) a designation under subparagraph (iii) is of no effect to the extent that the amount designated

(A) exceeds the fair market value of the work of art otherwise determined, or

(B) is less than the cost amount to the particular individual of the work of art.

(8) Gifts made by partnership — If at the end of a fiscal period of a partnership an individual is a member of the partnership, the individual's share of any amount that would, if the partnership were a person, be the eligible amount of a gift made by the partnership to any donee is, for the purpose of this section, deemed to be the eligible amount of a gift made to that donee by the individual in the individual's taxation year in which the fiscal period of the partnership ends.

(9) Commuter's charitable donations — Where throughout a taxation year an individual resided in Canada near the boundary between Canada and the United States, if

(a) the individual commuted to the individual's principal place of employment or business in the United States, and

(b) the individual's chief source of income for the year was that employment or business,

a gift made by the individual in the year to a religious, charitable, scientific, literary or educational organization created or organized in or under the laws of the United States that would be allowed as a deduction under the *United States Internal Revenue Code* shall, for the purpose of the definition "total charitable gifts" in subsection (1), be deemed to have been made to a registered charity.

(10) Determination of fair market value — For the purposes of paragraph 110.1(1)(c) and the definition "total cultural gifts" in subsection (1), the fair market value of an object is deemed to be the fair market value determined by the Canadian Cultural Property Export Review Board.

(10.1) Determination of fair market value [cultural or ecological property] — For the purposes of this section, subparagraph 69(1)(b)(ii), subsection 70(5) and sections 110.1 and 207.31, if at any time the Canadian Cultural Property Export Review Board or the Minister of the Environment determines or redetermines an amount to be the fair market value of a property that is the subject of a gift described in paragraph 110.1(1)(a), or in the definition "total charitable gifts" in subsection (1), made by a taxpayer within the two-year period that begins at that time, an amount equal to the last amount so determined or redetermined within the period is deemed to be the fair market value of the gift at the time the gift was made and, subject to subsections (6),

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(7.1) and 110.1(3), to be the taxpayer's proceeds of disposition of the gift.

(10.2) Request for determination by the Minister of the Environment —

Where a person disposes or proposes to dispose of a property that would, if the disposition were made and the certificates described in paragraph 110.1(1)(d) or in the definition "total ecological gifts" in subsection (1) were issued by the Minister of the Environment, be a gift described in those provisions, the person may request, by notice in writing to that Minister, a determination of the fair market value of the property.

(10.3) Duty of Minister of the Environment — In response to a request made under subsection (10.2), the Minister of the Environment shall with all due dispatch make a determination in accordance with subsection (12) or 110.1(5), as the case may be, of the fair market value of the property referred to in that request and give notice of the determination in writing to the person who has disposed of, or who proposes to dispose of, the property, except that no such determination shall be made if the request is received by that Minister after three years after the end of the person's taxation year in which the disposition occurred.

(10.4) Ecological gifts — redetermination — Where the Minister of the Environment has, under subsection (10.3), notified a person of the amount determined by that Minister to be the fair market value of a property in respect of its disposition or proposed disposition,

(a) that Minister shall, on receipt of a written request made by the person on or before the day that is 90 days after the day that the person was so notified of the first such determination, with all due dispatch confirm or redetermine the fair market value;

(b) that Minister may, on that Minister's own initiative, at any time redetermine the fair market value;

(c) that Minister shall in either case notify the person in writing of that Min-

ister's confirmation or redetermination; and

(d) any such redetermination is deemed to replace all preceding determinations and redeterminations of the fair market value of that property from the time at which the first such determination was made.

(10.5) Certificate of fair market value —

Where the Minister of the Environment determines under subsection (10.3) the fair market value of a property, or redetermines that value under subsection (10.4), and the property has been disposed of to a qualified donee described in paragraph 110.1(1)(d) or in the definition "total ecological gifts" in subsection (1), that Minister shall issue to the person who made the disposition a certificate that states the fair market value of the property so determined or redetermined and, where more than one certificate has been so issued, the last certificate is deemed to replace all preceding certificates from the time at which the first certificate was issued.

(11) Assessments — Notwithstanding subsections 152(4) to (5), such assessments or reassessments of a taxpayer's tax, interest or penalties payable under this Act for any taxation year shall be made as are necessary to give effect

(a) to a certificate issued under subsection 33(1) of the *Cultural Property Export and Import Act* or to a decision of a court resulting from an appeal made pursuant to section 33.1 of that Act; or

(b) to a certificate issued under subsection (10.5) or to a decision of a court resulting from an appeal made pursuant to subsection 169(1.1).

(12) Ecological gifts [fair market value] —

For the purposes of applying subparagraph 69(1)(b)(ii), subsection 70(5), this section and section 207.31 in respect of a gift described in the definition "total ecological gifts" in subsection (1) that is made by an individual, the amount that is the fair market value (or, for the purpose of subsec-

tion (6), the fair market value otherwise determined) of the gift at the time the gift was made and, subject to subsection (6), the individual's proceeds of disposition of the gift, is deemed to be the amount determined by the Minister of the Environment to be

- (a) where the gift is land, the fair market value of the gift; or
- (b) where the gift is a servitude, covenant or easement to which land is subject, the greater of
 - (i) the fair market value otherwise determined of the gift, and
 - (ii) the amount by which the fair market value of the land is reduced as a result of the making of the gift.

(13) Non-qualifying securities — For the purposes of this section (other than this subsection), if at any particular time an individual makes a gift (including a gift that, but for this subsection, would be deemed by subsection (5) to be made at the particular time) of a non-qualifying security of the individual and the gift is not an excepted gift,

- (a) except for the purpose of applying subsection (6) to determine the individual's proceeds of disposition of the security, the gift is deemed not to have been made;
- (b) if the security ceases to be a non-qualifying security of the individual at a subsequent time that is within 60 months after the particular time and the donee has not disposed of the security at or before the subsequent time, the individual is deemed to have made a gift to the donee of property at the subsequent time and the fair market value of that property is deemed to be the lesser of the fair market value of the security at the subsequent time and the fair market value of the security at the particular time that would, if this Act were read without reference to this subsection, have been included in calculating the individual's total charitable gifts for a taxation year;

(c) if the security is disposed of by the donee within 60 months after the particular time and paragraph (b) does not apply to the security, the individual is deemed to have made a gift to the donee of property at the time of the disposition and the fair market value of that property is deemed to be the lesser of the fair market value of any consideration (other than a non-qualifying security of any person) received by the donee for the disposition and the fair market value of the security at the particular time that would, if this Act were read without reference to this subsection, have been included in calculating the individual's total charitable gifts for a taxation year; and

(d) a designation under subsection (6) or 110.1(3) in respect of the gift made at the particular time may be made in the individual's return of income for the year that includes the subsequent time referred to in paragraph (b) or the time of the disposition referred to in paragraph (c).

(13.1) Application of subsec. (13.2) — Subsection (13.2) applies if, as part of a series of transactions,

- (a) an individual makes, at a particular time, a gift of a particular property to a qualified donee;
- (b) a particular person holds a non-qualifying security of the individual; and
- (c) the qualified donee acquires, directly or indirectly, a non-qualifying security of the individual or of the particular person.

(13.2) Non-qualifying securities — third-party accommodation [indirect gift] — If this subsection applies,

- (a) for the purposes of this section, the fair market value of the particular property is deemed to be reduced by an amount equal to the fair market value of the non-qualifying security acquired by the qualified donee; and

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- (b) for the purposes of subsection (13),
- (i) if the non-qualifying security acquired by the qualified donee is a non-qualifying security of the particular person, it is deemed to be a non-qualifying security of the individual,
 - (ii) the individual is deemed to have made, at the particular time referred to in subsection (13.1), a gift of the non-qualifying security acquired by the qualified donee, the fair market value of which does not exceed the amount, if any, by which
 - (A) the fair market value of the particular property determined without reference to paragraph (a) exceeds
 - (B) the fair market value of the particular property determined under paragraph (a), and
 - (iii) paragraph (13)(b) does not apply in respect of the gift.

(13.3) Non-qualifying securities — anti-avoidance — For the purposes of subsections (13.1) and (13.2), if, as part of a series of transactions, an individual makes a gift to a qualified donee and the qualified donee acquires a non-qualifying security of a person (other than the individual or particular person referred to in subsection (13.1)) and it may reasonably be considered, having regard to all the circumstances, that one of the purposes or results of the acquisition of the non-qualifying security by the qualified donee was to facilitate, directly or indirectly, the making of the gift by the individual, then the non-qualifying security acquired by the qualified donee is deemed to be a non-qualifying security of the individual.

(14) Exchanged security — Where a share (in this subsection referred to as the “new share”) that is a non-qualifying security of an individual has been acquired by a

donee referred to in subsection (13) in exchange for another share (in this subsection referred to as the “original share”) that is a non-qualifying security of the individual by means of a transaction to which section 51, subparagraphs 85.1(1)(a)(i) and (ii) or section 86 or 87 applies, the new share is deemed for the purposes of this subsection and subsection (13) to be the same share as the original share.

(14.1) Exchange of beneficial interest in trust — Where a donee disposes of a beneficial interest in a trust that is a non-qualifying security of an individual in circumstances where paragraph (13)(c) would, but for this subsection, apply in respect of the disposition, and in respect of which the donee receives no consideration other than other non-qualifying securities of the individual, for the purpose of subsection (13) the gift referred to in that subsection is to be read as a reference to a gift of those other non-qualifying securities.

(15) Death of donor — If, but for this subsection, an individual would be deemed by subsection (13) to have made a gift after the individual’s death, for the purpose of this section the individual is deemed to have made the gift in the taxation year in which the individual died, except that the amount of interest payable under any provision of this Act is the amount that it would be if this subsection did not apply to the gift.

(16) Loanbacks — For the purpose of this section, where

- (a) at any particular time an individual makes a gift of property,
- (b) if the property is a non-qualifying security of the individual, the gift is an excepted gift, and
- (c) within 60 months after the particular time
 - (i) the donee holds a non-qualifying security of the individual that was acquired by the donee after the time that is 60 months before the particular time, or

(ii) the individual or any person or partnership with which the individual does not deal at arm's length uses property of the donee under an agreement that was made or modified after the time that is 60 months before the particular time, and the property was not used in the carrying on of the donee's charitable activities,

the fair market value of the gift is deemed to be that value otherwise determined minus the total of all amounts each of which is the fair market value of the consideration given by the donee to so acquire a non-qualifying security so held or the fair market value of such a property so used, as the case may be.

**Possible Future Amendment —
Non-qualifying security and
loanback rules extended to
limited partnership interests**

Federal Budget, Supplementary Information, April 21, 2015: The non-qualifying security rules and the loanback rules that apply to donations of shares will also apply to donations of interests in limited partnerships.

(17) Ordering rule — For the purpose of applying subsection (16) to determine the fair market value of a gift made at any time by a taxpayer, the fair market value of consideration given to acquire property described in subparagraph (16)(c)(i) or of property described in subparagraph (16)(c)(ii) is deemed to be that value otherwise determined minus any portion of it that has been applied under that subsection to reduce the fair market value of another gift made before that time by the taxpayer.

(18) Non-qualifying security defined — For the purposes of this section, "non-qualifying security" of an individual at any time means

- (a) an obligation (other than an obligation of a financial institution to repay an amount deposited with the institution or an obligation listed on a designated stock exchange) of the individual or the individual's estate or of any person or partnership with which the individual or the estate does not deal at arm's length immediately after that time;

nated stock exchange) of the individual or the individual's estate or of any person or partnership with which the individual or the estate does not deal at arm's length immediately after that time;

(b) a share (other than a share listed on a designated stock exchange) of the capital stock of a corporation with which the individual or the estate or, where the individual is a trust, a person affiliated with the trust, does not deal at arm's length immediately after that time;

(b.1) a beneficial interest of the individual or the estate in a trust that

(i) immediately after that time is affiliated with the individual or the estate, or

(ii) holds, immediately after that time, a non-qualifying security of the individual or estate, or held, at or before that time, a share described in paragraph (b) that is, after that time, held by the donee; or

(c) any other security (other than a security listed on a designated stock exchange) issued by the individual or the estate or by any person or partnership with which the individual or the estate does not deal at arm's length (or, in the case where the person is a trust, with which the individual or estate is affiliated) immediately after that time.

**Possible Future Amendment —
Non-qualifying security and
loanback rules extended to
limited partnership interests**

See under 118.1(16).

(19) Excepted gift — For the purposes of this section, a gift made by a taxpayer is an excepted gift if

- (a) the security is a share;
- (b) the donee is not a private foundation;

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(c) either,

(i) if the taxpayer is an individual's graduated rate estate,

(A) the individual dealt at arm's length with the donee immediately before the individual's death, and

(B) the graduated rate estate deals at arm's length with the donee (determined without reference to paragraph 251(1)(b)), or

(ii) if subparagraph (i) does not apply, the taxpayer deals at arm's length with the donee; and

(d) where the donee is a charitable organization or a public foundation, the taxpayer deals at arm's length with each director, trustee, officer and like official of the donee.

(20) Financial institution defined —

For the purpose of subsection (18), "financial institution" means a corporation that is

(a) a member of the Canadian Payments Association; or

(b) a credit union that is a shareholder or member of a body corporate or organization that is a central for the purposes of the *Canadian Payments Act*.

(21) Options [granted by individual to qualified donee] — Subject to subsections (23) and (24), if an individual has granted an option to a qualified donee in a taxation year, no amount in respect of the option is to be included in computing the total charitable gifts, total cultural gifts or total ecological gifts in respect of any taxpayer for any taxation year.

(22) Application of subsec. (23) — Subsection (23) applies if

(a) an option to acquire a property of an individual is granted to a qualified donee;

(b) the option is exercised so that the property is disposed of by the individ-

dual and acquired by the qualified donee at a particular time; and

(c) either

(i) the amount that is 80% of the fair market value of the property at the particular time is greater than or equal to the total of

(A) the consideration received by the individual from the qualified donee for the property, and

(B) the consideration received by the individual from the qualified donee for the option, or

(ii) the individual establishes to the satisfaction of the Minister that the granting of the option or the disposition of the property was made by the individual with the intention to make a gift to the qualified donee.

(23) Granting of an option — If this subsection applies, notwithstanding subsection 49(3),

(a) the individual is deemed to have received proceeds of disposition of the property equal to the property's fair market value at the particular time; and

(b) there shall be included in the individual's total charitable gifts, for the taxation year that includes the particular time, the amount by which the property's fair market value exceeds the total described in subparagraph (22)(c)(i).

(24) Disposition of an option — If an option to acquire a particular property of an individual is granted to a qualified donee and the option is disposed of by the qualified donee (otherwise than by the exercise of the option) at a particular time

(a) the individual is deemed to have disposed of a property at the particular time

(i) the adjusted cost base of which to the individual immedi-

ately before the particular time is equal to the consideration, if any, paid by the qualified donee for the option, and

(ii) the proceeds of disposition of which are equal to the lesser of the fair market value of the particular property at the particular time and the fair market value of any consideration (other than a non-qualifying security of any person) received by the qualified donee for the option; and

(b) there shall be included in the total charitable gifts of the individual for the individual's taxation year that includes the particular time the amount, if any, by which the proceeds of disposition as determined by paragraph (a) exceed the consideration, if any, paid by the donee for the option.

(25) Returned property — Subsection (26) applies if a qualified donee has issued to an individual a receipt referred to in subsection (2) in respect of a transfer of a property (in this subsection and subsection (26) referred to as the "original property") and a particular property that is

(a) the original property is later transferred to the individual (unless that later transfer is reasonable consideration or remuneration for property acquired by or services rendered to a person); or

(b) any other property that may reasonably be considered compensation for or a substitute for, in whole or in part, the original property, is later transferred to the individual.

(26) Returned property — If this subsection applies, then

(a) irrespective of whether the transfer of the original property by the individual to the qualified donee referred to in subsection (25) was a gift, the individual is deemed not to have disposed of the original property at the time of that transfer nor to have made a gift;

(b) if the particular property is identical to the original property, the particular property is deemed to be the original property; and

(c) if the particular property is not the original property, then

(i) the individual is deemed to have disposed of the original property at the time that the particular property is transferred to the individual for proceeds of disposition equal to the greater of the fair market value of the particular property at that time and the fair market value of the original property at the time that it was transferred by the individual to the donee, and

(ii) if the transfer of the original property by the individual would be a gift if this section were read without reference to paragraph (a), the individual is deemed to have, at the time of that transfer, transferred to the donee a property that is the subject of a gift having a fair market value equal to the amount, if any, by which the fair market value of the original property at the time of that transfer exceeds the fair market value of the particular property at the time that it is transferred to the individual.

(27) Information return — If subsection (26) applies in respect of a transfer of property to an individual and that property has a fair market value greater than \$50, the transferor must file an information return containing prescribed information with the Minister not later than 90 days after the day on which the property was transferred and provide a copy of the return to the individual.

(28) Reassessment — If subsection (26) applies in respect of a transfer of property to an individual, the Minister may reassess a return of income of any person to the extent

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that the reassessment can reasonably be regarded as relating to the transfer.

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120.4 Tax on split income [TOSI] — (1) **Definitions** — The definitions in this subsection apply in this section.

“arm’s length capital”, of a specified individual, means property of the individual if the property, or property for which it is a substitute, was not

- (a) acquired as income from, or a taxable capital gain or profit from the disposition of, another property that was derived directly or indirectly from a related business in respect of the specified individual;
- (b) borrowed by the specified individual under a loan or other indebtedness; or
- (c) transferred, directly or indirectly by any means whatever, to the specified individual from a person who was related to the specified individual (other than as a consequence of the death of a person).

“excluded amount”, in respect of an individual for a taxation year, means an amount that is the individual’s income for the year from, or the individual’s taxable capital gain or profit for the year from the disposition of, a property to the extent that the amount

- (a) if the individual has not attained the age of 24 years before the year, is from a property that was acquired by, or for the benefit of, the individual as a consequence of the death of a person who is

- (i) a parent of the individual, or
- (ii) any person, if the individual is

(A) enrolled as a full-time student during the year at a “post-secondary educational institution” (as de-

fined in subsection 146.1(1)), or

(B) an individual in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer’s tax payable under this Part for the year;

- (b) is from a property acquired by the individual under a transfer described in subsection 160(4);
- (c) is a taxable capital gain that arises because of subsection 70(5);
- (d) is a taxable capital gain for the year from the disposition by the individual of property that is, at the time of the disposition, “qualified farm or fishing property” or “qualified small business corporation shares” (as those terms are defined in subsection 110.6(1)), unless the amount would be deemed to be a dividend under subsection 120.4(4) or (5) if this definition were read without reference to this paragraph;
- (e) if the individual has attained the age of 17 years before the year, is
 - (i) not derived directly or indirectly from a related business in respect of the individual for the year, or
 - (ii) derived directly or indirectly from an excluded business of the individual for the year;
- (f) if the individual has attained the age of 17 years but not the age of 24 years before the year, is
 - (i) a safe harbour capital return of the individual, or
 - (ii) a reasonable return in respect of the individual, having regard only to the contributions of arm’s length capital by the individual; or
- (g) if the individual has attained the age of 24 years before the year, is
 - (i) income from, or a taxable capital gain from the disposition of,

excluded shares of the individual,
or
(ii) a reasonable return in respect
of the individual.

“excluded business”, of a specified individual for a taxation year, means a business if the specified individual is actively engaged on a regular, continuous and substantial basis in the activities of the business in either

- (a) the taxation year, except in respect of an amount described in paragraph (e) of the definition “split income”; or
- (b) any five prior taxation years of the specified individual.

“excluded shares”, of a specified individual at any time, means shares of the capital stock of a corporation owned by the specified individual if

- (a) the following conditions are met:
 - (i) less than 90% of the business income of the corporation for the last taxation year of the corporation that ends at or before that time (or, if no such taxation year exists, for the taxation year of the corporation that includes that time) was from the provision of services, and
 - (ii) the corporation is not a professional corporation;
- (b) immediately before that time, the specified individual owns shares of the capital stock of the corporation that
 - (i) give the holders thereof 10% or more of the votes that could be cast at an annual meeting of the shareholders of the corporation, and
 - (ii) have a fair market value of 10% or more of the fair market value of all of the issued and outstanding shares of the capital stock of the corporation; and
- (c) all or substantially all of the income of the corporation for the relevant taxation year in subparagraph (a)(i) is in-

come that is not derived, directly or indirectly, from one or more related businesses in respect of the specified individual other than a business of the corporation.

“reasonable return”, in respect of a specified individual for a taxation year, means a particular amount derived directly or indirectly from a related business in respect of the specified individual that

- (a) would, if this subsection were read without reference to subparagraph (f)(ii) or (g)(ii) of the definition “excluded amount”, be an amount described in the definition “split income” in respect of the specified individual for the year; and
- (b) is reasonable having regard to the following factors relating to the relative contributions of the specified individual, and each source individual in respect of the specified individual, in respect of the related business:
 - (i) the work they performed in support of the related business,
 - (ii) the property they contributed, directly or indirectly, in support of the related business,
 - (iii) the risks they assumed in respect of the related business,
 - (iv) the total of all amounts that were paid or that became payable, directly or indirectly, by any person or partnership to, or for the benefit of, them in respect of the related business, and
 - (v) such other factors as may be relevant.

“related business”, in respect of a specified individual for a taxation year, means

- (a) a business carried on by
 - (i) a source individual in respect of the specified individual at any time in the year, or
 - (ii) a partnership, corporation or trust if a source individual in re-

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spect of the specified individual at any time in the year is actively engaged on a regular basis in the activities of the partnership, corporation or trust related to earning income from the business;

(b) a business of a particular partnership, if a source individual in respect of the specified individual at any time in the year has an interest — including directly or indirectly — in the particular partnership; and

(c) a business of a corporation, if the following conditions are met at any time in the year:

(i) a source individual in respect of the specified individual owns

- (A) shares of the capital stock of the corporation, or
- (B) property that derives, directly or indirectly, all or part of its fair market value from shares of the capital stock of the corporation, and

(ii) it is the case that

$$0.1A \leq B + C$$

where

A is the total fair market value of all of the issued and outstanding shares of the capital stock of the corporation,

B is the total fair market value at that time of property described in clause (i)(A), and

C is the portion of the total fair market value of property described in clause (i)(B) that is derived from shares of the capital stock of the corporation.

“safe harbour capital return”, of a specified individual for a taxation year, means an amount that does not exceed the amount determined by the formula

$$A \times B$$

where

- A is the rate equal to the highest rate of interest prescribed under paragraph 4301(c) of the *Income Tax Regulations* in effect for a quarter in the year; and
- B is the total of all amounts each of which is determined by the formula

$$C \times D/E$$

where

C is the fair market value of property contributed by the specified individual in support of a related business at the time it was contributed,

D is the number of days in the year that the property (or property substituted for it) is used in support of the related business and has not directly or indirectly, in any manner whatever, been returned to the specified individual, and

E is the number of days in the year.

“source individual”, in respect of a specified individual for a taxation year, means an individual (other than a trust) who, at any time in the year, is

- (a) resident in Canada; and
- (b) related to the specified individual.

“specified individual”, for a taxation year, means an individual (other than a trust) who

- (a) is resident in Canada
 - (i) in the case where the individual dies in the year, immediately before the death, and
 - (ii) in any other case, at the end of the year; and
- (b) if the individual has not attained the age of 17 years before the year, has a parent resident in Canada at any time in the year.

“split income”, of a specified individual for a taxation year, means the total of all

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| amounts (other than excluded amounts) each of which is | |
| (a) an amount required to be included in computing the individual's income for the year | directly or indirectly through one or more other partnerships, |
| (i) in respect of taxable dividends received by the individual in respect of shares of the capital stock of a corporation (other than shares of a class listed on a designated stock exchange or shares of the capital stock of a mutual fund corporation), or | (c) a portion of an amount included because of the application of subsection 104(13) or 105(2) in respect of a trust (other than a mutual fund trust or a trust that is deemed to be in existence by subsection 143(1)) in computing the individual's income for the year, to the extent that the portion |
| (ii) because of the application of section 15 in respect of the ownership by any person of shares of the capital stock of a corporation (other than shares of a class listed on a designated stock exchange), | (i) is not included in an amount described in paragraph (a), and |
| (b) a portion of an amount included because of the application of paragraph 96(1)(f) in computing the individual's income for the year, to the extent that the portion | (ii) can reasonably be considered |
| (i) is not included in an amount described in paragraph (a), and | (A) to be in respect of taxable dividends received in respect of shares of the capital stock of a corporation (other than shares of a class listed on a designated stock exchange or shares of the capital stock of a mutual fund corporation), |
| (ii) can reasonably be considered to be income derived directly or indirectly from | (B) to arise because of the application of section 15 in respect of the ownership by any person of shares of the capital stock of a corporation (other than shares of a class listed on a designated stock exchange), |
| (A) one or more related businesses in respect of the individual for the year, or | (C) to be income derived directly or indirectly from one or more related businesses in respect of the individual for the year, or |
| (B) the rental of property by a particular partnership or trust, if a person who is related to the individual at any time in the year | (D) to be income derived from the rental of property by a particular partnership or trust, if a person who is related to the individual at any time in the year is actively engaged on a regular basis in the activities of the particular partnership or trust related to the rental of property, |
| (I) is actively engaged on a regular basis in the activities of the particular partnership or trust related to the rental of property, or | |
| (II) in the case of a particular partnership, has an interest in the particular partnership | |

Rules

Subdivision a — ~~Computation of Tax: Individuals~~ S. 120.4(1) spl

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| <p>(d) an amount included in computing the individual's income for the year to the extent that the amount is in respect of a debt obligation that</p> <p>(i) is of a corporation (other than a mutual fund corporation or a corporation shares of a class of the capital stock of which are listed on a designated stock exchange), partnership or trust (other than a mutual fund trust), and</p> <p>(ii) is not</p> <ul style="list-style-type: none">(A) described in paragraph (a) of the definition "fully exempt interest" in subsection 212(3),(B) listed or traded on a public market, or(C) a deposit, standing to the credit of the individual,<ul style="list-style-type: none">(I) within the meaning assigned by the <i>Canada Deposit Insurance Corporation Act</i>, or(II) with a credit union or a branch in Canada of a bank, and <p>(e) an amount in respect of a property, to the extent that</p> <p>(i) the amount</p> <ul style="list-style-type: none">(A) is a taxable capital gain, or a profit, of the individual for the year from the disposition after 2017 of the property, or(B) is included under subsection 104(13) or 105(2) in computing the individual's income for the year and can reasonably be considered to be attributable to a taxable capital gain, or a profit, of any person or partnership for the year from the disposition after 2017 of the property, and | <p>(ii) the property is</p> <ul style="list-style-type: none">(A) a share of the capital stock of a corporation (other than a share of a class listed on a designated stock exchange or a share of the capital stock of a mutual fund corporation), or(B) a property in respect of which the following conditions are met: <p>(I) the property is</p> <ul style="list-style-type: none">1 an interest in a partnership,2 an interest as a beneficiary under a trust (other than a mutual fund or a trust that is deemed to be in existence by subsection 143(1)), or3 a debt obligation (other than a debt obligation described in any of clauses (d)(ii)(A) to (C)), and <p>(II) either</p> <ul style="list-style-type: none">1 in respect of the property an amount is included in the individual's split income for the year or an earlier taxation year, or2 all or any part of the fair market value of the property, immediately before the disposition referred to in clause (i)(A) or |
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(B), as the case may be, is derived, directly or indirectly, from a share described in clause (A).

(1.1) Additional rules — specified individual — For the purpose of applying this section in respect of a specified individual in respect of a taxation year,

(a) an individual is deemed to be actively engaged on a regular, continuous and substantial basis in the activities of a business in a taxation year of the individual if the individual works in the business at least an average of 20 hours per week during the portion of the year in which the business operates;

(b) if an amount would — if this section were read without reference to this paragraph — be split income of a specified individual who has attained the age of 17 years before the year in respect of a property, and that property was acquired by, or for the benefit of, the specified individual as a consequence of the death of another person, then

(i) for the purpose of applying paragraph (b) of the definition “reasonable return” in subsection (1), to the extent that the particular amount referred to in that paragraph is in respect of the property, then the factors referred to in that paragraph in respect of the other person are to be included for the purpose of determining a reasonable return in respect of the individual,

(ii) for the purposes of this subparagraph and the definition “excluded business” in subsection (1), if the other person was actively engaged on a regular, substantial and continuous basis in the activities of a business throughout five previous taxation

years, then the individual is deemed to have been actively engaged on a regular, substantial and continuous basis in the business throughout those five years, and

(iii) for the purpose of applying paragraph (g) of the definition “excluded amount” in subsection (1) in respect of that property, the individual is deemed to have attained the age of 24 years before the year if the other person had attained the age of 24 years before the year;

(c) an amount that is a specified individual’s income for a taxation year from, or the specified individual’s taxable capital gain or profit for the year from the disposition of, a property is deemed to be an excluded amount in respect of the specified individual for the taxation year if

(i) the following conditions are met:

(A) the amount would be an excluded amount in respect of the specified individual’s spouse or common-law partner for the year, if the amount were included in computing the spouse or common-law partner’s income for the year, and

(B) the spouse or common-law partner has attained the age of 64 years before the year, or

(ii) the amount would have been an excluded amount in respect of an individual who was, immediately before their death, the specified individual’s spouse or common-law partner, if the amount were included in computing the spouse or common-law partner’s income for their last taxation year (determined as if this section applies in respect of that year);

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Subdivision a — ~~Computation of Tax: Individuals~~ **S. 120.4(5)**

(d) for greater certainty, an amount derived directly or indirectly from a business includes

- (i) an amount that
 - (A) is derived from the provision of property or services to, or in support of, the business, or
 - (B) arises in connection with the ownership or disposition of an interest in the person or partnership carrying on the business, and
- (ii) an amount derived from an amount described in this paragraph; and

(e) for the purposes of this section, an individual is deemed not to be related to their spouse or common-law partner at any time in a year if, at the end of the year, the individual is living separate and apart from their spouse or common-law partner because of a breakdown of their marriage or common-law partnership.

(2) Tax on split income — There shall be added to a specified individual's tax payable under this Part for a taxation year the highest individual percentage for the year multiplied by the individual's split income for the year.

(3) Tax payable by a specified individual — Notwithstanding any other provision of this Act, if an individual is a specified individual for a taxation year, the individual's tax payable under this Part for the year shall not be less than the amount by which the amount added under subsection (2) to the individual's tax payable under this Part for the year exceeds the amount determined by the formula

$$A + B$$

where

A is the amount deducted under section 118.3 in computing the individual's tax payable under this Part for the year; and

B is the total of all amounts each of which is the amount that

- (a) may be deducted under section 121 or 126 in computing the individual's tax payable under this Part for the year, and
- (b) can reasonably be considered to be in respect of an amount included in computing the individual's split income for the year.

(4) Taxable capital gain — If a specified individual who has not attained the age of 17 years before a taxation year would have for the taxation year, if this Act were read without reference to this section, a taxable capital gain (other than an excluded amount) from a disposition of shares (other than shares of a class listed on a designated stock exchange or shares of a mutual fund corporation) that are transferred, either directly or indirectly, in any manner whatever, to a person with whom the specified individual does not deal at arm's length, then the amount of that taxable capital gain is deemed not to be a taxable capital gain and twice the amount is deemed to be received by the specified individual in the year as a taxable dividend that is not an eligible dividend.

(5) Taxable capital gain of trust — If a specified individual who has not attained the age of 17 years before a taxation year would be, if this Act were read without reference to this section, required under subsection 104(13) or 105(2) to include an amount in computing the specified individual's income for the taxation year, then to the extent that the amount can reasonably be considered to be attributable to a taxable capital gain (other than an excluded amount) of a trust from a disposition of shares (other than shares of a class listed on a designated stock exchange or shares of a mutual fund corporation) that are transferred, either directly or indirectly, in any manner whatever, to a person with whom the specified individual does not deal at arm's length, subsections 104(13) and 105(2) do not apply in respect of the amount and twice the amount is deemed to be received by the specified individual in the

year as a taxable dividend that is not an eligible dividend.

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DIVISION G — DEFERRED AND OTHER SPECIAL INCOME ARRANGEMENTS

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Life Insurance Policies

148. (1) Amounts included in computing policyholder's income —

There shall be included in computing the income for a taxation year of a policyholder in respect of the disposition of an interest in a life insurance policy, other than a policy that is or is issued pursuant to

- (a) a registered pension plan,
- (b) a registered retirement savings plan,
- (b.1) a registered retirement income fund,
- (b.2) a TFSA,
- (b.3) a pooled registered pension plan,
- (c) an income-averaging annuity contract,
- (d) a deferred profit sharing plan, or
- (e) an annuity contract if
 - (i) the payment for the annuity contract was deductible under paragraph 60(l) in computing the policyholder's income,
 - (i.1) the annuity contract is a qualifying trust annuity with respect to a taxpayer and the amount paid to acquire it was deductible under paragraph 60(l) in computing the taxpayer's income, or

- (ii) the policyholder acquired the annuity contract in circumstances to which subsection 146(21) applied,

the amount, if any, by which the proceeds of the disposition of the policyholder's interest in the policy that the policyholder, beneficiary or assignee, as the case may be, became entitled to receive in the year exceeds the adjusted cost basis to the policyholder of that interest immediately before the disposition.

(1.1) Amount included in computing taxpayer's income —

There shall be included in computing the income for a taxation year of a taxpayer in respect of a disposition of an interest in a life insurance policy described in paragraph (e) of the definition "disposition" in subsection (9) the amount, if any, by which the amount of a payment described in paragraph (e) of that definition that the taxpayer became entitled to receive in the year exceeds the amount that would be the taxpayer's adjusted cost basis of the taxpayer's interest in the policy immediately before the disposition if, for the purposes of the definition "adjusted cost basis" in subsection (9), the taxpayer were, in respect of that interest in the policy, the policyholder.

(2) Deemed proceeds of disposition —

For the purposes of subsections (1) and 20(20) and the definition "adjusted cost basis" in subsection (9),

- (a) where at any time a policyholder becomes entitled to receive under a life insurance policy a particular amount as, on account of, in lieu of payment of or in satisfaction of, a policy dividend, the policyholder shall be deemed
 - (i) to have disposed of an interest in the policy at that time, and
 - (ii) to have become entitled to receive proceeds of the disposition equal to the amount, if any, by which
 - (A) the particular amount

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Division G — Deferred & Special Income Arrangements: 148(2)(e)(iv)(A)

exceeds

(B) the part of the particular amount applied immediately after that time to pay a premium under the policy or to repay a policy loan under the policy, as provided for under the terms and conditions of the policy;

(b) where in a taxation year a holder of an interest in, or a person whose life is insured or who is the annuitant under, a life insurance policy (other than an annuity contract or an exempt policy) last acquired after December 1, 1982 or an annuity contract (other than a life annuity contract, as defined by regulation, entered into before November 13, 1981 or a prescribed annuity contract) dies, the policyholder shall be deemed to have disposed of the policyholder's interest in the policy or the contract, as the case may be, immediately before the death;

(c) where, as a consequence of a death, a disposition of an interest in a life insurance policy is deemed to have occurred under paragraph (b), the policyholder immediately after the death shall be deemed to have acquired the interest at a cost equal to the accumulating fund in respect thereof, as determined in prescribed manner, immediately after the death;

(d) where at any time a life insurance policy last acquired after December 1, 1982, or a life insurance policy to which subsection 12.2(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, applies by virtue of paragraph 12.2(9)(b) of that Act, ceases to be an exempt policy (otherwise than as a consequence of the death of an individual whose life is insured under the policy or at a time when that individual is totally and permanently disabled), the policyholder shall be deemed to have disposed of

the policyholder's interest in the policy at that time for proceeds of disposition equal to the accumulating fund with respect to the interest, as determined in prescribed manner, at that time and to have reacquired the interest immediately after that time at a cost equal to those proceeds; and

(e) a policyholder with an interest in a life insurance policy, issued after 2016, that gives rise to an entitlement (of the policyholder, beneficiary or assignee, as the case may be) to receive all or a portion of an excess described in subparagraph (iv) is deemed, at a particular time, to dispose of a part of the interest and to be entitled to receive proceeds of the disposition equal to that excess or portion, as the case may be, if

(i) the policy is an exempt policy,
(ii) a "benefit on death" (as defined in subsection 1401(3) of the *Income Tax Regulations*) under a "coverage" (as defined in section 310 of the *Income Tax Regulations* for the purposes of section 306 of the *Income Tax Regulations*) under the policy is paid at the particular time,

(iii) the payment results in the termination of the coverage but not the policy, and

(iv) the amount of the "fund value benefit" (as defined in subsection 1401(3) of the *Income Tax Regulations*) paid at the particular time in respect of the coverage exceeds the amount

(A) in the case where there is no "policy anniversary" (as defined in section 310 of the *Income Tax Regulations*) before the date of death of the individual whose life is insured under the coverage, that would be determined — on the policy anniversary that is on or

that first follows that date of death and as though the coverage were not terminated — in respect of the coverage under subclause (A)(I) of the description of B in subparagraph 306(4)(a)(iii) of the *Income Tax Regulations*, and

(B) in any other case, that is determined — on the last policy anniversary before the date of the death of the individual whose life is insured under the coverage — in respect of the coverage under subclause (A)(I) of the description of B in subparagraph 306(4)(a)(iii) of the *Income Tax Regulations* as it applies for the purpose of subparagraph 306(1)(b)(ii) of the *Income Tax Regulations*.

(3) Special rules for certain policies —

For the purposes of this section, where all or any part of an insurer's reserves for a life insurance policy vary in amount depending on the fair market value of a specified group of properties (in this subsection referred to as a "segregated fund"),

(a) in computing the adjusted cost basis of the policy,

(i) an amount paid by the policyholder or on the policyholder's behalf as or on account of premiums under the policy or to acquire an interest in the policy shall, to the extent that the amount was used by the insurer to acquire property for the purposes of the segregated fund, be deemed not to have been so paid, and

(ii) any transfer of property by the insurer from the segregated fund that resulted in an increase in the portion of its reserves for the policy that do not vary with

the fair market value of the segregated fund shall be deemed to have been a premium paid under the policy by the policyholder; and

(b) the proceeds of the disposition of an interest in the policy shall be deemed not to include the portion thereof, if any, payable out of the segregated fund.

(4) Partial surrender — ACB prorated — If a taxpayer disposes (other than because of paragraph (2)(a) or as described in paragraph (b) of the definition "disposition" in subsection (9)) of a part of the taxpayer's interest in a life insurance policy (other than an annuity contract) last acquired after December 1, 1982 or an annuity contract, the adjusted cost basis to the taxpayer, immediately before the disposition, of the part is the amount determined by the formula

$$A \times B/C$$

where

A is the adjusted cost basis to the taxpayer of the taxpayer's interest immediately before the disposition,

B is the proceeds of the disposition, and

C is

(a) if the policy is a policy (other than an annuity contract) issued after 2016, the amount determined by the formula

$$D - E$$

where

D is the interest's cash surrender value immediately before the disposition, and

E is the total of all amounts each of which is an amount payable, immediately before the disposition, by the taxpayer in respect of a policy loan in respect of the policy, and

(b) in any other case, the accumulating fund with respect to the taxpayer's interest, as determined in prescribed manner, immediately before the disposition.

(4.01) Repayment of policy loan on partial surrender — For the purposes of the definition "adjusted cost basis" in subsection (9) and paragraph 60(s), a particular amount is deemed to be a repayment made immediately before a particular time by a taxpayer in respect of a policy loan in respect of a life insurance policy if

- (a) the policy is issued after 2016;
- (b) the taxpayer disposes of a part of the taxpayer's interest in the policy at the particular time;
- (c) paragraph (a) of the definition "proceeds of the disposition" in subsection (9) applies to determine the proceeds of the disposition of the interest;
- (d) the particular amount is not
 - (i) otherwise a repayment by the taxpayer in respect of the policy loan, and
 - (ii) described in subparagraph (i) of the description of C in paragraph (a) of the definition "proceeds of the disposition" in subsection (9); and
- (e) the amount payable by the taxpayer in respect of the policy loan is reduced by the particular amount as a consequence of the disposition.

(4.1) [Repealed under former Act]

(5) 10/8 policy surrender — If a policyholder has after March 20, 2013 and before April 2014 disposed of an interest in a 10/8 policy because of a partial or complete surrender of the policy, the policyholder may deduct in computing their income for the taxation year in which the disposition occurs an amount that does not exceed the least of

- (a) the portion of an amount, included under subsection (1) in computing their income for the year in respect of

the disposition, that is attributable to an investment account described in paragraph (b) of the definition "10/8 policy" in subsection 248(1) in respect of the policy,

- (b) the total of all amounts each of which is an amount, to the extent that the amount has not otherwise been included in determining an amount under this paragraph, of a payment made after March 20, 2013 and before April 2014 that reduces the amount outstanding of a borrowing or policy loan, as the case may be, described in paragraph (a) of the definition "10/8 policy" in subsection 248(1) in respect of the policy, and
- (c) the total of all amounts each of which is an amount, to the extent that the amount has not otherwise been included in determining an amount under this paragraph, that the policyholder is entitled to receive as a result of the disposition and that is paid after March 20, 2013 and before April 2014 out of an investment account described in paragraph (b) of the definition "10/8 policy" in subsection 248(1) in respect of the policy.

(6) Proceeds receivable as annuity — Where, under the terms of a life insurance policy (other than an annuity contract) last acquired before December 2, 1982, a policyholder became entitled to receive from the insurer at any time before the death of the person whose life was insured thereunder, all the proceeds (other than policy dividends) payable at that time under the policy in the form of an annuity contract or annuity payments,

- (a) the payments shall be regarded as annuity payments made under an annuity contract;
- (b) the purchase price of the annuity contract shall be deemed to be the adjusted cost basis of the policy to the policyholder immediately before the first payment under that contract became payable; and

(c) the annuity contract or annuity payments shall be deemed not to be proceeds of the disposition of an interest in the policy.

(7) Disposition at non-arm's length and similar cases — If an interest of a policyholder in a life insurance policy is, at any time (referred to in this subsection as the “disposition time”), disposed of (other than a disposition under paragraph (2)(b)) by way of a gift, by distribution from a corporation or by operation of law only to any person, or in any manner whatever to any person with whom the policyholder was not dealing at arm's length,

(a) the policyholder is deemed to become entitled to receive, at the disposition time, proceeds of the disposition equal to the greatest of

(i) the value of the interest at the disposition time,

(ii) an amount equal to

(A) if the disposition time is before March 22, 2016, nil, and

(B) if the disposition time is after March 21, 2016, the fair market value at the disposition time of the consideration, if any, given for the interest, and

(iii) an amount equal to

(A) if the disposition time is before March 22, 2016, nil, and

(B) if the disposition time is after March 21, 2016, the adjusted cost basis to the policyholder of the interest immediately before the disposition time;

(b) the person that acquires the interest because of the disposition is deemed to acquire it, at the disposition time, at a cost equal to the amount determined under paragraph (a) in respect of the disposition;

(c) in computing the paid-up capital in respect of each class of shares of the capital stock of a corporation at any time at or after the disposition time there shall be deducted the amount determined by the formula

$$(A - B \times C/D) \times E/A$$

where

A is the increase, if any, as a result of the disposition, in the paid-up capital in respect of all the shares of the capital stock of the corporation,

B is the amount determined under paragraph (a) in respect of the disposition,

C is

(i) if consideration is given for the interest, the fair market value at the disposition time of consideration that is shares of the capital stock of the corporation given for the interest, and

(ii) if no consideration is given for the interest, 1,

D is

(i) if consideration is given for the interest, the fair market value at the disposition time of the consideration given for the interest, and

(ii) if no consideration is given for the interest, 1, and

E is the increase, if any, as a result of the disposition, in the paid-up capital in respect of the class of shares, computed without reference to this paragraph as it applies to the disposition;

(d) any contribution of capital to a corporation or partnership in connection with the disposition is deemed, to the extent that it exceeds the amount determined under subparagraph (a)(i) in respect of the disposition, not to result in a contribution of capital for the pur-

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pose of applying paragraphs 53(1)(c) and (e) at or after the disposition time;

(e) any contributed surplus of a corporation that arose in connection with the disposition is deemed, to the extent that it exceeds the amount determined under subparagraph (a)(i) in respect of the disposition, not to be contributed surplus for the purpose of applying subsection 84(1) at or after the disposition time; and

(f) if the disposition time is before March 22, 2016,

(i) subparagraphs (ii) and (iii) and paragraphs (c) to (e) apply in respect of the disposition only if the disposition is after 1999 and at least one person whose life was insured under the policy before March 22, 2016 is alive on March 22, 2016,

(ii) in applying paragraphs (c) to (e) in respect of the disposition, a reference in those paragraphs to “the disposition time” is to be read as “the beginning of March 22, 2016”,

(iii) if at any time (referred to in this subparagraph as the “conversion time”) before March 22, 2016 the paid-up capital of a class of shares of the capital stock of a corporation was increased, the increase occurred as a result of any action by which the corporation converted any of its contributed surplus into paid-up capital in respect of the class of shares, the contributed surplus arose in connection with the disposition, and subsection 84(1) did not apply to deem the corporation to pay a dividend at the conversion time in respect of the increase, in computing the paid-up capital in respect of that class of shares after March 21, 2016, there shall be deducted the

amount determined by the formula

$$(A - B \times A/D) \times C/A$$

where

A is the increase, if any, as a result of the conversion, in the paid-up capital in respect of all the shares of the capital stock of the corporation, computed without reference to this paragraph as it applies to the disposition,

B is the amount determined under subparagraph (a) (i) in respect of the disposition,

C is the increase, if any, as a result of the conversion, in the paid-up capital in respect of the class of shares, computed without reference to this paragraph as it applies to the disposition, and

D is the total amount of the corporation’s contributed surplus that arose in connection with the disposition, and

(iv) if any consideration given for the interest includes a share of the capital stock of a corporation, the share (or a share substituted for the share) is disposed of (referred to in this subparagraph as the “share disposition”) after March 21, 2016 by a taxpayer and subsection 84.1(1) applies in respect of the share disposition, then for the purposes of applying section 84.1, the adjusted cost base to the taxpayer of the share immediately before the share disposition is to be reduced by the amount determined by the formula

$$(A - B \times A/C)/D$$

where

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- A is the total of all amounts each of which is the fair market value at the disposition time of a share of that capital stock given as consideration for the interest,
- B is the greater of the amount determined under subparagraph 148(7)(a)(i) in respect of the disposition and the adjusted cost basis to the policyholder of the interest immediately before the disposition,
- C is the fair market value at the disposition time of the consideration, if any, given for the interest, and
- D is the total number of shares of that capital stock given as consideration for the interest.

(8) Idem — Notwithstanding any other provision in this section, where

- (a) an interest of a policyholder in a life insurance policy (other than an annuity contract) has been transferred to the policyholder's child for no consideration, and
- (b) a child of the policyholder or a child of the transferee is the person whose life is insured under the policy,

the interest shall be deemed to have been disposed of by the policyholder for proceeds of the disposition equal to the adjusted cost basis to the policyholder of the interest immediately before the transfer, and to have been acquired by the person who acquired the interest at a cost equal to those proceeds.

(8.1) *Inter vivos transfer to spouse [or common-law partner]* — Notwithstanding any other provision of this section, where

- (a) an interest of a policyholder in a life insurance policy (other than a policy that is, or is issued under, a plan or contract referred to in any of

paragraphs (1)(a) to (e)) is transferred to

- (i) the policyholder's spouse or common-law partner, or
- (ii) a former spouse or common-law partner of the policyholder in settlement of rights arising out of their marriage or common-law partnership, and
- (iii) [Repealed]

- (b) both the policyholder and the transferee are resident in Canada at the time of the transfer,

unless an election is made in the policyholder's return of income under this Part for the taxation year in which the interest was transferred to have this subsection not apply, the interest shall be deemed to have been disposed of by the policyholder for proceeds of the disposition equal to the adjusted cost basis to the policyholder of the interest immediately before the transfer and to have been acquired by the transferee at a cost equal to those proceeds.

(8.2) Transfer to spouse [or common-law partner] at death — Notwithstanding any other provision of this section, where, as a consequence of the death of a policyholder who was resident in Canada immediately before the policyholder's death, an interest of the policyholder in a life insurance policy (other than a policy that is or is issued under a plan or contract referred to in any of paragraphs (1)(a) to (e)) is transferred or distributed to the policyholder's spouse or common-law partner who was resident in Canada immediately before the death, unless an election is made in the policyholder's return of income under this Part for the taxation year in which the policyholder died to have this subsection not apply, the interest shall be deemed to have been disposed of by the policyholder immediately before the death for proceeds of the disposition equal to the adjusted cost basis to the policyholder of the interest immediately before the transfer and to have been acquired by the spouse or com-

mon-law partner at a cost equal to those proceeds.

(9) Definitions — In this section and paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

“**adjusted cost basis**”, at any time to a policyholder of the policyholder’s interest in a life insurance policy, means the amount determined by the formula

$$(A + B + C + D + E + F + G + G.1) - \\ (H + I + J + K + L + M + N + O)$$

where

- A is the total of all amounts each of which is the cost of an interest in the policy acquired by the policyholder before that time but not including an amount referred to in the description of B or E,
- B is the total of all amounts each of which is an amount paid before that time by or on behalf of the policyholder in respect of a premium under the policy, other than amounts referred to in clause (2)(a)(ii)(B), in subparagraph (iii) of the description of C in paragraph (a) of the definition “proceeds of the disposition” or in subparagraph (b)(i) of that definition,
- C is the total of all amounts each of which is an amount in respect of the disposition of an interest in the policy before that time that was required to be included in computing the policyholder’s income or taxable income earned in Canada for a taxation year,
- D is the total of all amounts each of which is an amount in respect of the policyholder’s interest in the policy that was included by virtue of subsection 12(3) or section 12.2 or of paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in computing the policyholder’s income for any taxation year ending before that time or the por-

tion of an amount paid to the policyholder in respect of the policyholder’s interest in the policy on which tax was imposed by virtue of paragraph 212(1)(o) before that time,

E is the total of all amounts each of which is an amount that is in respect of the repayment, before that time and after March 31, 1978, of a policy loan and that does not exceed the amount determined by the formula,

$$E.1 - E.2$$

where

E.1 is the total of

- (a) the proceeds of the disposition, if any, in respect of the loan,
- (b) if the policy is issued after 2016 (and, in the case where the particular time at which the policy is issued is determined under subsection (11), the repayment is at or after the particular time), the portion of the loan applied, immediately after the loan, to pay a premium under the policy as provided for under the terms and conditions of the policy (except to the extent that the portion is described in subparagraph (i) of the description of C in paragraph (a) of the definition “proceeds of the disposition” in this subsection), and
- (c) the amount, if any, described in the description of J in this definition (but not including any payment of interest) in respect of the loan, and

E.2 is the total all amounts each of which is an amount in respect of a repayment, of the loan, referred to in clause (2)(a)(ii)(B) or de-

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| | ductible under paragraph 60(s) of this Act or paragraph 20(1)(hh) of the <i>Income Tax Act</i> , chapter 148 of the <i>Revised Statutes of Canada</i> , 1952 (as it applied in taxation years before 1985), | the policy that the policyholder became entitled to receive before that time, |
| F | is the amount, if any, by which the cash surrender value of the policy as at its first anniversary date after March 31, 1977 exceeds the adjusted cost basis (determined under the <i>Income Tax Act</i> , chapter 148 of the Revised Statutes of Canada, 1952, as it would have read on that date if subsection 148(8) of that Act, as it read in its application to the period ending immediately before April 1, 1978, had not been applicable) of the policyholder's interest in the policy on that date, | I is the total of all amounts each of which is an amount in respect of the policyholder's interest in the policy that was deducted by virtue of subsection 20(19) in computing the policyholder's income for any taxation year commencing before that time, |
| G | is, in the case of an interest in a life annuity contract, as defined by regulation, to which subsection 12.2(1) applies for the taxation year that includes that time (or would apply if the contract had an anniversary day in the year at a time when the taxpayer held the interest), the total of all amounts each of which is a mortality gain, as defined by regulation and determined by the issuer of the contract in accordance with the regulations, in respect of the interest immediately before the end of the calendar year ending in a taxation year commencing before that time, | J is the amount payable on March 31, 1978 in respect of a policy loan in respect of the policy, |
| G.1 | is, in the case of an interest in a life insurance policy (other than an annuity contract) to which subsection (8.2) applied before that time, the total of all amounts each of which is a mortality gain, as defined by regulation and determined by the issuer of the policy in accordance with the regulations, in respect of the interest immediately before the end of the calendar year that ended in a taxation year that began before that time, | K is the total of all amounts each of which is an amount received before that time in respect of the policy that the policyholder was entitled to deduct under paragraph 60(a) in computing the policyholder's income for a taxation year, |
| H | is the total of all amounts each of which is the proceeds of the disposition of the policyholder's interest in | L is <ul style="list-style-type: none"> (a) in the case of an interest in a life insurance policy (other than an annuity contract) that was last acquired after December 1, 1982 by the policyholder, the total of all amounts each of which is the net cost of pure insurance, as defined by regulation and determined by the issuer of the policy in accordance with the regulations, in respect of the interest immediately before the end of the calendar year ending in a taxation year commencing after May 31, 1985 and before that time, (b) in the case of an interest in an annuity contract to which subsection 12.2(1) applies for the taxation year that includes that time (or would apply if the contract had an anniversary day in the year and while the taxpayer held the interest), the total of all annuity payments paid in respect of the interest before that time and while the policyholder held the interest, or |

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| <p>(c) in the case of an interest in a contract referred to in the description of G, the total of all amounts each of which is a mortality loss, as defined by regulation and determined by the issuer of the contract in accordance with the regulations, in respect of the interest before that time;</p> <p>M is, in the case of a policy that is issued after 2016 and is not an annuity contract, the total of all amounts each of which is a premium paid by or on behalf of the policyholder, or a cost of insurance charge incurred by the policyholder, before that time (and, in the case where the particular time at which the policy is issued is determined under subsection (11), at or after the particular time), to the extent that the premium or charge is in respect of a benefit under the policy other than a benefit on death (as defined in subsection 1401(3) of the <i>Income Tax Regulations</i>),</p> <p>N is, in the case of a policy that is issued after 2016 and is not an annuity contract, the total of all amounts each of which is the policyholder's interest in an amount paid — to the extent that the cash surrender value of the policy, if any, or the fund value of the policy (as defined in subsection 1401(3) of the <i>Income Tax Regulations</i>), if any, is reduced by the amount paid — before that time (and, in the case where the particular time at which the policy is issued is determined under subsection (11), at or after the particular time) that</p> <ul style="list-style-type: none"> (a) is a benefit on death (as defined in subsection 1401(3) of the <i>Income Tax Regulations</i>), or a disability benefit, under the policy, and (b) does not result in the termination of a coverage (as defined in subsection 1401(3) of the <i>Income Tax Regulations</i>) under the policy, | <p>O is, in the case of a policy that is issued after 2016 and is not an annuity contract, the total of all amounts each of which is — if a “benefit on death” (as defined in subsection 1401(3) of the <i>Income Tax Regulations</i>) under a “coverage” (as defined in section 310 of the <i>Income Tax Regulations</i> for the purposes of section 306 of the <i>Income Tax Regulations</i>) under the policy is paid before that time as a consequence of the death of an individual whose life is insured under the coverage (and, in the case where the particular time at which the policy is issued is determined under subsection (11), at or after the particular time) and the payment results in the termination of the coverage — the amount, if any, determined with respect to the coverage by the formula</p> $[P \times (Q + R + S)/T] - U$ <p>where</p> <p>P is the adjusted cost basis of the policyholder's interest immediately before the termination,</p> <p>Q is the amount of the “fund value benefit” (as defined in subsection 1401(3) of the <i>Income Tax Regulations</i>) under the policy paid in respect of the “coverage” (as defined in section 310 of the <i>Income Tax Regulations</i> for the purposes of section 306 of the <i>Income Tax Regulations</i>) on the termination,</p> <p>R is the total of all amounts — each of which is in respect of a “coverage” (as defined in subsection 1401(3) of the <i>Income Tax Regulations</i>) in respect of a specific life or two or more specific lives jointly insured under the coverage referred to in the description of O — that would be the present value, determined for the purposes of section 307 of the <i>Income Tax Regulations</i>, on the last “policy anniversary” (as defined</p> |
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| | in section 310 of the <i>Income Tax Regulations</i>) on or before the termination, of the “fund value of the coverage” (as defined in subsection 1401(3) of the <i>Income Tax Regulations</i>) if the fund value of the coverage on that policy anniversary were equal to the fund value of the coverage on the termination, | defined in subsection 1401(3) of the <i>Income Tax Regulations</i>) and the fund value of each coverage (as defined in subsection 1401(3) of the <i>Income Tax Regulations</i>) on that policy anniversary were equal to the fund value benefit, the benefit on death under each coverage and the fund value of each coverage, as the case may be, under the policy on the termination, and |
| S | is the total of all amounts — each of which is in respect of a “coverage” (as defined in subsection 1401(3) of the <i>Income Tax Regulations</i> and referred to in this description as a “particular coverage”) in respect of a specific life or two or more specific lives jointly insured under the coverage referred to in the description of O — that would be determined, on that policy anniversary, for paragraph (a) of the description of C in the definition “net premium reserve” in subsection 1401(3) of the <i>Income Tax Regulations</i> in respect of the particular coverage, if the benefit on death under the particular coverage, and the “fund value of the coverage” (as defined in subsection 1401(3) of the <i>Income Tax Regulations</i>), on that policy anniversary were equal to the benefit on death under the particular coverage and the fund value of the coverage, as the case may be, on the termination, | U is the amount, if any, determined under subsection (4) in respect of a disposition before that time of the interest because of paragraph (2)(e) in respect of the payment in respect of the fund value benefit under the policy paid in respect of the “coverage” (as defined in section 310 of the <i>Income Tax Regulations</i> for the purposes of section 306 of the <i>Income Tax Regulations</i>) on the termination; |
| T | is the amount that would be, on that policy anniversary, the “net premium reserve” (as defined in subsection 1401(3) of the <i>Income Tax Regulations</i>) in respect of the policy for the purposes of section 307 of the <i>Income Tax Regulations</i> , if the “fund value benefit” (as defined in subsection 1401(3) of the <i>Income Tax Regulations</i>) under the policy, the benefit on death under each “coverage” (as | <p>“amount payable”, in respect of a policy loan, has the meaning assigned by subsection 138(12);</p> <p>“cash surrender value” at a particular time of a life insurance policy means its cash surrender value at that time computed without regard to any policy loans made under the policy, any policy dividends (other than paid-up additions) payable under the policy or any interest payable on those dividends;</p> <p>“child” of a policyholder includes a child as defined in subsection 70(10);</p> <p>“disposition”, in relation to an interest in a life insurance policy, includes</p> <ul style="list-style-type: none">(a) a surrender thereof,(b) a policy loan made after March 31, 1978,(c) the dissolution of that interest by virtue of the maturity of the policy,(d) a disposition of that interest by operation of law only, and |



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(e) the payment by an insurer of an amount (other than an annuity payment, a policy loan or a policy dividend) in respect of a policy (other than a policy described in paragraph (1)(a), (b), (c), (d) or (e)) that is a life annuity contract, as defined by regulation, entered into after November 16, 1978, and before November 13, 1981,

but does not include

(f) an assignment of all or any part of an interest in the policy for the purpose of securing a debt or a loan other than a policy loan,

(g) a lapse of the policy in consequence of the premiums under the policy remaining unpaid, if the policy was reinstated not later than 60 days after the end of the calendar year in which the lapse occurred,

(h) a payment under a policy as a disability benefit or as an accidental death benefit,

(i) an annuity payment,

(j) a payment under a life insurance policy (other than an annuity contract) that

(i) was last acquired before December 2, 1982, or

(ii) is an exempt policy

in consequence of the death of any person whose life was insured under the policy, or

(k) any transaction or event by which an individual becomes entitled to receive, under the terms of an exempt policy, all of the proceeds (including or excluding policy dividends) payable under the policy in the form of an annuity contract or annuity payments, if, at the time of the transaction or event, the individual whose life is insured under the policy was totally and permanently disabled;

“interest”, in relation to a policy loan, has the meaning assigned by subsection 138(12);

“life insurance policy” — [Repealed under former Act]

“policy loan” means an amount advanced by an insurer to a policyholder in accordance with the terms and conditions of the life insurance policy;

“premium” under a policy includes

(a) interest paid after 1977 to a life insurer in respect of a policy loan, other than interest deductible in the 1978 or any subsequent taxation year pursuant to paragraph 20(1)(c) or (d), and

(b) a prepaid premium under the policy to the extent that it cannot be refunded otherwise than on termination or cancellation of the policy,

but does not include

(c) the portion of any amount paid under the policy with respect to an accidental death benefit, a disability benefit, an additional risk as a result of insuring a substandard life, an additional risk in respect of the conversion of a term policy into another policy after the end of the year, an additional risk under a settlement option, or an additional risk under a guaranteed insurability benefit, if

(i) in the case of an annuity contract, a policy issued before 2017 or in respect of which the particular time at which the policy is issued is determined under subsection (11), where the interest in the policy was last acquired after December 1, 1982, the payment is made after May 31, 1985 and, if the particular time at which the policy is issued is determined under subsection (11), before the particular time, or

(ii) in the case where the taxpayer’s interest in the policy was last acquired before December 2, 1982,

(A) subsection 12.2(9) of the *Income Tax Act*, chapter

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148 of the *Revised Statutes of Canada*, 1952, applies to the interest,

(B) the particular time at which the policy is issued is determined under subsection (11), and

(C) the payment is made in the period that starts at the later of May 31, 1985 and the first time at which that subsection 12.2(9) applies in respect of the interest and that ends at the particular time;

“proceeds of the disposition” of an interest in a life insurance policy means the amount of the proceeds that the policyholder, beneficiary or assignee, as the case may be, is entitled to receive on a disposition of an interest in the policy and for greater certainty,

(a) in respect of a surrender or maturity thereof, means the amount determined by the formula

$$(A - B) - C$$

where

A is the cash surrender value of that interest in the policy at the time of surrender or maturity,

B is that portion of the cash surrender value represented by A that is applicable to the policyholder's interest in the related segregated fund trust as referred to in paragraph 138.1(1)(e), and

C is the total of amounts each of which is

(i) an amount by which the amount payable in respect of a policy loan in respect of the policy is reduced as a consequence of the disposition, except that if the policy is issued after 2016 and the disposition is of a part of the interest (and, in the

case where the particular time at which the policy is issued is determined under subsection (11), the disposition occurs at or after the particular time), only to the extent that the amount represents the portion of the loan applied, immediately after the loan, to pay a premium under the policy, as provided for under the terms and conditions of the policy,

(ii) a premium under the policy that is due but unpaid at that time, or

(iii) an amount applied, immediately after the time of the surrender, to pay a premium under the policy, as provided for under the terms and conditions of the policy,

(b) in respect of a policy loan made after March 31, 1978 means the lesser of

(i) the amount of the loan, other than the part thereof applied, immediately after the loan, to pay a premium under the policy, as provided for under the terms and conditions of the policy, and

(ii) the amount, if any, by which the cash surrender value of the policy immediately before the loan was made exceeds the total of the balances outstanding at that time of any policy loans in respect of the policy,

(c) in respect of a payment described in paragraph (e) of the definition “disposition” in this subsection, means the amount of that payment, and

(d) in respect of a disposition deemed to have occurred under paragraph (2)(b), means the accumulating fund in

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respect of the interest, as determined in prescribed manner,

- (i) immediately before the time of death in respect of a life insurance policy (other than an annuity contract) last acquired after December 1, 1982, or
- (ii) immediately after the time of death in respect of an annuity contract;

“relevant authority” — [Repealed]

“tax anniversary date”, in relation to a life insurance policy, means the second anniversary date of the policy to occur after October 22, 1968;

“value” at a particular time of an interest in a life insurance policy means

- (a) where the interest includes an interest in the cash surrender value of the policy, the amount in respect thereof that the holder of the interest would be entitled to receive if the policy were surrendered at that time, and
- (b) in any other case, nil.

(9.1) Application of subsec. 12.2(11) —
The definitions in subsection 12.2(11) apply to this section.

(10) Life annuity contracts — For the purposes of this section,

- (a) a reference to “insurer” or “life insurer” shall be deemed to include a reference to a person who is licensed or otherwise authorized under a law of Canada or a province to issue contracts that are annuity contracts;
- (b) a reference to a “person whose life was insured” shall be deemed to include a reference to an annuitant under a life annuity contract, as defined by regulation, entered into before November 17, 1978;
- (c) where a policyholder is a person who has held an interest in a life insurance policy continuously since its issue date, the interest shall be deemed to

have been acquired on the later of the date on which

- (i) the policy came into force, and
 - (ii) the application in respect of the policy signed by the policyholder was filed with the insurer;
- (d) except as otherwise provided, a policyholder shall be deemed not to have disposed of or acquired an interest in a life insurance policy (other than an annuity contract) as a result only of the exercise of any provision (other than a conversion into an annuity contract) of the policy; and
- (e) where an interest in a life insurance policy (other than an annuity contract) last acquired before December 2, 1982 to which subsection 12.2(9) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, does not apply has been acquired by a taxpayer from a person with whom the taxpayer was not dealing at arm’s length, the interest shall be deemed to have been last acquired by the taxpayer before December 2, 1982.

(11) Loss of [pre-2017] grandfathering — For the purposes of determining at and after a particular time whether a life insurance policy (other than an annuity contract) issued before 2017 is treated as issued after 2016 under this section (other than this subsection) and sections 306 (other than subsections (9) and (10)), 307, 308, 310, 1401 and 1403 of the *Income Tax Regulations* (except as they apply for the purposes of subsection 211.1(3)), the policy is deemed to be a policy issued at the particular time if the particular time is the first time after 2016 at which life insurance — in respect of a life, or two or more lives jointly insured, and in respect of which a particular schedule of premium or cost of insurance rates applies — is

- (a) if the insurance is term insurance, converted to permanent life insurance within the policy; or

(b) if the insurance (other than insurance paid for with policy dividends or that is reinstated) is medically underwritten after 2016 (other than to obtain a reduction in the premium or cost of insurance rates under the policy), added to the policy.

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DIVISION I — RETURNS, ASSESSMENTS, PAYMENT AND APPEALS

Returns

150. (1) Filing returns of income — general rule — Subject to subsection (1.1), a return of income that is in prescribed form and that contains prescribed information shall be filed with the Minister, without notice or demand for the return, for each taxation year of a taxpayer,

Announced Administrative Change — COVID-19 — Filing and payment deadlines

CRA notice (tinyurl.com/covid-dates), March 30, 2020 [updated to Aug. 19, 2020]: Extended filing and payment deadlines

The CRA is further extending the payment due date for 2019 individual tax returns and 2019 or 2020 corporation, or trust returns, as well as for instalment payments, from September 1, 2020, to September 30, 2020.

The previously-extended filing due dates for individual, corporation, and trust income tax returns remain unchanged. The CRA encourages everyone to file their income tax returns as soon as possible, even though payment deadlines are being extended. However, recognizing the difficult circumstances faced by Canadians, the CRA will not charge late-filing penalties where a 2019 individual return or a 2019 or 2020 corporation, or trust return is filed late as long as it is filed by September 30, 2020.

The extensions to the filing due date for income tax returns detailed below also apply to forms T106 and T1135, and any elections, forms, and schedules that must be filed with the return.

The CRA will also waive arrears interest on existing tax debts related to individual, corporation, and trust income tax returns from April 1, 2020, to September 30, 2020, and from April 1, 2020, to June 30, 2020, for Goods and Services Tax/Harmonized Sales Tax (GST/HST) returns. While this measure for existing tax debts does not cancel penalties and interest already assessed on a taxpayer's account prior to this period, it will ensure that a taxpayer's existing tax debt will not grow through interest charges during this difficult time.

Notes

- Some taxpayers may have received a Notice of Assessment that says the deadline for payment is April 30, 2020 or September 1, 2020, which is now incorrect.
- On May 15, it was announced that eligible Canadians who are presently receiving the GST/HST credit and/or Canada child benefit (CCB) payments will continue to receive these payments until the end of September 2020. Benefit payments starting in July 2020 and those scheduled for August and September won't be interrupted.
- If we're unable to assess your 2019 return by early September 2020, your estimated benefits and/or credits will stop in October 2020 and you'll have to repay the estimated amounts that were issued to you starting in July 2020.
- By extending the deadlines for federal returns and instalments, the CRA is also extending the deadlines for provincial/territorial individual, trust, and corporate returns and instalments. Note that the CRA does not administer Quebec tax, nor Alberta corporate tax.

Individuals — Deadlines

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| <i>Filing date for 2019 tax year</i> | June 1, 2020 The CRA is seeking tax returns from individuals by June 1, 2020 in order to ensure accurate federal and provincial benefits payments. This extension also applies to forms T106 and T1135, and any elections, forms and schedules that must be filed with the return. | Penalties (including late-filing penalties) and interest will not be applied if returns are filed and payments are made by September 30, 2020. |
| If the death occurred after October 2019 and before June 1, 2020: | | |
| <i>Filing date for 2019 tax year</i> | The later of June 1, 2020 or six months after their day of death. | |
| <i>Payment date for 2019 tax year</i> | The later of September 30, 2020 or six months after their day of death. Penalties (including late-filing penalties) and interest will not be applied if returns are filed and payments are made by the later of September 30, 2020 or six months after their day of death. | |
| Self-employed and their spouse or common law partner — Deadlines | | |
| <i>Filing date for 2019 tax year</i> | June 15, 2020 Unchanged The CRA is seeking T1 returns by June 15, 2020 for sole proprietors in order to ensure accurate federal and provincial benefits payments. | |
| <i>Payment date for 2019 tax year</i> | September 30, 2020 Further extended as of July 27 | |

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| <i>Payment date for 2019 tax year</i> | September 30, 2020 Further extended as of July 27 Penalties (including late-filing penalties) and interest will not be applied if returns are filed and payments are made by September 30, 2020. This also applies to the June 15 and September 15, 2020, instalment payments for those who have to pay by instalments. | <i>Filing date for 2019 tax year</i> The later between June 15, 2020 or six months after their day of death. |
| <i>Payment date for 2019 tax year</i> | The later of September 30, 2020 or six months after their day of death. | Penalties (including late-filing penalties) and interest will not be applied if returns are filed and payments are made by the later of September 30, 2020 or six months after their day of death. |
| Deceased self-employed individuals — Deadlines | | |
| If the death occurred between January 1 and October 31, 2019, inclusive: | | |
| <i>Filing date for 2019 tax year</i> | June 15, 2020 Unchanged | <i>Filing date for the current tax year</i> June 1, 2020 Extended date |
| <i>Payment date for 2019 tax year</i> | September 30, 2020 Further extended as of July 27 Penalties (including late-filing penalties) and interest will not be applied if returns are filed and payments are made by September 30, 2020. | Applies to corporations that would otherwise have a filing deadline after March 18 and before May 31, 2020. September 1, 2020 Extended date Applies to corporations that would otherwise have a filing deadline on May 31, or in June, July, or August 2020. This extension also applies to forms T106 and T1135, and any elections, forms and schedules that must be filed with the return. |
| If the death occurred after October 2019 and before June 15, 2020: | | |

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| <i>Payment date for the current tax year</i> | <p>September 30, 2020 <i>Further extended as of July 27</i></p> <p>Applies to balances and instalments due on or after March 18 and before September 30, 2020. Penalties and interest will not be applied if returns are filed and payments are made by September 30, 2020.</p> | | <p>This extension also applies to forms T106 and T1135, and any elections, forms and schedules that must be filed with the return.</p> |
| <i>Payment date for the current tax year</i> | <p>September 30, 2020 <i>Further extended as of July 27</i></p> <p>Applies to income tax balances and instalments due on or after March 18 and before September 30, 2020. Penalties and interest will not be applied if returns are filed and payments are made by September 30, 2020.</p> | | <p>This also applies to the Part XIII remittance requirement associated with income paid or payable to non-resident beneficiaries.</p> |
| Trusts — Deadlines | | | |
| <i>Filing date for the current tax year (including the associated T3 information return)</i> | <p>May 1, 2020 <i>Extended date</i></p> <p>Applies to trusts with a tax year end date of December 31, 2019</p> <p>June 1, 2020 <i>Extended date</i></p> <p>Applies to trusts that would otherwise have a filing due date after March 30 and before May 31, 2020.</p> <p>September 1, 2020 <i>Extended date</i></p> <p>Applies to trusts that would otherwise have a filing due date on May 31, or in June, July, or August 2020.</p> | | |
| <i>Filing date</i> | December 31, 2020 <i>Extended date</i> | | <p>Applies to charities with Form T3010 due between March 18, 2020 and December 31, 2020</p> |
| <i>Payment date</i> | Not Applicable | | |
| Charities — Deadlines | | | |
| <i>Filing date</i> | December 31, 2020 <i>Extended date</i> | | |
| <i>Payment date</i> | Not Applicable | | |
| Part XIII non-resident tax — Deadlines | | | |
| <i>Filing date for the 2019 NR4 information return</i> | May 1, 2020 <i>Extended date</i> | | |
| <i>Payment date</i> | The 15th of each month following an amount paid or credited by residents of Canada to non-resident persons. Unchanged | | |

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| Section 216(4) — Deadlines | |
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| <i>Filing date for current tax year</i> | <p>September 1, 2020 Extended date</p> <p>Applies to non-resident individuals electing under section 216(4) who would otherwise have a filing deadline of June 30, 2020.</p> <p>June 1, 2020 Extended date</p> <p>Applies to non-resident corporations electing under section 216(4) that would otherwise have a filing deadline after March 18 and before May 31, 2020.</p> <p>September 1, 2020 Extended date</p> <p>Applies to non-resident corporations electing under section 216(4) that would otherwise have a filing deadline on May 31, or in June, July, or August 2020.</p> |
| <i>Payment date for current tax year</i> | <p>September 30, 2020 Further extended as of July 27</p> <p>Interest will not be applied if payments are made by September 30, 2020.</p> |
| Payroll remittances — Deadlines | |
| <i>Payment date</i> | See Payroll page [tinyurl.com/cra-payroll] for filing deadlines. <i>Unchanged</i> |
| Information returns, elections, designations and information requests — Deadlines | |
| <i>Filing date for 2019 information returns under Part XVIII and Part XIX of the Income Tax Act</i> | <p>September 1, 2020 Extended date</p> |
| <i>Filing date for the 2019 (for individuals) or 2019 and 2020 (for corporations) T5013 Partnership Information Return</i> | <p>May 1, 2020 Extended date</p> <p>Applies to partnerships that would normally have a March 31 filing deadline.</p> |
| | <p>June 1, 2020 Extended date</p> <p>Applies to partnerships that would normally have a filing deadline after March 31 and before May 31, 2020.</p> <p>September 1, 2020 Extended date</p> |
| Section 217 — Deadlines | |
| <i>Filing date for 2019 tax year</i> | <p>September 1, 2020 Extended date</p> <p>Applies to non-resident taxpayers electing under section 217 who would otherwise have a filing deadline of June 30, 2020.</p> |

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| | Applies to partnerships that normally have a filing deadline on May 31, or in June, July, or August 2020. | | Penalties and interest will not be applied if information returns, elections, designations, and information requests are filed and payments are made by September 1, 2020. |
| <i>Filing date for the 2019 NR4, Statement of Amounts Paid or Credited to Non-Residents of Canada information return</i> | May 1, 2020 Extended date | | Other income tax debts, including: <ul style="list-style-type: none"> • Tax in respect of Registered Investments (Parts X.2) • Tax in respect of overpayments to Registered Education Savings Plan (Part X.4) • Payments under Registered Education Savings Plan (Part X.5) • Tax on Carved-Out income (Part XII.1) • Tax on Investment Income of Life Insurers (Part XII.3) • Recovery of labour-sponsored funds tax credit (Part XII.5) |
| <i>Other information returns, elections, designations and information requests</i> | June 1, 2020 Extended date Unless otherwise noted, applies to other information returns, elections, designations and information requests that would have been due after March 18 and before May 31, 2020. September 1, 2020 Extended date Unless otherwise noted, applies to other information returns, elections, designations and information requests that would have been due on May 31, or in June, July, or August 2020. | Payment date | September 30, 2020 Extended as of July 27 Applies to balances due on or after March 18, 2020, and before September 30, 2020. |
| | | <i>Existing debt</i> | The CRA will also waive arrears interest on existing tax debts related to these parts of the <i>Income Tax Act</i> from April 1, 2020, to September 30, 2020. |
| Penalties and interest relief for extended deadlines | | | Penalties and interest will not be charged if payments are made by the extended deadlines of September 30, 2020. This includes the late-filing penalty as long as the return is filed by September 30, 2020. (related to the 2019 tax return for individuals and the tax returns for trusts and corporations that would otherwise be due on or after March 18, 2020, and before September 30, 2020). This applies in respect of income tax returns |

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and the associated elections, designations and information returns, such as the Form T1135, that are required to be filed with or on the same day as the return. Penalties and interest relief will be considered on a case-by-case basis for income tax balances that are not listed above.

The CRA will also waive arrears interest on existing tax debts related to individual, corporation, and trust income tax returns from April 1, 2020, to September 30, 2020, and from April 1, 2020, to June 30, 2020, for GST/HST returns.

Processing delays for individual income tax paper returns — file online instead

Temporary measures for individual income tax paper returns and adjustment requests — file online instead

CRA is experiencing delays in processing paper income tax and benefit returns.

File your 2019 taxes online as soon as possible and register for direct deposit to get refunds faster and avoid interruptions to benefit and credit payments.

Submit your requests for changes electronically, using Change My Return in My Account or ReFILE. If you have already submitted a request to change your return by mail that has not been processed yet, you may be able to submit it again electronically.

Temporary measure for paper returns

If you already filed a 2019 paper return that has not been processed yet, you can file it again online using NETFILE certified tax software. This does not include returns that the software says must be paper-filed or returns that are excluded from electronic filing.

(a) **corporations** — in the case of a corporation, by or on behalf of the corporation within six months after the end of the year if

(i) at any time in the year the corporation

(A) is resident in Canada,

(B) carries on business in Canada, unless the corpora-

tion's only revenue from carrying on business in Canada in the year consists of amounts in respect of which tax was payable by the corporation under subsection 212(5.1),

- (C) has a taxable capital gain (otherwise than from an excluded disposition), or
- (D) disposes of a taxable Canadian property (otherwise than in an excluded disposition), or

(ii) tax under this Part

(A) is payable by the corporation for the year, or

(B) would be, but for a tax treaty, payable by the corporation for the year (otherwise than in respect of a disposition of taxable Canadian property that is treaty-protected property of the corporation);

Announced Temporary Administrative Change — Electronic signature to authorize corporate e-filing

Dept. of Finance Backgrounder, March 18, 2020: See under 241(5).

Announced Administrative Change — Elections, forms and responses to information requests delayed

CRA notice, March 26, 2020: See under 220(1).

Announced Administrative Change — COVID-19 — Filing deadline for corporations

CRA notice (tinyurl.com/covid-dates): See under 150(1) opening words above.

(b) **deceased individuals** — in the case of an individual who dies after October of the year and before the day that would be the individual's filing due date for the year if the individual had not died, by the individual's legal representatives on or before the day that is the later of the day on or before which the return would otherwise be required to be filed and the day that is 6 months after the day of death;

Announced Administrative Change — COVID-19 — Filing deadline for deceased individuals

CRA notice (tinyurl.com/covid-dates):
See under 150(1) opening words above, at subheadings “Deceased individuals” and “Deceased self-employed individuals”.

(c) **trusts or estates** — in the case of an estate or trust, within 90 days from the end of the year;

Announced Administrative Change — COVID-19 — Filing deadline for trusts

CRA notice (tinyurl.com/covid-dates):
See under 150(1) opening words.

(d) **individuals** — in the case of any other person, on or before

(i) the following April 30 by that person or, if the person is unable for any reason to file the return, by the person's guardian, committee or other legal representative (in this paragraph referred to as the person's “guardian”),

(ii) the following June 15 by that person or, if the person is unable for any reason to file the return, by the person's guardian where the person is

(A) an individual who carried on a business in the year, unless the expenditures made in the course of carrying on the business

were primarily the cost or capital cost of tax shelter investments (as defined in subsection 143.2(1)), or

(B) at any time in the year a cohabiting spouse or common-law partner (within the meaning assigned by section 122.6) of an individual to whom clause (A) applies, or

(iii) where at any time in the year the person is a cohabiting spouse or common-law partner (within the meaning assigned by section 122.6) of an individual to whom paragraph (b) applies for the year, on or before the day that is the later of the day on or before which the person's return would otherwise be required to be filed and the day that is 6 months after the day of the individual's death; or

Announced Administrative Changes — Individual tax returns

CRA news release, Jan. 22, 2020: *Do you file your taxes on paper? Here's what you need to know*

No matter how you choose to file your return, the Canada Revenue Agency (CRA) is working hard to make tax filing easier. Here are some things you should know if you are filing on paper this year.

Income tax and benefit package delivery

If you filed a paper return last year, we will mail you a 2019 Income tax package by February 17, 2020. The package will have everything you need to file a 2019 return.

If you don't receive a package in the mail, you can order or download copies as of January 21, 2020 at canada.ca/taxes-general-package. You can also call us starting February 24, 2020 at 1-855-330-3305 (for service in English) or 1-855-330-3310 (for service in French) to order a copy.

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A limited amount of packages will be available at select northern and rural Service Canada locations.

If you need to order a package, you should allow up to 10 days for delivery.

Changes to the package

New for the 2019 tax year: line numbers that used to be three or four digits are now five digits (e.g. line 150 on the return is now line 15000).

We have reduced the number of forms you need by incorporating Schedule 1 into the return, and we have updated worksheets to make calculations simpler.

Use File my Return

If you have a low or fixed income, you may be eligible to use File my Return, which lets you file your return by answering a series of short questions through a secure, dedicated, automated, telephone service. If you filed a paper return last year and are eligible to use File my Return, you will receive your personalized invitation letter with the 2019 Income tax package that we will mail to you. Starting February 24, 2020, you can use File my Return to quickly file your return using a phone.

Please remember to file by April 30, 2020 to avoid interruptions or delays to your benefit and credit payments. For more information to help you get ready for the 2020 tax season, go to canada.ca/taxes-get-ready.

Contacts: Media Relations, Canada Revenue Agency, 613-948-8366, cra-arc.media@cra-arc.gc.ca

Announced Administrative Change — COVID-19 — June 1, 2020 deadline for 2019 T1s

Dept. of Finance Backgrounder, March 18, 2020: Canada's COVID-19 Economic Response Plan: Support for Canadians and Businesses

Flexibility for Taxpayers

In order to provide greater flexibility to Canadians who may be experiencing hard-

ships during the COVID-19 outbreak, the Canada Revenue Agency will defer the filing due date for the 2019 tax returns of individuals, including certain trusts.

- For individuals (other than trusts), the return filing due date will be deferred until June 1, 2020. However, the Agency encourages individuals who expect to receive benefits under the GSTC or the Canada Child Benefit not to delay the filing of their return to ensure their entitlements for the 2020-21 benefit year are properly determined.

CRA, EFILE news and program update, March 18, 2020: Filing Season Deadline Extensions

In order to provide greater flexibility to Canadians who may be experiencing hardships during the COVID-19 outbreak, the Canada Revenue Agency will defer the filing due date for the 2019 tax returns of individuals, including certain trusts

- For individuals (other than trusts), the return filing due date will be deferred until June 1, 2020. However, the Agency encourages individuals who expect to receive benefits under the GSTC or the Canada Child Benefit not to delay the filing of their return to ensure their entitlements for the 2020-21 benefit year are properly determined.

[Remainder of news release under 150(1)(c) and 156.1(4). See also under 150(1) opening words — ed.]

Announced Administrative Change — COVID-19 — Elections, forms and responses to requests delayed to May 1 and June 1, 2020**CRA notice, March 26, 2020: COVID-19 Update: Additional measures from the Canada Revenue Agency**

The Canada Revenue Agency (CRA) understands that individuals and businesses might be dealing with difficulties filing their income and benefit returns, and could experi-

ence cash-flow challenges in the coming months. In response, the CRA is applying these additional measures:

Administrative income tax measures: In addition to the income tax filing and payment deadline extensions announced as part of the fiscal measures, unless otherwise noted, taxpayers may defer a number of other administrative tax actions required under the *Income Tax Act* (ITA) that are due after March 18, 2020, until June 1, 2020. [The statutory authority for the CRA doing this is 220(3) and 220(2.1) — ed.] These administrative income tax actions include the filing of returns, forms, elections, designations, and responses to information requests. Payment and remitting requirements are not covered by this announcement [see Announced Administrative Change under 156(1) for these measures — ed.].

- This measure also does not apply in respect of a prescribed form, receipt or document, or prescribed information, that is required to be filed with the Minister on or after the day specified, in respect of the form, receipt, document or information, in subsection 37(11) or paragraph (m) of the definition “investment tax credit” in subsection 127(9) of the ITA. [This is because 220(2.2) does not allow CRA to extend this deadline. However, the *Time Limits and Other Periods Act* (TLOPA) allows an extension. See Notes to TLOPA s. 7(1), in Proposed Amendment under 169(1) — ed.]
- Payroll deductions and all related activities (except to the extent they relate to the reduction of remittances related to the temporary wage subsidy [153(1.02 — ed.]) must continue to be done on time. [These are trust funds, and the presumption is that if the employer is able to pay the employee, the employer can also remit the withheld tax to CRA — ed.]

Trusts, Partnerships and NR4 Information Returns: The deadlines for trusts [Reg. 204(2) — ed.], partnership [Reg. 229(5) —

ed.] and NR4 Information returns [Reg. 202(7) — ed.] are all extended to May 1, 2020. [CRA’s authority for doing this is 220(3) — ed.] This is due to administrative requirements in advance of the June 1st deadline for filing individual income tax and benefit returns.

For more information

We thank you all for your patience as we navigate through this situation together. To learn more about how the CRA is helping Canadians with the economic impact of the COVID-19 Pandemic, go to *Helping Canadians with the economic impact of the COVID-19 Pandemic* [tinyurl.com/cra-covidhelp — ed.]. To get the latest information please bookmark this page as we update it often and follow us on our social media channels.

Announced Temporary Administrative Change — Electronic signature to authorize e-filing

Dept. of Finance Backgrounder, March 18, 2020: See under 241(5).

Announced Administrative Change — E-Filing of returns already paper-filed

CRA EFILE notice, April 20, 2020: *COVID-19 — Temporary Measure — Already Filed Paper Returns*

In support of the recent COVID-19 announcements, the Canada Revenue Agency (CRA) is continuing to introduce new measures to assist Canadians in filing their income tax and benefit returns during this difficult time.

In its ongoing commitment to serve Canadians better, the CRA will implement a temporary measure, starting on April 20, 2020, which will allow an electronic filer to submit an electronic return for their client, even if a paper return has already been received for that tax year, but has not yet been processed.

This temporary measure excludes returns where the:

- CRA's web response stated that the return must be paper filed; or
- Electronic filing exclusions are applicable.

We also ask that you file your clients' income tax and benefit returns electronically by June 1, 2020, to make sure their benefits and credits are not interrupted.

(e) **designated persons** — in a case where no person described by paragraph (a), (b) or (d) has filed the return, by such person as is required by notice in writing from the Minister to file the return, within such reasonable time as the notice specifies.

(1.1) Exception [— return not required] — Subsection (1) does not apply to a taxation year of a taxpayer if

Proposed Amendment — 150(1.1) opening words

(1.1) Exception [— return not required] — Subject to subsection (1.2), subsection (1) does not apply to a taxation year of a taxpayer if

Application: The July 27, 2018 draft legislation (Budget), subsec. 7(1), will amend the opening words of subsec. 150(1.1) to read as above, applicable to taxation years that end after Dec. 30, 2021.

Technical Notes: Subsection 150(1) stipulates the tax return requirements and the filing dates for different categories of taxpayers. Subsection 150(1.1) sets out exceptions to subsection 150(1), when the filing of a tax return is not required.

Subsection 150(1.1) is amended to provide that the exceptions from filing a return outlined in that subsection do not apply to an express trust, or for civil law purposes a trust other than a trust that is established by law or by judgement, that is resident in Canada unless the trust meets one of the excep-

tions outlined in new paragraphs 150(1.2)(a) to (n).

- (a) the taxpayer is a corporation that was a registered charity throughout the year; or
- (b) the taxpayer is an individual unless
 - (i) tax is payable under this Part by the individual for the year,
 - (ii) where the individual is resident in Canada at any time in the year, the individual has a taxable capital gain or disposes of capital property in the year,
 - (iii) where the individual is non-resident throughout the year, the individual has a taxable capital gain (otherwise than from an excluded disposition) or disposes of a taxable Canadian property (otherwise than in an excluded disposition) in the year, or
 - (iv) at the end of the year the individual's HBP balance or LLP balance (as defined in subsection 146.01(1) or 146.02(1)) is a positive amount.

Proposed Addition — 150(1.2)

(1.2) Exception [—] trusts — Subsection (1.1) does not apply to a taxation year of a trust if the trust is resident in Canada and is an express trust, or for civil law purposes a trust other than a trust that is established by law or by judgement, unless the trust

- (a) had been in existence for less than three months at the end of the year;
- (b) holds assets with a total fair market value that does not exceed \$50,000 throughout the year, if the only assets held by the trust throughout the year are one or more of
 - (i) cash,
 - (ii) a debt obligation described in paragraph (a) of the definition "fully exempt interest" in subsection 212(3),

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| <p>(iii) a share, debt obligation or right listed on a designated stock exchange,</p> <p>(iv) a share of the capital stock of a mutual fund corporation,</p> <p>(v) a unit of a mutual fund trust, and</p> <p>(vi) an interest in a related segregated fund (within the meaning assigned by paragraph 138.1(1)(a));</p> <p>(c) is required under the relevant rules of professional conduct or the laws of Canada or a province to hold funds for the purposes of the activity that is regulated under those rules or laws, provided the trust is not maintained as a separate trust for a particular client or clients;</p> <p>(d) is a registered charity;</p> <p>(e) is a club, society or association described in paragraph 149(1)(l);</p> <p>(f) is a mutual fund trust;</p> <p>(g) is, for greater certainty, a related segregated fund trust, within the meaning assigned by paragraph 138.1(1)(a);</p> <p>(h) is prescribed to be a master trust;</p> <p>(i) is, for greater certainty, a graduated rate estate;</p> <p>(j) is a “qualified disability trust”, as defined in subsection 122(3);</p> <p>(k) is an employee life and health trust;</p> <p>(l) is a trust described under paragraph 81(1)(g.3);</p> <p>(m) is a trust under or governed by</p> <ul style="list-style-type: none"> (i) a deferred profit sharing plan, (ii) a pooled registered pension plan, (iii) a registered disability savings plan, (iv) a registered education savings plan, (v) a registered pension plan, (vi) a registered retirement income fund, | <p>(vii) a registered retirement savings plan, or</p> <p>(viii) a tax-free savings account; or</p> <p>(n) a cemetery care trust or a trust governed by an eligible funeral arrangement.</p> <p>Application: The July 27, 2018 draft legislation (Budget), subsec. 7(2), will add subsec. 150(1.2), applicable to taxation years that end after Dec. 30, 2021.</p> <p>Technical Notes: New subsection 150(1.2) provides for an exception to subsection 150(1.1) and requires that a trust that is resident in Canada (including trusts that are deemed resident in Canada under section 94) and that is an express trust (or for civil law purposes a trust other than a trust that is established by law or by judgement) file a tax return notwithstanding that it may meet one of the exceptions to filing a return listed in subsection 150(1.1).</p> <p>Subsection 150(1.2), however, also includes a number of exceptions to the requirement to file a return which are listed in paragraphs (a) to (n). In addition, a trust that meets one of the exceptions listed in paragraphs 150(1.2)(a) to (n) will not be required to provide the additional information set out in new section 204.2 of the Regulations. Trusts that are required to file a return, whether because of current filing requirements under subsection 150(1) or because of new subsection 150(1.2), will be required to provide the additional information outlined in section 204.2 of the Regulations. For more information, see the commentary on section 204.2 of the Regulations.</p> <p>The exceptions to the reporting requirements in new subsection 150(1.2) are as follows:</p> <ul style="list-style-type: none"> • trusts that have been in existence for less than three months; • trusts that hold assets with a total fair market value that does not exceed \$50,000 throughout the year, where the |
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- only assets held by the trust throughout the year are one or more of
- cash,
 - certain government debt obligations,
 - a share, debt obligation or right listed on a designated stock exchange,
 - a share of the capital stock of a mutual fund corporation,
 - a unit of a mutual fund trust, and
 - an interest in a related segregated fund (within the meaning assigned by paragraph 138.1(1)(a));
- trusts that are required under the relevant rules of professional conduct or the laws of Canada or a province to hold funds for the purposes of the activity that is regulated under those rules or laws, provided the trust is not maintained as a separate trust for a particular client or clients (this provides an exception for a lawyer's general trust account, but not for specific client accounts);
 - trusts that qualify as non-profit organizations or registered charities;
 - mutual fund trusts, segregated funds and master trusts;
 - graduated rate estates;
 - qualified disability trusts;
 - employee life and health trusts;
 - certain government funded trusts;
 - trusts under or governed by a deferred profit sharing plan, pooled registered pension plan, registered disability savings plan, registered education savings plan, registered pension plan, registered retirement income fund or registered retirement savings plan; and
 - cemetery care trusts and trusts governed by eligible funeral arrangements.

Federal Budget, Notice of Ways and Means Motion, Feb. 27, 2018: 17. The Act is modified to give effect to the proposals relating to reporting requirements for

trusts described in the budget documents tabled by the Minister of Finance in the House of Commons on February 27, 2018.

Federal Budget, Supplementary Information, Feb. 27, 2018: Reporting Requirements for Trusts

Authorities require sufficient information in order to determine taxpayers' tax liabilities and to effectively counter aggressive tax avoidance as well as tax evasion, money laundering and other criminal activities. Some taxpayers have used trusts in complex arrangements to prevent the appropriate authorities from acquiring this required information.

A trust that does not earn income or make distributions in a year is generally not required to file an annual (T3) return of income. A trust is required to file a T3 return if the trust has tax payable or it distributes all or part of its income or capital to its beneficiaries. Even if a trust is required to file a return of income for a year, there is no requirement for the trust to report the identity of all its beneficiaries. Given the absence of an annual reporting requirement, and the limitations with respect to the information collected when reporting is required, there are significant gaps with respect to the information that is currently collected with respect to trusts.

As a consequence, Budget 2017 [see under 239(1) — ed.] announced the Government's intention to examine ways to enhance the tax reporting requirements for trusts in order to improve the collection of beneficial ownership information.

Reporting Requirements

To improve the collection of beneficial ownership information with respect to trusts, Budget 2018 proposes to require that certain trusts provide additional information on an annual basis. The new reporting requirements will impose an obligation on certain trusts to file a T3 return where one does not currently exist. This information would be used to help the Canada Revenue Agency assess the tax liability for trusts and its beneficiaries.

The new reporting requirements will apply to express trusts that are resident in Canada and to non-resident trusts that are currently required to file a T3 return. An express trust is generally a trust created with the settlor's express intent, usually made in writing (as opposed to a resulting or constructive trust, or certain trusts deemed to arise under the provisions of a statute). **Exceptions to the additional reporting requirements are proposed for the following types of trusts:**

- mutual fund trusts, segregated funds and master trusts;
- trusts governed by registered plans (i.e., deferred profit sharing plans, pooled registered pension plans, registered disability savings plans, registered education savings plans, registered pension plans, registered retirement income funds, registered retirement savings plans, registered supplementary unemployment benefit plans and tax-free savings accounts);
- lawyers' general trust accounts [*note that this does not exempt lawyers' trust accounts for specific clients, but requiring disclosure of such accounts will likely breach solicitor-client privilege — ed.*];
- graduated rate estates and qualified disability trusts;
- trusts that qualify as non-profit organizations or registered charities; and
- trusts that have been in existence for less than three months or that hold less than \$50,000 in assets throughout the taxation year (provided, in the latter case, that their holdings are confined to deposits, government debt obligations and listed securities).

[It has been suggested to Finance that other regulated trust accounts be added, in addition to those of a lawyer — e.g., real estate brokers, and funeral/cemetery trusts (see 148.1) — ed.]

Where the new reporting requirements apply to a trust, **the trust will be required to report the identity of all trustees, benefici-**

aries and settlors of the trust, as well as the identity of each person who has the ability (through the trust terms or a related agreement) to exert control over trustee decisions regarding the appointment of income or capital of the trust (e.g., a **protector**).

In order to implement the new reporting requirements, and to improve the Canada Revenue Agency's audit and administration of trusts and trust returns, Budget 2018 proposes to provide funding of \$79 million over a five-year period and \$15 million on an ongoing basis to the Canada Revenue Agency in order to support the development of an electronic platform for processing T3 returns.

These proposed new reporting requirements will apply to returns required to be filed for the 2021 and subsequent taxation years.

Penalties

To support these new reporting requirements, Budget 2018 proposes to introduce new penalties for a failure to file a T3 return, including a required beneficial ownership schedule, in circumstances where the schedule is required. The penalty will be equal to \$25 for each day of delinquency, with a minimum penalty of \$100 and a maximum penalty of \$2,500. If a failure to file the return was made knowingly, or due to gross negligence, an additional penalty will apply. The additional penalty will be equal to 5% of the maximum fair market value of property held during the relevant year by the trust, with a minimum penalty of \$2,500. As well, existing penalties will continue to apply.

The new penalties will apply in respect of returns required to be filed for the 2021 and subsequent taxation years.

Dept. of Finance news release, Dec. 11, 2017: Agreement to Strengthen Beneficial Ownership Transparency

Finance Ministers [at a meeting of federal, provincial and territorial FMs — ed.] agreed on the importance of ensuring appropriate safeguards are in place to prevent the misuse of corporations and other legal entities for

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tax evasion and other criminal purposes, such as money laundering, corruption and the financing of terrorist activities. To this end:

1. Ministers agreed in principle to pursue legislative amendments to federal, provincial and territorial corporate statutes or other relevant legislation to ensure corporations hold accurate and up to date information on beneficial owners that will be available to law enforcement, and tax and other authorities.
2. Ministers agreed in principle to pursue amendments to federal, provincial and territorial corporate statutes to eliminate the use of bearer shares and bearer share warrants or options and to replace existing ones with registered instruments.
3. Ministers agreed to work with respective Ministers responsible for corporate statutes and through their respective Cabinet processes to make best efforts to put forward these legislative amendments in order to bring these changes into force by July 1, 2019.
4. Ministers agreed to develop a joint outreach and consultation plan for coordinated engagement with the business community and other stakeholders.
5. Ministers agreed to continue existing work assessing potential mechanisms to enhance timely access by competent authorities to beneficial ownership information.
6. Ministers agreed to establish a federal, provincial and territorial working group to combat aggressive tax planning strategies that erode the integrity of the Canadian tax base.

Backgrounder: Tax Fairness and Beneficial Ownership Transparency

The Government of Canada is committed to ensuring all Canadians pay their fair share of taxes.

Appropriate authorities need to know who owns which companies in Canada to counter

international tax evasion and avoidance, money laundering, and other criminal activities perpetrated through the misuse of corporate vehicles.

The concealment of corporate ownership information (also called “beneficial ownership”) can be part of international webs used to facilitate tax evasion, money laundering, corruption, financing of terrorist activities, and the proliferation of dangerous goods.

Current Legislation

In support of its national and global tax fairness efforts, the federal government has already developed an extensive network of bilateral tax treaties and tax information exchange agreements with international partners. Furthermore, it has recently passed legislation to adopt the Common Reporting Standard, and signed on to the Organisation for Economic Cooperation and Development (OECD)’s Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

However, Canada still has significant blind spots when it comes to knowing the identity of those who own or control a corporation operating in Canada. Addressing this problem requires coordinated action between jurisdictions, given that only 10 per cent of Canadian companies are federally incorporated.

Furthermore, although Canada’s anti-money laundering and anti-terrorist financing laws require that beneficial ownership information be provided by corporations when accessing financial services, requirements under federal, provincial and territorial corporate law for corporations to hold beneficial ownership information remain limited.

Addressing the Blind Spots

In Budget 2016 and Budget 2017, the federal government committed to cracking down on tax evasion and tax avoidance. This includes commitments to further strengthening corporate transparency. The information revealed through the recent leaks of the Panama and Paradise Papers reinforces the need for action.

To address current blind spots, action will be taken to improve the available beneficial ownership information to ensure appropriate authorities have timely access to this information in all jurisdictions.

These actions are part of international efforts in that regard. For example, in the United Kingdom, the names of people who have significant control of companies are now included in a central registry.

Federal Budget, Chapter 4, “Tax Fairness for the Middle Class”, March 22, 2017: Strengthening Corporate and Beneficial Ownership Transparency

The Government of Canada is committed to implementing strong standards for corporate and beneficial ownership transparency that provide safeguards against money laundering, terrorist financing, tax evasion and tax avoidance, while continuing to facilitate the ease of doing business in Canada. Understanding the ownership and control of corporations is vital for good corporate governance and to protect the integrity of the tax and financial systems.

The Government will collaborate with provinces and territories to put in place a national strategy to strengthen the transparency of legal persons and legal arrangements and improve the availability of beneficial ownership information.

The Government is also examining ways to enhance the tax reporting requirements for trusts in order to improve the collection of beneficial ownership information.

These actions will ensure that law enforcement and other authorities have timely access to the information needed to crack down on money laundering, terrorist financing and tax evasion and to combat tax avoidance.

Federal Budget, Supplementary Information, March 19, 2019: Previously Announced Measures

Budget 2019 confirms the Government’s intention to proceed with the following previously announced tax and related measures,

as modified to take into account consultations and deliberations since their release: ...

- The income tax measures announced in Budget 2018 to implement enhanced reporting requirements for certain trusts to provide additional information on an annual basis;

(2) Demands for returns — Every person, whether or not the person is liable to pay tax under this Part for a taxation year and whether or not a return has been filed under subsection (1) or (3), shall, on demand sent by the Minister, file, within such reasonable time stipulated in the demand, with the Minister in prescribed form and containing prescribed information a return of the income for the taxation year designated in the demand.

(3) Trustees, etc. — Every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding up, controlling or otherwise dealing with the property, business, estate or income of a person who has not filed a return for a taxation year as required by this section shall file a return in prescribed form of that person’s income for that year.

(4) Death of partner or proprietor — Where

- (a) subsection 34.1(9) or 34.2(8) applies in computing an individual’s income for a taxation year from a business, or
- (b) an individual who carries on a business in a taxation year dies in the year and after the end of a fiscal period of the business that ends in the year, another fiscal period of the business (in this subsection referred to as the “short period”) ends in the year because of the individual’s death, and the individual’s legal representative elects that this subsection apply,

the individual’s income from businesses for short periods, if any, shall not be included in computing the individual’s income for the

S. 150(4)

Income Tax Act, Part I

year and the individual's legal representative shall file an additional return of income for the year in respect of the individual as if the return were filed in respect of another person and shall pay the tax payable under this Part by that other person for the year computed as if

- (c) the other person's only income for the year were the amount determined by the formula

$$A + B - C$$

where

- A is the total of all amounts each of which is the individual's income from a business for a short fiscal period,
- B is the total of all amounts each of which is an amount deducted under subsection 34.2(8) in computing the individual's income for the taxation year in which the individual dies, and
- C is the total of all amounts each of which is an amount included under subsection 34.1(9) in computing the individual's income for the taxation year in which the individual dies, and
- (d) subject to sections 114.2 and 118.93, that other person were entitled to the deductions to which the individual is entitled under sections 110, 118 to 118.7 and 118.9 for the year in computing the individual's taxable income or tax payable under this Part, as the case may be, for the year.

(5) Excluded disposition — For the purposes of this section, a disposition of a property by a taxpayer at any time in a taxation year is an excluded disposition if

- (a) the taxpayer is non-resident at that time;
- (b) no tax is payable under this Part by the taxpayer for the taxation year;
- (c) the taxpayer is, at that time, not liable to pay any amount under this Act in respect of any previous taxation year

(other than an amount for which the Minister has accepted, and holds, adequate security under section 116 or 220); and

(d) each taxable Canadian property disposed of by the taxpayer in the taxation year is

(i) excluded property within the meaning assigned by subsection 116(6), or

(ii) a property in respect of the disposition of which the Minister has issued to the taxpayer a certificate under subsection 116(2), (4) or (5.2).

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Payment of Tax

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159. (1) Person acting for another —

For the purposes of this Act, where a person is a legal representative of a taxpayer at any time,

(a) the legal representative is jointly and severally, or solidarily, liable with the taxpayer

(i) to pay each amount payable under this Act by the taxpayer at or before that time and that remains unpaid, to the extent that the legal representative is at that time in possession or control, in the capacity of legal representative, of property that belongs or belonged to, or that is or was held for the benefit of, the taxpayer or the taxpayer's estate, and

(ii) to perform any obligation or duty imposed under this Act on

the taxpayer at or before that time and that remains outstanding, to the extent that the obligation or duty can reasonably be considered to relate to the responsibilities of the legal representative acting in that capacity; and

(b) any action or proceeding in respect of the taxpayer taken under this Act at or after that time by the Minister may be so taken in the name of the legal representative acting in that capacity and, when so taken, has the same effect as if it had been taken directly against the taxpayer and, if the taxpayer no longer exists, as if the taxpayer continued to exist.

(2) Certificate before distribution — Every legal representative (other than a trustee in bankruptcy) of a taxpayer shall, before distributing to one or more persons any property in the possession or control of the legal representative acting in that capacity, obtain a certificate from the Minister, by applying for one in prescribed form, certifying that all amounts

(a) for which the taxpayer is or can reasonably be expected to become liable under this Act at or before the time the distribution is made, and

(b) for the payment of which the legal representative is or can reasonably be expected to become liable in that capacity

have been paid or that security for the payment thereof has been accepted by the Minister.

Announced Administrative Change — 159(2) — Requesting clearance certificate by email

CRA notice, June 23, 2020: Clearance certificates: CRA and COVID-19

Clearance certificates (Forms TX19 and GST352) continue to be processed. However, as Canada Revenue Agency (CRA) employees are working under certain restrictions for their health and safety during the

COVID-19 pandemic, processing times may be increased.

Employees have limited access to the office and are currently receiving minimal submissions sent by mail or fax. As a result, any documentation or new clearance request applications sent to the CRA after March 12, 2020, may not have been included in the inventory for processing.

Legal representatives who submitted a clearance request after March 12, 2020, are encouraged to resubmit the request and supporting documents electronically.

You and your representatives can now submit your request for a clearance certificate (TX19 and GST352) online through My Account, Represent a Client, or My Business Account. For more information go to: Request a clearance certificate.

As part of the response to COVID-19, the CRA has also created a temporary procedure allowing taxpayers and their representatives to submit clearance certificate requests and supporting information via email, should they not be able to use one of the portals.

How to send us your documents via email

1. If you are unable to use My Account, Represent a Client, or My Business Account to submit your request for clearance certificate (Forms TX19 and GST353) electronically, send an email to CCTX19G@cra-arc.gc.ca stating that you want to correspond by email with the CRA to submit a request or enquiry to CCTX19G@cra-arc.gc.ca and include, in the subject line, the province where the executor lives.

Example: Sample email from a legal representative

Joe is a legal representative living in the province of Ontario. Joe can submit a request to the CRA via email.

To: CCTX19G@cra-arc.gc.ca

Subject: Clearance certificate (Ontario)

Body: I am the legal representative and need to file a clearance certificate request. Please send instructions.

Do not include any sensitive information or attachments in the email.

2. Wait for a CRA officer to respond to your email. The CRA officer will send you the requirements to authorize communication by email, and tell you when/if you are permitted to submit your application or request by email.

NOTE: Please be advised that there are risks involved in sending sensitive and/or personal information over email. The CRA is temporarily allowing applications to be submitted via email as an emergency measure to help stop the spread of COVID-19.

NOTE: Incomplete applications will cause delays in processing.

(3) Personal liability — If a legal representative (other than a trustee in bankruptcy) of a taxpayer distributes to one or more persons property in the possession or control of the legal representative, acting in that capacity, without obtaining a certificate under subsection (2) in respect of the amounts referred to in that subsection,

(a) the legal representative is personally liable for the payment of those amounts to the extent of the value of the property distributed;

(b) the Minister may at any time assess the legal representative in respect of any amount payable because of this subsection; and

(c) the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, to an assessment made under this subsection as though it had been made under section 152 in respect of taxes payable under this Part.

(3.1) Appropriation of property — For the purposes of subsections (2) and (3), an appropriation by a legal representative of a taxpayer of property in the possession or control of the legal representative acting in

that capacity is deemed to be a distribution of the property to a person.

(5) Election [to spread out payments] where certain provisions applicable [on death] — Where subsection 70(2), (5) or (5.2) of this Act or subsection 70(9.4) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, is applicable in respect of a taxpayer who has died, and the taxpayer's legal representative so elects and furnishes the Minister with security acceptable to the Minister for payment of any tax the payment of which is deferred by the election, notwithstanding any provision of this Part or the *Income Tax Application Rules* respecting the time within which payment shall be made of the tax payable under this Part by the taxpayer for the taxation year in which the taxpayer died, all or any portion of such part of that tax as is equal to the amount, if any, by which that tax exceeds the amount that that tax would be, if this Act were read without reference to subsections 70(2), (5) and (5.2) and the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, were read without reference to subsections 70(2), (5), (5.2) and (9.4) of that Act, may be paid in such number (not exceeding 10) of equal consecutive annual instalments as is specified by the legal representative in the election, the first instalment of which shall be paid on or before the day on or before which payment of that tax would, but for the election, have been required to be made and each subsequent instalment of which shall be paid on or before the next following anniversary of that day.

(5.1) Idem [pre-1972 professional business] — Where, in the taxation year in which a taxpayer dies, an amount is included in computing the taxpayer's income by virtue of paragraph 23(3)(c) of the *Income Tax Application Rules*, the provisions of subsection (5) apply, with such modifications as the circumstances require, as though the amount were an amount included in computing the taxpayer's income for the year by virtue of subsection 70(2) or an amount

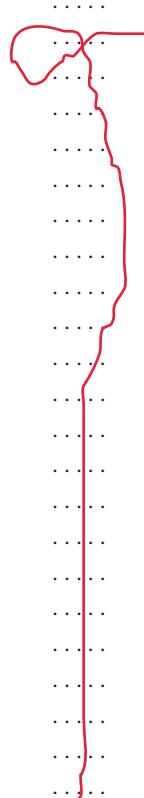
deemed to have been received by the taxpayer by virtue of subsection 70(5).

(6) Idem — For the purposes of subsection (5), the “tax payable under this Part” by a taxpayer for the taxation year in which the taxpayer died includes any tax payable under this Part by virtue of an election in respect of the taxpayer’s death made by the taxpayer’s legal representative under subsection 70(2) or under the provisions of that subsection as they are required to be read by virtue of the *Income Tax Application Rules*.

(6.1) Election where subsec. 104(4) applicable — Where a time determined under paragraph 104(4)(a), (a.1), (a.2), (a.3), (a.4), (b) or (c) in respect of a trust occurs in a taxation year of the trust and the trust so elects and furnishes to the Minister security acceptable to the Minister for payment of any tax the payment of which is deferred by the election, notwithstanding any other provision of this Part respecting the time within which payment shall be made of the tax payable under this Part by the trust for the year, all or any portion of the part of that tax that is equal to the amount, if any, by which that tax exceeds the amount that that tax would be if this Act were read without reference to paragraph 104(4)(a), (a.1), (a.2), (a.3), (a.4), (b) or (c), as the case may be, may be paid in the number (not exceeding 10) of equal consecutive annual instalments that is specified by the trust in the election, the first instalment of which shall be paid on or before the day on or before which payment of that tax would, but for the election, have been required to be made and each subsequent instalment of which shall be paid on or before the next following anniversary of that day.

(7) Form and manner of election and interest — Every election made by a taxpayer under subsection (4) or (6.1) or by the legal representative of a taxpayer under subsection (5) shall be made in prescribed form and on condition that, at the time of payment of any amount payment of which is deferred by the election, the taxpayer shall pay to the Receiver General interest on the amount at the prescribed rate in effect at the time the

election was made, computed from the day on or before which the amount would, but for the election, have been required to be paid to the day of payment.



can some of these
be deleted please?

PART XVII — INTERPRETATION

248. (1) Definitions — In this Act,

.....

“common-law partner”, with respect to a taxpayer at any time, means a person who cohabits at that time in a conjugal relationship with the taxpayer and

- (a) has so cohabited throughout the 12-month period that ends at that time, or
- (b) would be the parent of a child of whom the taxpayer is a parent, if this

Act were read without reference to paragraphs 252(1)(c) and (e) and subparagraph 252(2)(a)(iii),

and, for the purpose of this definition, where at any time the taxpayer and the person cohabit in a conjugal relationship, they are, at any particular time after that time, deemed to be cohabiting in a conjugal relationship unless they were living separate and apart at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship;

“common-law partnership” means the relationship between two persons who are common-law partners of each other;

.....

“death benefit” means the total of all amounts received by a taxpayer in a taxation year on or after the death of an employee in recognition of the employee’s service in an office or employment minus

(a) where the taxpayer is the only person who has received such an amount and who is a surviving spouse or common-law partner of the employee (which person is, in this definition, referred to as the “surviving spouse or common-law partner”), the lesser of

(i) the total of all amounts so received by the taxpayer in the year, and

(ii) the amount, if any, by which \$10,000³ exceeds the total of all amounts received by the taxpayer in preceding taxation years on or after the death of the employee in recognition of the employee’s service in an office or employment, or

(b) where the taxpayer is not the surviving spouse or common-law partner of the employee, the lesser of

(i) the total of all amounts so received by the taxpayer in the year, and

(ii) that proportion of

(A) the amount, if any, by which \$10,000⁴ exceeds the total of all amounts received by the surviving spouse or common-law partner of the employee at any time on or after the death of the employee in recognition of the employee’s service in an office or employment

that

(B) the amount described in subparagraph (i)

is of

(C) the total of all amounts received by all taxpayers other than the surviving spouse or common-law partner of the employee at any time on or after the death of the employee in recognition of the employee’s service in an office or employment;

.....

“legal representative” of a taxpayer means a trustee in bankruptcy, an assignee, a liquidator, a curator, a receiver of any kind, a trustee, an heir, an administrator, an executor, a liquidator of a succession, a committee, or any other like person, administering, winding up, controlling or otherwise dealing in a representative or fiduciary capacity with the property that belongs or belonged to, or

³ Not indexed for inflation.

⁴ Not indexed for inflation.

that is or was held for the benefit of, the taxpayer or the taxpayer's estate;

.....

(8) Occurrences as a consequence of death — For the purpose of this Act,

(a) a transfer, distribution or acquisition of property under or as a consequence of the terms of the will or other testamentary instrument of a taxpayer or the taxpayer's spouse or common-law partner or as a consequence of the law governing the intestacy of a taxpayer or the taxpayer's spouse or common-law partner shall be considered to be a transfer, distribution or acquisition of the property as a consequence of the death of the taxpayer or the taxpayer's spouse or common-law partner, as the case may be;

(b) a transfer, distribution or acquisition of property as a consequence of a disclaimer, release or surrender by a person who was a beneficiary under the will or other testamentary instrument or on the intestacy of a taxpayer or the taxpayer's spouse or common-law partner shall be considered to be a transfer, distribution or acquisition of the property as a consequence of the death of the taxpayer or the taxpayer's spouse or common-law partner, as the case may be; and

(c) a release or surrender by a beneficiary under the will or other testamentary instrument or on the intestacy of a taxpayer with respect to any property that was property of the taxpayer immediately before the taxpayer's death shall be considered not to be a disposition of the property by the beneficiary.

.....

(23.1) Transfers after death — If, as a consequence of the laws of a province relating to spouses' or common-law partners' interests or rights in respect of property as a result of marriage or common-law partner-

ship, property is, after the death of a taxpayer,

(a) transferred or distributed to a person who was the taxpayer's spouse or common-law partner at the time of the death, or acquired by that person, the property shall be deemed to have been so transferred, distributed or acquired, as the case may be, as a consequence of the death; or

(b) transferred or distributed to the taxpayer's estate, or acquired by the taxpayer's estate, the property shall be deemed to have been so transferred, distributed or acquired, as the case may be, immediately before the time that is immediately before the death.

(24) Accounting methods — For greater certainty, it is hereby declared that, unless specifically required, neither the equity nor the consolidation method of accounting shall be used to determine any amount for the purposes of this Act.

(25) Beneficially interested — For the purposes of this Act,

(a) a person or partnership beneficially interested in a particular trust includes any person or partnership that has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretion by any person or partnership) as a beneficiary under a trust to receive any of the income or capital of the particular trust either directly from the particular trust or indirectly through one or more trusts or partnerships;

(b) except for the purpose of this paragraph, a particular person or partnership is deemed to be beneficially interested in a particular trust at a particular time where

(i) the particular person or partnership is not beneficially interested in the particular trust at the particular time,

- (ii) because of the terms or conditions of the particular trust or any arrangement in respect of the particular trust at the particular time, the particular person or partnership might, because of the exercise of any discretion by any person or partnership, become beneficially interested in the particular trust at the particular time or at a later time, and
- (iii) at or before the particular time, either
- (A) the particular trust has acquired property, directly or indirectly in any manner whatever, from
 - (I) the particular person or partnership,
 - (II) another person with whom the particular person or partnership, or a member of the particular partnership, does not deal at arm's length,
 - (III) a person or partnership with whom the other person referred to in subclause (II) does not deal at arm's length,
 - (IV) a controlled foreign affiliate of the particular person or of another person with whom the particular person or partnership, or a member of the particular partnership, does not deal at arm's length, or
 - (V) a non-resident corporation that would, if the particular partnership were a corporation resident in Canada, be a con-
- trolled foreign affiliate of the particular partnership, or
- (B) a person or partnership described in any of subclauses (A)(I) to (V) has given a guarantee on behalf of the particular trust or provided any other financial assistance whatever to the particular trust; and
- (c) a member of a partnership that is beneficially interested in a trust is deemed to be beneficially interested in the trust.
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- 252. (1) Extended meaning of “child”** — In this Act, words referring to a child of a taxpayer include
- (a) a person of whom the taxpayer is the legal parent;
 - (b) a person who is wholly dependent on the taxpayer for support and of whom the taxpayer has, or immediately before the person attained the age of 19 years had, in law or in fact, the custody and control;
 - (c) a child of the taxpayer's spouse or common-law partner; and
 - (d) [Repealed]
 - (e) a spouse or common-law partner of a child of the taxpayer.
- (2) Relationships** — In this Act, words referring to
- (a) a parent of a taxpayer include a person
 - (i) whose child the taxpayer is,
 - (ii) whose child the taxpayer had previously been within the meaning of paragraph (1)(b), or
 - (iii) who is a parent of the taxpayer's spouse or common-law partner;

- (b) a brother of a taxpayer include a person who is
 - (i) the brother of the taxpayer's spouse or common-law partner, or
 - (ii) the spouse or common-law partner of the taxpayer's sister;
- (c) a sister of a taxpayer include a person who is
 - (i) the sister of the taxpayer's spouse or common-law partner, or
 - (ii) the spouse or common-law partner of the taxpayer's brother;
- (d) a grandparent of a taxpayer include a person who is
 - (i) the grandfather or grandmother of the taxpayer's spouse or common-law partner, or
 - (ii) the spouse or common-law partner of the taxpayer's grandfather or grandmother;
- (e) an aunt or uncle of a taxpayer include the spouse or common-law partner of the taxpayer's aunt or uncle, as the case may be;
- (f) a great-aunt or great-uncle of a taxpayer include the spouse or common-law partner of the taxpayer's great-aunt or great-uncle, as the case may be; and
- (g) a niece or nephew of a taxpayer include the niece or nephew, as the case may be, of the taxpayer's spouse or common-law partner.

(3) Extended meaning of “spouse” and “former spouse” — For the purposes of paragraph 56(1)(b), section 56.1, paragraphs 60(b) and (j), section 60.1, subsections 70(6) and (6.1), 73(1) and (5) and 104(4), (5.1) and (5.4), the definition “pre-1972 spousal trust” in subsection 108(1), subsection 146(16), the definition “survivor” in subsection 146.2(1), subparagraph 146.3(2)(f)(iv), subsections 146.3(14), 147(19) and 147.3(5) and (7), section 147.5, subsections 148(8.1) and (8.2), the definition

“qualifying transfer” in subsection 207.01(1), and subsections 210(1) and 248(22) and (23), “spouse” and “former spouse” of a particular individual include another individual who is a party to a void or voidable marriage with the particular individual.

Proposed Amendment — 252(3)

Application: The July 30, 2019 draft legislation, s. 20, will amend subsec. 252(3) to change “subsections 146.3(14), 147(19)” to “subsection 146.3(14), section 146.5, subsections 147(19)”, deemed to have come into force on Jan. 1, 2020.

Technical Notes: Subsection 252(3) extends the meaning of the terms “spouse” and “former spouse” to include, for a number of purposes in the Act, a party to a void or voidable marriage.

Consequential on the introduction of advanced life deferred annuities under new section 146.5, which includes certain benefits payable to an annuitant’s spouse after the death of the annuitant, subsection 252(3) is amended so that it applies for the purposes of section 146.5.

(4) [Repealed]

252.1 Union [as] employer — All the structural units of a trade union, including each local, branch, national and international unit, shall be deemed to be a single employer and a single entity for the purposes of the provisions of this Act and the regulations relating to

- (a) pension adjustments and past service pension adjustments for years after 1994;
- (b) the determination of whether a pension plan is, in a year after 1994, a multi-employer plan or a specified multi-employer plan (within the meanings assigned by subsection 147.1(1));
- (c) the determination of whether a contribution made under a plan or arrange-

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Income Tax Act

ment is a resident's contribution (within the meaning assigned by subsection 207.6(5.1)); and

(d) the deduction or withholding and the remittance of any amount as required by subsection 153(1) in respect

of a contribution made after 1991 under a retirement compensation arrangement.

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INCOME TAX REGULATIONS

CONSOLIDATED REGULATIONS
OF CANADA, CHAPTER 945
(CONSOLIDATED AS OF DECEMBER 31, 1977)
PROCLAIMED IN FORCE AUGUST 15, 1979, AS AMENDED TO APRIL 11, 2020

PART II — INFORMATION RETURNS

204. Estates and trusts — (1) Every person having the control of, or receiving income, gains or profits in a fiduciary capacity, or in a capacity analogous to a fiduciary capacity, shall make a return in prescribed form in respect thereof.

(2) The return required under this section shall be filed within 90 days from the end of the taxation year and shall be in respect of the taxation year.

Announced Administrative Change — Trust information return deadline extended to May 1, 2020

CRA notice, March 26, 2020: *Trusts, Partnerships and NR4 Information Returns:* The deadlines for trusts [Reg. 204(2) — ed.], partnership [Reg. 229(5) — ed.] and NR4 Information returns [Reg. 202(7) — ed.] are all extended to May 1, 2020. [CRA's authority for this is in ITA 220(3) — ed.] This is due to administrative requirements in advance of the June 1st deadline for filing individual income tax and benefit returns.

Notes: Editorial annotations have been added in square brackets to update references to the ITA where the numbering of the provision has changed as a result of the R.S.C. 1985, c. 1 (5th Supp.) consolidation implemented in 1994. (See Reg. 700(1) and 2301 as examples.)

Regulations cannot override the Act, unless authorized by ITA 221: *G.H.C. Investment*, [1961] C.T.C. 187 (Exch. Ct.); *Phénix*, [1998] 1 C.T.C. 2379 (TCC), para. 72.

[See under ITA 150(1)(d) for the rest of this news release — ed.]

(3) Subsection (1) does not require a trust to make a return for a taxation year at the end of which it is

- (a) governed by a deferred profit sharing plan or by a plan referred to in subsection 147(15) of the Act as a revoked plan;
- (b) governed by an employees profit sharing plan;
- (c) a registered charity;
- (d) governed by an eligible funeral arrangement;
- (d.1) a cemetery care trust;
- (e) governed by a registered education savings plan;
- (f) governed by a TFSA or by an arrangement that is deemed by paragraph 146.2(9)(a) of the Act to be a TFSA; or
- (g) governed by a registered disability savings plan, except if paragraph 146.4(5)(a) or (b) of the Act applies.

206. Legal representatives and others — (1) Where a person, who is required to make a return under this Part, has died, such return shall be filed by his legal representative within 90 days of the date of death and shall be in respect of any calendar

S. 206(1)

Income Tax Regulations

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| year or a portion thereof prior to the date of death for which a return has not previously been filed. | |
| (2) Every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding-up, controlling or otherwise dealing with the property, business, estate or income of a person who has not filed a return as required by this Part shall file such return. | |
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INSURANCE ACT

R.S.O. 1990, c. I.8, as am. S.O. 1993, c. 10, ss. 1–51; 1993, c. 27, Sched.; 1994, c. 11, ss. 336–348; 1994, c. 27, s. 43(2); 1996, c. 21, ss. 1–49; 1997, c. 16, s. 9; 1997, c. 19, s. 10; 1997, c. 25, Sched. E, s. 5; 1997, c. 28, ss. 64–92, 94–120, 122–134, 141, 143–147; 1997, c. 43, Sched. F, s. 5; 1999, c. 6, s. 31; 1999, c. 12, Sched. I, s. 4 [s. 4(59) repealed 2006, c. 21, Sched. F, s. 10.1.]; 2000, c. 26, Sched. G, s. 1 [Repealed 2006, c. 21, Sched. F, s. 10.1.]; 2001, c. 8, ss. 43, 44; 2002, c. 14, Sched., s. 10; 2002, c. 17, Sched. F, s. 1; 2002, c. 18, Sched. H, s. 4(1)–(15), (16) (Fr.), (17)–(34); 2002, c. 22, ss. 114–133 [ss. 121, 122 repealed 2006, c. 21, Sched. F, s. 10.1.]; 2002, c. 24, Sched. B, s. 39; 2002, c. 31, s. 10 [Repealed 2006, c. 21, Sched. F, s. 10.1.]; 2004, c. 8, s. 46; 2004, c. 11; 2004, c. 31, Sched. 20, ss. 1–12; 2005, c. 5, s. 35(1)–(6), (7) (Fr.), (8)–(18); 2005, c. 31, Sched. 12; 2006, c. 19, Sched. C, s. 1(1), Sched. L, s. 11(3); 2006, c. 21, Sched. F, s. 136(1), Table 1; 2006, c. 33, Sched. O, ss. 1–16; 2007, c. 7, Sched. 18; 2009, c. 33, Sched. 16, s. 7(1)–(4), (5) (Fr.); 2010, c. 1, Sched. 11; 2010, c. 26, Sched. 9; 2011, c. 9, Sched. 21; 2012, c. 8, Sched. 23; 2013, c. 2, Sched. 8, ss. 1–24, 25(1) (Fr.), (2), 26–39; 2014, c. 7, Sched. 14, ss. 1–3, 4 (Fr.), 5–7 [ss. 1, 2 not in force at date of publication.]; 2014, c. 9, Sched. 3; 2015, c. 9, s. 30; 2015, c. 20, Sched. 17 [s. 1 repealed 2020, c. 36, Sched. 14, s. 3.]; 2016, c. 5, Sched. 14 [ss. 1, 2 repealed 2018, c. 8, Sched. 13, s. 25.]; 2016, c. 17, s.

92 [Repealed 2016, c. 37, Sched. 18, s. 5.]; 2016, c. 23, s. 55(1), (2)–(5) (Fr.); 2016, c. 37, Sched. 10; 2017, c. 34, Sched. 17, s. 22, Sched. 21, ss. 1–53 [Sched. 21, ss. 1–8, 9(2), (4), (7)–(9), 11, 12, 14, 18–22, 25–53 not in force at date of publication.] [Sched. 21, ss. 1, 4 repealed 2018, c. 8, Sched. 13, s. 26.]; 2018, c. 8, Sched. 13, ss. 1–24 [ss. 3, 6, 8, 10, 12–14, 16–21 not in force at date of publication; s. 2 repealed 2019, c. 7, Sched. 33, s. 12.]; 2018, c. 17, Sched. 21, ss. 1, 2 (Fr.) [s. 1 not in force at date of publication.]; 2019, c. 7, Sched. 25, s. 19, Sched. 33, ss. 1–11 [Sched. 25, s. 19 not in force at date of publication; Sched. 33, ss. 1, 4, 5, 7–9, 11 not in force at date of publication.] [Sched. 33, ss. 5(2), 8(2) repealed 2020, c. 36, Sched. 22, s. 9.]; 2019, c. 8, Sched. 2; 2019, c. 14, Sched. 9, ss. 1–20 [s. 4 not in force at date of publication.]; 2020, c. 34, Sched. 7 [ss. 3, 6–13 not in force at date of publication.]; 2020, c. 36, Sched. 14, s. 8, Sched. 22, ss. 1–8 [Sched. 22, ss. 1–8 not in force at date of publication.].

[Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by striking out “Superintendent” wherever it appears and substituting in each case “Chief Executive Officer”, except in the definition of “Superintendent” in section 1, subsections 42(1.1), (1.3) and subsection 121(2) as re-enacted by S.O. 2017, c. 34, Sched. 21, s. 9(6). See S.O. 2018, c. 8, Sched. 13, s. 22.]

[Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by striking out “Superintendent’s” wherever it appears and substituting in each case “Chief Executive Officer’s”. See S.O. 2018, c. 8, Sched. 13, s. 23.]

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**PART II — GENERAL
PROVISIONS APPLICABLE
TO INSURERS (SS.
39—121.2)**

.....

General

115. Trafficking in life insurance policies prohibited — Any person, other than an insurer or its duly authorized agent, who advertises or holds himself, herself or itself out as a purchaser of life insurance policies or of benefits thereunder, or who trafficks or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation thereof to himself, herself or itself or any other person, is guilty of an offence.

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Fees and Regulations

121. (1) Regulations — The Lieutenant Governor in Council may make regulations,

1. respecting any matter in respect of which the Authority may make Authority rules under section 121.0.1, with necessary modifications;

2. prescribing entities or classes of entities for the purposes of clause (f) of the definition of “financial institution” in section 1;

2.1 [Repealed 1997, c. 28. s. 107(1).]

3. designating one or more bodies corporate or associations as compensation associations and designating any such body corporate or association as a compensation association for one or more classes of insurers specified by the regulations;

**Proposed Repeal — 121(1),
para. 3**

3. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

4. [Repealed 2002, c. 18, Sched. H, s. 4(14).]

**Proposed Addition — 121(1),
para. 4**

4. prescribing requirements imposed by, or provisions of, this Act, the regulations or an Authority rule for the purposes of exemption orders under subsection 15.1(1) and prescribing limits and conditions that an exemption order may be subject to for the purposes of subsection 15.1(2);

2020, c. 36, Sched. 22, s. 2(1) [Not in force at date of publication.]

5. designating insurers for the purposes of clause 44(3)(a) and designating classes of insurers for the purposes of clause 44(3)(e);

**Proposed Repeal — 121(1),
para. 5**

5. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

6. prescribing ratios, percentages, amounts and calculations for the purposes of subsection 102(8) and any such regulation may prescribe different ratios, percentages, amounts and calculations for one or more classes of insurance and for insurers whose business is limited to that of reinsurance;

**Proposed Repeal — 121(1),
para. 6**

6. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

7. exempting any insurer or class of insurers from any regulation made under paragraph 6 subject to such terms and

conditions as may be set out in the regulations;

Proposed Repeal — 121(1), para. 7

7. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

7.0.1 prescribing restrictions on insurers holding, managing or otherwise dealing with real property;

7.1 prescribing an activity or failure to act for the purpose of paragraph 8 of subsection 65.1(1);

8. prescribing terms, conditions and limitations with respect to the reinsurance of risk;

Proposed Repeal — 121(1), para. 8

8. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

Proposed Addition — 121(1), paras. 8.1, 8.2

8.1 exempting any person or class of persons from section 115.1 subject to such terms and conditions, including any limitations or restrictions, as may be set out in the regulations;

8.2 governing transitional matters which, in the opinion of the Lieutenant Governor in Council, are necessary or desirable to facilitate the implementation of section 115.1;

2014, c. 7, Sched. 14, s. 2 [Not in force at date of publication.]

9. establishing benefits for the purposes of Part VI that must be provided under contracts evidenced by motor vehicle liability policies and establishing terms, conditions, provisions, exclusions and limits related to such benefits;

10. requiring insurers to offer optional benefits in excess of the benefits that must be provided under paragraph 9

prescribing the circumstances in which the optional benefits are to be offered and establishing terms, conditions, provisions, exclusions and limits related to such benefits;

10.1 prescribing coverages and endorsements in respect of contracts of automobile insurance that insurers or a class of insurers are required to offer, deeming the benefits provided by the coverages and endorsements not to be statutory accident benefits for the purpose of Part VI, and prescribing the circumstances in which the coverages and endorsements shall be offered;

10.2 prescribing rules for interpreting the regulations made under paragraphs 9 and 10 or any provision of those regulations;

10.3 prescribing functions to be performed by a committee appointed under section 7;

10.4 governing the procedure for determining who is liable to pay statutory accident benefits under section 268, including requiring insurers to resolve disputes about liability through an arbitration process established by the regulations and requiring the interim payment of benefits pending the determination of liability;

11. prescribing categories of insurers for the purpose of subsection 101(1), requiring insurers to file a return under that subsection by category and prescribing the information that insurers may solicit from insured persons for purposes of such returns;

Proposed Repeal — 121(1), para. 11

11. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

11.1 prescribing the information to be provided under section 101.1 and any conditions that apply to the provision of the information;

**Proposed Repeal — 121(1),
para. 11.1**

11.1 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

12. prescribing categories of insurers for the purpose of subsection 102(1);

**Proposed Repeal — 121(1),
para. 12**

12. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

13. prescribing dates for the purpose of clause 102(1)(a);

**Proposed Repeal — 121(1),
para. 13**

13. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

14. governing the preparation of financial statements required under this Act or the regulations;

**Proposed Repeal — 121(1),
para. 14**

14. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

14.0.0.1 prescribing classes of persons for the purposes of clause 129.1(1)(d);

14.0.0.2 prescribing requirements with which persons must comply for the purpose of subsection 129.1(3);

14.0.1 governing the investment and valuation of the assets of the Fire Mutuals Guarantee Fund;

**Proposed Repeal — 121(1),
para. 14.0.1**

14.0.1 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

14.0.2 exempting a contract or class of contracts from the application of Part V, any provision or requirement of

Part V or any regulation or provision or requirement of a regulation made in respect of Part V, postponing, for any contract or class of contracts, the application of Part V or of any such provision or requirement to a specified date and applying a provision of Part V for a specified period on and after the date it was re-enacted, repealed or amended by Schedule 23 to the *Strong Action for Ontario Act (Budget Measures), 2012*, as it read immediately before that date, to a contract or class of contracts;

14.0.3 prescribing information for which access is limited under clause 174(8)(b);

**Proposed Repeal — 121(1),
para. 14.0.3**

14.0.3 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

14.0.4 for the purpose of subsection 190(4), respecting the circumstances under which an insurer may not restrict or exclude in a contract of life insurance the right of an insured to designate persons to whom or for whose benefit insurance money is to be payable and respecting the restriction or exclusion in a contract of such right;

**Proposed Repeal — 121(1),
para. 14.0.4**

14.0.4 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

14.0.5 prescribing the rights the insured may exercise under a contract of life insurance in the circumstances described in subsection 197(2);

**Proposed Repeal — 121(1),
para. 14.0.5**

14.0.5 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

14.1 for the purposes of Part VI or any provision of Part VI,

- i. defining “automobile”,
- ii. prescribing any vehicle or class of vehicles to be automobiles subject to any terms and conditions prescribed in the regulations,
- iii. prescribing any vehicle or class of vehicles not to be automobiles, subject to any terms and conditions prescribed in the regulations,
- iv. prescribing any service or class of services to be public transit, in the circumstances, if any, prescribed in the regulations and subject to any terms, conditions, provisions, exclusions and limits prescribed in the regulations,
- v. prescribing any service or class of services not to be public transit, in the circumstances, if any, prescribed in the regulations and subject to any terms, conditions, provisions, exclusions and limits prescribed in the regulations;

15. prescribing the information to be given to applicants or to insured persons under subsection 229(1) and the circumstances in which it is to be given;

**Proposed Repeal — 121(1),
para. 15**

15. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

15.0.1 governing the inspection of automobiles for the purpose of section 232.1;

**Proposed Repeal — 121(1),
para. 15.0.1**

15.0.1 [Repealed 2020, c. 34, Sched. 7, s. 3(1). Not in force at date of publication.]

15.1 for the purpose of section 234, prescribing statutory conditions and the types of contracts of automobile insurance to which the statutory conditions apply;

16. establishing requirements that must be met, in circumstances specified by the regulations, before an insurer declines to issue, terminates or refuses to renew a contract of automobile insurance or refuses to provide or continue any coverage or endorsement in respect of a contract of automobile insurance;

17. prescribing grounds for which an insurer cannot, in circumstances specified by the regulations, decline to issue, terminate or refuse to renew a contract of automobile insurance or refuse to provide or continue any coverage or endorsement in respect of a contract of automobile insurance;

**Proposed Repeal — 121(1),
para. 17**

17. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

18. prescribing coverages and endorsements for the purposes of section 237;

**Proposed Repeal — 121(1),
para. 18**

18. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

19. governing the payment of premiums for automobile insurance in instalments and setting maximum rates of interest in relation to instalment payments;

**Proposed Repeal — 121(1),
para. 19**

19. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

19.1 prescribing types of contracts and circumstances in which section 236 does not apply;

**Proposed Repeal — 121(1),
para. 19.1**

19.1 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

20. exempting any insurer, and exempting any insurer in respect of certain types of contracts of automobile insurance, from section 236;

**Proposed Repeal — 121(1),
para. 20**

20. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

20.1 prescribing information to be provided under clause 258.3(1)(c) and the time period within which the information must be provided for the purpose of that clause;

20.2 prescribing procedures and time limits applicable to mediations required by section 258.6;

20.3 prescribing circumstances in which a contract or part of a contract providing insurance against loss of or damage to an automobile and the loss of use thereof must contain a clause described in subsection 261(1.1);

20.4 prescribing a minimum or maximum sum to be deducted under a clause described in clause 261(1)(b) or subsection 261(1.1);

21. prescribing rules for determining the degree of fault in various situations for loss or damage arising directly or indirectly from the use or operation of an automobile;

22. providing for and governing indemnification and subrogation where section 263 applies;

**Proposed Addition — 121(1),
para. 22.0.1**

22.0.1 respecting elections under subsection 263(2.2);

2020, c. 36, Sched. 22, s. 2(2) [Not in force at date of publication.]

22.1 prescribing classes of contracts for the purpose of subsection 263(5.1);

22.2 prescribing circumstances in which a contract belonging to a class prescribed under paragraph 22.1 must contain a provision described in subsection 263(5.2.1);

22.3 prescribing the minimum or maximum amount of a reduction required by a provision described in clause 263(5.1)(b) or subsection 263(5.2.1);

23. prescribing any activity or failure to act that constitutes an unfair or deceptive act or practice under the definition of “unfair or deceptive acts or practices” in section 438, and prescribing requirements that, if not complied with, constitute an unfair or deceptive act or practice;

**Proposed Repeal — 121(1),
para. 23**

23. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

23.1 defining serious impairment of an important physical, mental or psychological function for the purpose of section 267.1 and defining permanent serious impairment of an important physical, mental or psychological function for the purpose of section 267.5;

**Proposed Amendment —
121(1), para. 23.1**

23.1 defining permanent serious impairment of an important physical,

mental or psychological function for the purpose of section 267.5;

2020, c. 34, Sched. 7, s. 3(2) [Not in force at date of publication.]

23.2 respecting the evidence that must be adduced to prove that a person has sustained serious impairment of an important physical, mental or psychological function for the purposes of section 267.1 or permanent serious impairment of an important physical, mental or psychological function for the purposes of section 267.5;

Proposed Amendment —
121(1), para. 23.2

23.2 respecting the evidence that must be adduced to prove that a person has sustained permanent serious impairment of an important physical, mental or psychological function for the purposes of section 267.5;

2020, c. 34, Sched. 7, s. 3(3) [Not in force at date of publication.]

23.3 prescribing the method for determining net income loss and net loss of earning capacity for the purpose of paragraphs 2 and 3 of subsection 267.5(1);

23.4 defining catastrophic impairment for the purpose of subsection 267.5(4);

23.5 prescribing amounts for the purpose of sub subparagraph B of subparagraph i of paragraph 3 of subsection 267.5(7) and sub subparagraph B of subparagraph ii of paragraph 3 of subsection 267.5(7);

23.6 prescribing circumstances in which the court shall order that an award for damages be paid periodically under section 267.10;

23.6.1 for the purpose of this Act or any provision of this Act, deeming payments for income loss or loss of earning capacity under an income continuation benefit plan to include payments prescribed by the regulations;

23.6.2 prescribing types of amounts and the manner of determining any type of amount for the purposes of clause 267.12(2)(c);

23.6.3 prescribing types of amounts and the manner of determining any type of amount for the purposes of clause 267.12(3)(c);

23.6.4 prescribing, for the purposes of subsection 267.12(4),

i. circumstances in which subsection 267.12(1) does not apply,

ii. persons or classes of persons to whom subsection 267.12(1) does not apply,

iii. motor vehicles or classes of motor vehicles to which subsection 267.12(1) does not apply,

iv. terms, conditions, provisions, exclusions and limits for the purposes of determining if subsection 267.12(1) applies in particular circumstances or to a prescribed person, prescribed class of persons, prescribed motor vehicle or prescribed class of motor vehicles;

23.6.5 defining the terms “**taxicab**”, “**livery vehicle**” and “**limousine for hire**” for the purposes of clause 267.12(4)(c);

23.7 prescribing the information to be provided under section 273.1 and the conditions governing the provision of the information;

24. prescribing classes of persons, classes of automobiles and terms, conditions, provisions, exclusions and limits for the purposes of subsection 275(1);

25. [Repealed 2014, c. 9, Sched. 3, s. 11(1).]

25.1 governing agreements to settle claims and disputes in respect of statutory accident benefits under Part VI;

25.2 governing the assignment of statutory accident benefits under Part VI,

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including the application of sections 279 to 282 to persons to whom the benefits are assigned;

26. governing proceedings before the Licence Appeal Tribunal under section 280, including imposing time limits or limitation periods;

26.0.0.1 prescribing anything that, in sections 288.1 to 288.7, is required or permitted to be prescribed or to be done in accordance with the regulations;

**Proposed Amendment —
121(1), para. 26.0.0.1**

26.0.0.1 prescribing anything that, in sections 288.1 and 288.2, is required or permitted to be prescribed or to be done in accordance with the regulations;

2017, c. 34, Sched. 21, s. 9(4) [Not in force at date of publication.]

26.0.1 exempting a contract or class of contracts from the application of Part VII, any provision or requirement of Part VII or any regulation or provision or requirement of a regulation made in respect of Part VII, postponing, for any contract or class of contracts, the application of Part VII or any such provision or requirement to a specified date and applying a provision of Part VII for a specified period on and after the date it was re-enacted, repealed or amended by Schedule 23 to the *Strong Action for Ontario Act (Budget Measures)*, 2012, as it read immediately before that date, to a contract or class of contracts;

26.1 prescribing such matters as are required or permitted to be prescribed under sections 380.1 to 386 with respect to reciprocal insurance exchanges;

**Proposed Repeal — 121(1),
para. 26.1**

26.1 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

27. [Repealed 2014, c. 9, Sched. 3, s. 11(4).]

28. extending the provisions of this Act or any of them to a system or class of insurance not particularly mentioned in this Act;

**Proposed Repeal — 121(1),
para. 28**

28. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

28.0.1 respecting any matter necessary or advisable to carry out effectively the intent and purpose of sections 392.2 to 392.7;

28.1 exempting a person or class of persons from subsection 392.2(6) or 397(7) or section 401, subject to such terms and conditions, including any limitations or restrictions, as may be specified in the regulations;

28.2 governing the sale and marketing of prescribed classes of insurance to members of a group, including prescribing and regulating qualifications for membership in groups;

**Proposed Repeal — 121(1),
para. 28.2**

28.2 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

28.3 [Repealed 2014, c. 9, Sched. 3, s. 11(6).]

28.3.1 respecting the application of Part VII to insurance described in clause 291(3)(c);

28.3.2 prescribing information for which access is limited under clause 293(8)(b);

**Proposed Repeal — 121(1),
para. 28.3.2**

28.3.2 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

28.3.3 for the purpose of subsection 313(1.2), respecting the circumstances under which an insurer may not restrict or exclude in a contract of accident and sickness insurance the right of an insured to designate persons to whom or for whose benefit insurance money is to be payable and respecting the restriction or exclusion in a contract of such right;

**Proposed Repeal — 121(1),
para. 28.3.3**

28.3.3 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

28.3.4 prescribing the rights the insured may exercise under a contract of accident and sickness insurance in the circumstances described in subsection 317.1(2);

**Proposed Repeal — 121(1),
para. 28.3.4**

28.3.4 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

28.4 prescribing persons or classes of persons for the purposes of subsection 398(3) and prescribing terms and conditions governing persons engaged in an activity set out in subsection 398(1);

29. governing group insurance contracts or schemes, or any class thereof including prescribing and regulating their terms and conditions, qualifications for membership in groups and regulating the marketing of group insurance contracts or schemes;

**Proposed Repeal — 121(1),
para. 29**

29. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

30. [Repealed 2006, c. 33, Sched. O, s. 6(5).]

31. [Repealed 2006, c. 33, Sched. O, s. 6(5).]

32. [Repealed 2006, c. 33, Sched. O, s. 6(5).]

33. governing the advertising of insurance contracts or any class thereof including prescribing and regulating the form and content of advertisements and requiring their filing;

**Proposed Repeal — 121(1),
para. 33**

33. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

33.1 governing the collection, use and disclosure of personal information by insurers or a class of insurers and, for that purpose, defining personal information;

**Proposed Repeal — 121(1),
para. 33.1**

33.1 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

34. prescribing types of contracts of automobile insurance and types of endorsements to contracts of automobile insurance in respect of which sections 410 to 417 apply;

**Proposed Repeal — 121(1),
para. 34**

34. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

34.1 prescribing percentages, criteria and elements of risk classification sys-

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tems for the purposes of subsection 411(1);

**Proposed Repeal — 121(1),
para. 34.1**

34.1 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

34.2 prescribing circumstances in which the Tribunal is required to hold a hearing on an application under section 410 to which section 411 does not apply;

**Proposed Repeal — 121(1),
para. 34.2**

34.2 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

35. prescribing coverages and categories of automobile insurance that may be provided by insurers and prescribing coverages and categories of automobile insurance that insurers are prohibited from providing;

**Proposed Repeal — 121(1),
para. 35**

35. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

36. prescribing a risk classification system or elements of a risk classification system that must be used by insurers or a class of insurers in classifying risks for a coverage or category of automobile insurance;

**Proposed Repeal — 121(1),
para. 36**

36. [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

36.1 prescribing elements of a risk classification system that insurers or a class of insurers are prohibited from using in classifying risks for a coverage or category of automobile insurance;

**Proposed Repeal — 121(1),
para. 36.1**

36.1 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

36.2 prescribing, for the purpose of section 413.1, maximum monetary amounts and percentages by which the rate for a class of risks in respect of a coverage or category of automobile insurance may increase or decrease as a result of the application of a regulation made under paragraph 36 or 36.1;

**Proposed Repeal — 121(1),
para. 36.2**

36.2 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

37. prescribing criteria that must be considered in determining whether to give an approval for the purposes of any provision in Part XVII that refers to approval being given, other than subsection 435.1(2);

37.0.0.1 prescribing criteria that must be considered in determining whether to give an approval for the purposes of any provision in Part XVII.1 that refers to approval being given;

37.0.1 prescribing amounts incurred by the Ministry of Health and Long-Term Care that may be subject to an assessment under section 14.1 and governing assessments under that section;

37.0.2 governing assessments under section 282;

37.1 respecting the relations between insurers, agents or brokers and,

- i. entities that undertake the business of financial services,
- ii. financial services intermediaries, and
- iii. customers of persons and entities referred to in subparagraphs i and ii;

**Proposed Repeal — 121(1),
para. 37.1**

37.1 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

37.2 respecting networking arrangements between insurers and other persons providing products or services to the insurer or its customers;

**Proposed Repeal — 121(1),
para. 37.2**

37.2 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

37.3 prohibiting or restricting networking arrangements;

**Proposed Repeal — 121(1),
para. 37.3**

37.3 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

37.4 governing the conduct of insurers, agents and brokers in networking arrangements;

**Proposed Repeal — 121(1),
para. 37.4**

37.4 [Repealed 2017, c. 34, Sched. 21, s. 9(2). Not in force at date of publication.]

38. generally for the better administration of this Act.

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 1993, c. 10, s. 12; 1994, c. 11, s. 338(1), (2);
 1996, c. 21, s. 14; 1997, c. 19, s. 10(22)–(24);
 1997, c. 28, s. 107; 1999, c. 12, Sched. I, s.
 4(14), (15); 2002, c. 18, Sched. H, s. 4(14);
 2002, c. 22, s. 114; 2004, c. 31, Sched. 20, s. 6;
 2005, c. 31, Sched. 12, s. 1; 2006, c. 19, Sched.
 L, s. 11(3); 2006, c. 33, Sched. O, s. 6; 2011, c.
 9, Sched. 21, s. 1; 2012, c. 8, Sched. 23, s. 3;
 2013, c. 2, Sched. 8, s. 5; 2014, c. 9, Sched. 3,
 s. 11; 2017, c. 34, Sched. 21, s. 9(1), (3), (5),
 (6); 2018, c. 8, Sched. 13, s. 22; 2019, c. 14,
 Sched. 9, s. 20, items 2, 3

**PART V — LIFE
INSURANCE (SS. 171–223)*****Definitions***

171. (1) Definitions — In this Part,

“**application**” means an application for insurance or for the reinstatement of insurance;

“**beneficiary**” means a person, other than the insured or the insured’s personal representative, to whom or for whose benefit insurance money is made payable in a contract or by a declaration;

“**blanket insurance**” means group insurance that covers loss,

(a) arising from specific hazards incidental to or defined by reference to a particular activity or activities, and

(b) occurring during a limited or specified period not exceeding 30 days in duration;

“**contract**” means a contract of life insurance;

“**court**” means the Superior Court of Justice or a judge thereof;

“**creditor’s group insurance**” means insurance effected by a creditor whereby the lives of a number of the creditor’s debtors are insured severally under a single contract;

“**debtor insured**” means a debtor whose life is insured under a contract of creditor’s group insurance;

“**declaration**”, except in sections 207 to 210, means an instrument signed by the insured,

(a) with respect to which an endorsement is made on the policy,

(b) that identifies the contract, or

(c) that describes the insurance or insurance fund or a part thereof,

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in which the insured,

- (d) designates, or alters or revokes the designation of, the insured, the insured's personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable, or
- (e) makes, alters or revokes an appointment under subsection 193(1) or a nomination referred to in section 199;

**Proposed Addition — 171(1)
“exempt policy”**

“exempt policy” has the same meaning as in the *Income Tax Regulations* (Canada); 2020, c. 36, Sched. 22, s. 4 [Not in force at date of publication.]

“family insurance” means insurance whereby the lives of the insured and one or more persons related to the insured by blood, marriage, conjugal relationship outside marriage or adoption are insured under a single contract between an insurer and the insured;

“group insurance” means insurance, other than creditor's group insurance and family insurance, whereby the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person;

“group life insured” means a person (the “primary person”) whose life is insured under a contract of group insurance but does not include a person whose life is insured under the contract as a person dependent upon, or related to, the primary person;

“instrument” includes a will;

“insurance” means life insurance;

“insured”,

- (a) in the case of group insurance, means, in the provisions of this Part relating to the designation of beneficiaries or personal representatives as recipients of insurance money and their rights and status, the group life insured, and

- (b) in all other cases, means the person who makes a contract with an insurer;

**Proposed Addition — 171(1)
“side account”**

“side account” means an account associated with or part of a contract of life insurance that is intended to hold funds in excess of the maximum amount permitted to be held in an exempt policy;

2020, c. 36, Sched. 22, s. 4 [Not in force at date of publication.]

“will” includes a codicil.

(2) Annuity deemed life insurance —

For the purposes of this Part, an undertaking entered into by an insurer to provide an annuity, or what would be an annuity except that the periodic payments may be unequal in amount, shall be deemed to be and always to have been life insurance whether the annuity is for,

- (a) a term certain;
- (a.1) a term dependent either solely or partly on a human life; or
- (b) a term dependent solely or partly on the happening of an event not related to a human life.

2002, c. 18, Sched. H, s. 4(22); 2006, c. 19, Sched. C, s. 1(1); 2012, c. 8, Sched. 23, s. 6

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**Designation of
Beneficiaries****190. (1) Designation of beneficiary —**

Subject to subsection (4), an insured may in a contract or by a declaration designate the insured, the insured's personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable.

(1.1) Electronic declaration — Despite anything to the contrary in the *Succession Law Reform Act*, a declaration under this section may be provided electronically.

(1.2) Same, Authority rule requirements — An electronic declaration under this section must comply with such requirements as may be prescribed by the Authority rules.

(2) Change in designation — Subject to section 191, the insured may from time to time alter or revoke the designation by a declaration.

(3) Meaning of “heirs”, etc. — A designation in favour of the “heirs”, “next of kin” or “estate” of the insured, or the use of words of like import in a designation, shall be deemed to be a designation of the personal representative of the insured.

(4) Restriction on designations — Subject to the Authority rules, an insurer may restrict or exclude in a contract the right of an insured to designate persons to whom or for whose benefit insurance money is to be payable.

(5) Designation may apply to replacement contract — A contract of group insurance replacing another contract of group insurance on some or all of the group life insured under the replaced contract may provide that a designation applicable to the replaced contract of a group life insured, a group life insured’s personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable shall be deemed to apply to the replacement contract.

(6) Same — Where a contract of group insurance replacing another contract of group insurance provides that a designation referred to in subsection (5) shall be deemed to apply to the replacement contract,

(a) each certificate in respect of the replacement contract must indicate that the designation under the replaced contract has been carried forward and that the group life insured should review the existing designation to ensure it reflects the group life insured’s current intentions; and

(b) as between the insurer under the replacement contract and a claimant under that contract, that insurer is liable to the claimant for any errors or omissions by the previous insurer in respect of the recording of the designation carried forward under the replacement contract.

(7) Settlement option — Where a beneficiary becomes entitled to insurance money and all or part of that insurance money remains with the insurer under a settlement option provided for in the contract or permitted by the insurer, that portion of the insurance money remaining with the insurer shall be deemed to be insurance money held under a contract on the life of the beneficiary and, subject to the provisions of the settlement option, the beneficiary has the rights and interests of an insured with respect to the insurance money.

2012, c. 8, Sched. 23, s. 22; 2017, c. 34, Sched. 21, s. 15; 2019, c. 7, Sched. 33, s. 6

191. (1) Designation of beneficiary irrevocably — An insured may in a contract, or by a declaration other than a declaration that is part of a will, filed with the insurer at its head or principal office in Canada during the lifetime of the person whose life is insured, designate a beneficiary irrevocably, and in that event the insured, while the beneficiary is living, may not alter or revoke the designation without the consent of the beneficiary and the insurance money is not subject to the control of the insured, is not subject to the claims of the insured’s creditor and does not form part of the insured’s estate.

(2) Attempted designation — Where the insured purports to designate a beneficiary irrevocably in a will or in a declaration that is not filed as provided in subsection (1), the designation has the same effect as if the insured had not purported to make it irrevocable.

2013, c. 2, Sched. 8, s. 10

192. Designation in will, etc. — (1) **Designation in invalid will** — A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.

(2) **Priorities** — Despite the *Succession Law Reform Act*, a designation in a will is of no effect against a designation made later than the making of the will.

(3) **Revocation** — Where a designation is contained in a will, if subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

(4) **Idem** — Where a designation is contained in an instrument that purports to be a will, if subsequently the instrument if valid as a will would be revoked by operation of law or otherwise, the designation is thereby revoked.

193. (1) Trustee for beneficiary — An insured may in a contract or by a declaration appoint a trustee for a beneficiary and may alter or revoke the appointment by a declaration.

(2) **Payment to trustee** — A payment by an insurer to a trustee for a beneficiary discharges the insurer to the extent of the payment.

194. Beneficiary's share of insurance money — (1) **Beneficiary predeceasing life insured** — Where a beneficiary predeceases the person whose life is insured, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by a declaration, the share is payable,

- (a) to the surviving beneficiary; or
- (b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or
- (c) if there is no surviving beneficiary, to the insured or the insured's personal representative.

(2) **Several beneficiaries** — Where two or more beneficiaries are designated otherwise than alternatively, but no division of the insurance money is made, the insurance money is payable to them in equal shares.

(3) **Disclaimer by beneficiary** — A beneficiary may disclaim the beneficiary's right to insurance money by filing notice in writing with the insurer at its head or principal office in Canada.

(4) **Same** — A notice of disclaimer filed under subsection (3) is irrevocable.

(5) **Same** — Subsection (1) applies in the case of a disclaiming beneficiary or in the case of a beneficiary determined by a court to be disentitled to insurance money as if the disclaiming or disentitled beneficiary died before the person whose life is insured.

2012, c. 8, Sched. 23, s. 23

195. Right to sue — A beneficiary may enforce for the beneficiary's own benefit, and a trustee appointed pursuant to section 193 may enforce as trustee, the payment of insurance money made payable to him, her or it in the contract or by a declaration and in accordance with the provisions thereof, but the insurer may set up any defence that it could have set up against the insured or the insured's personal representative.

196. Insurance money free from other claims, etc. — (1) **Claims by creditors** — Where a beneficiary is designated, the insurance money, from the time of the happening of the event upon which the insurance money becomes payable, is not part of the estate of the insured and is not subject to the claims of the creditors of the insured.

(2) **Contract exempt from seizure** — While a designation in favour of a spouse, child, grandchild or parent of a person whose life is insured, or any of them, is in effect, the rights and interests of the insured in the insurance money and in the contract are exempt from execution or seizure.

1999, c. 6, s. 31(3); 2005, c. 5, s. 35(4)

Dealings with Contract During Lifetime of Insured

197. (1) Insured dealing with contract — Where a beneficiary,

- (a) is not designated irrevocably; or
- (b) is designated irrevocably but has attained the age of eighteen years and consents,

the insured may assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as provided therein or in this Part or as may be agreed upon with the insurer.

(2) Where there is irrevocable designation of beneficiary, who does not consent — Despite subsection 191(1), where a beneficiary is designated irrevocably and has not consented as described in clause (1)(b), the insured may exercise any rights in respect of the contract that are prescribed by Authority rule.

(3) Same — Subject to the terms of a consent under clause (1)(b) or an order of the court under subsection (4), where there is an irrevocable designation of a beneficiary under a contract, a person acquiring an interest in the contract takes that interest subject to the rights of that beneficiary.

(4) Application to court — When a beneficiary who is designated irrevocably is unable to provide consent under clause (1)(b) because of legal incapacity, an insured may apply to the court for an order permitting the insured to deal with the contract without that consent.

(5) Same — The court may grant an order under subsection (4) on any notice and terms it considers just.

2012, c. 8, Sched. 23, s. 24; 2016, c. 37, Sched. 10, s. 1; 2017, c. 34, Sched. 21, s. 16

198. (1) Insured entitled to dividends — Despite the designation of a beneficiary irrevocably, the insured is entitled while living to the dividends or bonuses de-

clared on a contract, unless the contract otherwise provides.

(2) Insurer may use dividends — Unless the insured otherwise directs, the insurer may apply the dividends or bonuses declared on the contract for the purpose of keeping the contract in force.

199. (1) Transfer of ownership — Despite the *Succession Law Reform Act*, where in a contract or declaration it is provided that a person named in the contract or declaration has, on the death of the insured, the rights and interests of the insured in the contract,

(a) the rights and interests of the insured in the contract do not, on the death of the insured, form part of the insured's estate; and

(b) on the death of the insured, the person named in the contract or declaration has the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured.

(2) Successive owners — Where the contract or declaration provides that two or more persons named in the contract or declaration shall, on the death of the insured, have successively, on the death of each of them, the rights and interests of the insured in the contract, this section applies successively, with necessary modifications, to each of such persons and to his or her rights and interests in the contract.

(3) Saving — Despite any nomination made pursuant to this section, the insured may, before his or her death,

(a) assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as if the nomination had not been made; and

(b) subject to the terms of the contract, alter or revoke the nomination by declaration.

2012, c. 8, Sched. 23, s. 25

200. Effect of assignment—(1) Interest of assignee—Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, the assignee has priority of interest as against,

- (a) any assignee other than one who gave notice earlier in like manner; and
- (b) a beneficiary other than one designated irrevocably as provided in section 191 prior to the time the assignee gave notice to the insurer of the assignment in the manner prescribed in this subsection.

(2) Effect on beneficiary's rights—Where a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests of the assignee.

(3) Assignee deemed to be insured—Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given to the insured by the contract and by this Part and shall be deemed to be the insured.

(3.1) Effect on designation of beneficiary, transfer of ownership—Unless the document by which the contract is assigned specifies otherwise, an assignment described in subsection (3) made on or after the date this section comes into force revokes,

- (a) a designation of a beneficiary made before or after that date and not made irrevocably; and
- (b) a nomination referred to in section 199 made before or after that date.

(4) Prohibition against assignment—A contract may provide that the rights or interests of the insured or, in the case of a contract of group insurance or of creditor's group insurance, of the group life insured or debtor insured, as the case may be, are not assignable.

2012, c. 8, Sched. 23, s. 26

201. Group life insured, enforcing rights—A group life insured may in his or her own name enforce a right given to him or her under a contract, subject to any defence available to the insurer against him or her or against the insured.

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Minors

202. Capacity of minors—Except in respect of his or her rights as beneficiary, a minor who has attained the age of sixteen years has the capacity of a person of the age of eighteen years,

- (a) to make an enforceable contract; and
- (b) in respect of a contract.

Proceedings Under Contract

203. (1) Proof of claim—Where an insurer receives sufficient evidence of,

- (a) the happening of the event upon which insurance money becomes payable;
- (b) the age of the person whose life is insured;
- (c) the right of the claimant to receive payment; and
- (d) the name and age of the beneficiary, if there is a beneficiary,

it shall, within thirty days after receiving the evidence, pay the insurance money to the person entitled thereto.

(2) Order under Declarations of Death Act, 2002—Despite sections 208 and 209, an order made under the *Declarations of Death Act, 2002* that declares that an individual has died is sufficient evidence of death for the purpose of clause (1)(a) if the insurer had notice of the application.

(3) Exception—Subsection (2) does not apply if the order is limited, under subsection 2(6) of the *Declarations of Death Act*,

2002, to specified purposes other than the payment of insurance money.

2002, c. 14, Sched., s. 10

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207. (1) Documents affecting right to insurance money — Until an insurer receives at its head or principal office in Canada an instrument or an order of a court affecting the right to receive insurance money, or a notarial copy, or a copy verified by statutory declaration, of any such instrument or order, it may make payment of the insurance money and shall be as fully discharged to the extent of the amount paid as if there were no such instrument or order.

(2) Saving — Subsection (1) does not affect the rights or interests of any person other than the insurer.

208. Declaration as to sufficiency of proof — Where an insurer admits the validity of the insurance but does not admit the sufficiency of the evidence required by section 203 and there is no other question in issue except a question under section 209, the insurer or the claimant may, before or after action is brought and upon at least thirty days notice, apply to the court for a declaration as to the sufficiency of the evidence furnished, and the court may make the declaration or may direct what further evidence shall be furnished and on the furnishing thereof may make the declaration or, in special circumstances, may dispense with further evidence.

209. Declaration as to presumption of death — Where a claimant alleges that the person whose life is insured should be presumed to be dead by reason of his or her not having been heard of for seven years and there is no other question in issue except a question under section 208, the insurer or the claimant may, before or after action is brought and upon at least thirty days notice, apply to the court for a declaration as to presumption of the death and the court may make the declaration.

210. (1) Court orders, application under s. 208 or 209 — Upon making a declaration under section 208 or 209, the court may make such order respecting the payment of the insurance money and respecting costs as it deems just and, subject to section 212, a declaration or direction or order made under this subsection is binding upon the applicant and upon all persons to whom notice of the application has been given.

(2) Payment under order — A payment made under an order made under subsection (1) discharges the insurer to the extent of the amount paid.

211. Stay of proceedings — Unless the court otherwise orders, an application made under section 208 or 209 operates as a stay of any pending action with respect to the insurance money.

212. Appeal, ss. 208 to 210 — An appeal lies to the Divisional Court from any declaration, direction or order made under section 208, section 209 or subsection 210(1).

213. Court orders, insufficient evidence, etc. — Where the court finds that the evidence furnished under section 203 is not sufficient or that a presumption of death is not established, it may order that the matters in issue be decided in an action brought or to be brought, or may make such other order as it considers just respecting further evidence to be furnished by the claimant, publication of advertisements, further inquiry or any other matter or respecting costs.

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220. (1) Minors — If an insurer admits liability for insurance money payable to a minor, and there is no person capable of giving and authorized to give a valid discharge for the insurance money who is willing to do so, the insurer shall, within 30 days after receiving the evidence referred to in section 203,

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pay the money and any applicable interest into court to the credit of the minor.

(2) [Repealed 2012, c. 8, Sched. 23, s. 31.]

(3) **Procedure** — No order is necessary for payment into court under subsection (1), but the accountant or other proper officer shall receive the money upon the insurer filing with him or her an affidavit showing the amount payable and the name, date of birth and residence of the minor, and, upon such payment being made, the insurer shall forthwith notify the Children's Lawyer and deliver to him or her a copy of the affidavit.

(4) **Authorized payments** — An insurer may, despite subsection (1), pay insurance money and applicable interest payable to a minor to,

(a) the guardian of the property of the minor, appointed under section 47 of the *Children's Law Reform Act*; or

(b) a person referred to in subsection 51(1) of the *Children's Law Reform Act*, if the payment does not exceed the amount set out in that subsection.

1993, c. 10, s. 13; 1994, c. 27, s. 43(2); 2012, c. 8, Sched. 23, s. 31

221. Beneficiary under legal incapacity

ity — Despite section 220, where it appears to an insurer that a representative of a beneficiary who is a minor or is otherwise under a legal incapacity may accept payments on behalf of the beneficiary under the law of the jurisdiction in which the beneficiary resides, the insurer may make payment to the representative, and the payment discharges the insurer to the extent of the amount paid.

2012, c. 8, Sched. 23, s. 32

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LAND TITLES ACT

R.S.O. 1990, c. L.5, as am. S.O. 1991, c. 9, s. 2; 1992, c. 32, s. 18; 1993, c. 27, Sched.; 1994, c. 25, s. 81; 1994, c. 27, ss. 7, 43(2), 86; 1997, c. 24, s. 214; 1998, c. 18, Sched. E, ss. 102–160 [s. 131 not in force at date of publication. Repealed 2006, c. 21, Sched. F, s. 10.1(1).]; 1998, c. 26, s. 105; 1999, c. 12, Sched. F, ss. 27, 28; 2000, c. 26, Sched. B, s. 12; 2001, c. 9, Sched. D, s. 13; 2002, c. 18, Sched. E, s. 6; 2002, c. 24, Sched. B, s. 40; 2004, c. 19, s. 13; 2006, c. 19, Sched. C, s. 1(3), Sched. G, s. 3; 2006, c. 21, Sched. F, ss. 116, 136(1), Table 1; 2006, c. 23, s. 33; 2006, c. 34, s. 15(1)–(6), (7) (Fr.), (8)–(14); 2006, c. 35, Sched. C, s. 58; 2009, c. 33, Sched. 2, s. 41, Sched. 11, s. 4, Sched. 17, s. 5; 2009, c. 34, Sched. T, s. 2; 2010, c. 1, Sched. 6, s. 10; 2012, c. 8, Sched. 28, ss. 1–87, 88 (Fr.), 89–97 [ss. 1(1), (2), 3(2), 4–10, 11(2), 12–87, 89–92; 94–97 not in force at date of publication.] [ss. 27(2), (3), 41 repealed 2017, c. 2, Sched. 12, s. 10.]; 2015, c. 28, Sched. 1, s. 150; 2017, c. 2, Sched. 12, s. 5; 2017, c. 20, Sched. 9, s. 7; 2017, c. 24, s. 76(1), (2) [s. 76(3) not in force at date of publication.]; 2019, c. 7, Sched. 17, s. 98; 2020, c. 34, Sched. 22, s. 4.

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PART VII — SUBSEQUENT REGISTRATIONS (SS. 66–139)

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Death of Registered Owner

120. Transmission on death of owner of freehold land — On the death of the sole registered owner or of the survivor of several joint registered owners of freehold land, such person shall be registered as owner in the place of the deceased owner or owners as may, on the application of any person interested in the land, be appointed by the land registrar, regard being had to the rights of the several persons interested in the land and in particular to the selection of any such person as for the time being appears to the land registrar to be entitled according to law to be so appointed, subject to an appeal to the Divisional Court in the prescribed manner by any person aggrieved by an order of the land registrar under this section.

Proposed Amendment — 120

120. (1) Transmission on death of owner of freehold land — On the death of the sole registered owner or of the survivor of several joint registered owners of freehold land and on the application of any person interested in the land, the person whom the Director specifies shall be registered as owner in the place of the deceased owner or owners.

(2) Factors to consider — In specifying a person for the purpose of the registration, the Director shall have regard to the rights of the several persons interested in the land and in particular to the selection of any person who, for the time being, appears to the Director to be entitled according to law to be so specified.

(3) Appeal — A person aggrieved by an order of the Director made under this section may appeal it to the Divisional Court in the required manner.

2012, c. 8, Sched. 28, s. 67 [Not in force at date of publication.]

121. Transmission on death of owner — On the death of the sole regis-

tered owner or of the survivor of several joint registered owners of leasehold land or of a charge, the executor, administrator or estate trustee of the deceased is entitled to be registered as owner in the place of the deceased.

1998, c. 18, Sched. E, s. 146

122. Entry of representatives of deceased tenant in common — Where two or more persons holding as tenants in common have been entered as owners of land or a charge and one of them dies, his or her personal representative, or such other person as is entitled to the share of the deceased, may be entered as owner with the survivor or survivors.

123. Removal of name of deceased joint tenant — Where one of two or more persons who are registered as the owners of land as joint tenants or as the owners of a charge on a joint account with right of survivorship has died and it appears from the parcel register that the interest of the deceased owner has passed by right of survivorship to the surviving owner or owners, the land registrar may, upon receipt of an application containing the evidence specified by the Director of Titles, delete the name of the deceased owner from the parcel register.

Proposed Amendment — 123

123. Removal of name of deceased joint tenant — Where one of two or more persons who are registered as the owners of land as joint tenants or as the owners of a charge on a joint account with right of survivorship has died and it appears from the parcel register that the interest of the deceased owner has passed by right of survivorship to the surviving owner or owners, the name of the deceased owner may be deleted from the register upon receipt of an application containing the evidence specified by the Director.

2012, c. 8, Sched. 28, s. 68 [Not in force at date of publication.]

2000, c. 26, Sched. B, s. 12(7)

124. Evidence of transmission of registered ownership — The fact of a person having become entitled to land or a charge in consequence of the death of a registered owner shall be proved in the manner specified by the Director of Titles.

Proposed Amendment — 124

124. Evidence of transmission of registered ownership — The fact of a person having become entitled to land or a charge in consequence of the death of a registered owner shall be proved in the manner specified by the Director.

2012, c. 8, Sched. 28, s. 69 [Not in force at date of publication.]

2000, c. 26, Sched. B, s. 12(8)

125. Entry of name of person beneficially entitled as owner without reference to debts — Where land has been transferred to a person beneficially entitled thereto within three years after the death of the registered owner or has become vested in the person beneficially entitled thereto under the *Estates Administration Act*, the land registrar, upon application and the production of evidence specified by the Director of Titles showing that all debts of the deceased registered owner have been paid and that creditors have been notified, may,

(a) where the person beneficially entitled is shown on the register as owner of the land and the register shows that the land is subject to the unpaid debts of the deceased registered owner, delete the reference to the unpaid debts from the register; or

(b) register the person beneficially entitled to the land without reference to the unpaid debts of the deceased registered owner.

Proposed Amendment — 125

125. Entry of owner without reference to debts — If land has been transferred to a person beneficially entitled to it within three years after the death of the registered

owner or has become vested in the person beneficially entitled to it under the *Estate Administration Act*, the following may be done upon application and the production of evidence specified by the Director showing that all debts of the deceased registered owner have been paid and that creditors have been notified:

1. The reference to the unpaid debts of the deceased registered owner may be deleted from the register if the person beneficially entitled to the land is shown on the register as owner of the land and the register shows that the land is subject to the unpaid debts.
2. The person beneficially entitled to the land may be registered without reference to the unpaid debts of the deceased registered owner.

2012, c. 8, Sched. 28, s. 70 [Not in force at date of publication.]

2000, c. 26, Sched. B, s. 12(9)

126. [Repealed 2009, c. 34, Sched. T, s. 2(2).]

127. (1) Registration of devisees, etc. — A person claiming to be entitled to freehold or leasehold land, or to an interest in it capable of being registered, or to a charge as devisee, heir, executor, administrator or estate trustee of a person who might have been registered under section 66, or a person claiming through the person claiming to be so entitled may apply to be registered as owner of the land, interest or charge and, if no conflicting registration has been made, may be so registered subject to section 66 and this section.

(2) Mode of entry — On registering the applicant, the land registrar shall, so far as practicable, enter on the register short particulars of every instrument or other title under which the right is conferred, as if such instrument had been duly presented for registration, or application for entry of transmission had been made in the proper order of time, and, as a preliminary step to the registration of the applicant, may enter an inter-

mediate transferee, heir, executor, administrator or estate trustee as registered owner where that method is more convenient.

Proposed Amendment — 127(2)

(2) Mode of entry — On registering the applicant, the Director shall, so far as practicable, enter on the register short particulars of every instrument or other title under which the right is conferred, as if the instrument had been duly presented for registration or application for entry of transmission had been made in the proper order of time. 2012, c. 8, Sched. 28, s. 71 [Not in force at date of publication.]

Proposed Addition — 127(2.1)

(2.1) Preliminary step to registration — As a preliminary step to the registration of the applicant, an intermediate transferee, heir, executor, administrator or estate trustee may be entered as registered owner if that method is more convenient.

2012, c. 8, Sched. 28, s. 71 [Not in force at date of publication.]

(3) All persons entitled must apply — No application by a person claiming through or under a deceased person shall be allowed unless all the persons entitled to the whole of the estate of the deceased in the land are to be entered as owners.

1998, c. 18, Sched. E, s. 148(1), (2)

Caution, etc.

128. (1) Registration of caution — A person claiming to have an interest in registered land or in a registered charge of which the person is not the registered owner may apply to the land registrar for the registration of a caution to the effect that no dealing with the land or charge be had on the part of the registered owner or other person named in the caution without the consent of the cautioner.

Proposed Amendment — 128(1)

(1) Registration of caution — A person claiming to have an interest in registered

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land or in a registered charge of which the person is not the registered owner may apply to the Director for the registration of a caution to the effect that no dealing with the land or charge be had on the part of the registered owner or other person named in the caution without the consent of the cautioner.
2012, c. 8, Sched. 28, s. 72 [Not in force at date of publication.]

(2) Caution by registered owner — Where the registered owner of freehold or leasehold land or of a charge has executed a transfer or a charge of the land or a transfer of the charge but claims that on account of special circumstances shown by affidavit the transferee or chargee should not be registered without the consent of the registered owner, the land registrar may permit the registration of a caution by the registered owner.

Proposed Amendment — 128(2)

(2) Caution by registered owner — Where the registered owner of freehold or leasehold land or of a charge has executed a transfer or a charge of the land or a transfer of the charge but claims that on account of special circumstances shown by affidavit the transferee or chargee should not be registered without the consent of the registered owner, the Director may permit the registration of a caution by the registered owner.
2012, c. 8, Sched. 28, s. 72 [Not in force at date of publication.]

(3) When no caution — A person interested under a lease or agreement for a lease of which notice has been entered on the register is not entitled to register a caution in respect of the lease or agreement.

(4) Expiry — A caution registered under this section on or after June 16, 1999 ceases to have effect 60 days from the date of its registration and may not be renewed.

(5) [Repealed 1998, c. 18, Sched. E, s. 149(1).]
1998, c. 18, Sched. E, s. 149

129. (1) Caution prevents dealing — After a caution has been registered, the land registrar shall not, without the consent of the cautioner, register any dealing with the land or charge against which the caution is registered.

Proposed Amendment — 129(1)

(1) Cautions — After a caution has been registered, no dealing with the land or charge against which the caution is registered shall be registered without the consent of the cautioner.
2012, c. 8, Sched. 28, s. 73(1) [Not in force at date of publication.]

(2) Notice of caution — After registering a caution, the cautioner shall serve a copy of the caution and a notice containing the particulars of its registration on the registered owner of the land and all other persons having an interest in the land or the charge against which the caution was registered.

(3) Application — In the case of a caution registered before June 16, 1999, the registered owner of the land or any other person having an interest in the land or the charge against which the caution was registered is entitled, on application to the land registrar, to have the land registrar delete the entry of the caution from the register if the applicant has served a notice of the application on the cautioner at least 60 days before making the application.

Proposed Amendment — 129(3)

(3) Application — In the case of a caution registered before June 16, 1999, the registered owner of the land or any other person having an interest in the land or the charge against which the caution was registered is entitled, on application to the Director, to have the entry of the caution deleted from the register if the applicant has served a notice of the application on the cautioner at least 60 days before making the application.
2012, c. 8, Sched. 28, s. 73(2) [Not in force at date of publication.]

(4) [Repealed 1998, c. 18, Sched. E, s. 150(1).]

(5) When consent of cautioner not required — The consent of a cautioner is not required where the dealing proposed to be registered is under the authority of a judgment or order of the court in a proceeding to which the cautioner is a party or where such dealing is under a power of sale contained in a charge or mortgage that is prior to the title under which the cautioner claims and the cautioner has been served with a notice of the proposed exercise of the power of sale and the caution is not in respect of the exercise of the power of sale or where the dealing is of such a nature that it cannot detrimentally affect the interest of the cautioner as claimed in the affidavit filed with the caution or where the transferee, chargee or other person desiring the registration of the dealing is willing that the same should be registered subject to the continuance of the caution and the land registrar thinks fit so to register it, and, where a caution is continued, such continuance prevents further registrations of dealings by the registered owner until the consent of the cautioner is obtained, unless as in this section provided.

Proposed Amendment — 129(5)

(5) Consent of cautioner not required — Subject to the requirements specified by the Director, the consent of a cautioner is not required if,

- (a) the dealing proposed to be registered is under the authority of a judgment or order of the court in a proceeding to which the cautioner is a party;
- (b) the dealing is under a power of sale contained in a charge or mortgage that is prior to the title under which the cautioner claims, the cautioner has been served with a notice of the proposed exercise of the power of sale and the caution is not in respect of the exercise of the power of sale;
- (c) the dealing is of such a nature that it cannot detrimentally affect the inter-

est of the cautioner as claimed in the affidavit filed with the caution; or

(d) the transferee, chargee or other person desiring the registration of the dealing is willing that it should be registered subject to the continuance of the caution and the Director thinks fit to register it.

2012, c. 8, Sched. 28, s. 73(3) [Not in force at date of publication.]

Proposed Addition — 129(5.1)

(5.1) Continuance of caution — If a caution is continued, the continuance prevents further registrations of dealings by the registered owner until the consent of the cautioner is obtained, unless this section provides otherwise.

2012, c. 8, Sched. 28, s. 73(3) [Not in force at date of publication.]

(6) Dealing where caution against part of land — Where a caution affects part only of the land dealt with by the transfer, charge or other instrument, the land registrar may, upon the application in writing of the person desiring registration or the person's solicitor, register the instrument as to the land not affected by the caution, and may subsequently, with the consent of the cautioner, register the dealing as to the remainder of the land dealt with by the instrument or any part thereof.

Proposed Amendment — 129(6)

(6) Dealing where caution against part of land — Where a caution affects part only of the land dealt with by the transfer, charge or other instrument, the Director may, upon the application in writing of the person desiring registration or the person's solicitor, register the instrument as to the land not affected by the caution, and may subsequently, with the consent of the cautioner, register the dealing as to the remainder of the land dealt with by the instrument or any part thereof.

2012, c. 8, Sched. 28, s. 73(4) [Not in force at date of publication.]

(7) Deletion from register — A land registrar shall delete the entry of a caution from the register as soon as practicable when,

- (a) the caution ceases to have effect; or
- (b) the land registrar receives a withdrawal of the caution in the prescribed form.

Proposed Amendment — 129(7)

(7) Deletion from register — The entry of a caution shall be deleted from the register as soon as practicable when,

- (a) the caution ceases to have effect; or
- (b) a withdrawal of the caution in the required form is received.

2012, c. 8, Sched. 28, s. 73(5) [Not in force at date of publication.]

1998, c. 18, Sched. E, s. 150(1)–(3)

130. Second caution — A second caution by the same cautioner or by any other person in respect of the same matter shall not be registered or have any effect except with the permission of the land registrar, which may be given either upon terms or without terms as the land registrar considers proper.

Proposed Amendment — 130

130. Second caution — A second caution by the same cautioner or by any other person in respect of the same matter shall not be registered or have any effect except with the approval of the Director, which may be given either upon terms or without terms as the Director considers proper.

2012, c. 8, Sched. 28, s. 74 [Not in force at date of publication.]

131. Caution to be supported by affidavit — Every caution shall be supported by either an affidavit in the prescribed form or a statement in a form specified by the Director, stating the nature of the interest of the cautioner, the land to be affected by the caution and such other matters as are prescribed.

Proposed Amendment — 131

131. Caution to be supported by affidavit — Every caution shall be supported by an affidavit in the required form or a statement in a form specified by the Director stating the nature of the interest of the cautioner, the land to be affected by the caution and the other matters specified by the Director.

2012, c. 8, Sched. 28, s. 74 [Not in force at date of publication.]

2002, c. 18, Sched. E, s. 6(9)

132. Liability where caution improperly registered — A person who registers a caution without reasonable cause is liable to make to any person who may sustain damage by its registration such compensation as is just, and the compensation shall be deemed to be a debt due from the person who has registered the caution to the person who has sustained damage.

133. Limit of effect of caution — A caution does not prejudice the claim or title of any person and has no effect except as in this Act provided.

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Application Provisions

— 1998, c. 18, Sched. E, s. 136(2):

The following sections that were repealed by 1998, c. 18, Sched. E, ss. 136(2), 141(1) continue to apply to a charge of registered land that was executed,

(a) before September 6, 1984, in the case of land in the County of Oxford as it existed on December 31, 1980; or

(b) before January 17, 1985, in the case of land elsewhere in Ontario.

— 1998, c. 18, Sched. E, s. 151(2):

(2) A caution registered under section 71, 128 or 134 of the Act or a predecessor of those sections before subsection (1) and sections 129 and 149 of Schedule E of the *Red Tape Reduction Act*,

1998 come into force ceases to have effect,

(a) five years from the date that subsection (1) and sections 129 and 149 come into force, if the date that the caution ceases to have effect is not specified in the caution or by subsection 128(4) of the Act, as it read immediately

before section 149 comes into force; or

(b) if there is a date specified in the caution or by subsection 128(4) of the Act, as it read immediately before section 149 comes into force, the earlier of that date and five years from the date of registration of the caution.

ONT. REG. 430/11 — FORMS

made under the *Land Titles
Act*

O. Reg. 430/11, as am. O. Reg.
355/13.

DEFINITIONS

1. Definitions — In this Regulation,

“charge” means a charge of freehold or leasehold land;

“electronic format” means an electronic format within the meaning of section 17 of the *Land Registration Reform Act*;

“non-electronic format” means a format that is not an electronic format within the meaning of section 17 of the *Land Registration Reform Act* and includes a written form;

“transfer” means a transfer of freehold or leasehold land.

FIRST REGISTRATION

2. Application for first registration —
(1) In this section,

“application” means an application for the first registration of freehold or leasehold land under section 30, 38 or 39 of the Act.

(2) An application shall be in the form entitled “Application for First Registration” and dated September 1, 2011, as it appears on the Government of Ontario website.

(3) A notice of an application shall be in the form entitled “Notice of Application for First Registration” and dated September 1, 2011, as it appears on the Government of Ontario website.

(4) A consent to an application that is required by clause 3(4)(b) of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act shall be in the form that the Director of Titles specifies.

(5) An application under subsection 38(6) of the Act shall be in the form entitled “Application for Leasehold Parcel” and dated September 1, 2011, as it appears on the Government of Ontario website.

(6) The affidavit required by clause 6(2)(b) of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act shall be in the form entitled “Affidavit of Applicant (Application for First Registration)” and dated September 1, 2011, as it appears on the Government of Ontario website.

(7) The certificate of the applicant’s solicitor required by clause 6(2)(p) of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act shall be in the form entitled “Certificate of Solicitor (Application for First Registration)” and dated September 1, 2011, as it appears on the Government of Ontario website.

(8) The certificate of the Ontario Land Surveyor required by clause 6(2)(q) of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act shall be in the form entitled “Certificate of Surveyor (Application for First Registration)” and dated September 1, 2011, as it appears on the Government of Ontario website.

(9) The certificate of the applicant’s solicitor required by clause 6(2)(r) of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act shall be in the form entitled “Certificate of Solicitor (Application for First Registration, Service of Notice of Application)” and dated September 1, 2011, as it appears on the Government of Ontario website.

(10) The proof of service required by subparagraph 6(2)(s)(i) of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act with respect to a notice of application shall be in a form approved by the land registrar.

(11) The certificate of registration as owner required by clause 6(2)(x) of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act shall be in the form that the Director of Titles specifies.

3. Objections to first registration — (1) An application for the registration of a caution against first registration under subsection 43(1) of the Act that is submitted for registration in a non-electronic format shall be in the form entitled “Application for Caution Against First Registration” and dated September 1, 2011, as it appears on the Government of Ontario website.

(2) An affidavit that is required by subsection 5(1) of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act and that sets out the supporting evidence for an application for the registration of a caution against first registration as described in that subsection shall be in the form that the Director of Titles specifies.

(3) A withdrawal of a caution against first registration that is submitted for registration in a non-electronic format shall be in the form entitled “Withdrawal of Caution Against First Registration” and dated September 1, 2011, as it appears on the Government of Ontario website.

(4) A notice to be served on a cautioner under subsection 43(4) of the Act shall be in the form entitled “Notice of Hearing” and dated September 1, 2011, as it appears on the Government of Ontario website.

4. Decision on application for first registration — (1) A bond or a covenant to indemnify the assurance fund that is re-

quired by subsection 7(1) of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act shall be in the form that the Director of Titles specifies.

(2) The notice of hearing required by subsection 8(3) of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act shall be in the form that the Director of Titles specifies.

(3) A notice of discontinuance described in subsection 10(4) of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act shall be in the form that the Director of Titles specifies.

(4) The certificate of the applicant’s solicitor that is required by clause 11(2)(a) of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act shall be in the form entitled “Certificate of Solicitor (Application for First Registration, Appeals from Hearing of Objections)” and dated September 1, 2011, as it appears on the Government of Ontario website.

DEALINGS AFTER FIRST REGISTRATION

5. Application to amend the register — An application to amend the register under subsection 69(1) or section 75 of the Act or under any other section of the Act under which no form is prescribed that is submitted for registration in a non-electronic format shall be in the form entitled “Application to Amend Register” and dated September 1, 2011, as it appears on the Government of Ontario website.

6. Notice of agreement — An application to register a notice under section 71 of the Act that is submitted for registration in a non-electronic format shall be in a form that the Director of Titles specifies.

7. Registration of judgments and orders — An application required by subsection 17(1) of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act to register a judgment or order described in that subsection shall be in the form that the Director of Titles specifies.

8. Charges — (1) A transfer of charge under subsection 101(1) or (6) of the Act that is submitted for registration in a non-electronic format shall be in the form entitled “Transfer of Charge” and dated September 1, 2011, as it appears on the Government of Ontario website.

(2) A postponement under subsection 78(6) of the Act that is submitted for registration in a non-electronic format shall be in the form entitled “Postponement of Charge or Other Rights” and dated September 1, 2011, as it appears on the Government of Ontario website.

(3) If the registered owner of the land submits an application to register in a non-electronic format a cessation of a registered charge under subsection 102(1) of the Act, the application shall be in the form entitled “Application by Owner of Land for Cessation of Charge” and dated September 1, 2011, as it appears on the Government of Ontario website.

(4) Subject to section 82 of the Act, a discharge to which subsection 103(1) of the Act applies shall be in the form that the Director of Titles specifies.

9. Transfer under power of sale — (1) A transfer of land by a chargee under section 99 of the Act that is submitted for registration in a non-electronic format shall be in the form entitled “Transfer of Land under Power of Sale” and dated September 1, 2011, as it appears on the Government of Ontario website.

(2) The evidence required by the Director of Titles under subsection 99(1) of the Act shall be attached to the original transfer.

(3) This section applies with necessary modifications to,

- (a) a sale under a mortgage that was entered on the register on the first registration of the land; and
- (b) a charge in the form of a debenture or similar instrument.

10. Notice of lease — The following documents shall be in the form that the Director of Titles specifies:

1. An application for a notice of a lease or for a notice of an agreement for a lease that is submitted for registration in a non-electronic format under subsection 111(1) of the Act.
2. A notice of an interest in a lease under subsection 111(6) of the Act that is submitted for registration in a non-electronic format.

11. Conditions, restrictions and covenants — An application under section 118 or 119 of the Act to impose on or annex to land a condition, restriction or covenant that is submitted for registration in a non-electronic format shall be in the form that the Director of Titles specifies.

12. Death of registered owner — (1) A transmission application under section 120, 121, 122 or 127 of the Act that is submitted for registration in a non-electronic format shall be in,

- (a) the form entitled “Transmission Application (For Registration of Executor or Administrator as Owner)” and dated September 1, 2011, as it appears on the Government of Ontario website, if made by an executor, administrator or estate trustee; or
- (b) the form entitled “Transmission Application (For Registration of Devisee or Heir at Law as Owner)” and dated September 1, 2011, as it appears on the Government of Ontario website, if made by a devisee or heir at law.

(2) A survivorship application under section 123 of the Act that is submitted for registration in a non-electronic format shall be in the form entitled “Survivorship Application” and dated September 1, 2011, as it appears on the Government of Ontario website.

(3) An affidavit required by section 37 of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act that sets out the supporting evidence for a survivorship application described in that section shall be in the form that the Director of Titles specifies.

13. Caution — (1) An application to register a caution that is submitted for registration under subsection 128(1) or (2) of the Act in a non-electronic format shall be in the form entitled “Application to Register Caution” and dated September 1, 2011, as it appears on the Government of Ontario website.

(2) A withdrawal of a caution that is submitted for registration under subsection 129(7) of the Act in a non-electronic format shall be in the form that the Director of Titles specifies.

14. Inhibiting order — (1) An application to the Director of Titles or to the land registrar for an inhibiting order under section 23 of the Act that is submitted for registration in a non-electronic format shall be in the form that the Director of Titles or the land registrar, as the case may be, requires.

(2) An application that is described in subsection 38(2) of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act and that is submitted for registration in a non-electronic format shall be in the form entitled “Application by Municipality for Inhibiting Order” and dated September 1, 2011, as it appears on the Government of Ontario website.

O. Reg. 355/13, s. 1

15. Withdrawal of registered land —

(1) An application for the withdrawal of land under subsection 171(1) of the Act shall be in the form entitled “Application to Withdraw Land from the *Land Titles Act*” and dated September 1, 2011, as it appears on the Government of Ontario website.

(2) A certificate of withdrawal under subsection 171(2) of the Act shall be in the form entitled “Certificate of Withdrawal” and dated September 1, 2011, as it appears on the Government of Ontario website, if the subject land is not situated in a land titles division where documents may be submitted for registration in an electronic format.

16. Notice of change of address for service — A notice of a change of address for service that is submitted for registration in non-electronic format shall be in the form that the Director of Titles specifies.

LAND TITLES ASSURANCE FUND

17. Application for compensation —

(1) A bond or a covenant to indemnify The Land Titles Assurance Fund under section 55 of the Act shall be in the form that the Director of Titles specifies.

(2) An application under subsection 57(6) of the Act for payment of compensation out of The Land Titles Assurance Fund shall be in the form that the Director of Titles specifies.

(3) The affidavit of the applicant that accompanies the application shall be in the form entitled “Affidavit in Support of Application for Payment of Compensation” and dated September 1, 2011, as it appears on the Government of Ontario website.

(4) The following shall be in the form that the Director of Titles specifies:

1. A notice of determination by the Director of Titles under subsection 57(8) of the Act.
2. A certificate of the Director of Titles under subsection 57(11) of the Act.

Land Titles Assurance Fund

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3. An acknowledgement and release of the applicant described in subsection 64.1(3) of Regulation 690 of the Revised Regulations of Ontario, 1990 (*Procedures and Records*) made under the Act.

18. Financial assistance for surveys — The following shall be in the form that the Director of Titles specifies:

1. An application for financial assistance out of The Land Titles Assurance

Fund under subsection 56(1) of the Act.

2. A direction of the Director of Titles under subsection 56(2) of the Act.

19. Revocation — Ontario Regulation 27/99 is revoked.

20. Commencement — This Regulation comes into force on the later of July 1, 2011 and the day it is filed.

LIMITATIONS ACT, 2002

S.O. 2002, c. 24, Sched. B, as am.
S.O. 2002, c. 24, Sched. B, s. 50;
2004, c. 16, Sched. D, s. 1, Table
(Fr.); 2004, c. 31, Sched. 22; 2006, c.
21, Sched. D; 2006, c. 32, Sched. C,
s. 29; 2007, c. 13, s. 44; 2008, c. 19,
Sched. L, Sched. V, s. 4; 2009, c. 13,
s. 12; 2009, c. 33, Sched. 21, s. 5;
2010, c. 1, Sched. 14; 2010, c. 16,
Sched. 4, s. 27; 2015, c. 20, Sched.
39, s. 5; 2016, c. 2, Sched. 2; 2017,
c. 2, Sched. 3, s. 6, Sched. 5, s. 14,
Sched. 8, s. 5; 2017, c. 10, Sched. 4,
s. 7; 2017, c. 24, s. 77; 2017, c. 34,
Sched. 12, s. 11; 2019, c. 15, Sched.
22, s. 98 [Not in force at date of pub-
lication.]; 2019, c. 17, Sched. 2, s.
15; 2020, c. 11, Sched. 16; 2020, c.
36, Sched. 25 [Not in force at date of
publication.].

DEFINITIONS AND APPLICATION

1. Definitions — In this Act,

“adverse effect” has the same meaning as in the *Environmental Protection Act*;

“assault” includes a battery;

“claim” means a claim to remedy an injury, loss or damage that occurred as a result of an act or omission;

“contaminant” has the same meaning as in the *Environmental Protection Act*;

“discharge” has the same meaning as in the *Environmental Protection Act*;

“environmental claim” means a claim based on an act or omission that caused, contributed to, or permitted the discharge of a contaminant into the natural environment that has caused or is likely to cause an adverse effect;

“natural environment” has the same meaning as in the *Environmental Protection Act*.

2. (1) Application — This Act applies to claims pursued in court proceedings other than,

- (a) proceedings to which the *Real Property Limitations Act* applies;
- (b) proceedings in the nature of an appeal, if the time for commencing them is governed by an Act or rule of court;
- (c) proceedings under the *Judicial Review Procedure Act*;
- (d) proceedings to which the *Provincial Offences Act* applies;
- (e) proceedings based on the existing aboriginal and treaty rights of the aboriginal peoples of Canada which are recognized and affirmed in section 35 of the *Constitution Act, 1982*;
- (f) proceedings based on equitable claims by aboriginal peoples against the Crown; and
- (g) proceedings to which the Limitation Convention or the Amended Limitation Convention, as defined in the *International Sales Conventions Act*, applies.

(2) Exception, aboriginal rights — Proceedings referred to in clause (1)(e) and (f) are governed by the law that would have been in force with respect to limitation of actions if this Act had not been passed.

2017, c. 2, Sched. 8, s. 5

3. Crown — This Act binds the Crown.

BASIC LIMITATION PERIOD

4. Basic limitation period — Unless this Act provides otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered.

S. 5(1)

Limitations Act, 2002

5. (1) Discovery — A claim is discovered on the earlier of,

(a) the day on which the person with the claim first knew,

(i) that the injury, loss or damage had occurred,

(ii) that the injury, loss or damage was caused by or contributed to by an act or omission,

(iii) that the act or omission was that of the person against whom the claim is made, and

(iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and

(b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

(2) Presumption — A person with a claim shall be presumed to have known of the matters referred to in clause (1)(a) on the day the act or omission on which the claim is based took place, unless the contrary is proved.

(3) Demand obligations — For the purposes of subclause (1)(a)(i), the day on which injury, loss or damage occurs in relation to a demand obligation is the first day on which there is a failure to perform the obligation, once a demand for the performance is made.

(4) Same — Subsection (3) applies in respect of every demand obligation created on or after January 1, 2004.

2008, c. 19, Sched. L, s. 1

6. Minors — The limitation period established by section 4 does not run during any time in which the person with the claim,

(a) is a minor; and

(b) is not represented by a litigation guardian in relation to the claim.

7. (1) Incapable persons — The limitation period established by section 4 does not run during any time in which the person with the claim,

(a) is incapable of commencing a proceeding in respect of the claim because of his or her physical, mental or psychological condition; and

(b) is not represented by a litigation guardian in relation to the claim.

(2) Presumption — A person shall be presumed to have been capable of commencing a proceeding in respect of a claim at all times unless the contrary is proved.

(3) Extension — If the running of a limitation period is postponed or suspended under this section and the period has less than six months to run when the postponement or suspension ends, the period is extended to include the day that is six months after the day on which the postponement or suspension ends.

(4) [Repealed 2016, c. 2, Sched. 2, s. 1.]
2016, c. 2, Sched. 2, s. 1

8. Litigation guardians — If a person is represented by a litigation guardian in relation to the claim, section 5 applies as if the litigation guardian were the person with the claim.

9. Appointment of litigation guardian on application or motion by potential defendant — **(1) Definitions** — In this section,

“**potential defendant**” means a person against whom another person may have a claim but against whom the other person has not commenced a proceeding in respect of the claim;

“**potential plaintiff**” means a person who may have a claim against another person but has not commenced a proceeding against that person in respect of the claim.

(2) Appointment of litigation guardian on application or motion by potential

defendant — If the running of a limitation period in relation to a claim is postponed or suspended under section 6 or 7, a potential defendant may make an application or a motion to have a litigation guardian appointed for a potential plaintiff.

(3) Effect of appointment — Subject to subsection (4), the appointment of a litigation guardian ends the postponement or suspension of the running of the limitation period if the following conditions are met:

1. The appointment is made by a judge on the application or motion of a potential defendant.
2. The judge is satisfied that the litigation guardian,
 - i. has been served with the motion,
 - ii. has consented to the appointment in writing, or in person before the judge,
 - iii. in connection with the claim, knows of the matters referred to in clause 5(1)(a),
 - iv. does not have an interest adverse to that of the potential plaintiff, and
 - v. agrees to attend to the potential plaintiff's interests diligently and to take all necessary steps for their protection, including the commencement of a claim if appropriate.

(4) Non-expiry — The limitation period shall be deemed not to expire against the potential plaintiff until the later of,

- (a) the date that is six months after the potential defendant files, with proof of service on the litigation guardian,
 - (i) a notice that complies with subsection (5), and
 - (ii) a declaration that, on the filing date, the potential defendant is not aware of any proceeding by the litigation guardian against the

potential defendant in respect of the claim; and

(b) the date on which the limitation period would otherwise expire after it resumes running under subsection (3).

(5) Notice — The notice,

- (a) shall not be served before the first anniversary of the appointment;
- (b) shall identify the potential plaintiff, the potential defendant and the claim; and
- (c) shall indicate that the claim could be extinguished if a proceeding is not promptly commenced.

10. [Repealed 2016, c. 2, Sched. 2, s. 2.]

11. (1) Attempted resolution — If a person with a claim and a person against whom the claim is made have agreed to have an independent third party resolve the claim or assist them in resolving it, the limitation periods established by sections 4 and 15 do not run from the date the agreement is made until,

- (a) the date the claim is resolved;
- (b) the date the attempted resolution process is terminated; or
- (c) the date a party terminates or withdraws from the agreement.

(2) Same — For greater certainty, a person or entity that provides resolution of claims or assistance in resolving claims, on an impartial basis, is an independent third party no matter how it is funded.

2006, c. 21, Sched. D, s. 1

12. (1) Successors — For the purpose of clause 5(1)(a), in the case of a proceeding commenced by a person claiming through a predecessor in right, title or interest, the person shall be deemed to have knowledge of the matters referred to in that clause on the earlier of the following:

1. The day the predecessor first knew or ought to have known of those matters.

2. The day the person claiming first knew or ought to have known of them.

(2) Principals and agents — For the purpose of clause 5(1)(a), in the case of a proceeding commenced by a principal, if the agent had a duty to communicate knowledge of the matters referred to in that clause to the principal, the principal shall be deemed to have knowledge of the matters referred to in that clause on the earlier of the following:

1. The day the agent first knew or ought to have known of those matters.
2. The day the principal first knew or ought to have known of them.

(3) Same — The day on which a predecessor or agent first ought to have known of the matters referred to in clause 5(1)(a) is the day on which a reasonable person in the predecessor's or agent's circumstances and with the predecessor's or agent's abilities first ought to have known of them.

13. (1) Acknowledgments — If a person acknowledges liability in respect of a claim for payment of a liquidated sum, the recovery of personal property, the enforcement of a charge on personal property or relief from enforcement of a charge on personal property, the act or omission on which the claim is based shall be deemed to have taken place on the day on which the acknowledgment was made.

(2) Interest — An acknowledgment of liability in respect of a claim for interest is an acknowledgment of liability in respect of a claim for the principal and for interest falling due after the acknowledgment is made.

(3) Collateral — An acknowledgment of liability in respect of a claim to realize on or redeem collateral under a security agreement or to recover money in respect of the collateral is an acknowledgment by any other person who later comes into possession of it.

(4) Realization — A debtor's performance of an obligation under or in respect of a security agreement is an acknowledgment by the debtor of liability in respect of a claim

by the creditor for realization on the collateral under the agreement.

(5) Redemption — A creditor's acceptance of a debtor's payment or performance of an obligation under or in respect of a security agreement is an acknowledgment by the creditor of liability in respect of a claim by the debtor for redemption of the collateral under the agreement.

(6) Trustees — An acknowledgment by a trustee is an acknowledgment by any other person who is or who later becomes a trustee of the same trust.

(7) Personal property — An acknowledgment of liability in respect of a claim to recover or enforce an equitable interest in personal property by a person in possession of it is an acknowledgment by any other person who later comes into possession of it.

(8) Liquidated sum — Subject to subsections (9) and (10), this section applies to an acknowledgment of liability in respect of a claim for payment of a liquidated sum even though the person making the acknowledgment refuses or does not promise to pay the sum or the balance of the sum still owing.

(9) Restricted application — This section does not apply unless the acknowledgment is made to the person with the claim, the person's agent or an official receiver or trustee acting under the *Bankruptcy and Insolvency Act* (Canada) before the expiry of the limitation period applicable to the claim.

(10) Same — Subsections (1), (2), (3), (6) and (7) do not apply unless the acknowledgment is in writing and signed by the person making it or the person's agent.

(11) Same — In the case of a claim for payment of a liquidated sum, part payment of the sum by the person against whom the claim is made or by the person's agent has the same effect as the acknowledgment referred to in subsection (10).

14. (1) Notice of possible claim — A person against whom another person may

have a claim may serve a notice of possible claim on the other person.

(2) Contents — A notice of possible claim shall be in writing and signed by the person issuing it or that person's lawyer, and shall,

- (a) describe the injury, loss or damage that the issuing person suspects may have occurred;
- (b) identify the act or omission giving rise to the injury, loss or damage;
- (c) indicate the extent to which the issuing person suspects that the injury, loss or damage may have been caused by the issuing person;
- (d) state that any claim that the other person has could be extinguished because of the expiry of a limitation period; and
- (e) state the issuing person's name and address for service.

(3) Effect — The fact that a notice of possible claim has been served on a person may be considered by a court in determining when the limitation period in respect of the person's claim began to run.

(4) Exception — Subsection (3) does not apply to a person who is not represented by a litigation guardian in relation to the claim and who, when served with the notice,

- (a) is a minor; or
- (b) is incapable of commencing a proceeding because of his or her physical, mental or psychological condition.

(5) Acknowledgment — A notice of possible claim is not an acknowledgment for the purpose of section 13.

(6) Admission — A notice of possible claim is not an admission of the validity of the claim.

ULTIMATE LIMITATION PERIODS

15. (1) Ultimate limitation periods — Even if the limitation period established by

any other section of this Act in respect of a claim has not expired, no proceeding shall be commenced in respect of the claim after the expiry of a limitation period established by this section.

(2) General — No proceeding shall be commenced in respect of any claim after the 15th anniversary of the day on which the act or omission on which the claim is based took place.

(3) Exception, purchasers for value — Despite subsection (2), no proceeding against a purchaser of personal property for value acting in good faith shall be commenced in respect of conversion of the property after the second anniversary of the day on which the property was converted.

(4) Period not to run — The limitation period established by subsection (2) does not run during any time in which,

- (a) the person with the claim,
 - (i) is incapable of commencing a proceeding in respect of the claim because of his or her physical, mental or psychological condition, and
 - (ii) is not represented by a litigation guardian in relation to the claim;
- (b) the person with the claim is a minor and is not represented by a litigation guardian in relation to the claim; or
- (c) the person against whom the claim is made,
 - (i) wilfully conceals from the person with the claim the fact that injury, loss or damage has occurred, that it was caused by or contributed to by an act or omission or that the act or omission was that of the person against whom the claim is made, or
 - (ii) wilfully misleads the person with the claim as to the appropriateness of a proceeding as a means of remedying the injury, loss or damage.

(5) Burden — The burden of proving that subsection (4) applies is on the person with the claim.

(6) Day of occurrence — For the purposes of this section, the day an act or omission on which a claim is based takes place is,

- (a) in the case of a continuous act or omission, the day on which the act or omission ceases;
- (b) in the case of a series of acts or omissions in respect of the same obligation, the day on which the last act or omission in the series occurs;
- (c) in the case of an act or omission in respect of a demand obligation, the first day on which there is a failure to perform the obligation, once a demand for the performance is made.

(7) Application, demand obligations — Clause (6)(c) applies in respect of every demand obligation created on or after January 1, 2004.

2008, c. 19, Sched. L, s. 2; 2016, c. 2, Sched. 2, s. 3

NO LIMITATION PERIOD

16. (1) No limitation period — There is no limitation period in respect of,

- (a) a proceeding for a declaration if no consequential relief is sought;
- (b) a proceeding to enforce an order of a court, or any other order that may be enforced in the same way as an order of a court;
- (c) a proceeding to obtain support under the *Family Law Act* or to enforce a provision for support or maintenance contained in a contract or agreement that could be filed under section 35 of that Act;
- (d) [Repealed 2017, c. 2, Sched. 5, s. 14(1).]
- (e) a proceeding under section 8 or 11.2 of the *Civil Remedies Act, 2001*;

(f) a proceeding by a debtor in possession of collateral to redeem it;

(g) a proceeding by a creditor in possession of collateral to realize on it;

(h) a proceeding based on a sexual assault;

(h.1) a proceeding based on any other misconduct of a sexual nature if, at the time of the misconduct, the person with the claim was a minor or any of the following applied with respect to the relationship between the person with the claim and the person who committed the misconduct:

(i) the other person had charge of the person with the claim,

(ii) the other person was in a position of trust or authority in relation to the person with the claim,

(iii) the person with the claim was financially, emotionally, physically or otherwise dependent on the other person;

(h.2) a proceeding based on an assault if, at the time of the assault, the person with the claim was a minor or any of the following applied with respect to the relationship between the person with the claim and the person who committed the assault:

(i) they had an intimate relationship,

(ii) the person with the claim was financially, emotionally, physically or otherwise dependent on the other person;

(i) a proceeding to recover money owing to the Crown in respect of,

(i) fines, taxes and penalties, or

(ii) interest that may be added to a tax or penalty under an Act;

(j) a proceeding described in subsection (2) that is brought by,

(i) the Crown, or

(ii) a delivery agent under the *Ontario Disability Support Pro-*

gram Act, 1997 or the Ontario Works Act, 1997; or

(k) a proceeding to recover money owing in respect of student loans, medical resident loans, awards or grants made under the *Ministry of Training, Colleges and Universities Act*, the *Canada Student Financial Assistance Act* or the *Canada Student Loans Act*.

(1.1) Same — Clauses (1)(h), (h.1) and (h.2) apply to a proceeding whenever the act on which the claim is based occurred and regardless of the expiry of any previously applicable limitation period, subject to subsection (1.2).

(1.2) Same — Subsection (1.1) applies to a proceeding that was commenced before March 8, 2016, unless the proceeding,

(a) was dismissed by a court and no further appeal is available; or

(b) was settled by the parties and the settlement is legally binding.

(1.3) Same — For greater certainty, clauses (1)(h), (h.1) and (h.2) are not limited in any way with respect to the claims that may be made in the proceeding in relation to the applicable act, which may include claims for negligence, for breach of fiduciary or any other duty or for vicarious liability.

(2) Same — Clause (1)(j) applies to proceedings in respect of claims relating to,

(a) the administration of social, health or economic programs; or

(b) the provision of direct or indirect support to members of the public in connection with social, health or economic policy.

(3) Same — Without limiting the generality of subsection (2), clause (1)(j) applies to proceedings in respect of claims for,

(a) the recovery of social assistance payments, student loans, awards, grants, contributions and economic development loans; and

(b) the reimbursement of money paid in connection with social, health or economic programs or policies as a result of fraud, misrepresentation, error or inadvertence.

(4) Conflict with s. 15 — This section and section 17 prevail over anything in section 15.

2007, c. 13, s. 44(1); 2010, c. 1, Sched. 14, s. 1; 2016, c. 2, Sched. 2, s. 4; 2017, c. 2, Sched. 5, s. 14(1); 2020, c. 11, Sched. 16, s. 1

17. Undiscovered environmental claims — There is no limitation period in respect of an environmental claim that has not been discovered.

GENERAL RULES

18. (1) Contribution and indemnity —

For the purposes of subsection 5(2) and section 15, in the case of a claim by one alleged wrongdoer against another for contribution and indemnity, the day on which the first alleged wrongdoer was served with the claim in respect of which contribution and indemnity is sought shall be deemed to be the day the act or omission on which that alleged wrongdoer's claim is based took place.

(2) Application — Subsection (1) applies whether the right to contribution and indemnity arises in respect of a tort or otherwise.

19. (1) Other Acts, etc. — A limitation period set out in or under another Act that applies to a claim to which this Act applies is of no effect unless,

(a) the provision establishing it is listed in the Schedule to this Act; or

(b) the provision establishing it,

(i) is in existence on January 1, 2004, and

(ii) incorporates by reference a provision listed in the Schedule to this Act.

(2) Act prevails — Subsection (1) applies despite any other Act.

S. 19(3)

Limitations Act, 2002

(3) Interpretation — The fact that a provision is listed in the Schedule shall not be construed as a statement that the limitation period established by the provision would otherwise apply to a claim as defined in this Act.

(4) Same — If there is a conflict between a limitation period established by a provision referred to in subsection (1) and one established by any other provision of this Act, the limitation period established by the provision referred to in subsection (1) prevails.

(5) Period not to run — Sections 6, 7 and 11 apply, with necessary modifications, to a limitation period established by a provision referred to in subsection (1).

2008, c. 19, Sched. L, s. 3

20. Statutory variation of time limits —

This Act does not affect the extension, suspension or other variation of a limitation period or other time limit by or under another Act.

21. (1) Adding party — If a limitation period in respect of a claim against a person has expired, the claim shall not be pursued by adding the person as a party to any existing proceeding.

(2) Misdescription — Subsection (1) does not prevent the correction of a misnaming or misdescription of a party.

22. (1) Limitation periods apply despite agreements — A limitation period under this Act applies despite any agreement to vary or exclude it, subject only to the exceptions in subsections (2) to (6).

(2) Exception — A limitation period under this Act may be varied or excluded by an agreement made before January 1, 2004.

(3) Same — A limitation period under this Act, other than one established by section 15, may be suspended or extended by an agreement made on or after October 19, 2006.

(4) Same — A limitation period established by section 15 may be suspended or extended by an agreement made on or after October 19, 2006, but only if the relevant claim has been discovered.

(5) Same — The following exceptions apply only in respect of business agreements:

1. A limitation period under this Act, other than one established by section 15, may be varied or excluded by an agreement made on or after October 19, 2006.

2. A limitation period established by section 15 may be varied by an agreement made on or after October 19, 2006, except that it may be suspended or extended only in accordance with subsection (4).

(6) Definitions — In this section,

“business agreement” means an agreement made by parties none of whom is a consumer as defined in the *Consumer Protection Act, 2002*;

“effective date” [Repealed 2008, c. 19, Sched. L, s. 4(2).]

“vary” includes extend, shorten and suspend.

2006, c. 21, Sched. D, s. 2; 2008, c. 19, Sched. L, s. 4

23. Conflict of laws — For the purpose of applying the rules regarding conflict of laws, the limitations law of Ontario or any other jurisdiction is substantive law.

24. Transition — (1) Definitions — In this section,

“effective date” [Repealed 2008, c. 19, Sched. L, s. 5(1).]

“former limitation period” means the limitation period that applied in respect of the claim before January 1, 2004.

(2) Application — Subject to subsection (2.1), this section applies to claims based on acts or omissions that took place before Jan-

uary 1, 2004 and in respect of which no proceeding has been commenced before that date.

(2.1) Exception — This section does not apply to a claim in respect of which clause 16(1)(h), (h.1) or (h.2) applies.

(3) Former limitation period expired — If the former limitation period expired before January 1, 2004, no proceeding shall be commenced in respect of the claim.

(4) Former limitation period unexpired — If the former limitation period did not expire before January 1, 2004 and if no limitation period under this Act would apply were the claim based on an act or omission that took place on or after that date, there is no limitation period.

(5) Same — If the former limitation period did not expire before January 1, 2004 and if a limitation period under this Act would apply were the claim based on an act or omission that took place on or after that date, the following rules apply:

1. If the claim was not discovered before January 1, 2004, this Act applies as if the act or omission had taken place on that date.

2. If the claim was discovered before January 1, 2004, the former limitation period applies.

(6) No former limitation period — If there was no former limitation period and if a limitation period under this Act would apply were the claim based on an act or omission that took place on or after January 1, 2004, the following rules apply:

1. If the claim was not discovered before January 1, 2004, this Act applies as if the act or omission had taken place on that date.
2. If the claim was discovered before January 1, 2004, there is no limitation period.

(7) [Repealed 2016, c. 2, Sched. 2, s. 5(3).]

(7.1) Claims re payments alleged to be ultra vires — For the purposes of this section, clause 45(1)(g) of the *Limitations Act*, as it read immediately before its repeal, applies to a claim respecting amounts paid to the Crown or to another public authority for which it is alleged that no valid legal authority existed at the time of payment.

(8) Agreements — This section is subject to any agreement to vary or exclude a limitation period that was made before January 1, 2004.

2008, c. 19, Sched. L, s. 5; 2016, c. 2, Sched. 2, s. 5

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LOAN AND TRUST CORPORATIONS ACT

R.S.O. 1990, c. L.25, as am. S.O. 1992, c. 32, s. 19; 1993, c. 27, Sched.; 1994, c. 11, s. 390; 1994, c. 17, ss. 103–121 [s. 121 repealed 1997, c. 19, s. 13(19).]; 1996, c. 2, s. 70; 1997, c. 10, s. 28; 1997, c. 19, s. 13; 1997, c. 23, s. 9; 1997, c. 28, ss. 149–171; 1999, c. 1; 1999, c. 6, s. 34; 1999, c. 12, Sched. s. 5(1)–(3) [s. 5(2) cannot be applied.]; 2001, c. 8, ss. 52–183; 2004, c. 7, s. 10; 2004, c. 8, s. 46; 2004, c. 31, Sched. 23; 2005, c. 5, s. 38; 2006, c. 19, Sched. C, s. 1(1); 2010, c. 26, Sched. 11; 2015, c. 20, Sched. 21 [Not in force at date of publication.]; CTS 23 FE 17 - 1; 2017, c. 34, Sched. 17, s. 23; 2018, c. 8, Sched. 16; 2020, c. 36, Sched. 7, s. 318, Sched. 14, s. 9 [Sched. 7, s. 318, Sched. 14, s. 9(4) not in force at date of publication.]

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PART X — BUSINESS AND INVESTMENTS (SS. 153–176.10)

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175. (1) [Repealed 2001, c. 8, s. 140.]

(2) Approval of the corporation as executor, etc. — Where a registered trust corporation is authorized to execute the office of executor, administrator, trustee, re-

ceiver, liquidator, assignee, guardian or committee, and the Lieutenant Governor in Council approves of the corporation being accepted as a trust corporation for the purposes of the Superior Court of Justice, every court or judge having authority to appoint such an officer may, with the consent of the corporation, appoint the corporation to exercise any of such offices in respect of any estate or person under the authority of such court or judge, or may grant to the corporation probate of any will in which the corporation is named as an executor.

(3) Appointment as trustee — A registered trust corporation approved by the Lieutenant Governor in Council under subsection (2),

(a) may be appointed to be a sole trustee, even though but for this Act it would be necessary to appoint more than one trustee; and

(b) may be appointed to any of the offices mentioned in subsection (2) jointly with another person,

and the appointment may be made whether the trustee is required under a deed, will or document creating a trust or whether the appointment is under the *Trustee Act* or otherwise.

(4) Security not required — Despite any rule, practice or statutory provision, it is not necessary for a trust corporation approved under subsection (2) to give any security for the due performance of its duty as executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee unless so ordered by a court.

2001, c. 8, s. 140; 2006, c. 19, Sched. C, s. 1(1)

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MARRIAGE ACT

R.S.O. 1990, c. M.3, as am. O. Reg. 726/91, s. 1; S.O. 1993, c. 27, Sched.; 1994, c. 27, s. 89; 1998, c. 18, Sched. E, ss. 179–182; 1999, c. 12, Sched. F, ss. 30–32; 2001, c. 9, Sched. D, s. 10; 2001, c. 13, s. 20 (Fr.); 2002, c. 14, Sched., s. 11; 2002, c. 17, Sched. F, s. 1; 2002, c. 25 [Not in force at date of publication. Repealed 2009, c. 33, Sched. 17, s. 7(1).]; 2005, c. 5, s. 39; 2006, c. 19, Sched. G, s. 4; 2008, c. 14, s. 55; 2009, c. 33, Sched. 17, s. 6(3), (7); 2012, c. 8, Sched. 32 [s. 4 not in force at date of publication.]; 2020, c. 11, Sched. 17, ss. 1–5; 2020, c. 18, Sched. 9.

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9. (1) Order under *Declarations of Death Act, 2002* — If an order has been

made under the *Declarations of Death Act, 2002* declaring that a married person has died, the person to whom the deceased was married may, subject to the provisions of this Act, obtain a licence or be married under the authority of the publication of banns upon depositing a certified copy of the order with the person issuing the licence or solemnizing the marriage together with an affidavit in the required form.

(2) Exception — Subsection (1) does not apply if the order is limited, under subsection 2(6) of the *Declarations of Death Act, 2002*, to specified purposes other than remarriage.

2001, c. 9, Sched. D, s. 10(3); 2002, c. 14, Sched., s. 11; 2005, c. 5, s. 39(2)

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MENTAL HEALTH ACT

R.S.O. 1990, c. M.7, as am. S.O. 1992, c. 32, s. 20; 1993, c. 27, Sched.; 1994, c. 27, s. 43(2); 1996, c. 2, s. 72; 1997, c. 15, s. 11; 1999, c. 12, Sched. J, s. 33 (Fr.); 2000, c. 9, ss. 1–30; 2001, c. 9, Sched. B, s. 9; 2002, c. 24, Sched. B, s. 25, item 12; 2004, c. 3, Sched. A, s. 90; 2010, c. 1, Sched. 17; 2015, c. 36, ss. 1–16.

1. (1) Definitions — In this Act,

“attending physician” means a physician to whom responsibility for the observation, care and treatment of a patient has been assigned;

“Board” means the Consent and Capacity Board continued under the *Health Care Consent Act, 1996*;

“community treatment plan” means a plan described in section 33.7 that is a required part of a community treatment order;

“Deputy Minister” means the deputy minister of the Minister;

“health practitioner” has the same meaning as in the *Health Care Consent Act, 1996*;

“informal patient” means a person who is a patient in a psychiatric facility, having been admitted with the consent of another person under section 24 of the *Health Care Consent Act, 1996*;

“involuntary patient” means a person who is detained in a psychiatric facility under a certificate of involuntary admission, a certificate of renewal or a certificate of continuation;

“local board of health” has the same meaning as board of health in the *Health Protection and Promotion Act*;

“medical officer of health” has the same meaning as in the *Health Protection and Promotion Act*;

“mental disorder” means any disease or disability of the mind;

“mentally competent” [Repealed 2004, c. 3, Sched. A, s. 90(1).]

“Minister” means the Minister of Health and Long-Term Care or such other member of the Executive Council as the Lieutenant Governor in Council designates;

“Ministry” means the Ministry of the Minister;

“officer in charge” means the officer who is responsible for the administration and management of a psychiatric facility;

“out-patient” means a person who is registered in a psychiatric facility for observation or treatment or both, but who is not admitted as a patient and is not the subject of an application for assessment;

“patient” means a person who is under observation, care and treatment in a psychiatric facility;

“personal health information” has the same meaning as in the *Personal Health Information Protection Act, 2004*;

“physician” means a legally qualified medical practitioner and, when referring to a community treatment order, means a legally qualified medical practitioner who meets the qualifications prescribed in the regulations for the issuing or renewing of a community treatment order;

“plan of treatment” has the same meaning as in the *Health Care Consent Act, 1996*;

“prescribed” means prescribed by the regulations;

“psychiatric facility” means a facility for the observation, care and treatment of persons suffering from mental disorder, and designated as such by the Minister;

S. 1(1) psy**Mental Health Act**

“psychiatrist” means a physician who holds a specialist’s certificate in psychiatry issued by The Royal College of Physicians and Surgeons of Canada or equivalent qualification acceptable to the Minister;

“record of personal health information”, in relation to a person, means a record of personal health information that is compiled in a psychiatric facility in respect of the person;

“registered nurse in the extended class” means a registered nurse who holds an extended certificate of registration under the *Nursing Act, 1991*;

“regulations” means the regulations made under this Act;

“related medical treatment” [Repealed 1992, c. 32, s. 20(3).]

“restrain” means place under control when necessary to prevent serious bodily harm to the patient or to another person by the minimal use of such force, mechanical means or chemicals as is reasonable having regard to the physical and mental condition of the patient;

“review board” [Repealed 1992, c. 32, s. 20(3).]

“rights adviser” means a person, or a member of a category of persons, qualified to perform the functions of a rights adviser under this Act and designated by a psychiatric facility, the Minister or by the regulations to perform those functions, but does not include,

- (a) a person involved in the direct clinical care of the person to whom the rights advice is to be given, or
- (b) a person providing treatment or care and supervision under a community treatment plan;

“senior physician” means the physician responsible for the clinical services in a psychiatric facility;

“substitute decision-maker”, in relation to a patient, means the person who would be

authorized under the *Health Care Consent Act, 1996* to give or refuse consent to a treatment on behalf of the patient, if the patient were incapable with respect to the treatment under that Act, unless the context requires otherwise;

“treatment” has the same meaning as in the *Health Care Consent Act, 1996*.

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1992, c. 32, s. 20; 1996, c. 2, s. 72; 2000, c. 9, s. 1; 2004, c. 3, Sched. A, s. 90(1)-(3); 2015, c. 36, s. 2

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PART III — ESTATES (SS. 54–76)

54. (1) Examination on admission to determine capacity — Forthwith on a patient’s admission to a psychiatric facility, a physician shall examine him or her to determine whether the patient is capable of managing property.

(2) Examination at other times — A patient’s attending physician may examine him or her at any time to determine whether the patient is capable of managing property.

(3) Record of personal health information — After an examination under subsection (1) or (2), the physician shall note his or her determination, with reasons, in the patient’s record of personal health information.

(4) Certificate of incapacity — If the physician determines that the patient is not capable of managing property, he or she shall issue a certificate of incapacity in the approved form, and the officer in charge shall transmit the certificate to the Public Guardian and Trustee.

(5) Same — If the circumstances are such that the Public Guardian and Trustee should immediately assume management of the patient’s property, the officer in charge (or the physician who examined the patient, if the officer in charge is absent) shall notify the

Public Guardian and Trustee of the matter as quickly as possible.

(6) Exception — This section does not apply if,

(a) the patient's property is under guardianship under the *Substitute Decisions Act, 1992*; or

(b) the physician believes on reasonable grounds that the patient has a continuing power of attorney under that Act that provides for the management of the patient's property.

1992, c. 32, s. 20(41); 1996, c. 2, s. 64(2); 2000, c. 9, s. 24; 2001, c. 9, Sched. B, s. 9; 2004, c. 3, Sched. A, s. 90(19)

55. Financial statement — When a certificate of incapacity is issued, the officer in charge shall forthwith transmit a financial statement in the approved form to the Public Guardian and Trustee.

1992, c. 32, s. 20(41); 1996, c. 2, s. 64(2); 2000, c. 9, s. 25

56. Cancellation of certificate — The attending physician of a patient with respect to whom a certificate of incapacity has been issued may, after examining the patient for that purpose, cancel the certificate, and the officer in charge shall transmit a notice of cancellation in the approved form to the Public Guardian and trustee.

1992, c. 32, s. 20(42); 2000, c. 9, s. 26

57. (1) Examination before discharge to determine capacity — Within twenty-one days before the discharge from the psychiatric facility of a patient with respect to whom a certificate of incapacity has been issued, the attending physician shall examine him or her to determine whether the patient is capable of managing property.

(2) Notice of continuance — If the attending physician determines that the patient is not capable of managing property, he or she shall issue a notice of continuance in the approved form, and the officer in charge

shall transmit the notice to the Public Guardian and Trustee.

1992, c. 32, s. 20(43); 2000, c. 9, s. 27

58. Notice of discharge — When a patient in respect of a whom a notice of continuance has been issued is discharged from the psychiatric facility, the officer in charge shall transmit notice of the fact to the Public Guardian and Trustee.

2015, c. 36, s. 13

59. (1) Advice to patient, notice to rights adviser — A physician who issues a certificate of incapacity or a notice of continuance shall promptly advise the patient of the act shall also promptly notify a rights adviser.

(2) Meeting with rights adviser — The rights adviser shall promptly meet with the patient and explain to him or her the significance of the certificate or notice and the right to have the issue of the patient's capacity to manage property reviewed by the Board.

(3) Exception — Subsection (2) does not apply if the patient himself or herself refuses to meet with the rights adviser.

(4) Assistance — At the patient's request, the rights adviser shall assist him or her in making an application to the Board and in obtaining legal services.

1992, c. 32, s. 20(43); 2015, c. 36, s. 14

60. (1) Application to Board for review — A patient in respect of whom a certificate of incapacity or a notice of continuance has been issued may apply in the approved form to have the Board review the issue of his or her capacity to manage property.

(2) Procedure — Except that applications may be made not more frequently than once in any six-month period, section 42 of this Act and sections 73 to 80 of the *Health Care Consent Act, 1996* apply to an application under subsection (1), with necessary modifications.

S. 60(3)

Mental Health Act

(3) Patient discharged — If an application is commenced under this section by a patient in respect of whom a notice of continuance has been issued, the application may continue to be dealt with by the Board even after the patient is discharged from the psychiatric facility.

1992, c. 32, s. 20(44); 1996, c. 2, s. 72(31);
2000, c. 9, s. 28

.....

.....

ONT. REG. 741 — GENERAL

made under the *Mental Health Act*

R.R.O. 1990, Reg. 741, as am. O. Reg. 342/93, ss. 1 (Fr.), 2; 15/95; 103/96; 616/00; 331/04; 153/17.

1. In this Regulation,

“psychiatric facility” means a facility that the Minister designates as such under section 80.2 of the Act.

O. Reg. 616/00, s. 1

STANDARDS

2. Plans and specifications for the creation, establishment, construction, alteration or renovation of a psychiatric facility shall be submitted to the Minister for approval.

3. [Revoked O. Reg. 616/00, s. 2.]

4. (1) Unless exempted therefrom by the Minister under subsection 80.2(1) of the Act, every psychiatric facility shall offer a program that includes the following essential services:

1. In-patient services.
2. Out-patient services.
3. Day care services.
4. Emergency services.
5. Consultative and educational services to local agencies.

(2) Any alteration in the program of a psychiatric facility that limits or restricts any of the essential services listed in subsection (1) shall be submitted to the Minister for approval.

(3) The list of psychiatric facilities designated by the Minister, their classifications, as well as any exemption from the requirement to provide the essential services mentioned in subsection (1), is available on the Internet through the web site of the Ministry of Health and Long-Term Care.

O. Reg. 616/00, s. 3; 331/04, s. 1

5. The observation, care and treatment of patients of a psychiatric facility shall be under the direction and supervision of a psychiatrist except at the Woodstock General Hospital and the St. Joseph’s Care Group, Westmount St. Site, in Thunder Bay.

O. Reg. 616/00, s. 4

RETURNS

6. (1) The Minister may require a psychiatric facility to furnish any returns, reports and information that the Minister may consider necessary from time to time.

(2) A psychiatric facility shall comply with a requirement of the Minister under subsection (1).

O. Reg. 331/04, s. 2

APPLICATION OF PARTS II AND III OF ACT

7. The psychiatric facilities designated by the Minister as belonging to the class of facilities not required to provide in-patient services are exempt from the application of,

- (a) Part II of the Act, except sections 35 and 35.1; and
- (b) Part III of the Act.

O. Reg. 616/00, s. 5; 331/04, s. 3

BRINGING INFORMATION BEFORE JUSTICE UNDER SECTION 16

7.1 For the purposes of section 16 of the Act, information on oath may be brought before a justice of the peace orally or in

S. 7.1

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writing, and may include documents and other recorded materials relevant to the subject matter of the proceeding

O. Reg. 616/00, s. 6

TAKING INTO CUSTODY BY FACILITY

7.2 (1) Where a person is taken to a psychiatric facility under section 33 of the Act, the officer in charge or his or her delegate shall ensure that a decision is made as soon as is reasonably possible as to whether or not the facility will take custody of the person.

(2) The staff member or members of the psychiatric facility responsible for making the decision shall consult with the police officer or other person who has taken the person in custody to the facility.

(3) A staff member designated for this purpose shall communicate with the police officer or other person about any delays in the making of the decision.

(4) Where a decision is made to take the person into custody, the designated staff member shall promptly inform the police officer or other person of the decision.

O. Reg. 616/00, s. 6

COMMUNITY TREATMENT ORDERS

7.3 A physician is qualified to issue or renew a community treatment order if he or she is,

- (a) a psychiatrist;
- (b) a physician who practises in the area of mental health; or
- (c) a physician who is an employee or staff member of a psychiatric facility.

O. Reg. 616/00, s. 6

7.4 Where a physician issues an order for examination under subsection 33.3(1) or

33.4(3), the physician shall ensure that the police,

(a) have complete and up-to-date information about the name, address and telephone number of the physician responsible for completing the examination required under the order and, if the information changes, shall provide the police with the changed information; and

(b) are immediately notified if the person subject to the order voluntarily attends for the examination or, for any other reason, the order is revoked prior to its expiry date.

O. Reg. 616/00, s. 6

ABSENCE WITHOUT AUTHORIZATION

8. (1) Where the absence without authorization of a patient who is subject to detention in a psychiatric facility becomes known to the officer in charge, he or she shall forthwith issue an order for return in the approved form and notify the appropriate law enforcement authorities.

(2) Where the officer in charge has issued an order for return and has notified the appropriate law enforcement authorities, he or she shall notify those authorities forthwith if the patient returns or if the patient does not return and is deemed discharged from the facility under subsection 28(4) of the Act.

O. Reg. 616/00, s. 7

BOARD

9. The officer in charge shall complete and transmit to the Board a notice in the approved form of the filing of a fourth certificate of renewal or a subsequent fourth certificate of renewal respecting a patient.

O. Reg. 15/95, s. 2(2); 616/00, s. 8

10. Every psychiatric facility in respect of which the Board has jurisdiction shall provide applications for review and envelopes

pre-addressed to the Board having jurisdiction and an application and envelope shall be furnished forthwith to any person who requests them.

O. Reg. 15/95, s. 3

11. [Revoked O. Reg. 15/95, s. 4.]

12. [Revoked O. Reg. 616/00, s. 9.]

FORMS

13. (1) An application under subsection 15(1) or (1.1) of the Act shall be in Form 1.

(2) An order under subsection 16(1) or (1.1) of the Act shall be in Form 2.

(3) A certificate of involuntary admission shall be in Form 3.

(4) A certificate of renewal shall be in Form 4.

(5) An order under subsection 21(1) of the Act shall be in Form 6.

(6) An order under subsection 22(1) of the Act shall be in Form 8.

(7) An order to admit a person coming into Ontario under subsection 32(1) of the Act shall be in Form 13.

(8) A community treatment order under subsection 33.1(2) of the Act shall be in Form 45.

(9) An order for examination under subsection 33.3(1) or 33.4(3) of the Act shall be in Form 47.

(10) In this section, a reference to a form is a reference to the form described in the following Table and available on the website of the Government of Ontario Central Forms

Repository under the listing for the Ministry of Health and Long-Term Care:

TABLE OF FORMS

| Form Number | Form Name | Date of Form |
|--------------------|--|---------------------|
| 1 | Application by Physician for Psychiatric Assessment | December 2000 |
| 2 | Order for Examination under Section 16 | December 2000 |
| 3 | Certificate of Involuntary Admission | December 2000 |
| 4 | Certificate of Renewal | December 2000 |
| 4A | Certificate of Continuation | December 2015 |
| 6 | Order for Attendance for Examination Subsection 21(1) of the Act | December 2000 |
| 8 | Order for Admission Subsection 22(1) of the Act | December 2000 |
| 13 | Order to Admit a Person Coming Into Ontario | December 2000 |
| 45 | Community Treatment Order | December 2000 |
| 47 | Order for Examination Sections 33.3(1) and 33.4(3) of the Act | December 2000 |

O. Reg. 616/00, s. 10; 331/04, s. 4; 153/17, s. 1

13.1 Where the Minister approves a form and requires its use under section 80.1 of the Act, the form shall be available on the website of the Government of Ontario Central

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Forms Repository under the listing for the Ministry of Health and Long-Term Care.

O. Reg. 153/17, s. 2

RIGHTS ADVICE

14. (1) The Minister shall designate one or more persons or categories of persons to perform the functions of a rights adviser under the Act in each psychiatric facility designated as an institution under the *Mental Hospitals Act* and may revoke such a designation.

(2) A psychiatric facility that is not an institution under the *Mental Hospitals Act* shall designate one or more persons or categories of persons to perform the functions of a rights adviser under the Act in the facility.

(3) A psychiatric facility acting under subsection (2) may designate a person or persons or a category of persons designated by the Minister under subsection (1) but on doing so the facility shall inform the Minister of the designation.

(4) A psychiatric facility may revoke a designation made under subsection (3).

(5) A designation or revocation by a psychiatric facility shall be made on its behalf by the officer in charge.

O. Reg. 616/00, s. 11

14.1 The Minister shall designate one or more persons or categories of persons to perform the functions of a rights adviser under the Act with respect to a person who is being considered for the issuance or renewal of a community treatment order where the person is not a patient in a psychiatric facility and may revoke such a designation.

O. Reg. 616/00, s. 11

14.2 Only persons who meet the following requirements may be designated to perform the functions of a rights adviser under the Act whether in a psychiatric facility or with respect to a person who is being considered

for the issuance or renewal of a community treatment order:

1. The person must be knowledgeable about the rights to apply to the Board provided under the Act, the *Health Care Consent Act, 1996* and the *Personal Health Information Protection Act, 2004*.

2. The person must be knowledgeable about the workings of the Board, how to contact the Board and how to make applications to the Board.

3. The person must be knowledgeable about how to obtain legal services.

4. The person must have the communications skills necessary to perform effectively the functions of a rights adviser under the Act.

5. The person must have successfully completed a training course for rights advisers approved by the Minister and have been certified as having completed such a course.

O. Reg. 616/00, s. 11; 331/04, s. 5

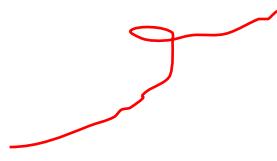
14.3 (1) A physician who is considering issuing or renewing a community treatment order for a person under section 33.1 of the Act shall give notice of his or her intention in the approved form to the person, the person's substitute decision-maker, if any, and to a rights adviser.

(2) A rights adviser who receives notice under subsection (1) shall promptly,

(a) provide rights advice to the person unless the person refuses the provision of rights advice;

(b) provide rights advice to the person's substitute decision-maker, if any.

(3) The rights adviser shall explain to the person and the substitute decision-maker, if any, the requirements for the issuance or renewal of a community treatment order, the significance of such an order, including any obligations that the person or the substitute decision-maker may be required to meet under the order.



Rights Advice for Patients ~~Found Incapable with Respect to Treatment of~~ S. 15(6)

- (4) Where a rights adviser who receives notice under subsection (1) believes that it is in the best interest of the person to receive rights advice from another rights adviser, he or she shall ensure that a second rights adviser provides such advice.
- (5) Where a rights adviser provides rights advice to the person and the substitute decision-maker, if any, the rights adviser shall promptly provide confirmation of that fact to the physician in the approved form.
- (6) Where a person refuses the provision of rights advice, the rights adviser shall promptly provide confirmation of that fact to the physician in the approved form.

O. Reg. 616/00, s. 11

**RIGHTS ADVICE FOR PATIENTS
FOUND INCAPABLE WITH
RESPECT TO TREATMENT OF A
MENTAL DISORDER**

15. (1) If a person who has been admitted to a psychiatric facility as a patient is 14 years old or older and if the person's attending physician proposes treatment of a mental disorder of the person and finds that the person is incapable with respect to the treatment within the meaning of the *Health Care Consent Act, 1996*, the attending physician shall ensure that,

- (a) the person is promptly given a written notice indicating that he or she has been found by the attending physician to be incapable with respect to the treatment; and
- (b) a rights adviser is promptly notified of the finding of incapacity.

(2) A rights adviser who is notified of a finding of incapacity shall promptly meet with the person who has been found incapable and shall explain to the person the significance of the finding and the right to apply to the Board under the *Health Care Consent Act, 1996* for a review of the finding.

(3) Subsection (2) does not apply if the person who has been found incapable refuses to meet with the rights adviser.

(4) At the request of the person who has been found incapable, the rights adviser shall assist him or her in applying to the Board under the *Health Care Consent Act, 1996* for a review of the finding and in obtaining legal services.

(5) This section does not apply if,

(a) the person has a guardian of the person appointed under the *Substitute Decisions Act, 1992* who has authority to give or refuse consent to the treatment;

(b) the person has an attorney under a power of attorney for personal care given under the *Substitute Decisions Act, 1992*, the power of attorney contains a provision waiving the person's right to apply to the Board for a review of the finding of incapacity and the provision is effective under subsection 50(1) of the *Substitute Decisions Act, 1992*;

(c) the person is in a coma, is unconscious, is semi-conscious or is unable to communicate comprehensibly despite reasonable efforts to understand the person; or

(d) the attending physician is of the opinion that there is an emergency within the meaning of subsection 25(1) of the *Health Care Consent Act, 1996*.

(6) If a rights adviser has met with a person who was admitted to a psychiatric facility and was found incapable with respect to a treatment of a mental disorder, and if the rights adviser has provided the person with the explanation required by subsection (2), this section does not apply to any subsequent finding of incapacity made in respect of the person during his or her stay in the facility pursuant to that admission, whether the subsequent finding is made in relation to the same treatment or a different treatment.

O. Reg. 103/96, s. 3

**RIGHTS ADVICE FOR PATIENTS
DETERMINED INCAPABLE OF
CONSENTING TO THE
COLLECTION, USE OR
DISCLOSURE OF PERSONAL
HEALTH INFORMATION UNDER
THE PERSONAL HEALTH
INFORMATION PROTECTION
ACT, 2004**

[Heading added O. Reg. 331/04, s. 6.]

15.1 (1) If a person who has been admitted to a psychiatric facility as a patient is 14 years old or older and if the officer in charge of the psychiatric facility determines that the person is incapable of consenting to a collection, use or disclosure of personal health information within the meaning of the *Personal Health Information Protection Act, 2004*, the officer in charge of the psychiatric facility shall ensure that,

(a) the person is promptly given a written notice indicating that he or she has been determined, by the officer in charge, incapable of consenting to the collection, use or disclosure of his or her personal health information; and

(b) a rights adviser is promptly notified of the determination of incapacity.

(2) A rights adviser who is notified of a determination of incapacity shall promptly meet with the person who has been determined to be incapable and shall explain to the person the significance of the determination and the right to apply to the Board for a review of the determination under subsection 22(3) of the *Personal Health Information Protection Act, 2004* and, where the patient is 16 years old or older, that the patient has the right to apply to the Board for appointment of a representative as set out in subsection 27(1) of that Act.

(3) Subsection (2) does not apply if the person who has been determined to be incapable refuses to meet with the rights adviser.

(4) At the request of the person who has been determined to be incapable, the rights adviser shall assist him or her in applying to the Board for a review of the determination, for appointment of a representative or in obtaining legal services.

(5) This section does not apply if,

(a) the person has a guardian of the person or a guardian of property appointed under the *Substitute Decisions Act, 1992* who has authority, on behalf of the person, to give or refuse consent to the collection, use or disclosure of personal health information;

(b) the person has an attorney under a power of attorney for personal care given under the *Substitute Decisions Act, 1992*, the power of attorney contains a provision waiving the person's right to apply to the Board for a review of the determination of incapacity and the provision is effective under subsection 50(1) of that Act;

(c) the person is in a coma, is unconscious, is semi-conscious or is unable to communicate comprehensibly despite reasonable efforts to understand the person; or

(d) the attending physician is of the opinion that there is an emergency.

(6) If a rights adviser has met with a person who was admitted to a psychiatric facility and was determined to be incapable of consenting to the collection, use or disclosure of personal health information, and if the rights adviser has provided the person with the explanation required by subsection (2), this section does not apply to any subsequent determination of incapacity with respect to collection, use or disclosure of personal health information made in respect of the person during his or her stay in the facility pursuant to that admission.

O. Reg. 331/04, s. 6

**EXPLANATION BY RIGHTS
ADVISERS**

16. (1) A rights adviser fulfils his or her obligation under this Regulation to explain a matter to a person if the rights adviser explains the matter to the best of his or her ability and in a manner that addresses the person's special needs, even if the person does not understand the explanation.

(2) In circumstances other than those described in subsection 14.3(5) and (6), where a rights adviser is required to explain a matter to a person under the Act, he or she shall provide confirmation that the explanation has been given to the attending physician or the officer in charge, as the case may be, in the approved form.

O. Reg. 103/96, s. 3; 616/00, s. 12

**SCHEDULE 1 — [REVOKE
O. REG. 616/00, S. 13.]**

[Revoked O. Reg. 616/00, s. 13.]

**SCHEDULE 2 — [REVOKE
O. REG. 616/00, S. 13.]**

[Revoked O. Reg. 616/00, s. 13.]

**SCHEDULE 3 — [REVOKE
O. REG. 616/00, S. 13.]**

[Revoked O. Reg. 616/00, s. 13.]

**SCHEDULE 4 — [REVOKE
O. REG. 616/00, S. 13.]**

[Revoked O. Reg. 616/00, s. 13.]

**SCHEDULE 5 — [REVOKE
O. REG. 616/00, S. 13.]**

[Revoked O. Reg. 616/00, s. 13.]

**Form 1 — Application by
Physician for Psychiatric
Assessment**

Mental Health Act

[Repealed O. Reg. 153/17, s. 3.]

[Editor's Note: Pursuant to General, R.R.O. 1990, Reg. 741, s. 13(10), when a form is referred to, the reference is to the form described by the s. 13(10) Table of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ministry of Health

Name of physician
(print name of physician)

Physician address (address of physician)

Telephone number ()
Fax number ()

On (date) I personally examined (print full name of person) whose address is (home address)

You may only sign this Form 1 if you have personally examined the person within the past seven days. In deciding if a Form 1 is appropriate, you must complete either Box A (serious harm test) or Box B (persons who are incapable of consenting to treatment and meet the specified criteria test) below.

**Box A — Section 15(1) of the Mental
Health Act Serious Harm Test**

The Past / Present Test (check one or more)

I have reasonable cause to believe that the person:

- has threatened or is threatening to cause bodily harm to himself or herself
- has attempted or is attempting to cause bodily harm to himself or herself
- has behaved or is behaving violently towards another person

Form 1

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has caused or is causing another person to fear bodily harm from him or her; or

has shown or is showing a lack of competence to care for himself or herself

I base this belief on the following information (*you may, as appropriate in the circumstances, rely on any combination of your own observations and information communicated to you by others.*)

My own observations:

Facts communicated to me by others:

The Future Test (check one or more)

I am of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in:

serious bodily harm to himself or herself,

serious bodily harm to another person,

serious physical impairment of himself or himself

I base this opinion on the following information (*you may, as appropriate in the circumstances, rely on any combination of your own observations and information communicated to you by others.*)

My own observations:

Facts communicated by others:

Box B — Section 15(1.1) of the Mental Health Act Patients who are Incapable of Consenting to Treatment and Meet the Specified Criteria

Note: The patient must meet the criteria set out in each of the following conditions.

I have reasonable cause to believe that the person:

1. Has previously received treatment for mental disorder of an ongoing or recurring nature that, when not treated, is of a nature or quality that likely will result in one or more of the following: (*please indicate one or more*)

serious bodily harm to himself or herself,

serious bodily harm to another person,

substantial mental or physical deterioration of himself or herself, or

serious physical impairment of himself or herself;

AND

2. Has shown clinical improvement as a result of the treatment.

AND

I am of the opinion that the person,

3. Is incapable, within the meaning of the *Health Care Consent Act, 1996*, of consenting to his or her treatment in a psychiatric facility and the consent of his or her substitute decision-maker has been obtained;

AND

4. Is apparently suffering from the same mental disorder as the one for which he or she previously received treatment or from a mental disorder that is similar to the previous one;

AND

5. Given the person's history of mental disorder and current mental or physical condition, is likely to: (*choose one or more of the following*)

cause serious bodily harm to himself or herself, or

cause serious bodily harm to another person, or

suffer substantial mental or physical deterioration, or

suffer serious physical impairment

I base this opinion on the following information (*you may, as appropriate in the circumstances, rely on any combination of your own observations and information communicated to you by others.*)

My own observations:

Facts communicated by others:

I have made careful inquiry into all the facts necessary for me to form my opinion as to the nature and quality of the person's mental

disorder. I hereby make application for a psychiatric assessment of the person named. Today's date Today's time Examining physician's signature (signature of physician)

This form authorizes, for a period of 7 days including the date of signature, the apprehension of the person named and his or her detention in a psychiatric facility for a maximum of 72 hours.

For Use at the Psychiatric Facility

Once the period of detention at the psychiatric facility begins, the attending physician should note the date and time this occurs and must promptly give the person a Form 42.

.....
 (Date and time
detention com-
mences)
 (signature of phy-
sician)

.....
 (Date and time
Form 42 deliv-
ered)
 (signature of phy-
sician)
 (00/12)

**Form 2 — Order for
Examination under
Section 16**

Mental Health Act

[Repealed O. Reg. 153/17, s. 3.]

[Editor's Note: Pursuant to General, R.R.O. 1990, Reg. 741, s. 13(10), when a form is referred to, the reference is to the form described by the s. 13(10) Table of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ministry of Health

To the police officers of Ontario.

Whereas information upon oath has been brought before me, a justice of the peace in and for the province of Ontario

by (print full name of person bringing information) of (address of person bringing information) in respect of (print full name or other description of person to be examined) of (home address, if known)

Part A or Part B must be completed

Part A — Subsection 16(1)

Information has been brought before me that such person

- has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself;
- has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; or
- has shown or is showing a lack of competence to care for himself or herself.

In addition based upon the information before me I have reasonable cause to believe that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

- serious bodily harm to the person;
- serious bodily harm to another person, or
- serious physical impairment of the person.

Part B — Subsection 16(1.1)

Information has been brought before me that such person

- a) has previously received treatment for mental disorder of an ongoing or recurring nature that, when not treated, is of a nature or quality that likely will result in serious bodily harm to the person or to another person or substantial mental or physical deterioration of the person or serious physical impairment of the person; and

Form 2

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b) has shown clinical improvement as a result of the treatment;

In addition based upon the information before me I have reasonable cause to believe that the person,

c) is apparently suffering from the same mental disorder as the one for which he or she previously received treatment or from a mental disorder that is similar to the previous one;

d) given the person's history of mental disorder and current mental or physical condition, is likely to

- cause serious bodily harm to himself or herself;
- cause serious bodily harm to another person,
- suffer substantial mental or physical deterioration of the person, or
- suffer serious physical impairment of the person; and

e) is apparently incapable within the meaning of the *Health Care Consent Act, 1996* of consenting to his or her treatment in a psychiatric facility and the consent of his or her substitute decision-maker has been obtained.

Now therefore, I order you, the said police officers, or any of you, to take the said person in custody forthwith to an appropriate place for examination by a physician.

.....
(date of signature)

.....
(Municipality
where order
signed)

.....
(signature of Justice
of the Peace)

.....
(print name of
Justice of the
Peace)

tacted by the police or the examining physician after this order is issued. This is entirely voluntary. *You are not required to give this information for the order to be issued or for the order to be legally valid.*

.....
(print name) (telephone
number)

2. You may wish to seek legal advice concerning this order, including the effect of this order and your legal rights.

3. You may wish to inform the police, the examining physician and/or an appropriate health care professional of the evidence you gave to the justice of peace, if you consider it appropriate in all the circumstances to do so. If you decide to do so, please use the space provided below. Use the back of this form if necessary. *You are not required to give this information for the order to be issued or for the order to be legally valid.*

(00/12)

Form 3 — Certificate of Involuntary Admission

Mental Health Act

[Repealed O. Reg. 153/17, s. 3.]

[Editor's Note: Pursuant to General, R.R.O. 1990, Reg. 741, s. 13(10), when a form is referred to, the reference is to the form described by the s. 13(10) Table of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ministry of Health

Name of patient (print name of patient)

Name of physician (print name of physician)

Name of psychiatric facility
..... (name of psychiatric facility)

Date of examination
(date)

Notes for Applicant / Informant

1. You may wish to provide your telephone number on this form so that you can be con-

I hereby certify that the following three pieces of information are correct:

1. I personally examined the patient on the date set out above.
2. I am of the opinion that the patient named above is not suitable for voluntary or informal status.
3. Complete one or more boxes as appropriate.
 - I am of the opinion that the patient named above meets the criteria set out in Box A. (*please complete Box A below*)
 - I am of the opinion that the patient named above meets each of the criteria set out in Box B. (*please complete Box B below*)

Box A — Risk of Serious Harm

Note: Check one or more boxes as appropriate.

The patient is suffering from mental disorder of a nature or quality that likely will result in:

- serious bodily harm to the patient,
- serious bodily harm to another person
- serious physical impairment of the patient unless he or she remains in the custody of a psychiatric facility.

Box B — Patients who are Incapable of Consenting to Treatment and Meet the Specified Criteria

Note: The patient must meet all of the following five criteria.

1. The patient has been found incapable, within the meaning of the *Health Care Consent Act, 1996* of consenting to his or her treatment in a psychiatric facility and the consent of his or her substitute decision-maker has been obtained.
2. The patient has previously received treatment for mental disorder of an ongoing or recurring nature that, when not treated, is of a nature or quality that likely will result in

one or more of the following: (*please indicate one or more*)

- serious bodily harm to the patient,
 - serious bodily harm to another person,
 - substantial mental or physical deterioration of the patient, or
 - serious physical impairment of the patient;
 - 3. The patient has shown clinical improvement as a result of the treatment.
 - 4. The patient is suffering from the same mental disorder as the one for which he or she previously received treatment or from a mental disorder that is similar to the previous one.
 - 5. Given the person's history of mental disorder and current mental or physical condition, is likely to: (*please indicate one or more*)
 - cause serious bodily harm to himself or herself, or
 - cause serious bodily harm to another person, or
 - suffer substantial mental or physical deterioration, or
 - suffer serious physical impairment
-
 (Date of signature) (signature of attending physician)
- Notes*
- 1) This certificate is valid for 14 calendar days, including the day upon which it was signed.
 - 2) The following actions must be taken promptly after this form is signed:
 - a) The signing physician must give the patient a properly executed Form 30 notice and notify a rights adviser.
 - b) The rights adviser must meet with the patient and explain to him or her the significance of the certificate and the right to have it reviewed by the Consent and Capacity Board.
- (00/12)

**Form 4 — Certificate of
Renewal***Mental Health Act**[Repealed O. Reg. 153/17, s. 3.]*

[Editor's Note: Pursuant to General, R.R.O. 1990, Reg. 741, s. 13(10), when a form is referred to, the reference is to the form described by the s. 13(10) Table of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ministry of Health

Name of patient (print name of patient)

Name of physician (print name of physician)

Name of psychiatric facility (name of psychiatric facility)

Date of examination (date)

The person's status at the psychiatric facility is that he/she is

- an involuntary patient subject to a Certificate of Involuntary Admission which expires on (date) or
- an involuntary patient subject to an existing Certificate of Renewal which expires on (date)

You must complete one or more of Box A or Box B for this form to be valid.

Box A

You must be satisfied that both criteria are met.

I am of the opinion that

1. The patient is suffering from mental disorder of a nature or quality that likely will result in: (*choose one or more of the following*)

- serious bodily harm to the patient,
- serious bodily harm to another person,
- serious physical impairment of the patient,

unless he or she remains in the custody of a psychiatric facility; and

2. The patient is not suitable for continuation as an informal or voluntary patient.

Box B

You must be satisfied that all six criteria are met.

I am of the opinion that

1. the patient has been found incapable, within the meaning of the *Health Care Consent Act, 1996* of consenting to his or her treatment in a psychiatric facility and the consent of his or her substitute decision-maker has been obtained,

AND

2. the patient has previously received treatment for mental disorder of an ongoing or recurring nature that, when not treated, is of a nature or quality that likely will result in (*choose one or more of the following*)

- serious bodily harm to the patient,
- serious bodily harm to another person,
- substantial mental or physical deterioration of the patient, or
- serious physical impairment of the patient,

AND

3. has shown clinical improvement as a result of the treatment,

AND

4. is suffering from the same mental disorder as the one for which he or she previously received treatment or from a mental disorder that is similar to the previous one,

AND

5. given the patient's history of mental disorder and current mental or physical condi-

Form 4A — Certificate of Continuation

Form 4A

tion, is likely to (*choose one or more of the following*)

- cause serious bodily harm to himself or herself,
- cause serious bodily harm to another person,
- suffer substantial mental or physical deterioration,
- suffer serious physical impairment;

AND

6. the patient is not suitable for continuation as an informal or voluntary patient.

This is a Certificate of Renewal.

This certificate is effective on the date that it is signed and expires on (Date) (day / month / year)

.....
 (Date of signature)

 (signature of attending physician)

 (00/12)

Form 4A — Certificate of Continuation

Mental Health Act

[Repealed O. Reg. 153/17, s. 3.]

[Editor's Note: Pursuant to General, R.R.O. 1990, Reg. 741, s. 13(10), when a form is referred to, the reference is to the form described by the s. 13(10) Table of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ministry of Health and Long-Term Care

Name of patient (print name of patient)

Name of physician
 (print name of physician)

Name of psychiatric facility
 (name of psychiatric facility)

Date of examination
 (date)

The person's status at the psychiatric facility is that he/she is

- an involuntary patient subject to an existing Certificate of Renewal which expires on (date) or
- an involuntary patient subject to an existing Certificate of Continuation which expires on (date)

You must complete one or more of Box A or Box B for this form to be valid.

Box A

You must be satisfied that both criteria are met.

I am of the opinion that

1 The patient is suffering from mental disorder of a nature or quality that likely will result in:
 (choose one or more of the following)

- serious bodily harm to the patient,
- serious bodily harm to another person,
- serious physical impairment of the patient,

unless he or she remains in the custody of a psychiatric facility; and

2 The patient is not suitable for continuation as an informal or voluntary patient.

Box B

You must be satisfied that all six criteria are met.

Form 4A

Ont. Reg. 741 — General

| | |
|---|---|
| <p>I am of the opinion that</p> <p>1 the patient has been found incapable, within the meaning of the Health Care Consent Act, 1996 of consenting to his or her treatment in a psychiatric facility and the consent of his or her substitute decision-maker has been obtained,</p> <p>AND</p> <p>2 the patient has previously received treatment for mental disorder of an ongoing or recurring nature that, when not treated, is of a nature or quality that likely will result in (choose one or more of the following)</p> <ul style="list-style-type: none"> <input type="checkbox"/> serious bodily harm to the patient, <input type="checkbox"/> serious bodily harm to another person, <input type="checkbox"/> substantial mental or physical deterioration of the patient, or <input type="checkbox"/> serious physical impairment of the patient, <p>AND</p> <p>3 has shown clinical improvement as a result of the treatment,</p> <p>AND</p> <p>4 is suffering from the same mental disorder as the one for which he or she previously received treatment or from a mental disorder that is similar to the previous one,</p> <p>AND</p> | <p>5 given the patient's history of mental disorder and current mental or physical condition, is likely to (choose one or more of the following)</p> <ul style="list-style-type: none"> <input type="checkbox"/> cause serious bodily harm to himself or herself, <input type="checkbox"/> cause serious bodily harm to another person, <input type="checkbox"/> suffer substantial mental or physical deterioration, <input type="checkbox"/> suffer serious physical impairment; <p>AND</p> <p>6 the patient is not suitable for continuation as an informal or voluntary patient.</p> <p>This is a Certificate of Continuation.</p> <p>This certificate is effective on the date that it is signed and expires on (Date) (day / month / year)</p> <p>..... (Date of signature) (signature of attending physician) (2015/12)</p> <h2 style="text-align: center;">Form 5</h2> <p>[Revoked O. Reg. 15/95, s. 6.]</p> <h2 style="text-align: center;">Form 6 — Order for Attendance for Examination Subsection 21(1) of the Act</h2> <p style="text-align: center;"><i>Mental Health Act</i></p> <p>[Repealed O. Reg. 153/17, s. 3.]</p> <p><i>[Editor's Note: Pursuant to General, R.R.O. 1990, Reg. 741, s. 13(10), when a form is referred to, the reference is to the form de-</i></p> |
|---|---|

Form 5

[Revoked O. Reg. 15/95, s. 6.]

**Form 6 — Order for
Attendance for
Examination Subsection
21(1) of the Act**

[Repealed O. Reg. 153/17, s. 3.]

[Editor's Note: Pursuant to General R.R.O. 1990, Reg. 741, s. 13(10), when a form is referred to, the reference is to the form de-

Form 8 — Order for Admission Subsection 22(1) of the Act

Form 8

scribed by the s. 13(10) Table of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ministry of Health

In the (name of court)
held at (address)
.....

TO (name of psychiatric facility)

WHEREAS (name of person
in full)
.....
(address)

is
charged
with
.....

Strike out
inapplicable
words

has been (offence)
convict-
ed of

contrary to section of
the;

AND WHEREAS he/she has appeared before me and I have reason to believe that he/she suffers from mental disorder;

AND WHEREAS I have ascertained from

.....
(name of senior physician, as defined in the Act) the senior physician of (name of psychiatric facility) that the services of the said psychiatric facility are available to the above-named person;

I HEREBY ORDER that the above-named person attend, by appointment, the said psychiatric facility for examination;

.....
(Judge)

Date (day / month / year)
.....
(00/12)

Form 7

[Revoked O. Reg. 15/95, s. 6.]

**Form 8 — Order for
Admission Subsection
22(1) of the Act**

Mental Health Act

[Repealed O. Reg. 153/17, s. 3.]

[Editor's Note: Pursuant to General, R.R.O. 1990, Reg. 741, s. 13(10), when a form is referred to, the reference is to the form described by the s. 13(10) Table of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ministry of Health

In the (name of court)
held at
.....
(address)

TO the Peace Officers in the
..... of
.....

AND TO (name of psychiatric facility)

WHEREAS (name of person
in full)
.....

(address) is a person in custody charged with (offence) contrary to section of the;

AND WHEREAS he/she has appeared before me and I have reason to believe that he/she suffers from mental disorder;

AND WHEREAS I have ascertained from

.....
(name of senior physician, as defined in the Act) the senior physician of (name of psychiatric facility) that the services of the said psychiatric facility are available to the above-named person;

Form 8

Ont. Reg. 741 — General

I HEREBY ORDER that the above-named person be remanded for admission as a patient to the said psychiatric facility for a period of not more than;

AND I FURTHER ORDER and direct you, the said Peace Officers, or any of you, to convey him/her to the said psychiatric facility;

AND I AUTHORIZE you, the authorities at the said psychiatric facility, to admit him/her in accordance with this order.

.....

(Judge)

Date (day / month / year)

(00/12)

Form 9

[Revoked O. Reg. 15/95, s. 6.]

Form 10

[Revoked O. Reg. 15/95, s. 6.]

Form 11

[Revoked O. Reg. 15/95, s. 6.]

Form 12

[Revoked O. Reg. 15/95, s. 6.]

Form 13 — Order to Admit a Person Coming into Ontario*Mental Health Act*

[Repealed O. Reg. 153/17, s. 3.]

[Editor's Note: Pursuant to General, R.R.O. 1990, Reg. 741, s. 13(10), when a form is referred to, the reference is to the form described by the s. 13(10) Table of this Regulation and which is available on the website

of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ministry of Health

TO:

Name of person (print full name of person)

WHEREAS I have reasonable cause to believe that the above person may come or be brought into Ontario from: and that the above person is suffering from mental disorder of a nature or quality that likely will result in:

- a) serious bodily harm to the person, or
- b) serious bodily harm to another person, unless the person is placed in the custody of a psychiatric facility,

I therefore order you to take the above person to

.....

(name of psychiatric facility)

..... (Minister of Health and Long-Term Care)

Date (day / month / year)

(00/12)

Form 14

[Revoked O. Reg. 15/95, s. 6.]

Form 15

[Revoked O. Reg. 15/95, s. 6.]

Form 16

[Revoked O. Reg. 15/95, s. 6.]

Form 17

[Revoked O. Reg. 15/95, s. 6.]

Form 39

Form 39

Form 18

[Revoked O. Reg. 15/95, s. 6.]

Form 19

[Revoked O. Reg. 15/95, s. 6.]

Form 20

[Revoked O. Reg. 15/95, s. 6.]

Form 21

[Revoked O. Reg. 15/95, s. 6.]

Form 22

[Revoked O. Reg. 15/95, s. 6.]

Form 23

[Revoked O. Reg. 15/95, s. 6.]

Form 24

[Revoked O. Reg. 15/95, s. 6.]

Form 25

[Revoked O. Reg. 15/95, s. 6.]

Form 26

[Revoked O. Reg. 15/95, s. 6.]

Form 27

[Revoked O. Reg. 15/95, s. 6.]

Form 28

[Revoked O. Reg. 15/95, s. 6.]

Form 29

[Revoked O. Reg. 15/95, s. 6.]

Form 30

[Revoked O. Reg. 15/95, s. 6.]

Form 31

[Revoked O. Reg. 15/95, s. 6.]

Form 32

[Revoked O. Reg. 15/95, s. 6.]

Form 33

[Revoked O. Reg. 15/95, s. 6.]

Form 34

[Revoked O. Reg. 15/95, s. 6.]

Form 35

[Revoked O. Reg. 15/95, s. 6.]

Form 36

[Revoked O. Reg. 15/95, s. 6.]

Form 37

[Revoked O. Reg. 15/95, s. 6.]

Form 38

[Revoked O. Reg. 15/95, s. 6.]

Form 39

[Revoked O. Reg. 15/95, s. 6.]

Form 40

Ont. Reg. 741 — General

Form 40

[Revoked O. Reg. 15/95, s. 6.]

Form 41

[Revoked O. Reg. 15/95, s. 6.]

Form 42

[Revoked O. Reg. 15/95, s. 6.]

Form 43

[Revoked O. Reg. 15/95, s. 6.]

Form 44

[Revoked O. Reg. 15/95, s. 6.]

Form 45 — Community Treatment Order*Mental Health Act*

[Repealed O. Reg. 153/17, s. 3.]

[Editor's Note: Pursuant to General, R.R.O. 1990, Reg. 741, s. 13(10), when a form is referred to, the reference is to the form described by the s. 13(10) Table of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ministry of Health

Part 1 — To be Filled Out by Examining Physician

Name of person (print name of patient)

Name of physician (print name of physician)

Name of substitute decision-maker (*if applicable*) (print name of substitute decision-maker)Name of psychiatric facility (*if applicable*)

..... (name of psychiatric facility)

Date of examination
(date)

This community treatment order for the above named person is the:

 first for this person
..... (no. of times CTO has been renewed) renewalDate of issue of previous community treatment order (*if applicable*)
..... (date)Date of expiry of previous community treatment order (*if applicable*)
..... (date)

During the previous three year period, the person named above:

 has been a patient in a psychiatric facility on two or more separate occasions or for a cumulative period of 30 days or more during that three year period, OR has been the subject of a previous community treatment order.**Criteria for Community Treatment Order**

(Note: All the criteria set out below must be met for this order to be valid)

I am of the opinion that

a) the person is suffering from mental disorder such that he or she needs continuing treatment or care and continuing supervision while living in the community, AND

b) if the person does not receive continuing treatment or care and continuing supervision while living in the community, he or she is likely, because of mental disorder, to:
(choose one or more of the following) cause serious bodily harm to himself or herself, OR cause serious bodily harm to another person, OR suffer substantial mental deterioration of the person, OR

suffer substantial physical deterioration of the person OR

suffer serious physical impairment of the person,

AND

c) the person is able to comply with the community treatment plan contained in the community treatment order, AND

d) the treatment or care and supervision required under the terms of the community treatment order are available in the community, AND

e) If the person is not currently a patient in a psychiatric facility, the person meets the criteria for the completion of an application for psychiatric assessment under subsection 15(1) or (1.1).

The facts on which I formed the above opinion are as follows:

Rights Advice

Note: The person and his or her substitute decision-maker, if applicable, must receive rights advice before the order is issued.

I am satisfied that the substitute decision-maker of the person, if applicable, has consulted with a rights adviser and been advised of his or her legal rights, AND

I am satisfied that the person:

has consulted with a rights adviser and been advised of his or her legal rights, or

has not consulted with a rights adviser because he or she has refused to consult a rights adviser.

Community Treatment Plan

Note: A copy of the community treatment plan must be attached to this order.

I am satisfied that a community treatment plan has been devised for the person.

I have consulted with all the persons named in the community treatment plan.

I am satisfied that:

the person OR

the person's substitute decision-maker, if the person is incapable, consents to the community treatment plan.

The community treatment plan for the person is

(Describe the community treatment plan. Use back of this form if necessary. The community treatment plan must be attached to this order.)

Part 2 — To be Filled Out by the Person or the Person's Substitute Decision-Maker

Undertaking of Person or Person's Substitute Decision-Maker (to be completed by the person or the person's substitute decision maker, if applicable)

I am

the person named above. I promise to comply with all my obligations as set out in the community treatment plan, OR

the person's substitute decision-maker. I promise to use my best efforts to ensure that the person named above complies with all the obligations as set out in the community treatment plan.

By my signature at the bottom of this order, I signify that I consent to the community treatment plan, and I consent to, and am assuming my undertakings as stated in, the community treatment plan.

Part 3 — Time in Force — To be Completed by the Examining Physician

This community treatment order is in force for 6 months, including the day upon which it is signed, and expires at midnight on the (date) (day / month / year) unless it is terminated at an earlier date.

Part 4 — Patient Right to Apply to Consent and Capacity Board

A person who is subject to a community treatment order, or any person on his or her

Form 45

Ont. Reg. 741 — General

behalf, may apply to the Board using a *Form 48* to inquire into whether or not the criteria for issuing or renewing this community treatment order have been met.

Signed at (name of psychiatric facility, or name of place [eg, doctor's office, hospital] where community treatment order signed)

.....
(Date) (signature of physician)

.....
(signature of person) (signature of substitute decision-maker)
(if applicable)

Notes:

The following actions must be taken by the physician who signs this order immediately after the order is signed:

1. A copy of this order, including the community treatment plan must be given to:
 - a) the person,
 - b) the person's substitute decision-maker, if applicable,
 - c) the officer in charge of a psychiatric facility, if applicable,
 - d) any other health practitioner or other person named in the community treatment plan.

2. A notice in the approved form (*Form 46*) must be given to the person that he or she is entitled to a hearing before the Consent and Capacity Board.

(00/12)

ferred to, the reference is to the form described by the s. 13(10) Table of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ministry of Health

To the police officers of Ontario

WHEREAS (print name of person subject to a community treatment order) of (address of person subject to community treatment order) is subject to a community treatment order issued or renewed on (date of order) by (name of issuing or renewing physician) of (business address of issuing or renewing physician) and

WHEREAS such person has

- failed to attend appointments or comply with treatment in accordance with ss. 33.1(9) of the *Mental Health Act*, or
 failed to permit (name of physician) to review his/her condition, in accordance with ss. 33.4(2) of the *Mental Health Act*; and

WHEREAS I have reasonable cause to believe that such person

(i) is suffering from mental disorder such that he/she needs continuing treatment or care and continuing supervision while living in the community;

(ii) meets the criteria for the completion of a Form 1 [an application for psychiatric assessment under ss. 15(1) or (1.1) of the *Mental Health Act*] and is not currently a patient in a psychiatric facility; and

(iii) if the person does not receive continuing treatment or care and continuing supervision while living in the community, he/she is likely, because of mental disorder, to *(choose one or more of the following)*

- cause serious bodily harm to himself / herself

Form 47 — Order for Examination Sections 33.3(1) and 33.4(3) of the Act*Mental Health Act**[Repealed O. Reg. 153/17, s. 3.]*

[Editor's Note: Pursuant to General, R.R.O. 1990, Reg. 741, s. 13(10), when a form is re-

Redacted signature

Form 47 — Order for Examination ~~Sections 33.3(1) and 33.4(3) of the Act~~ **Form 47**

- cause serious bodily harm to another person
- suffer substantial mental or physical deterioration of the person
- suffer serious physical impairment of the person.

Now therefore, I hereby issue this Order for Examination for any of you to take such person in custody forthwith to (address of physician, agency or psychiatric facility where the person will be examined) for an examination by me or by a physician named below appointed to carry out this responsibility in accordance with ss. 33.5(2) of the *Mental Health Act*.

..... (name of physician, agency or psychiatric facility responsible for examination of the person)

This order is in force for 30 days after the date upon which it is issued and will expire at midnight on (date order will expire)

Dated at (name of municipality / city / town) on (date) (day / month / year)

.....
(signature of physician) (print name of physician)

Notes:

1. The physician who issues an order for examination shall ensure that the

police have complete and up-to-date information about the name, address and telephone number of the physician responsible for completing the examination required under an order for examination and shall ensure that the police have such information at all times that the order for examination is in force.

2. The physician who issues an order for examination shall ensure that the police are immediately notified if the person who is subject to the order for examination voluntarily attends for an examination or, for any other reason, the order for examination is cancelled prior to its expiry date.

3. The police may need a physical description of the person named in your Order for Examination so that the person may be located and returned to you for an examination. Please use the space below to provide the police with relevant information about the person's physical description.

4. The police may ask you for information about the person's physical description, in addition to the information you have provided below.

(00/12)

PART IV — GENERAL (SS. 26.1–47)

.....

OLD AGE SECURITY ACT

An Act to provide for old age security

R.S.C. 1985, c. O-9, as am. R.S.C. 1985, c. 34 (1st Supp.); R.S.C. 1985, c. 1 (4th Supp.); R.S.C. 1985, c. 51 (4th Supp.), s. 15; S.C. 1990, c. 39; 1991, c. 44, ss. 32, 33; 1992, c. 24, s. 17; 1992, c. 48, s. 29; 1995, c. 33, ss. 1–24, 50; 1996, c. 11, ss. 76, 95, 97, 101; 1996, c. 16, s. 61; 1996, c. 18, ss. 50–58(1)(a); 1996, c. 21, s. 74; 1996, c. 23, s. 187; 1997, c. 40, ss. 100–107; 1998, c. 19, s. 288; 1998, c. 21, ss. 105–119; 1999, c. 17, s. 171; 1999, c. 22, ss. 87–89; 2000, c. 12, ss. 192–209; 2000, c. 34, s. 94(h) (Fr.); 2001, c. 4, s. 111; 2001, c. 27, ss. 263–267; 2002, c. 8, s. 182(1)(z.5); 2003, c. 22, ss. 178, 179; 2005, c. 30, ss. 136, 137; 2005, c. 35, ss. 55–58, 59 (Fr.), 60–62, 66(e), 67(e); 2005, c. 38, s. 138(o); 2005, c. 49, s. 7; 2006, c. 4, s. 180; 2007, c. 11, ss. 15–27, 28(1), (2), (3) (Fr.), (4), (5), 29–32, 33(1) (Fr.), (2), (3) (Fr.), (4), (5), 34, 35; 2007, c. 35, s. 129; 2008, c. 28, s. 156; 2009, c. 33, ss. 31, 32; 2010, c. 22; 2011, c. 15, ss. 13, 14; 2012, c. 19, ss. 235–239, 296–299, 445 (Fr.), 446–451, 452 (Fr.), 453, 454(1), (2), (3) (Fr.), 455–460, 461 (Fr.), 462–466, 694(f) [ss. 459–460, 462, 463 not in force at date of publication.]; 2013, c. 40, ss. 236(1)(g), 237(1)(l), 238(1)(k); 2014, c. 20, ss. 371–373 [Not in force at date of publication.]; 2015, c. 17, s. 2; 2016, c. 7, ss. 188–190; 2016, c. 12, ss. 104, 105; 2019, c. 29, s. 156.

.....

Reconsiderations and Appeals

.....

28. (1) Appeal — benefits — A person who is dissatisfied with a decision of the Minister made under section 27.1, including a decision in relation to further time to make a request, or, subject to the regulations, any person on their behalf, may appeal the decision to the Social Security Tribunal established under section 44 of the *Department of Employment and Social Development Act*.

(2) Reference as to income — If, on an appeal to the Social Security Tribunal, it is a ground of the appeal that the decision made by the Minister as to the income or income from a particular source or sources of an applicant or beneficiary or of the spouse or common-law partner of the applicant or beneficiary was incorrectly made, the appeal on that ground must, in accordance with the regulations, be referred for decision to the Tax Court of Canada, whose decision, subject only to variation by that Court in accordance with any decision on an appeal under the *Tax Court of Canada Act* relevant to the appeal to the Social Security Tribunal, is final and binding for all purposes of the appeal to the Social Security Tribunal except in accordance with the *Federal Courts Act*.

(3) Stay of benefits pending judicial review — If a decision is made by the Social Security Tribunal in respect of a benefit, the Minister may stay payment of the benefit until the later of

- (a) the expiration of the period allowed for making an application under the *Federal Courts Act* for judicial review of the decision, and
- (b) where Her Majesty has made an application under the *Federal Courts Act* for judicial review of the decision,

the month in which all proceedings in relation to the judicial review have been completed.

R.S.C. 1985, c. 34 (1st Supp.), s. 7; R.S.C. 1985, c. 51 (4th Supp.), s. 15; 1995, c. 33, s. 16; 1997, c. 40, s. 101; 2000, c. 12, s. 207(1)(k); 2002, c. 8, s. 182(1)(z.5); 2012, c. 19, s. 236; 2013, c. 40, s. 236(1)(g)(iv)

Incapacity

28.1 (1) Incapacity when application actually made — Where an application for a benefit is made on behalf of a person and the Minister is satisfied, on the basis of evidence provided by or on behalf of that person, that the person was incapable of forming or expressing an intention to make an application on the person's own behalf on the day on which the application was actually made, the Minister may deem the application to have been made in the month preceding the first month in which the relevant benefit could have commenced to be paid or in the month that the Minister considers the person's last relevant period of incapacity to have commenced, whichever is the later.

(2) Where previous incapacity — Where an application for a benefit is made by or on behalf of a person and the Minister is satisfied, on the basis of evidence provided by or on behalf of that person, that

(a) the person was incapable of forming or expressing an intention to make an application before the day on which the application was actually made,

(b) the person had ceased to be so incapable before that day, and

(c) the application was made

(i) within the period beginning on the day on which that person had ceased to be incapable and comprising the same number of days, not exceeding twelve months, as in the period of incapacity, or

(ii) where the period referred to in subparagraph (i) comprises fewer than thirty days, not more

than one month after the month in which that person ceased to be so incapable,

the Minister may deem the application to have been made in the month preceding the first month in which the relevant benefit could have commenced to be paid or in the month that the Minister considers the person's last relevant period of incapacity to have commenced, whichever is the later.

(3) Period of incapacity — For the purposes of subsections (1) and (2), a period of incapacity must be a continuous period, except as otherwise prescribed.

(4) Application — This section applies only to persons who were incapacitated on or after January 1, 1995.

1995, c. 33, s. 17

Death

[Heading amended 2000, c. 12, s. 201.]

29. (1) Application for pension by estate, etc. — Despite anything in this Act, an application for a pension that would have been payable to a deceased person who, before their death, would have been entitled, on approval of an application, to payment of that pension under this Act may be made within one year after the person's death by the estate or succession, by the liquidator, executor or administrator of the estate or succession or heir of that person or by any person that may be prescribed by regulation.

(2) Pension payable to estate or other persons — If an application is made under subsection (1), the pension that would have been payable to a deceased person referred to in that subsection shall be paid to the estate or succession or to any person that may be prescribed by regulation.

(3) Application deemed to have been received on date of death — Any application made under subsection (1) is deemed to have been received on the date of the

death of the person who, before their death, would have been entitled to payment of the pension.

(4) [Repealed 2007, c. 11, s. 23.]
2007, c. 11, s. 23

30. (1) Retroactive application by survivor — Despite paragraph 19(6)(b), if a person dies and the person's survivor would have been entitled to an allowance under section 19 had the survivor and the deceased person made a joint application for it before the death of the deceased person, the survivor may make application for an allowance under section 19 within one year after the death of the deceased person.

(2) Treated as joint application — An application referred to in subsection (1) shall be considered and dealt with as though it had been a joint application of the survivor and the deceased person and had been received on the date of the death of the deceased person.

(3) [Repealed 2007, c. 11, s. 24(2).]
R.S.C. 1985, c. 34 (1st Supp.), s. 8; 2000, c. 12, ss. 202, 209(q); 2007, c. 11, s. 24

31. (1) Presumption as to death of applicant or beneficiary — Where an applicant or beneficiary has disappeared under circumstances that, in the opinion of the Minister, raise beyond a reasonable doubt a presumption that the applicant or beneficiary is dead, the Minister may issue a certificate declaring that the applicant or beneficiary is presumed to be dead and stating the date on which the death is presumed to have occurred, and thereupon the applicant or beneficiary shall be deemed for all

purposes of this Act to have died on the date so stated in the certificate.

(2) Change of presumed date of death — If, after issuing a certificate under subsection (1), the Minister is satisfied from new information or evidence that the date of death is different from that stated in the certificate, the Minister may revoke the certificate and issue a new certificate stating a different date, in which case the applicant or beneficiary shall be deemed for all purposes of this Act to have died on the date so stated in the new certificate.

(3) Where person presumed dead reappears — If, after issuing a certificate under this section, the Minister is satisfied from new information or evidence that the applicant or beneficiary named in the certificate is alive, the Minister shall forthwith revoke the certificate and cause that person's benefits to be re-instated effective the month following the date of the person's presumed death stated in the certificate, subject to the provisions of this Act relating to the person's eligibility to receive those benefits.

(4) Death certificates issued by other authorities — For the purposes of this section, the Minister is not bound by the issuance or revocation of a death certificate by any other authority.

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Transitional Provisions

— 2007, c. 11, ss. 37, 38:

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— 2012, c. 19, s. 262:

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PENSION BENEFITS ACT

R.S.O. 1990, c. P.8, as am. S.O. 1997, c. 28, ss. 190–224; 1998, c. 34, ss. 91, 92; 1999, c. 6, s. 53; 1999, c. 15, ss. 1–19; 2002, c. 18, Sched. H, s. 5; 2004, c. 31, Sched. 31; 2005, c. 5, s. 56(1)–(3), (4)–(6) (Fr.), (7)–(26); 2005, c. 31, Sched. 18; 2006, c. 19, Sched. C, s. 1(1); 2006, c. 21, Sched. F, s. 136(1), Table 1; 2006, c. 33, Sched. Z.1; 2007, c. 7, Sched. 31; 2009, c. 11, ss. 41–50; 2009, c. 18, Sched. 24 [s. 1(2) not in force at date of publication.]; 2010, c. 1, Sched. 23, ss. 1–5, 6 (Fr.), 7–11, 12(1) (Fr.), (2), (3), (4) (Fr.), (5), 13–15; 2010, c. 9, ss. 1–38, 39(1), (2) (Fr.), (3) (Fr.), 40, 41(1)–(5), (6) (Fr.), (7), 42–53, 54(1), (2) (Fr.), (3), (4), 55–71, 72(1), (2) (Fr.), 73–78, 79(1), (2) (Fr.), 80 [s. 80(4) amended 2014, c. 7, Sched. 26, s. 14; 2016, c. 5, Sched. 22, s. 4.] [ss. 1(4), 10, 13, 28(2), 40, 72(1), 74 not in force at date of publication.] [ss. 49(5), (6), 63(4), (5), (7), (8), (10), 76 repealed 2010, c. 24, s. 48; s. 63(6) cannot be applied.] [s. 33(6) enacting s. 48(8) repealed without coming into force 2011, c. 9, Sched. 35, s. 4(2).] [s. 65(2) repealed 2014, c. 7, Sched. 26, s. 9(5).] [ss. 1(4), 10(1), (2), 13, 28(2), 40, 72(1), 74 repealed 2020, c. 36, Sched. 37, s. 25.] [ss. 15(1), (2), 22, 71 repealed 2006, c. 21, Sched. F, s. 10.1.]; 2010, c. 24, ss. 1–47 [s. 48(2) cannot be applied.] [s. 31(1) repealed 2014, c. 7, Sched. 26, s. 9(6).] [s. 11 repealed 2015, c. 20, Sched. 34, s. 10.] [ss. 10(1), 12, 15(3) repealed 2017, c. 34, Sched. 33, s. 44.] [s. 1(10) repealed 2019, c. 7, Sched. 48, s. 6.] [ss. 1(1)–(3), (5), (8), 4(1), 10(2), 13(1), (2), 14, 20, 26(3), (6), (7), 29(4), (8), (11), 31(2), 38(2), (3) repealed 2020, c. 36,

Sched. 37, s. 24.] [ss. 4(2), 9, 26(4), (8)–(10), 27, 29(5), (7), 30(2), 32(1), 33(1), 36, 47 repealed 2006, c. 21, Sched. F, s. 10.1.]; 2010, c. 26, Sched. 15 [s. 1(1) repealed 2011, c. 9, Sched. 35, s. 13.]; 2011, c. 9, Sched. 35, ss. 1–12 [s. 9 not in force at date of publication.] [s. 8(5) repealed 2012, c. 8, Sched. 44, s. 10.]; 2012, c. 8, Sched. 44, ss. 1–9; 2013, c. 2, Sched. 11 [s. 1(2) cannot be applied.]; 2014, c. 7, Sched. 26, ss. 1–13 [ss. 3(2), (4), 9(2)–(4) not in force at date of publication.] [s. 9(2)–(4) repealed 2019, c. 15, Sched. 29, s. 4.]; 2015, c. 9, s. 31 [s. 31(2), (3) repealed 2016, c. 5, Sched. 23, s. 5.]; 2015, c. 20, Sched. 34, ss. 1–9 [ss. 3, 4(3), 5, 8 not in force at date of publication.] [ss. 3, 4(3), 5, 8 repealed 2017, c. 8, Sched. 27, s. 20.] [s. 9 repealed 2018, c. 8, Sched. 23, s. 25.]; 2015, c. 38, Sched. 17; 2016, c. 5, Sched. 22, ss. 1 (Fr.), 2, 3; 2016, c. 17, s. 96 [Not in force at date of publication. Repealed 2016, c. 37, Sched. 18, s. 5.]; 2016, c. 23, s. 63; 2016, c. 37, Sched. 19; 2017, c. 8, Sched. 27, ss. 1–14, 15 (Fr.), 16–19 [s. 1 repealed 2018, c. 17, Sched. 33, s. 1(1).]; 2017, c. 14, Sched. 4, s. 26; 2017, c. 34, Sched. 17, s. 25, Sched. 33, ss. 1–18, 19 (Fr.), 20–43 [Sched. 33, ss. 1(1), (5), 2(4), 3(3), (4), 9, 12, 13, 17, 29, 33–35 not in force at date of publication.] [Sched. 33, ss. 1(1), 34, 35 repealed 2018, c. 8, Sched. 23, s. 26.] [Sched. 33, s. 1(5) repealed 2020, c. 36, Sched. 37, s. 26.]; 2018, c. 8, Sched. 23, ss. 1–24 [s. 17 not in force at date of publication.]; 2018, c. 17, Sched. 33 [ss. 11(2), 13 not in force at date of publication.]; 2019, c. 4, Sched. 6; 2019, c. 5, Sched. 3, s. 16 [Not in force at date of publication.]; 2019, c. 7, Sched. 48, ss. 1–5 [ss. 1(2), (4), 2 not in force at date of publication.]; 2019, c. 14, Sched. 9, ss. 22–40 [ss. 26–30, 31(3), (4), (5),

S. 1(1)

Pension Benefits Act

32, 34, 35, 39(1), 40(2), (4), (5), (8) not in force at date of publication.]; 2019, c. 15, Sched. 29, ss. 1–3 [s. 2(2) not in force at date of publication. s. 2(2) repealed 2020, c. 36, Sched. 37, s. 27.]; 2020, c. 7, Sched. 15, s. 2; 2020, c. 34, Sched. 18; 2020, c. 36, Sched. 14, s. 12, Sched. 37, ss. 1–23 [Sched. 37, ss. 1–16, 18, 19, 21, 22 not in force at date of publication.].

1. (1) Definitions — In this Act,

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“administrator” means the person or persons that administer the pension plan;

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“commuted value” means the value calculated in the prescribed manner and as of a fixed date of a pension, a deferred pension, a pension benefit or an ancillary benefit;

.....

“contributory benefit” means a pension benefit or part of a pension benefit to which a member is required to make contributions under the terms of the pension plan;

.....

“deferred pension” means a pension benefit, payment of which is deferred until the person entitled to the pension benefit reaches the normal retirement date under the pension plan;

.....

“defined contribution benefit” means a pension benefit determined with reference to and provided by contributions, and the interest on the contributions, paid by or for the credit of a member and determined on an individual account basis;

**Proposed Amendment — 1(1)
“defined contribution benefit”**

“defined contribution benefit” means a pension benefit determined with reference to and provided by contributions paid by or for the credit of a member, and the interest on the contributions, and determined on an in-

dividual account basis, but does not include an optional benefit;

2020, c. 36, Sched. 37, s. 1(3) [Not in force at date of publication.]

.....

“domestic contract” means a domestic contract as defined in Part IV of the *Family Law Act*;

“employee” means a natural person who is employed by an employer;

“employer” means, in relation to a member, former member or retired member of a pension plan, the person or persons from whom or the organization from which the member, former member or retired member receives or received remuneration to which the pension plan is related, and **“employed”** and **“employment”** have a corresponding meaning;

“family arbitration award” means a family arbitration award made under the *Arbitration Act, 1991*;

.....

“former member” means an individual who satisfies the criteria set out in section 1.1 to be a former member;

.....

“insurance company” means a corporation authorized to undertake life insurance in Canada;

“joint and survivor pension” means a pension payable during the joint lives of the person entitled to the pension and his or her spouse and thereafter during the life of the survivor of them;

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“member” means a member of the pension plan;

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“normal retirement date” means the date or age specified in the pension plan as the normal retirement date of members;

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| <p>“pension” means a pension benefit that is in payment;</p> <p>“pension benefit” means the aggregate monthly, annual or other periodic amounts payable to a member, former member or retired member during his or her lifetime to which he or she will become entitled under the pension plan or to which, upon his or her death, any other person will become entitled;</p> <p style="text-align: center;">.....</p> <p>“pension fund” means the fund maintained to provide benefits under or related to the pension plan;</p> <p>“pension plan” means a plan organized and administered to provide pensions for employees, but does not include,</p> <ul style="list-style-type: none"> (a) an employee’s profit sharing plan or a deferred profit sharing plan as defined in sections 144 and 147 of the <i>Income Tax Act</i> (Canada), (a.1) a pooled registered pension plan registered under the <i>Pooled Registered Pension Plans Act, 2015</i>, (b) a plan to provide a retiring allowance as defined in subsection 248(1) of the <i>Income Tax Act</i> (Canada), (c) a plan under which all pension benefits are provided by contributions made by members, or (d) any other prescribed type of plan; <p>“prescribed” means,</p> <ul style="list-style-type: none"> (a) prescribed by the regulations, or (b) subject to section 115.2, in respect of matters listed in subsection 115.1(1), prescribed by the Authority rules; <p style="text-align: center;">.....</p> <p>“registration” means registration under this Act;</p> <p style="text-align: center;">.....</p> <p>“same-sex partner” [Repealed 2005, c. 5, s. 56(2).]</p> <p style="text-align: center;">.....</p> | <p>“spouse” means, except where otherwise indicated in this Act, either of two persons who,</p> <ul style="list-style-type: none"> (a) are married to each other, or (b) are not married to each other and are living together in a conjugal relationship, <ul style="list-style-type: none"> (i) continuously for a period of not less than three years, or (ii) in a relationship of some permanence, if they are the parents of a child as set out in section 4 of the <i>Children’s Law Reform Act</i>; <p>“Superintendent” means the former position of Superintendent of Financial Services under the repealed <i>Financial Services Commission of Ontario Act, 1997</i>;</p> <p style="text-align: center;">.....</p> <p style="margin-left: 40px;">1997, c. 28, s. 190; 1999, c. 6, s. 53(1), (2); 2004, c. 31, Sched. 31, s. 1; 2005, c. 5, s. 56(1)–(3); 2005, c. 31, Sched. 18, s. 1; 2007, c. 7, Sched. 31, s. 1; 2009, c. 11, s. 41; 2010, c. 1, Sched. 23, s. 1; 2010, c. 9, s. 1(1)–(3), (5)–(7); 2010, c. 24, s. 1(4), (6), (7), (9); 2012, c. 8, Sched. 44, s. 1; 2014, c. 7, Sched. 26, s. 1; 2015, c. 9, s. 31(1); 2016, c. 23, s. 63; 2017, c. 14, Sched. 4, s. 26; 2017, c. 34, Sched. 17, s. 25, Sched. 33, s. 1(2)–(4), (6), (7); 2017, c. 8, Sched. 27, s. 1; 2018, c. 8, Sched. 23, ss. 1, 23; 2018, c. 17, Sched. 33, s. 1; 2019, c. 7, Sched. 48, s. 1(1), (3); 2020, c. 36, Sched. 14, s. 12(1)</p> <p style="text-align: center;">.....</p> <p style="text-align: center;">BENEFITS</p> <p style="text-align: center;">.....</p> <p>44. (1) Joint and survivor pension benefits — Every pension paid under a pension plan to a retired member who has a spouse on the date that the payment of the first instalment of the pension is due shall be a joint and survivor pension.</p> <p>(1.1) Interpretation re “spouse” — If, on the date that the payment of the first instalment of the pension is due, a retired member has a spouse described in clause (a) of the definition of “spouse” in subsection</p> |
|--|--|

1(1) from whom the retired member is living separate and apart, that person is not a spouse for the purposes of subsection (1).

(1.2) **Same** — If, on the date that the payment of the first instalment of the pension is due, a retired member has a spouse described in clause (b) of the definition of “spouse” in subsection 1(1) and a spouse described in clause (a) of that definition from whom the retired member is living separate and apart, the spouse described in clause (b) of the definition is the spouse for the purposes of subsection (1).

(2) **Commututed value** — The commuted value of a joint and survivor pension under subsection (1) shall not be less than the commuted value of the pension that would be payable under the pension plan to the retired member.

(3) **Amount of survivor benefit** — Upon the death of the retired member, the pension payable to his or her surviving spouse shall not be less than 60 per cent of the pension paid to the retired member during their joint lives.

(3.1) **Same** — If the spouse of the retired member dies before the retired member, the pension payable to the retired member after the spouse’s death shall not be less than 60 per cent of the pension paid to the retired member during their joint lives.

(4) **Application of subss. (1–3.1)** — Subsections (1) to (3.1) do not apply in respect of a pension benefit if payment of the pension commenced before January 1, 1988.

(5) **Deferred life annuity** — Where,

(a) prior to the 1st day of January, 1988, a deferred life annuity has been purchased from an insurance company for a person entitled to a deferred pension under the *Pension Benefits Act*, being chapter 373 of the Revised Statutes of Ontario, 1980;

(b) payments have not commenced under the annuity on the 1st day of January, 1988; and

(c) the recipient of the payments has a spouse on the date payments commence,

the annuity shall be paid as a joint and survivor pension in accordance with the requirements of this section and the insurance company shall make payments accordingly.

(6) **Application of ss. 45, 46** — For the purposes of subsection (5), the insurance company shall be deemed to be the administrator under sections 45 and 46.

(7) **Lump sum payment, small amounts** — A pension plan may provide for payment, upon the death of a retired member, of the commuted value of the survivor benefit to a person who is entitled to the survivor benefit if, at the date of death,

(a) the annual benefit payable is not more than 4 per cent of the Year’s Maximum Pensionable Earnings; or

(b) the commuted value of the benefit is less than 20 per cent of the Year’s Maximum Pensionable Earnings.

(7.1) **Same** — However, if the first instalment of the retired member’s pension is due before the date on which subsection (7) comes into force, subsection (7) does not apply unless the person entitled to the survivor benefit upon the retired member’s death consents in writing to the payment of the commuted value of the survivor benefit.

(8) **Right to transfer lump sum** — The person to whom the payment under subsection (7) is to be made may require the administrator to pay the commuted value into a registered retirement savings arrangement and the person may exercise this entitlement by delivering a direction to the administrator within the prescribed period.

(9) **Same** — Section 50.1 applies with respect to the payment into the registered retirement savings arrangement.

(10) **Discharge** — An administrator who commenced payment of a pension under this section before the day on which subsection (1.2) comes into force is deemed to have

been discharged on making the payment if all of the following circumstances exist:

1. On the date that the payment of the first instalment of the pension was due, the retired member had a spouse described in clause (b) of the definition of "spouse" in subsection 1(1) and a spouse described in clause (a) of that definition from whom the retired member was living separate and apart.
2. The spouse described in clause (b) of the definition of "spouse" in subsection 1(1) was the retired member's spouse for the purposes of determining that the pension is a joint and survivor pension under subsection (1).
3. The pension benefit was paid or continues to be paid to the retired member or to the spouse described in clause (b) of the definition of "spouse" in subsection 1(1).
4. The payment otherwise complied with the requirements under this Act and the regulations.

(11) Claims — If, before the day on which subsection (1.2) comes into force, an administrator made a payment of a pension as a joint and survivor pension and the circumstances set out in subsection (10) existed, no person has a claim against the administrator or against the recipient of the payment in respect of the payment.

1999, c. 6, s. 53(5)–(8); 2005, c. 5, s. 56(9)–(12); 2010, c. 9, s. 30; 2012, c. 8, Sched. 44, s. 2; 2014, c. 7, Sched. 26, s. 4

45. (1) Information for payment — Before commencing payment of a pension or pension benefit, the administrator of a pension plan shall require the person entitled to the payment to provide to the administrator the information needed to calculate and pay the pension or pension benefit.

(2) Person to provide information — The person entitled to the payment shall provide the information to the administrator.

(3) Discharge of administrator — In the absence of actual notice to the contrary, the

administrator is discharged on paying the pension or pension benefit in accordance with the information provided by the person in accordance with subsection (2) or, if the person does not provide the information, in accordance with the latest information in the records of the administrator.

46. (1) Waiver of joint and survivor pension benefit — The persons entitled to a joint and survivor pension benefit may waive the entitlement to receive payment of pension benefits in the form of a joint and survivor pension by delivering to the administrator of the pension plan or, in the case of a deferred life annuity, to the insurance company a written waiver in the form approved by the Chief Executive Officer or a certified copy of a domestic contract, containing the waiver.

(2) Time — The waiver is not effective unless the following condition is satisfied:

1. For a written waiver in the form approved by the Chief Executive Officer, the form is dated and signed within the 12 months preceding commencement of payment of the pension benefit and is delivered to the administrator or insurance company within that 12-month period.
2. For a certified copy of a domestic contract, the certified copy is delivered to the administrator or insurance company within the 12 months preceding commencement of payment of the pension benefit.

(3) Cancellation of waiver — Persons who have delivered a waiver may jointly cancel it by delivering a written and signed notice of cancellation to the administrator or the insurance company, as the case may be, before the commencement of payment of the pension benefit.

1997, c. 28, s. 198; 1999, c. 15, s. 7; 2009, c. 11, s. 43; 2010, c. 9, s. 31; 2018, c. 8, Sched. 23, s. 23

47. Remarriage, etc. — If the spouse of a deceased former member or retired member

of a pension plan is receiving a pension under the pension plan, he or she is not disentitled to payment of the pension by reason only of becoming the spouse of another person after the death of the former member or retired member.

1999, c. 6, s. 53(9); 2005, c. 5, s. 56(13); 2010, c. 9, s. 32

48. (1) Pre-retirement death benefit — If a member who is entitled under the pension plan to a deferred pension described in section 37 dies before payment of the first instalment is due, or if a former member or retired member dies before payment of the first instalment of his or her deferred pension or pension is due, the person who is his or her spouse on the date of death is entitled,

- (a) to receive a lump sum payment equal to the commuted value of the deferred pension;
- (b) to require the administrator to pay an amount equal to the commuted value of the deferred pension into a registered retirement savings arrangement; or
- (c) to receive an immediate or deferred pension, the commuted value of which is at least equal to the commuted value of the deferred pension.

(2) Same — If a member of a pension plan continues in employment after the normal retirement date under the pension plan and dies before payment of pension benefits referred to in section 37 begins, the person who is the spouse of the member on the date of death is entitled,

- (a) to receive a lump sum payment equal to the commuted value of the pension benefits;
- (b) to require the administrator to pay an amount equal to the commuted value of the pension benefits into a registered retirement savings arrangement; or
- (c) to receive an immediate or deferred pension, the commuted value of which

is at least equal to the commuted value of the pension benefits.

(3) Interpretation re “spouse” — If, on the date of death, a member, former member or retired member has a spouse described in clause (a) of the definition of “spouse” in subsection 1(1) from whom the member, former member or retired member is living separate and apart, that spouse does not have an entitlement under subsection (1) or (2).

(3.1) Same — If, on the date of death, a member, former member or retired member has a spouse described in clause (b) of the definition of “spouse” in subsection 1(1) and a spouse described in clause (a) of that definition from whom the member, former member or retired member is living separate and apart, the spouse described in clause (b) of the definition has an entitlement under subsection (1) or (2).

(3.2) Same, entitlement as beneficiary or personal representative — Subsection (3) does not prevent a spouse from having an entitlement as a designated beneficiary under subsection (6) or as a personal representative under subsection (7).

(3.3) Application — For greater certainty, subsections (3), (3.1) and (3.2) apply if the member, former member or retired member dies on or after the day subsection 5(1) of Schedule 26 to the *Building Opportunity and Securing Our Future Act (Budget Measures)*, 2014 comes into force.

(4) Direction — A spouse may exercise his or her entitlement under subsection (1) or (2) by delivering a direction to the administrator within the prescribed period and, if the spouse does not do so, the spouse is deemed to have elected to receive an immediate pension.

(5) Calculation of benefit — For the purposes of this section, the deferred pension or pension benefits to which a member is entitled if the member dies while employed shall be calculated as if the member’s employment were terminated immediately before the member’s death.

(6) Designated beneficiary — A member, former member or retired member described in subsection (1) may designate a beneficiary and the beneficiary is entitled to be paid an amount equal to the commuted value of the deferred pension or pension benefits mentioned in subsection (1) or (2) unless on the date of death the member, former member or retired member has a spouse who has an entitlement under subsection (1) or (2).

(7) Estate entitlement — The personal representative of a member, former member or retired member described in subsection (1) is entitled to receive payment of the commuted value mentioned in subsection (1) or (2) as the property of the member, former member or retired member unless,

(a) on the date of death, the member, former member or retired member has a spouse who has an entitlement under subsection (1) or (2); or

(b) the member, former member or retired member has designated a beneficiary who has an entitlement under subsection (6).

(8) Dependent children — If the pension plan provides for payment of pension benefits to or for a dependent child or dependent children of the member, former member or retired member upon the death of the member, former member or retired member,

(a) the commuted value of the payments in respect of employment after December 31, 1986 may be deducted from the entitlement of a beneficiary designated under subsection (6) or of a personal representative under subsection (7); and

(b) the commuted value of the payments in respect of employment before January 1, 1987 may be deducted from the entitlement in subsection (8.1) of a beneficiary designated under subsection (6) or of a personal representative under subsection (7).

(8.1) Additional entitlement — A spouse who has an entitlement under subsection (1) or (2), a designated beneficiary who has an entitlement under subsection (6) or a personal representative who has an entitlement under subsection (7) is entitled to a lump sum payment from the pension fund equal to the amount of any contributions that the member or former member was required to make under the pension plan in respect of employment before January 1, 1987, plus interest credited to the contributions.

(8.2) Spouse's right to transfer additional entitlement — A spouse entitled to a lump sum payment under subsection (8.1) may require the administrator to pay the lump sum into a registered retirement savings arrangement and may exercise this entitlement by delivering a direction to the administrator within the prescribed period.

(8.3) Payments into registered retirement savings arrangements — Section 50.1 applies with respect to any payment into a registered retirement savings arrangement.

(8.4) Limitation on all payments — The entitlements under this section are subject to the prescribed limitations in respect of the transfer of funds from pension funds.

(9) Information — It is the responsibility of the person entitled to the payment to provide to the administrator the information needed to make the payment.

(10) Discharge of administrator — In the absence of actual notice to the contrary, the administrator is discharged on making payment in accordance with the information provided by the person.

(10.1) Discharge, payments prior to October 31, 2012 — An administrator who made a payment under subsection (1) or (2) before October 31, 2012 is deemed to have been discharged on making the pay-

ment if all of the following circumstances exist:

1. On the date of death, the member, former member or retired member had a spouse described in clause (b) of the definition of "spouse" in subsection 1(1) and a spouse described in clause (a) of that definition from whom the member, former member or retired member was living separate and apart.
2. The payment was made to the spouse described in clause (b) of the definition of "spouse" in subsection 1(1).
3. The payment otherwise complied with the requirements under this Act and the regulations.

(10.2) Claims — If, before October 31, 2012, an administrator made a payment under subsection (1) or (2) and the circumstances set out in subsection (10.1) existed, no person has a claim against the administrator or against the recipient of the payment in respect of the payment.

(11) Offset — A pension plan may provide for reduction of an amount to which a person is entitled under this section to offset any part of a prescribed additional benefit that is attributable to an amount paid by an employer, subject to the following:

1. The reduction shall be calculated in the prescribed manner.
2. The reduction shall not exceed the prescribed limits.

(12) Discharge of entitlement — Payment in accordance with this section replaces the entitlement of a member, former member or retired member in respect of a deferred pension mentioned in section 37.

(13) Restriction on entitlement — An entitlement to a benefit under this section is subject to any right to or interest in the benefit set out in an order made under Part I (Family Property) of the *Family Law Act*, a family arbitration award or a domestic contract.

(14) Waiver — The spouse of a member or former member may waive the spouse's entitlement under subsection (1) or (2) by delivering a written waiver, in the form approved by the Chief Executive Officer, to the administrator of the pension plan.

(14.1) Cancellation of waiver — A spouse who has delivered a waiver may cancel it by delivering a written and signed notice of cancellation to the administrator before the date of death of the member or former member.

(14.2) Effect of waiver — If a waiver is in effect on the date of death of the member or former member, subsections (6) and (7) apply as if the member or former member does not have a spouse on the date of death.

(15) Definition — In this section, “personal representative” has the same meaning as in the *Estates Administration Act*.

1997, c. 28, s. 198; 1999, c. 6, s. 53(10)–(16);
1999, c. 15, s. 8; 2005, c. 5, s. 56(14)–(22);
2009, c. 11, s. 44; 2010, c. 9, s. 33; 2011, c. 9,
Sched. 35, s. 4; 2014, c. 7, Sched. 26, s. 5;
2018, c. 8, Sched. 23, s. 23

49. (1) Variation of payment to disabled person — A pension plan may permit variation in the terms of payment of a pension benefit, deferred pension or pension by reason of the mental or physical disability of a member, former member or retired member that is likely to considerably shorten his or her life expectancy.

(2) Shortened life expectancy — A pension plan shall be deemed to permit variation in the terms of payment of a pension or deferred pension in such circumstances of shortened life expectancy as may be prescribed, if the prescribed conditions are satisfied.

1999, c. 15, s. 9; 2010, c. 9, s. 34

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FAMILY LAW MATTERS

[Heading added 2009, c. 11, s. 49.]

67.1 (1) Interpretation — In this section and in sections 67.2 to 67.9,

“**family law valuation date**” means, with respect to a member, former member or retired member of a pension plan and his or her spouse,

(a) the spouses’ valuation date under Part I (Family Property) of the *Family Law Act*, or

(b) for spouses to whom Part I of that Act does not apply, the date on which they separate and there is no reasonable prospect that they will resume cohabitation;

“**spouse**” has the same meaning as in section 29 of the *Family Law Act*.

(2) Former spouse — A reference in this section and in sections 67.2 to 67.9 to the spouse of a member, former member or retired member of a pension plan is, where circumstances require, a reference to him or her as the former spouse of the member, former member or retired member.

Proposed Addition — 67.1(3)

(3) Changes in membership status after family law valuation date — For greater certainty, sections 67.2 to 67.5 shall be interpreted so as to take into account any change to an individual’s status as a member, a former member or a retired member of a pension plan that occurs after the family law valuation date and, for that purpose, a reference to an individual in terms of their status in those sections is to be read as a reference to the relevant status of the individual and to the individual’s pension benefits, deferred pension or pension as of the date of any event or action that is relevant to the application of the provision.

2019, c. 14, Sched. 9, s. 29 [Not in force at date of publication.]

2009, c. 11, s. 49; 2010, c. 9, s. 43; 2017, c. 8, Sched. 27, s. 13

67.2 Valuation for family law purposes — **(1) Preliminary valuation, member, former member or retired member** — The preliminary value of a member’s pension benefits, a former member’s deferred pension or a retired member’s pension under a pension plan, before apportionment for family law purposes, is determined by the administrator in accordance with the regulations and as of the family law valuation date of the member, former member or retired member and his or her spouse.

(2) Same, spouse — The preliminary value of the pension of the spouse of a retired member under a pension plan, before apportionment for family law purposes, is determined by the administrator in accordance with the regulations and as of the family law valuation date of the spouse and the retired member.

(3) Adjustments — If the pension benefits, pension or deferred pension are provided under a pension plan that provides defined benefits, the preliminary value includes such adjustments as may be prescribed for ancillary benefits and other entitlements.

(4) Same — There is no preliminary value attributable to ancillary benefits and other entitlements otherwise than by virtue of subsection (3).

(5) Imputed value for family law purposes — The imputed value, for family law purposes, of each spouse’s pension benefits, deferred pension or pension, as the case may be, is that portion of the preliminary value that is attributed by the administrator, in accordance with the regulations,

(a) to the period beginning with the date of the spouses’ marriage and ending on their family law valuation date, for the purposes of an order under Part I (Family Property) of the *Family Law Act*; or

(b) to the period beginning with the date determined in accordance with the regulations and ending on the spouses’

family law valuation date, for the purposes of a family arbitration award or domestic contract.

(6) Application for statement of imputed value — The following persons may apply to the administrator of the pension plan, in accordance with the prescribed requirements, for a statement of the imputed value, for family law purposes, of each spouse's pension benefits, deferred pension or pension, as the case may be:

1. In the case of spouses to whom Part I of the *Family Law Act* applies, either spouse.
2. In the case of spouses to whom Part I of the *Family Law Act* does not apply, the member, former member or retired member.

(7) Application fee — The application must be accompanied by the applicable fee, if any, imposed by the administrator and the applicable fee must not exceed the prescribed amount.

(8) Duty to determine imputed value — Once the application is complete, the administrator shall determine the imputed value, for family law purposes, of each spouse's pension benefits, deferred pension or pension, as the case may be.

(9) Duty to provide statement — The administrator shall give a statement containing the prescribed information to both spouses within the prescribed period.

(10) Transition — Neither spouse is eligible to apply under paragraph 1 of subsection (6) for the statement if an order made under Part I of the *Family Law Act* before the day on which this section comes into force requires one spouse to pay to the other spouse the amount to which the other spouse is entitled under section 5 (equalization of net family properties) of that Act.

2009, c. 11, s. 49; 2010, c. 9, s. 44; 2017, c. 34, Sched. 33, s. 24

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67.3 Transfer of a lump sum for certain family law purposes — **(1) Eligibility** — A spouse of a member, former member or retired member of a pension plan is eligible to apply under this section for an immediate transfer of a lump sum from the plan if all of the following circumstances exist:

1. The spouses are separated and there is no reasonable prospect that they will resume cohabitation.
2. No payment of an instalment of the member's or former member's pension was due on or before the family law valuation date.
3. A statement of the imputed value, for family law purposes, of the member's pension benefits or the former member's deferred pension has been obtained from the administrator under section 67.2.
4. The transfer is provided for by an order made under Part I (Family Property) of the *Family Law Act* or is authorized under a family arbitration award or domestic contract.
5. In the order, family arbitration award or domestic contract, the amount to be transferred as a lump sum is expressed,
 - i. as a specified amount, or
 - ii. as a proportion of the imputed value, for family law purposes, of the member's pension benefits or the former member's deferred pension.

(2) Application for transfer — The eligible spouse may apply, in accordance with the prescribed requirements, to the administrator of the plan for any of the following:

1. Transfer of a lump sum from the plan to another pension plan registered under the pension benefits legislation in any jurisdiction in Canada or provided by a government in Canada. This option is available only if the adminis-

trator of the other plan agrees to accept the transfer.

2. Transfer of a lump sum from the plan to a prescribed retirement savings arrangement.

3. Transfer of a lump sum to another prescribed arrangement.

4. Implementation of the transfer of a lump sum by leaving it in the plan to the credit of the eligible spouse. This option is available in such circumstances as may be prescribed and only if the administrator agrees to it.

(3) Restrictions on transfers — The transfer is subject to the restrictions set out in this section and to such other restrictions as may be prescribed.

(4) Duty to transfer — Once the application is complete, the administrator shall make the transfer within the prescribed period.

(5) Transfer to eligible spouse's estate — If the lump sum is not transferred under subsection (4) before the death of the eligible spouse, the lump sum is payable instead to the eligible spouse's estate or as otherwise prescribed.

(6) Maximum percentage — The order, family arbitration award or domestic contract is not effective to the extent that it purports to entitle the eligible spouse to the transfer of a lump sum that exceeds 50 per cent of the imputed value, for family law purposes, of the pension benefits or deferred pension, as updated for the purposes of this subsection if the regulations or the Authority rules require the imputed value to be updated.

(7) Partial transfer directly to spouse — If the amount that would otherwise be transferred in accordance with the application is greater than the amount prescribed under the *Income Tax Act* (Canada) for such a transfer, the administrator shall pay the portion that exceeds the prescribed amount as a lump sum to the eligible spouse.

(8) Duty to adjust pension benefits, etc. — Upon making the transfer, the administrator shall, in accordance with the regulations, adjust the benefits and entitlements of the member or former member under the pension plan to take into account the transfer.

Proposed Amendment — 67.3(8)

(8) Duty to adjust pension benefits, etc. — Upon making the transfer, the administrator shall, in accordance with the regulations or the Authority rules, adjust the benefits and entitlements of the member, former member or retired member under the pension plan to take into account the transfer.

2019, c. 14, Sched. 9, s. 31(3) [Not in force at date of publication.]

(9) Discharge of administrator — In the absence of actual notice to the contrary, the administrator is entitled to rely upon the information provided by the spouse in the application and is discharged upon making the transfer in accordance with the application and this section and making the adjustments required by subsection (8).

(10) Effect of transfer — Once the transfer is made in accordance with the application and this Act, the eligible spouse has no further claim against the pension plan in respect of the member or former member.

Proposed Amendment — 67.3(10)

(10) Effect of transfer — Once the transfer is made in accordance with the application and this Act, the eligible spouse has no further claim against the pension plan in respect of the member, former member or retired member.

2019, c. 14, Sched. 9, s. 31(4) [Not in force at date of publication.]

(11) Orders for support — This section does not affect any order for support enforceable in Ontario.

(12) Priorities — An entitlement to a transfer under this section prevails over any other entitlement under this Act to a payment from the pension plan in respect of the member or former member.

Proposed Amendment —
67.3(12)

(12) Priorities — An entitlement to a transfer under this section prevails over any other entitlement under this Act to a payment from the pension plan in respect of the member, former member or retired member.

2019, c. 14, Sched. 9, s. 31(5) [Not in force at date of publication.]

(13) Same — For the purposes of subsection (12), an entitlement to a transfer under this section arises on application under subsection (2) by an eligible spouse.

2009, c. 11, s. 49; 2010, c. 9, s. 45; 2017, c. 34, Sched. 33, s. 25; 2019, c. 14, Sched. 9, s. 31(1), (2)

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67.4 Division of a pension for certain family law purposes — (1) Eligibility — A spouse of a retired member of a pension plan is eligible to apply under this section for the division of the retired member's pension if all of the following circumstances exist:

1. The spouses are separated and there is no reasonable prospect that they will resume cohabitation.
2. Payment of the first instalment of the retired member's pension was due on or before the family law valuation date.
3. A statement of the imputed value, for family law purposes, of the retired member's pension has been obtained from the administrator under section 67.2.
4. The division of the pension is provided for by an order made under Part I (Family Property) of the *Family Law Act* or is authorized under a family arbitration award or domestic contract.

5. In the order, family arbitration award or domestic contract, the amount of each pension instalment to be paid to the spouse is expressed,

- i. as a specified amount, or
- ii. as a proportion of the instalment otherwise payable to the retired member.

(2) Application for division and payment — The eligible spouse may apply, in accordance with the prescribed requirements, to the administrator of the plan for division of the retired member's pension and for payment of the eligible spouse's share to him or her.

(3) Restrictions — The division and payment of the pension is subject to the restrictions set out in this section and to such other restrictions as may be prescribed.

(4) Duties of administrator — Once the application is complete, the administrator shall revalue the retired member's pension in the prescribed manner and begin the payments to the eligible spouse within the prescribed period.

(5) Maximum percentage — The order, family arbitration award or domestic contract is not effective to the extent that it purports to entitle the eligible spouse to a share that exceeds 50 per cent of the imputed value, for family law purposes, of the pension, as updated for the purposes of this subsection if the regulations or the Authority rules require the imputed value to be updated.

(6) Discharge of administrator — In the absence of actual notice to the contrary, the administrator is entitled to rely upon the information provided by the spouse in the application and is discharged on revaluing the retired member's pension and making the payments to the eligible spouse in accordance with the application and this section.

(7) Orders for support — This section does not affect any order for support enforceable in Ontario.

(8) Waiver of joint and survivor pension — Despite subsection 46(2), the eligible spouse may waive his or her entitlement to a joint and survivor pension after payment of the first instalment of the retired member's pension is due and before the pension is divided in accordance with this section.

(9) No cancellation — A waiver authorized by subsection (8) cannot be cancelled.

(10) Special case, combining payments — The following rules and any additional prescribed rules apply if the eligible spouse is entitled to a joint and survivor pension in respect of the retired member in addition to being entitled to payment of a share of the retired member's pension in accordance with this section:

1. The eligible spouse may make a written request, in the form approved by the Chief Executive Officer, to the administrator for payment of a single pension from the pension plan instead of payment of a share of the retired member's pension and payment of a joint and survivor pension.

2. If the pension plan so permits, the administrator may comply with the request.

3. When the eligible spouse begins to receive the single pension, he or she ceases to be entitled to payment of the share of the retired member's pension and to payment of the joint and survivor pension in respect of the retired member.

2009, c. 11, s. 49; 2010, c. 9, s. 46; 2017, c. 34, Sched. 33, s. 26; 2018, c. 8, Sched. 23, s. 23; 2019, c. 14, Sched. 9, s. 33

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67.5 (1) Restriction on other ways of dividing pension benefits, etc. — An order made under Part I (Family Property) of the *Family Law Act*, a family arbitration award or a domestic contract is not effective to the extent that it purports to require the administrator of a pension plan to divide the pension benefits, deferred pension or pen-

sion, as the case may be, of a member, former member or retired member of the plan otherwise than as provided under section 67.3 or 67.4.

Proposed Amendment — 67.5(1)

(1) Restriction on other ways of dividing pension benefits, etc. — An order made under Part I (Family Property) of the *Family Law Act*, a family arbitration award or a domestic contract is not effective to the extent that it purports to require the administrator of a pension plan to divide the pension benefits, deferred pension or pension, as the case may be, of a member, former member or retired member of the plan otherwise than as provided under sections 67.3 to 67.4.1.

2019, c. 14, Sched. 9, s. 35 [Not in force at date of publication.]

(2) Transition, valuation date — This section applies whether the family law valuation date for the member, former member or retired member and his or her spouse is before, on or after the date on which this section comes into force.

(3) Transition, previous orders, etc. — This section does not apply to an order, family arbitration award or domestic contract to which section 67.6 applies.

2009, c. 11, s. 49; 2010, c. 9, s. 47

67.6 (1) Other transitional matters — This section applies to an order under Part I (Family Property) of the *Family Law Act*, family arbitration award or domestic contract that requires one spouse to pay to the other spouse the amount to which that spouse is entitled under section 5 (equalization of net family properties) of that Act, if the order, award or contract was made before the date on which this section comes into force.

(2) Amendments — The application of this section to an order, family arbitration award or domestic contract described in subsection (1) is not affected by an amendment or variation made on or after the date on

S. 67.6(2)

Pension Benefits Act

which this section comes into force to the order, award or contract, if,

- (a) the order, award or contract provided, before that date, for the division of a party's interest in a pension plan; and
- (b) the amendment or variation is made in order to facilitate or effect the division of the party's interest in the pension plan in accordance with the order, award or contract.

(3) Timing of payment — The order, family arbitration award or domestic contract is not effective to require payment of a pension benefit before the earlier of,

- (a) the date on which payment of the pension benefit commences; or
- (b) the normal retirement date of the relevant member or former member.

(4) Maximum percentage — The order, family arbitration award or domestic contract is not effective to cause the spouse to become entitled to more than 50 per cent of the pension benefits, calculated in the prescribed manner, accrued by the member, for-

mer member or retired member during the period when they were spouses.

(5) Discharge of administrator — If payment of a pension or a deferred pension is divided between spouses by the order, family arbitration award or domestic contract, the administrator is discharged on making payment in accordance with the order, award or contract.

(6) Revaluation of joint and survivor pension — If the order, family arbitration award or domestic contract affects a pension, the administrator of the pension plan shall revalue the pension in the prescribed manner.

(7) Entitlement to options — The spouse has the same entitlement, on termination of employment by the member, former member or retired member, to any option available in respect of the spouse's interest in the pension benefits as the member, former member or retired member has in respect of his or her pension benefits.

2009, c. 11, s. 49; 2010, c. 9, s. 48

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ONT. REG. 909 — GENERAL

made under the *Pension
Benefits Act*

R.R.O. 1990, Reg. 909, as am.
R.R.O. 1990, Reg. 909, s. 80(3) [Am.
O. Reg. 144/00, s. 31.]; O. Reg.
402/91; 740/91; 743/91; 760/91;
69/92; 564/92; 629/92; 712/92;
755/92; 778/92; 779/92; 433/93;
785/93; 786/93; 787/93; 408/94;
409/94; 558/94; 665/94; 73/95;
343/95; 504/96; 286/97; 415/97;
307/98; 625/98; 115/00; 144/00;
242/00; 680/00; 480/01; 203/02;
350/02; 444/03; 386/04; 324/05;
100/06; 116/06, ss. 1–4, 5(1), (2), (3)
(Fr.), 6 (Fr.), 7–21; 509/06; 570/06;
413/07; 416/07, ss. 1–9(4), (5) (Fr.),
(6)–(36), 10, 11(1), (2) (Fr.),
(3)–(20); 489/07; 116/09; 239/09, ss.
1–19, 20 (Fr.), 21–28, 29(1)–(5), (6)
(Fr.), (7), 30, 31 (Fr.), 32–38, 39(1)
(Fr.), (2), 40–45; 322/09; 447/09;
477/09; 342/10; 367/10; 19/11; 84/11;
85/11; 86/11; 177/11 [s. 7(4)
amended O. Reg. 330/12; 186/13;
207/14; 441/17. Repealed O. Reg.
400/19, s. 7.]; 195/11; 288/11;
336/11; 396/11; 466/11; 164/12;
178/12, ss. 1–16, 17(1), (2) (Fr.), (3)
(Fr.), 18–56; CTR 5 JL 12 - 1; CTR
5 JL 12 - 2; CTR 5 JL 12 - 3;
203/12; 314/12; 329/12; 364/12;
447/12; 131/13; 185/13; 291/13;
306/13; 328/13; 51/14; 106/14;
119/14; 235/14, ss. 1, 2(1), (2)–(4)
(Fr.), (5), (6), 3, 4, 5 (Fr.), 6 (Fr.),
7–9; 37/15; 312/15; 343/15; 390/15;
395/15; 161/16, ss. 1, 2, 3(1)–(5)
(Fr.), (6)–(8), 4(1) (Fr.), (2) (Fr.), (3),
(4)–(8) (Fr.), (9)–(11), 5–10; 240/16;
351/16; 352/16; 47/17; 49/17; 69/17;

213/17; 225/17; 412/17; 442/17;
536/17; 180/18; 192/18; 250/18, ss. 1
(Fr.) 2–39; 252/18; 486/18; 105/19
[ss. 6(3), (5) to come into force Feb-
ruary 1, 2022; s. 7(2) to come into
force May 1, 2029.]; 149/19; 369/19;
400/19, ss. 1(1) (Fr.), (2), (3) (Fr.),
(4), 2–6 [s. 6(2) to come into force
January 1, 2024.]; 420/19; 32/20;
187/20; 231/20; 285/20; 287/20, ss.
1–17 [ss. 1(2), 2(2), 3(2), 4(2), 5(2),
(4), 7(2), 8(2), 9(2), 11(2), 12(2),
13(2), 14(2), 15(2), 16(2), 17(2) to
come into force on July 1, 2021.];
290/20; 520/20 [s. 1(2)–(4) not in
force at date of publication; s. 2(2) to
come into force August 1, 2021.];
670/20 [To come into force July 1,
2021.].

PART I — INTERPRETATION

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Funding of Pension Plans

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Death/Survivor Benefits Statement

43. (1) This section applies if, as a result of the death of a member, a former member or a retired member, his or her spouse, beneficiary or estate becomes entitled to a benefit.

(1.1) Within 30 days after the administrator receives a notice of the death, the administrator shall give a statement containing at least the following information to the spouse, beneficiary or legal representative:

1. The name of the pension plan and its provincial registration number.
2. The amount and method of payment of the benefit.
3. The amount, if any, payable under subsection 39(4) of the Act.
4. If applicable, the basis for indexation of a pension.

S. 43(1.1)

Ont. Reg. 909 — General

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| <p>5. If applicable, the amount of the pension resulting from additional voluntary contributions.</p> <p>6. In the case of a spouse, the options available under section 44 or 48 of the Act.</p> <p>(2) For purposes of subsection 48(1) or (2) of the Act, a spouse shall make an election within ninety days after receipt of the notice referred to in subsection (1.1).</p> <p>(3) The administrator of the plan shall comply with an election under subsection (2) within sixty days after receipt of the direction from the spouse.</p> <p>O. Reg. 115/00, s. 6; 324/05, s. 9; 178/12, s. 41</p> <p style="text-align: center;">.....</p> | <p>(4) The actuarial present value of a reduction to an entitlement under section 48 of the Act may not exceed the amount of the payment under the group life insurance plan.</p> <p>(5) In the case of a pension plan that provides contributory benefits, the reduction referred to in subsection (1) shall not reduce an entitlement under section 48 of the Act to less than the aggregate of the required contributions of the member, former member or retired member, with interest in accordance with section 24.</p> <p>(6) A reduction under this section may not be made unless the group life insurance contract provides for payment of the insurance payment to the spouse of a member, former member or retired member, where there is a spouse at the date of death or the spouse has waived the insurance payment.</p> <p>(7) Subsection 48(11) of the Act does not apply to pension plans that provide defined contribution benefits.</p> <p>O. Reg. 115/00, s. 11; 324/05, s. 14; 178/12, s. 54</p> |
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Offsets from Pre-Retirement Death Benefits

63. (1) A pension plan may provide for the reduction of an entitlement under section 48 of the Act by an amount equal to that part of a group life insurance payment payable on the death of the member, former member or retired member that can be considered to have been paid by employer premiums.

(2) An entitlement under section 48 of the Act shall not be offset by an amount greater than the group life insurance payment times the rate of the employer paid cost of the group life insurance policy to the total cost of the policy for the relevant class of employees, taking into account in both the numerator and the denominator the ratio of any experience or other refunds.

(3) The ratio referred to in subsection (2) shall be averaged over a period not exceeding five years.

Survivor Benefits

64. A bridging benefit need not be taken into account when calculating,

- (a) the amount of a pension for purposes of subsection 44(3) of the Act;
 - or
 - (b) the commuted value of a deferred pension or a pension benefit under section 48 of the Act.
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PERPETUITIES ACT

R.S.O. 1990, c. P.9, as am. S.O. 1999, c. 6, s. 54; 2005, c. 5, s. 57; 2006, c. 19, Sched. C, s. 1(1); 2009, c. 33, Sched. 16, s. 11; 2017, c. 14, Sched. 4, s. 27.

1. Definitions — In this Act,

“court” means the Superior Court of Justice;

“in being” means living or conceived;

“limitation” includes any provision whereby property or any interest in property, or any right, power or authority over property, is disposed of, created or conferred.

2006, c. 19, Sched. C, s. 1(1)

2. Rule against perpetuities to continue; saving — Except as provided by this Act, the rule of law known as the rule against perpetuities continues to have full effect.

3. Possibility of vesting beyond period — No limitation creating a contingent interest in property shall be treated as or declared to be invalid as violating the rule against perpetuities by reason only of the fact that there is a possibility of such interest vesting beyond the perpetuity period.

4. (1) Presumption of validity and “Wait and See” — Every contingent interest in property that is capable of vesting within or beyond the perpetuity period is presumptively valid until actual events establish,

(a) that the interest is incapable of vesting within the perpetuity period, in which case the interest, unless validated by the application of section 8 or 9, shall be treated as void or declared to be void; or

(b) that the interest is incapable of vesting beyond the perpetuity period, in which case the interest shall be treated as valid or declared to be valid.

(2) General power of appointment — A limitation conferring a general power of appointment, which but for this section would have been void on the ground that it might become exercisable beyond the perpetuity period, is presumptively valid until such time, if any, as it becomes established by actual events that the power cannot be exercised within the perpetuity period.

(3) Special power of appointment, etc. — A limitation conferring any power, option or other right, other than a general power of appointment, which but for this section would have been void on the ground that it might be exercised beyond the perpetuity period, is presumptively valid, and shall be declared or treated as void for remoteness only if, and so far as, the right is not fully exercised within the perpetuity period.

5. (1) Applications to determine validity — An executor or a trustee of any property or any person interested under, or on the validity or invalidity of, an interest in such property may at any time apply to the court for a declaration as to the validity or invalidity with respect to the rule against perpetuities of an interest in that property, and the court may on such application make an order as to validity or invalidity of an interest based on the facts existing and the events that have occurred at the time of the application and having regard to sections 8 and 9.

(2) Interim income — Pending the treatment or declaration of a presumptively valid interest within the meaning of subsection 4(1) as valid or invalid, the income arising from such interest and not otherwise disposed of shall be treated as income arising from a valid contingent interest, and any uncertainty whether the limitation willulti-

mately prove to be void for remoteness shall be disregarded.

6. (1) Measurement of perpetuity period — Except as provided in section 9, subsection 13(3) and subsections 15(2) and (3), the perpetuity period shall be measured in the same way as if this Act had not been passed, but, in measuring that period by including a life in being when the interest was created, no life shall be included other than that of any person whose life, at the time the interest was created, limits or is a relevant factor that limits in some way the period within which the conditions for vesting of the interest may occur.

(2) Idem — A life that is a relevant factor in limiting the time for vesting of any part of a gift to a class shall be a relevant life in relation to the entire class.

(3) Idem — Where there is no life satisfying the conditions of subsection (1), the perpetuity period is twenty-one years.

7. (1) Presumptions and evidence as to future parenthood — Where, in any proceeding respecting the rule against perpetuities, a question arises that turns on the ability of a person to have a child at some future time, then,

(a) it shall be presumed,

(i) that a male is able to have a child at the age of fourteen years or over, but not under that age, and

(ii) that a female is able to have a child at the age of twelve years or over, but not under that age or over the age of fifty-five years; but

(b) in the case of a living person, evidence may be given to show that he or she will or will not be able to have a child at the time in question.

(2) Idem — Subject to subsection (3), where any question is decided in relation to a limitation of interest by treating a person

as able or unable to have a child at a particular time, then he or she shall be so treated for the purpose of any question that arises concerning the rule against perpetuities in relation to the same limitation or interest despite the fact that the evidence on which the finding of ability or inability to have a child at a particular time is proved by subsequent events to have been erroneous.

(3) Idem — Where a question is decided by treating a person as unable to have a child at a particular time and such person subsequently has a child or children at that time, the court may make such order as it sees fit to protect the right that such child or children would have had in the property concerned as if such question had not been decided and as if such child or children would, apart from such decision, have been entitled to a right in the property not in itself invalid by the application of the rule against perpetuities as modified by this Act.

(4) Idem — The possibility that a person may at any time have a child by adoption or by means other than by procreating or giving birth to a child shall not be considered in deciding any question that turns on the ability of a person to have a child at some particular time, but, if a person does subsequently have a child or children by such means, then subsection (3) applies to such child or children.

8. (1) Reduction of age — Where a limitation creates an interest in property by reference to the attainment by any person or persons of a specified age exceeding twenty-one years, and actual events existing at the time the interest was created or at any subsequent time establish,

(a) that the interest, would, but for this section, be void as incapable of vesting within the perpetuity period; but

(b) that it would not be void if the specified age had been twenty-one years,

the limitation shall be read as if, instead of referring to the age specified, it had referred

to the age nearest the age specified that would, if specified instead, have prevented the interest from being so void.

(2) Exclusion of class members to avoid remoteness — Where the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, prevents subsection (1) from operating to save a limitation creating an interest in favour of a class of persons from being void for remoteness, such persons shall be excluded from the class for all purposes of the limitation, and the limitation takes effect accordingly.

(3) Idem — Where a limitation creates an interest in favour of a class to which subsection (2) does not apply and actual events at the time of the creation of the interest or at any subsequent time establish that, but for this subsection, the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, would cause the limitation to the class to be void for remoteness, such persons shall be excluded from the class for all purposes of the limitation, and the limitation takes effect accordingly.

(4) Interpretation — For the purposes of this section, a person shall be treated as a member of a class if in the person's case all the conditions identifying a member of the class are satisfied, and a person shall be treated as a potential member if in the person's case some only of those conditions are satisfied but there is a possibility that the remainder will in time be satisfied.

9. (1) Spouses — Where any disposition is made in favour of any spouse of a person in being at the commencement of the perpetuity period, or where a limitation creates an interest in property by reference to the time of the death of the survivor of a person in being at the commencement of the perpetuity period and any spouse of that person, for the purpose of validating any such

disposition or limitation, that but for this section would be void as offending the rule against perpetuities as modified by this Act, the spouse of such person shall be deemed to be a life in being at the commencement of the perpetuity period even though such spouse was not born until after that time.

(2) Definition — For the purposes of subsection (1),

“**same-sex partner**” [Repealed 2005, c. 5, s. 57(2).]

“**spouse**” means a person,

- (a) to whom the person is married; or
- (b) with whom the person is living in a conjugal relationship outside marriage, if the two persons,
 - (i) have cohabited for at least a year,
 - (ii) are together the parents of a child, or
 - (iii) have together entered into a cohabitation agreement under section 53 of the *Family Law Act*.
1999, c. 6, s. 54; 2005, c. 5, s. 57(1)-(3)

10. (1) Saving — A limitation that, if it stood alone, would be valid under the rule against perpetuities is not invalidated by reason only that it is preceded by one or more limitations that are invalid under the rule against perpetuities, whether or not such limitation expressly or by implication takes effect after, or is subject to, or is ulterior to and dependent upon, any such invalid limitation.

(2) Acceleration of expectant interests — Where a limitation is invalid under the rule against perpetuities, any subsequent interest that, if it stood alone, would be valid shall not be prevented from being accelerated by reason only of the invalidity of the prior interest.

11. (1) Powers of appointment — For the purpose of the rule against perpetuities, a

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power of appointment shall be treated as a special power unless,

(a) in the instrument creating the power it is expressed to be exercisable by one person only; and

(b) it could, at all times during its currency when that person is of full age and capacity, be exercised by the person so as immediately to transfer to the person the whole of the interest governed by the power without the consent of any other person or compliance with any other condition, not being a formal condition relating only to the mode of exercise of the power.

(2) Idem — A power that satisfies the conditions of clauses (1)(a) and (b) shall, for the purpose of the rule against perpetuities, be treated as a general power.

(3) Idem — For the purpose of determining whether an appointment made under a power of appointment exercisable by will only is void for remoteness, the power shall be treated as a general power where it would have been so treated if exercisable by deed.

12. (1) Administrative powers of trustees — The rule against perpetuities does not invalidate a power conferred on trustees or other persons to sell, lease, exchange or otherwise dispose of any property, or to do any other act in the administration (as opposed to the distribution) of any property including, where authorized, payment to trustees or other persons of reasonable remuneration for their services.

(2) Application of subs. (1) — Subsection (1) applies for the purpose of enabling a power to be exercised at any time after this Act comes into force, despite the fact that the power is conferred by an instrument that took effect before that time.

13. (1) Options to acquire reversionary interests — The rule against perpetuities does not apply to an option to acquire for

valuable consideration an interest reversionary on the term of a lease,

(a) if the option is exercisable only by the lessee or the lessee's successors in title; and

(b) if it ceases to be exercisable at or before the expiration of one year following the determination of the lease.

(2) Application of subs. (1) — Subsection (1) applies to an agreement for a lease as it applies to a lease, and "lessee" shall be construed accordingly.

(3) Other options — In the case of all other options to acquire for valuable consideration any interest in land, the perpetuity period under the rule against perpetuities is twenty-one years, and any such option that according to its terms is exercisable at a date more than twenty-one years from the date of its creation is void on the expiry of twenty-one years from the date of its creation as between the person by whom it was made and the person to whom or in whose favour it was made and all persons claiming through either or both of them, and no remedy lies for giving effect to it or making restitution for its lack of effect.

(4) Options to renew leases — The rule against perpetuities does not apply, nor do the provisions of subsection (3) apply, to options to renew a lease.

14. Easements, profits à prendre, etc. — In the case of an easement, *profit à prendre* or other similar interest to which the rule against perpetuities may be applicable, the perpetuity period is forty years from the time of the creation of such easement, *profit à prendre* or other similar interest, and the validity or invalidity of such easement, *profit à prendre* or other similar interest, so far as remoteness is concerned, shall be determined by actual events within such forty-year period, and the easement, *profit à prendre* or other similar interest is void only for remoteness if, and to the extent that, it fails to acquire the characteristics of a present ex-

ercisable right in the servient land within the forty-year period.

15. (1) Determinable interests — In the case of,

- (a) a possibility of reverter on the determination of a determinable fee simple; or
- (b) a possibility of a resulting trust on the determination of any determinable interest in property,

the rule against perpetuities as modified by this Act applies in relation to the provision causing the interest to be determinable as it would apply if that provision were expressed in the form of a condition subsequent giving rise on its breach to a right of re-entry or an equivalent right in the case of personal property, and, where the event that determines the determinable interest does not occur within the perpetuity period, the provision shall be treated as void for remoteness and the determinable interest becomes an absolute interest.

(2) Idem — In the case of a possibility of reverter on the determination of a determinable fee simple, or in the case of a possibility of a resulting trust on the determination of any determinable interest in any property, or in the case of a right of re-entry following on a condition subsequent, or in the case of an equivalent right in personal property, the perpetuity period shall be measured as if the event determining the prior interest were a condition to the vesting of the subsequent interest, and failing any life in being at the time the interests were created that limits or is a relevant factor that limits in some way the period within which that event may take place, the perpetuity period is twenty-one years from the time when the interests were created.

(3) Idem — Even though some life or lives in being may be relevant in determining the perpetuity period under subsection (2), the perpetuity period for the purposes of this section shall not exceed a period of forty years from the time when the interests were

created and shall be the lesser of a period of forty years and a period composed of the relevant life or lives in being and twenty-one years.

16. (1) Specific non-charitable trusts — A trust for a specific non-charitable purpose that creates no enforceable equitable interest in a specific person shall be construed as a power to appoint the income or the capital, as the case may be, and, unless the trust is created for an illegal purpose or a purpose contrary to public policy, the trust is valid so long as and to the extent that it is exercised either by the original trustee or the trustee's successor, within a period of twenty-one years, despite the fact that the limitation creating the trust manifested an intention, either expressly or by implication, that the trust should or might continue for a period in excess of that period, but, in the case of such a trust that is expressed to be of perpetual duration, the court may declare the limitation to be void if the court is of opinion that by so doing the result would more closely approximate the intention of the creator of the trust than the period of validity provided by this section.

(2) Idem — To the extent that the income or capital of a trust for a specific non-charitable purpose is not fully expended within a period of twenty-one years, or within any annual or other recurring period within which the limitation creating the trust provided for the expenditure of all or a specified portion of the income or the capital, the person or persons, or the person or person's successors, who would have been entitled to the property comprised in the trust if the trust had been invalid from the time of its creation, are entitled to such unexpended income or capital.

17. (1) Rule in *Whitby vs. Mitchell* abolished — The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to any unborn issue or an unborn person is abolished,

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but without affecting any other rule relating to perpetuities.

(2) Definition — For the purposes of subsection (1),

“**issue**” means issue of a person, whether born within or outside marriage, subject to sections 217 and 218 of the *Child, Youth and Family Services Act, 2017*.

2017, c. 14, Sched. 4, s. 27

18. (1) Rules as to perpetuities not applicable to employee-benefit trusts — The rules of law and statutory enactments relating to perpetuities do not apply and shall be deemed never to have applied to the trusts of a plan, trust or fund established for the purpose of providing pensions, retirement allowances, annuities, or sickness, death or other benefits, to employees or to their surviving spouses, dependants or other beneficiaries.

(1.1) Rules not applicable to certain trust funds — The rules of law and statutory enactments relating to perpetuities do

not apply and are deemed never to have applied to a trust fund required by subsection 9(1) of the *Nuclear Fuel Waste Act* (Canada).

(2) Definition — In this section,

“**spouse**” means,

- (a) a spouse as defined in section 1 of the *Family Law Act*, or
- (b) either of two persons who live together in a conjugal relationship outside marriage.

2005, c. 5, s. 57(4), (5); 2009, c. 33, Sched. 16,
s. 11

19. Application of Act — Except as provided in subsection 12(2) and in section 18, this Act applies only to instruments that take effect on or after the 6th day of September, 1966, and such instruments include an instrument made in the exercise of a general or special power of appointment on or after that date even though the instrument creating the power took effect before that date.

POWERS OF ATTORNEY ACT

R.S.O. 1990, c. P.20, as am. S.O.
1992, c. 32, s. 24; 1993, c. 27,
Sched..

1. Definition — In this Act,

“attorney” means the donee of a power of attorney or where a power of attorney is given to two or more persons, whether jointly or severally or both, means any one or more of such persons.

“legal incapacity” [Repealed 1992, c. 32, s. 24(1).]

1992, c. 32, s. 24(1)

2. Form of general power of attorney — A general power of attorney for property is sufficient authority for the donee of the power or, where there is more than one donee, for the donees acting jointly or acting jointly and severally, as the case may be, to

do on behalf of the donor anything that the donor can lawfully do by an attorney, subject to such conditions and restrictions, if any, as are contained therein.

1992, c. 32, s. 24(2)

3. (1) Exercise of power after termination — Where a power of attorney is terminated or revoked or becomes invalid, any subsequent exercise of the power by the attorney is valid and binding as between the donor or the estate of the donor and any person, including the attorney, who acted in good faith and without knowledge of the termination, revocation or invalidity.

(2) Saving — Where money is paid in the exercise of a power of attorney to which subsection (1) applies, nothing in subsection (1) affects the right of any person entitled to the money against the person to whom the payment is made, and the person so entitled has the same remedy against the person to whom the payment is made as he, she or it would have had against the person making the payment.

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PUBLIC GUARDIAN AND TRUSTEE ACT

R.S.O. 1990, c. P.51, as am. S.O. 1992, c. 32, s. 25; 1996, c. 2, s. 75; 1997, c. 23, s. 11; 1998, c. 18, Sched. B, s. 13; 2000, c. 26, Sched. A, s. 14; 2001, c. 9, Sched. B, s. 12; 2002, c. 18, Sched. A, s. 17; 2004, c. 17, s. 32, Table; 2006, c. 19, Sched. B, s. 18; 2006, c. 34, s. 20; 2009, c. 33, Sched. 2, s. 62, Sched. 6, s. 81; 2017, c. 20, Sched. 8, s. 123 [Not in force at date of publication.]; 2019, c. 7, Sched. 17, s. 145; 2020, c. 11, Sched. 18 [Not in force at date of publication.].

1. (1) Public Guardian and Trustee, staff — The Lieutenant Governor in Council may appoint a member of the bar of Ontario of at least ten years' standing to be Public Guardian and Trustee, may appoint one or more deputies to act for him or her and may appoint such other persons as employees in the office of the Public Guardian and Trustee as are necessary for the purposes of this Act.

(2) Corporation sole — The corporation sole known as the Public Trustee is continued under the name of Public Guardian and Trustee.

(3) Same — The Public Guardian and Trustee has perpetual succession and an official seal, and may sue and be sued in his or her corporate name.

1992, c. 32, s. 25(1)

2. (1) Powers and duties of deputy — A deputy of the Public Guardian and Trustee has the powers and duties that the Public Guardian and Trustee delegates to him or her.

(2) Absence of Public Guardian and Trustee — If the Public Guardian and Trustee is unable to act because of absence or illness, the deputy who was appointed first shall act in his or her place.

(3) Vacancy — If the Public Guardian and Trustee dies or resigns the office, the deputy who was appointed first shall act as Public Guardian and Trustee until a successor is appointed.

(4) Other delegation — The Public Guardian and Trustee may in writing delegate any of his or her powers or duties to an employee in his or her office.

(5) Power to act as corporate director — Despite paragraph 3 of subsection 118(1) of the *Business Corporations Act*, the Public Guardian and Trustee may act as a director of a corporation in which,

(a) a deceased person was the sole shareholder and for whose estate the Public Guardian and Trustee acts as estate trustee if it is necessary and expedient to do so to protect or preserve the interest of the deceased person's estate in the corporation or to provide for the orderly winding-up or dissolution of the corporation; or

(b) a mentally incapable person is the sole shareholder and for whom the Public Guardian and Trustee acts as the guardian of property if it is necessary and expedient to do so to protect or preserve the interest of the mentally incapable person in the corporation or to provide for the orderly winding-up or dissolution of the corporation.

1992, c. 32, s. 25(3); 1996, c. 2, s. 75(1); 2006, c. 34, s. 20(1)

3. When Attorney General to act — In the case of the illness or absence of the Public Guardian and Trustee or if the office becomes vacant and no deputy has been appointed, the Attorney General is by virtue of his or her office Public Guardian and Trustee until another appointment is made.

1992, c. 32, s. 25(2)

4. Salaries — The salaries or other remuneration of the Public Guardian and Trustee and of the employees in his or her office shall be fixed by the Lieutenant Governor in Council and may be paid out of the money that is appropriated by the Legislature for that purpose or out of any fund established under this Act, as the Lieutenant Governor in Council from time to time may direct.

1992, c. 32, s. 25(2)

5. (1) Duties — The Public Guardian and Trustee shall discharge the duties imposed upon him or her by any Act of the Legislature or by the Lieutenant Governor in Council, and the Public Guardian and Trustee shall also make inquiries from time to time as to property that has escheated, or become forfeited for any cause to the Crown, or in which the Crown in right of Ontario may be interested.

(2) Accountant of the Ontario Court — The Public Guardian and Trustee shall carry out the duties of the Accountant of the Superior Court of Justice and shall designate an employee appointed under subsection (1) to hold that office.

(3) Same — The Accountant of the Superior Court of Justice is an officer of that court.

1992, c. 32, s. 25(2), (4); 1997, c. 23, s. 11(1);
2000, c. 26, Sched. A, s. 14(1), (2)

5.1 (1) Immunity — No proceeding for damages shall be commenced against the Public Guardian and Trustee for anything done or omitted in good faith in connection with his or her powers and duties under an Act.

(2) Vicarious liability — Despite subsection 8(3) of the *Crown Liability and Proceedings Act, 2019*, subsection (1) does not relieve the Crown of any liability to which it would otherwise be subject.

(3) Immunity when acting as director — Without limiting subsection (1), if, in the course of the exercise or intended exercise of any power or the performance of any

duty under this Act or any other Act, the Public Guardian and Trustee becomes a director of a corporation, the Public Guardian and Trustee shall not be liable as a director under any Act in respect of any debt or other liability of the corporation, or any claim against the corporation, or for any act or omission by the corporation or by the Public Guardian and Trustee acting in his or her capacity as director, if he or she has acted honestly and in good faith with a view to the best interests of the corporation.

(4) Indemnity — If the Public Guardian and Trustee acts as a director of a corporation on behalf of a deceased person's estate or a mentally incapable person, the Public Guardian and Trustee may obtain an indemnity from the estate of the deceased or mentally incapable person against all costs, charges and expenses, including any amount paid to settle an action or satisfy a judgment, reasonably incurred by him or her in respect of any civil, criminal or administrative action or proceeding to which he or she is made a party by reason of being or having been a director of the corporation if he or she has acted honestly and in good faith with a view to the best interests of the corporation.

1992, c. 32, s. 25(5); 2006, c. 34, s. 20(2);
2019, c. 7, Sched. 17, s. 145

6. Application of Public Inquiries Act, 2009 — Section 33 of the *Public Inquiries Act, 2009* applies to an inquiry under section 5 by the Public Guardian and Trustee.

1992, c. 32, s. 25(2); 2009, c. 33, Sched. 6, s. 81

7. (1) Estates and trusts — The Public Guardian and Trustee may be granted letters probate or letters of administration and, subject to subsection (1.1), may be appointed as a trustee under any Act or as trustee of any will or settlement or other instrument creating a trust or duty in the same manner as if he or she were a private trustee.

(1.1) Consent required — The Public Guardian and Trustee shall not be appointed

as a trustee, by a court or otherwise, without his or her consent in writing.

(2) May be appointed sole trustee —

The Public Guardian and Trustee may be appointed sole trustee although the trust instrument contemplates two or more trustees, and any person who is a trustee with the Public Guardian and Trustee may at any time retire from the trust upon passing the person's accounts and paying over the balance.

1992, c. 32, s. 25(2); 1996, c. 2, s. 75(2)

8. (1) Fees — The Public Guardian and Trustee may charge fees for anything done by the Public Guardian and Trustee under this or any other Act.

(1.1) Fees — The Public Guardian and Trustee may charge fees for services rendered and things done by his or her employees and agents.

(1.2) Reimbursement for expenses — The Public Guardian and Trustee is entitled to be reimbursed for expenses incurred by the Public Guardian and Trustee or his or her employees or agents in respect of services rendered and things done under this or any other Act.

(2) Establishing fees — The Public Guardian and Trustee shall establish the fees, subject to the approval of the Attorney General.

(3) Basis of calculation — The fees may be calculated on a flat rate basis for each thing done, on an hourly basis, on the basis of actual costs incurred by the Public Guardian and Trustee, as a percentage of the income or capital of an estate, or in any other manner that the Public Guardian and Trustee considers appropriate.

(3.1) Deduction of fees and expenses — The Public Guardian and Trustee may deduct fees and expenses from the money held for a person, estate or trust.

(3.2) Discretionary reduction or waiver — The Public Guardian and Trustee may, in his or her discretion, reduce the

amount of a fee or waive its payment in a case of hardship or in other appropriate circumstances.

(3.3) Same — A reduction or waiver under subsection (3.2) may be in respect of a person or a class of persons.

(4) Other acts — This section prevails over provision relating to fees in any other Act, except subsection 40(3) of the *Substitute Decisions Act, 1992*.

1992, c. 32, s. 25(2); 1996, c. 2, s. 75(3); 1997, c. 23, s. 11(2); 2000, c. 26, Sched. A, s. 14(3); 2001, c. 9, Sched. B, s. 12(1)

8.1 (1) Lien re fees and expenses, advances, etc. — The Public Guardian and Trustee has a lien on the real and personal property of a person, estate or trust for whom he or she acts or has acted, for the following amounts:

1. Fees and expenses charged to the person, estate or trust under section 8.
2. An amount advanced for or on behalf of the person, estate or trust or for the support of dependants.
3. The amount of a liability incurred for a purpose referred to in paragraph 2.

(2) Real property — In the case of real property, the Public Guardian and Trustee may register in the proper land registry office a notice claiming a lien and identifying the real property against which it is claimed.

1997, c. 23, s. 11(3); 2000, c. 26, Sched. A, s. 14(4)

8.2 Costs of passing accounts — If the Public Guardian and Trustee holds money of an estate or trust and has applied or proposes to apply to pass its accounts, he or she may withhold an amount sufficient to secure his or her costs of the passing of accounts.

1997, c. 23, s. 11(3)

9. (1) Administration fund — All fees and other income of the office of every description shall be paid by the Public Guardian and Trustee into a separate ac-

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count as prescribed by the regulations made under this Act.

(2) Payments out of account — There shall be paid out of such account the salaries or other remuneration and the expenses of the Public Guardian and Trustee and the employees in his or her office.

(3) Assurance fund — From any surplus in such account there may be established an assurance fund as provided by the regulations made under this Act.

(4) Money received — Despite the *Crown Administration of Estates Act*, the Lieutenant Governor in Council may direct that money coming to the hand of the Public Guardian and Trustee under that Act shall be placed to the credit of such account and applied to the purposes of subsection (2).

(5) Payment over of balances — The Lieutenant Governor in Council may from time to time direct the payment into the Consolidated Revenue Fund of any balance at the credit of such account.

(6) Manner of paying into and out of account — Payments into and out of such account shall be made in such manner and subject to such conditions as are prescribed in the regulations made under this Act.

1992, c. 32, s. 25(2); 1996, c. 2, s. 75(4)

10. (1) Delivery up of property — Where the Public Guardian and Trustee acting in any capacity holds property of a person who has died and to which the person's personal representative is entitled, the production to the Public Guardian and Trustee of,

(a) an authenticated copy of the probate of the will of the deceased, or of letters of administration of his or her estate, or of letters of verification of heirship, or of the act of curatorship or tutorship, granted by any court in Canada having power to grant the same, or by any court or authority in a country of the Commonwealth or any colony, dependency or protectorate of any such

country, or of any testament-testamentary or testamentative expedite in Scotland;

(b) an authentic copy of the will of the deceased, if it is in notarial form according to the law of the Province of Quebec; or

(c) if the deceased died elsewhere than in a place mentioned in clause (a), any authenticated copy of the probate of his or her will, or of letters of administration of his or her property, or other document of like import, granted by any court or authority having the requisite power in such matters,

is sufficient justification and authority for the delivering of such property in pursuance of and in conformity with such probate, letters of administration, or other document.

(2) Deposit of copy of document — When the authenticated copy or other document of like import is produced to the Public Guardian and Trustee under subsection (1), there shall be deposited with him or her a true copy thereof.

(3) Exception, property \$20,000 or less in value — Where the Public Guardian and Trustee acting in any capacity holds property, not exceeding \$20,000 in value, of a person who has died, the Public Guardian and Trustee has discretion, on receiving evidence satisfactory to him or her, to distribute the property to the person's heirs or personal representative without requiring compliance with subsection (1).

Proposed Amendment — 10(3)

(3) Exception — Where the Public Guardian and Trustee acting in any capacity holds property of a person who has died and the value of the property does not exceed the amount prescribed by the regulations made under this Act, the Public Guardian and Trustee may, on receiving evidence satisfactory to him or her, distribute the property to the person's heirs or personal representative

without requiring compliance with subsection (1).

2020, c. 11, Sched. 18, s. 1 [Not in force at date of publication.]

(b) be signed by the Public Guardian and Trustee and sealed with his or her official seal.

1997, c. 23, s. 11(5); 2006, c. 19, Sched. B, s. 18

(4) Protection from liability — The Public Guardian and Trustee is not liable for a distribution made under subsection (3) that is carried out prudently and in good faith.

1992, c. 32, s. 25(2), (6); 1997, c. 23, s. 11(4)

10.1 Admissibility of material from records of the Public Guardian and Trustee — **(1) Definitions** — In this section,

“copy of a record of the Public Guardian and Trustee” includes,

- (a) a photocopy of a hard copy;
- (b) a print-out of a document or of other information that is stored electronically, and
- (c) a print from photographic film;

“record of the Public Guardian and Trustee” means a document or other information that the Public Guardian and Trustee creates or receives in any medium and records or stores in that medium or in any other medium.

(2) Copy as evidence — A copy of a record of the Public Guardian and Trustee, accompanied by the certificate described in subsection (3), is admissible in evidence and has the same probative force as the information in the record of the Public Guardian and Trustee would itself have had if it had been proved in the ordinary way.

(3) Certificate — The certificate accompanying the copy shall,

- (a) identify the record of the Public Guardian and Trustee and certify that the copy is a true copy or contains the same information as the record of the Public Guardian and Trustee; and

10.2 (1) Storage and transfer of information — The Public Guardian and Trustee may store information in any form or medium and may at any time transfer or retransfer it to another form or medium, in whole or in part.

(2) Retention of earlier record or document — It is not necessary for the Public Guardian and Trustee to retain a record or an original document if the information it contains has been stored in some other form or medium.

1997, c. 23, s. 11(5)

10.3 (1) Access to personal information — For the purpose of identifying and locating minors and other persons who may be entitled to assets held by the Accountant of the Superior Court of Justice, the Public Guardian and Trustee is entitled to collect personal information from any source and to retain, use and disclose the personal information.

(2) Institution, mandatory disclosure — Every institution shall disclose to the Public Guardian and Trustee information requested under subsection (1).

(3) Exception, Ministry of Health and Long-Term Care and related institutions — Subsection (2) does not apply to the Ministry of Health and Long-Term Care or to any other institution of which the Minister of Health and Long-Term Care is the head.

(3.1) Personal Health Information Protection Act, 2004 — For greater certainty, subsection (3) does not affect the disclosure of personal health information by the Minister of Health and Long-Term Care under clause 43(1)(e) of the *Personal Health Information Protection Act, 2004*.

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(4) Others, optional disclosure — A person other than an institution may disclose to the Public Guardian and Trustee information requested under subsection (1).

(5) Application of subs. (4) — Subsection (4) also applies to unincorporated associations and any other public and private entities.

(6) [Repealed 2009, c. 33, Sched. 2, s. 62(5).]

(7) Definitions — In this section,

“**head**” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;

“**institution**” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;

“**personal health information**” has the same meaning as in the *Personal Health Information Protection Act, 2004*;

“**personal information**” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*.

(8) Conflict — This section applies despite anything in the *Freedom of Information and Protection of Privacy Act* or in any other Act or regulation.

(9) Same — Subsection 39(2) of the *Freedom of Information and Protection of Privacy Act* does not apply when information is collected under this section.

(10) [Repealed 2009, c. 33, Sched. 2, s. 62(7).]

2002, c. 18, Sched. A, s. 17(1); 2009, c. 33, Sched. 2, s. 62(1)–(7)

11. Losses, how to be made good — All sums required to discharge any liability for a loss that the Public Guardian and Trustee, if he or she were a private trustee, would be personally liable to discharge, shall be made good out of the assurance fund or out of the Consolidated Revenue Fund, but neither the Public Guardian and Trustee nor

any of his or her employees nor the assurance fund is liable for any loss that would not have imposed liability upon a private trustee.

1992, c. 32, s. 25(2)

12. Charitable and public trusts — The Public Guardian and Trustee may accept and administer any charitable or public trust.

1992, c. 32, s. 25(2)

13. Investment of property — Except as provided by this Act and the *Substitute Decisions Act, 1992*, sections 27 to 31 of the *Trustee Act* apply, with necessary modifications, to the investment of any property that is available for investment by the Public Guardian and Trustee.

1992, c. 32, s. 25(2); 1998, c. 18, Sched. B, s. 13; 2002, c. 18, Sched. A, s. 17(2)

13.1 (1) Interest — Subject to the approval of the advisory committee referred to in clause 14(g), the Public Guardian and Trustee has power to fix the rates of interest to be paid on money in his or her hands.

(2) Criteria for rates — Rates of interest may be fixed on the basis of one or more of the following factors: the type of account, the amount of money held for a person, estate or trust and the length of time during which it is held.

(3) Publication — The Public Guardian and Trustee shall publish in *The Ontario Gazette* notice of any change in the interest rates.

1992, c. 32, s. 25(7); 1997, c. 23, s. 11(6)

Proposed Addition — 13.2

13.2 Not-for-Profit Corporations Act, 2010 — The *Not-for-Profit Corporations Act, 2010* does not apply to the Public Guardian and Trustee except as is prescribed by regulation.

2017, c. 20, Sched. 8, s. 123(1) [Not in force at date of publication.]

14. Regulations — The Lieutenant Governor in Council may make regulations,

- (a) respecting the office of Public Guardian and Trustee, imposing duties on the Public Guardian and Trustee in addition to those imposed by this Act, and prescribing the trusts or duties he or she is authorized to accept or undertake under this Act, and the security, if any, to be given by the Public Guardian and Trustee and his or her employees;
- (b) respecting the application and disposal of fees and other income of the office of the Public Guardian and Trustee;
- (c) respecting the transfer to and from the Public Guardian and Trustee of any property;
- (d) respecting the accounts to be kept;
- (e) for the establishment of an assurance fund for the purpose of meeting any losses for which the office of Public Guardian and Trustee may be liable;
- (f) respecting the functions of the Accountant of the Superior Court of Justice, including, without limiting the generality of the foregoing,
 - (i) prescribing the officer or employee to whom money paid into the Superior Court of Justice shall be paid,
 - (ii) respecting money paid into court and governing its payment into and out of court,
 - (iii) governing the management and investment of money paid into court,
 - (iv) providing for the vesting of money paid into court and of any securities in which the money is invested,
 - (v) prescribing the officer or employee in whose name mortgages, securities, other instruments and other personal

property taken under orders of the Superior Court of Justice and mortgages, securities, other instruments and other personal property taken as security in respect of a proceeding in that court shall be taken,

(vi) respecting the deposit and custody of mortgages, securities, other instruments and other personal property mentioned in sub-clause (v) and the duties, if any, that the officer or employee in whose name they are taken has in respect of them;

Proposed Addition — 14(f.1)

- (f.1) prescribing an amount for the purposes of subsection 10(3);

2020, c. 11, Sched. 18, s. 2 [Not in force at date of publication.]

(g) for constituting a committee for the purposes of section 13.1 and to advise the Public Guardian and Trustee generally on investments and other property management issues;

(h) for constituting a committee to advise the Public Guardian and Trustee generally on guardianship matters;

(i) for constituting committees to advise the Public Guardian and Trustee generally on other matters;

(j) for providing for the remuneration, by fees or otherwise, of the members of the advisory committees.

(k) establishing criteria for determining hardship for the purposes of subsection 8(3.2).

Proposed Addition — 14(l)

- (l) prescribing provisions of the *Not-for-Profit Corporations Act, 2010* that apply to the Public Guardian and Trustee and prescribing any modifications, if necessary.

2017, c. 20, Sched. 8, s. 123(2) [Not in force at date of publication.]

S. 15(1)

Public Guardian and Trustee Act

1992, c. 32, s. 25(2), (8), (9); 1996, c. 2, s. 75(5); 2000, c. 26, Sched. A, s. 14(5); 2001, c. 9, Sched. B, s. 12(2)

15. (1) Advisory committees — The members of the advisory committees of the Public Guardian and Trustee are visitors of his or her office.

(2) Suggestions and recommendations — Each advisory committee may make suggestions and recommendations, in connection with its area of jurisdiction, with regard to the policies of the office of Public Guardian and Trustee.

(3) Consultation — The Public Guardian and Trustee may consult with the committees on the policies of his or her office.

(4) Annual reports — Each advisory committee shall make an annual report to the Attorney General on the performance of its duties and the exercise of its powers.

1992, c. 32, s. 25(10); 2009, c. 33, Sched. 2, s. 62(8)

16. Security by Public Guardian and Trustee not necessary — Despite any rule or practice or any Act requiring security, it is not necessary for the Public Guardian and Trustee to give any security for the due performance of his or her duty as executor, administrator, trustee, committee, or in any other office to which the Public Guardian and Trustee may be appointed by order of any court or under any statute.

1992, c. 32, s. 25(2)

17. Audit — The Auditor General shall examine and report upon the accounts and financial transactions of the Public Guardian and Trustee.

1992, c. 32, s. 25(2); 2004, c. 17, s. 32, Table

18. Matters confidential — Every person employed in the performance of the duties imposed upon the Public Guardian and Trustee by this or any other Act or by the Lieutenant Governor in Council shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of such employment and shall not communicate any such matters to any person other than to a person legally entitled thereto or to the person's legal counsel except as may be required in connection with the administration of this Act and the regulations under this Act or any proceedings thereunder.

1992, c. 32, s. 25(2)

19. Report — The Public Guardian and Trustee shall, at the end of each fiscal year, prepare a report on his or her operations and submit it to the Attorney General who shall submit the report to the Lieutenant Governor in Council and then lay the report before the Assembly, if it is in session or, if not, at its next session.

1992, c. 32, s. 25(2)

ONT. REG. 191/95 — GENERAL

made under the *Public
Guardian and Trustee Act*

O. Reg. 191/95, as am. O. Reg.
118/12; 121/21.

- 1. (1)** The Public Guardian and Trustee shall maintain,
 - (a) an Escheats account;
 - (b) a Public Guardian and Trustee Administration account; and
 - (c) an assurance fund.
- (2)** The Public Guardian and Trustee may maintain,
 - (a) common trust accounts;
 - (b) an Unadministered Estates Account; and
 - (c) such other accounts as the Public Guardian and Trustee may require.
- (3)** The Public Guardian and Trustee shall transfer to the Escheats account money received under the *Escheats Act*.
- (4)** The Public Guardian and Trustee shall pay all fees, charges, remuneration, refunds of expenses and all income of the office of every description, including surplus income from investments, into the Public Guardian and Trustee Administration account.
- (5)** All interest payable by the Public Guardian and Trustee shall be paid out of the Public Guardian and Trustee Administration account.
- (6)** The assurance fund shall be established from money that the Public Guardian and Trustee transfers to it from the Public Guardian and Trustee Administration account, in those amounts determined by him or her.

(7) The Public Guardian and Trustee shall convert the assets of any trust or the assets of the estate of a person for whom he or she has acted as guardian to cash and transfer the money to the Unadministered Estates account if the persons entitled to apply for and receive the assets from the Public Guardian and Trustee have not assumed lawful administration of the estate within two years after the date of the person's death or the termination of the trust.

(8) In subsection (2), "common trust accounts" means accounts maintained by the Public Guardian and Trustee in which money belonging to various estates and trusts in his or her care is combined for the purpose of facilitating investment.

- 2.** The Public Guardian and Trustee may make a payment,

- (a) by cheque signed by the Attorney General, the Public Guardian and Trustee or an employee in his or her office designated by written direction delivered to the Public Guardian and Trustee's bankers, and countersigned by the Chief Financial Officer, the Assistant to the Chief Financial Officer or another employee in the Public Guardian and Trustee's office designated in the same manner; or

- (b) in any manner the Public Guardian and Trustee considers appropriate, including the transfer of bonds or other securities, where the payment is made into the Consolidated Revenue Fund at the direction of the Lieutenant Governor in Council under subsection 9(5) of the Act.

- 3. (1)** In this section,

"Accountant" means the Accountant of the Superior Court of Justice;

"court" means the Superior Court of Justice, including the Small Claims Court and Family Court branches of the Superior Court of Justice;

S. 3(1) ord

Ont. Reg. 191/95 — General

“order” means an order made under the *Rules of Civil Procedure*, the *Small Claims Court Rules* or the *Family Law Rules*.

(2) Money paid into the Superior Court of Justice shall be paid to the Accountant.

(3) Subsection (2) does not apply to the following:

1. Money paid into court pursuant to the enforcement of an order for the payment or recovery of money, including money paid pursuant to enforcement by garnishment.

2. Money paid into the Small Claims Court pursuant to,

i. an order or proposal for payment made under rule 9.03 of the *Small Claims Court Rules*, or

ii. an offer to settle a claim in return for the payment of money, where the offer includes a term that the defendant pay the money into court.

3. Money for the support of a child or spouse that is paid into court by the payor on behalf of a recipient.

(4) The money paid into court under subsection (2) and any securities in which it is invested are vested in the Accountant.

(5) Money that vests in the Accountant under subsection (4) shall be managed and invested by the Accountant in accordance with the Act.

(6) Mortgages, securities, other instruments and other personal property taken under an order made by a court or as security in respect of a proceeding in a court shall be taken in the name of and deposited with the Accountant, unless that court orders otherwise.

(7) The Accountant is the custodian of mortgages, securities, other instruments and other personal property deposited with him or her, but has no other duties or obligations with respect to them.

(8) The Accountant may engage the services of a person or body to undertake or assist in undertaking any or all of the Accountant's role as custodian under subrule (7).

O. Reg. 118/12, s. 1

3.1 The amount prescribed for the purposes of subsection 10(3) of the Act is,

(a) \$20,000, in the case of a person who dies before the day that is two months after the day section 1 of Ontario Regulation 121/21 comes into force; and

(b) \$50,000, in the case of a person who dies on or after the day referred to in clause (a).

O. Reg. 121/21, s. 1

4. (1) An advisory committee is hereby constituted for the purposes of section 13.1 of the Act and to advise the Public Guardian and Trustee generally on investments and other property management issues.

(2) The advisory committee shall be appointed by the Lieutenant Governor in Council.

5. Regulation 981 of the Revised Regulations of Ontario, 1990 and Ontario Regulations 264/91, 38/92, 562/92, 634/92, 780/92, 639/93, 27/95 and 28/95 are revoked.

6. This Regulation comes into force on April 3, 1995.

REAL PROPERTY LIMITATIONS ACT

R.S.O. 1990, c. L.15, as am. S.O. 2002, c. 24, Sched. B, s. 26; 2006, c. 19, Sched. B, s. 20; 2009, c. 33, Sched. 2, s. 63.

[*Note: The title of this Act was changed from "Limitations Act" to "Real Property Limitations Act" by 2002, c. 24, Sched. B, s. 26(2).J*

1. Definitions — In this Act,

“action” includes an information on behalf of the Crown and any civil proceeding;

“assurance” means a deed or instrument, other than a will, by which land may be conveyed or transferred;

“land” includes messuages and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be laid out in the purchase of land, and any share of the same hereditaments and properties or any of them, any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interest or any of them, are in possession, reversion, remainder or contingency;

“rent” includes all annuities and periodical sums of money charged upon or payable out of land.

[PART] [I] — (SS. 2–41)

[Heading implicitly repealed 2002, c. 24, Sched. B, s. 26(1).]

The text in square brackets has been editorially added by Carswell and does not form part of the legislation.

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2. Refusing relief because of acquiescence or otherwise — Nothing in this Act interferes with any rule of equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring an action is not barred by virtue of this Act.

3. (1) Limitation where the Crown interested — No entry, distress, or action shall be made or brought on behalf of Her Majesty against any person for the recovery of or respecting any land or rent, or of land or for or concerning any revenues, rents, issues or profits, but within sixty years next after the right to make such entry or distress or to bring such action has first accrued to Her Majesty.

(2) Application of certain sections to Crown — Subsections 5(1), (2), (3), (5), (6), (7), (9), (10), (11) and (12) and sections 6, 8 to 11 and 13 to 15 apply to rights of entry, distress or action asserted by or on behalf of Her Majesty.

4. Limitation where the subject interested — No person shall make an entry or distress, or bring an action to recover any land or rent, but within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to some person through whom the person making or bringing it claims, or if the right did not accrue to any person through whom that person claims, then within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to the person making or bringing it.

5. (1) When right accrues on dissession — Where the person claiming such land or rent, or some person through whom that person claims, has, in respect of the estate or interest claimed, been in possession or in receipt of the profits of the land, or in receipt of the rent, and has, while entitled thereto, been dispossessed, or has discontinued such possession or receipt, the right to make an entry or distress or bring an action to recover the land or rent shall be deemed to have first accrued at the time of the dispossession or discontinuance of possession, or at the last time at which any such profits or rent were so received.

(2) On death — Where the person claiming such land or rent claims the estate or interest of a deceased person who continued in such possession or receipt, in respect of the same estate or interest, until the time of his or her death, and was the last person entitled to such estate or interest who was in such possession or receipt, the right shall be deemed to have first accrued at the time of such death.

(3) On alienation — Where the person claiming such land or rent claims in respect of an estate or interest in possession, granted, appointed or otherwise assured by an assurance to the person or to some person through whom that person claims, by a person being, in respect of the same estate or interest, in the possession or receipt of the profits of the land, or in receipt of the rent, and no person entitled under the assurance has been in possession or receipt, the right shall be deemed to have first accrued at the time at which the person so claiming or the person, through whom that person claims, became entitled to such possession or receipt by virtue of the assurance.

(4) As to land not cultivated or improved — In the case of land granted by the Crown of which the grantee, the grantee's heirs or assigns, by themselves, their servants or agents, have not taken actual possession by residing upon or cultivating some part thereof, and of which some other person not claiming to hold under such

grantee has been in possession, such possession having been taken while the land was in a state of nature, then unless it is shown that the grantee or person claiming under the grantee while entitled to the land had knowledge of it being in the actual possession of such other person, the lapse of ten years does not bar the right of the grantee or any person claiming under the grantee to bring an action for the recovery of the land, but the right to bring an action shall be deemed to have accrued from the time that such knowledge was obtained, but no action shall be brought or entry made after twenty years from the time such possession was taken.

(5) Where rent reserved by lease in writing has been wrongfully received — Where a person is in possession or in receipt of the profits of any land, or in receipt of any rent by virtue of a lease in writing, by which a rent amounting to the yearly sum of \$4 or upwards is reserved, and the rent reserved by the lease has been received by some person wrongfully claiming to be entitled to the land or rent in reversion immediately expectant on the determination of the lease, and no payment in respect of the rent reserved by the lease has afterwards been made to the person rightfully entitled thereto, the right of the person entitled to the land or rent, subject to the lease, or of the person through whom that person claims to make an entry or distress, or to bring an action after the determination of the lease, shall be deemed to have first accrued at the time at which the rent reserved by the lease was first so received by the person so wrongfully claiming, and no such right shall be deemed to have first accrued upon the determination of the lease to the person rightfully entitled.

(6) Where tenancy from year to year — Where a person is in possession or in receipt of the profits of any land, or in receipt of any rent as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom that person claims, to make an entry or distress,

or to bring an action to recover the land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy was received, whichever last happened.

(7) In the case of a tenant at will — Where a person is in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom that person claims, to make an entry or distress, or to bring an action to recover the land or rent, shall be deemed to have first accrued either at the determination of the tenancy, or at the expiration of one year next after the commencement of the tenancy, at which time the tenancy shall be deemed to have determined.

(8) Case of mortgagor or beneficiary of trust — No mortgagor or beneficiary of a trust shall be deemed to be a tenant at will to the mortgagee or trustee within the meaning of subsection (7).

(9) In case of forfeiture or breach of condition — Where the person claiming such land or rent, or the person through whom that person claims, has become entitled by reason of any forfeiture or breach of condition, such right shall be deemed to have first accrued when the forfeiture was incurred or the condition broken.

(10) Where advantage of forfeiture is not taken by person in remainder — Where any right to make an entry or distress, or to bring an action to recover any land or rent, by reason of any forfeiture or breach of condition, has first accrued in respect of any estate or interest in reversion or remainder and the land or rent has not been recovered by virtue of such right, the right to make an entry or distress, or to bring an action to recover the land or rent, shall be deemed to have first accrued in respect of such estate or interest at the time when it became an estate or interest in possession as if no such forfeiture or breach of condition had happened.

(11) In case of future estates — Where the estate or interest claimed is an estate or interest in reversion or remainder, or other future estate or interest, and no person has obtained the possession or receipt of the profits of the land, or the receipt of the rent, in respect of such estate or interest, such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession.

(12) Further provision for cases of future estates — A right to make an entry or distress, or to bring an action to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion or remainder or other future estate or interest at the time at which it became an estate or interest in possession, by the determination of any estate or estates in respect of which the land has been held or the profits thereof or the rent have been received, despite the fact that the person claiming the land or rent, or some person through whom that person claims, has, at any time before to the creation of the estate or estates that have determined, been in the possession or receipt of the profits of the land, or in receipt of the rent.

6. (1) Limitation in case of future estates when person entitled to the particular estate out of possession, etc. — If the person last entitled to any particular estate on which any future estate or interest was expectant has not been in the possession or receipt of the profits of the land, or in receipt of the rent, at the time when the person's interest determined, no such entry or distress shall be made and no such action shall be brought by any person becoming entitled in possession to a future estate or interest but within ten years next after the time when the right to make an entry or distress, or to bring an action for the recovery of the land or rent, first accrued to the person whose interest has so determined, or within five years next after the time when the estate of the person becoming entitled in possession has become vested in possession, whichever of those two periods is the longer.

(2) The case of bar of future estate and of a subsequent interest created after right of entry, etc., accrued to owner of particular estate — If the right of any such person to make such entry or distress, or to bring any such action, has been barred, no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will or settlement executed or taking effect after the time when a right to make an entry or distress or to bring an action for the recovery of the land or rent, first accrued to the owner of the particular estate whose interest has so determined, shall make any entry or distress, or bring any action, to recover the land or rent.

(3) Bar of right to future estates acquired after bar of particular estate — Where the right of any person to make an entry or distress, or to bring an action to recover any land or rent to which the person has been entitled for an estate or interest in possession, has been barred by the determination of the period that is applicable in such case, and such person has, at any time during such period, been entitled to any other estate, interest, right or possibility, in reversion, remainder or otherwise, in or to the same land or rent, no entry, distress or action shall be made or brought by such person, or by any person claiming through the person, to recover the land or rent in respect of such other estate, interest, right or possibility, unless in the meantime the land or rent has been recovered by some person entitled to an estate, interest or right that has been limited or taken effect after or in defeasance of such estate or interest in possession.

7. When right of action devolves to administrator — For the purposes of this Act, an administrator claiming the estate or interest of the deceased person of whose property he, she or it has been appointed administrator shall be deemed to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration.

8. Effect of mere entry — No person shall be deemed to have been in possession of any land within the meaning of this Act merely by reason of having made an entry thereon.

9. Continual claim — No continual or other claim upon or near any land preserves any right of making an entry or distress or of bringing an action.

10. Descent cast, discontinuance warranty, etc. — No descent cast, discontinuance or warranty, that has happened or been made since the 1st day of July, 1834, or that may hereafter happen or be made, shall toll or defeat any right of entry or action for the recovery of land.

11. Possession of one coparcener, etc. — Where any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common has or have been in possession or receipt of the entirety, or more than the person's or their undivided share or shares of the land, or of the profits thereof, or of the rent for the person's or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of, or by the last-mentioned person or persons or any of them.

12. Possession of relations — Where a relation of the persons entitled as heirs to the possession or receipt of the profits of any land, or to the receipt of any rent, enters into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the persons entitled as heirs.

13. Effect of acknowledgment in writing — Where any acknowledgment in writing of the title of the person entitled to any land or rent has been given to the person or to the person's agent, signed by the person

in possession or in receipt of the profits of the land, or in the receipt of the rent, such possession or receipt of or by the person by whom the acknowledgment was given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent the acknowledgment was given at the time of giving it, and the right of the last-mentioned person, or of any person claiming through that person, to make an entry or distress or bring an action to recover the land or rent, shall be deemed to have first accrued at and not before the time at which the acknowledgment, or the last of the acknowledgments, if more than one, was given.

14. Effect of receipt of rent — The receipt of the rent payable by a lessee, shall, as against the lessee or any person claiming under the lessee, but subject to the lease, be deemed to be the receipt of the profits of the land for the purposes of this Act.

15. Extinguishment of right at the end of the period of limitation — At the determination of the period limited by this Act to any person for making an entry or distress or bringing any action, the right and title of such person to the land or rent, for the recovery whereof such entry, distress or action, respectively, might have been made or brought within such period, is extinguished.

16. Waste or vacant land of Crown excepted — Nothing in sections 1 to 15 applies to any waste or vacant land of the Crown, whether surveyed or not, nor to lands included in any road allowance heretofore or hereafter surveyed and laid out or to any lands reserved or set apart or laid out as a public highway where the freehold in any such road allowance or highway is vested in the Crown or in a municipal corporation, commission or other public body, but nothing in this section shall be deemed to affect or prejudice any right, title or interest acquired by any person before the 13th day of June, 1922.

17. (1) Maximum of arrears of rent or interest recoverable — No arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, whether it is or is not charged upon land, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress or action but within six years next after the same respectively has become due, or next after any acknowledgment in writing of the same has been given to the person entitled thereto or the person's agent, signed by the person by whom the same was payable or that person's agent.

(2) Exception as to action for redemption — This section does not apply to an action for redemption brought by a mortgagor or a person claiming under the mortgagor.

18. Exception in favour of subsequent mortgagee when a prior mortgagee has been in possession — Where a prior mortgagee or other encumbrancer has been in possession of any land, or in the receipt of the profits thereof, within one year next before an action is brought by a person entitled to a subsequent mortgage or other encumbrance on the same land, the person entitled to the subsequent mortgage or encumbrance may recover in the action the arrears of interest that have become due during the whole time that the prior mortgagee or encumbrancer was in such possession or receipt, although the time may have exceeded the term of six years.

19. Limitation where a mortgagee in possession — Where a mortgagee has obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in the mortgage, the mortgagor, or any person claiming through the mortgagor, shall not bring any action to redeem the mortgage but within ten years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of the mortga-

gor's right to redemption, has been given to the mortgagor or to some person claiming the mortgagor's estate, or to the agent of such mortgagor or person, signed by the mortgagee, or the person claiming through the mortgagee, and in such case no such action shall be brought but within ten years next after the time at which the acknowledgment, or the last of the acknowledgments if more than one, was given.

20. Acknowledgment to one of several mortgagors — Where there are more mortgagors than one or more persons than one claiming through the mortgagor or mortgagors, the acknowledgment, if given to any of such mortgagors or persons, or the agent of one or more of them, is as effectual as if it had been given to all such mortgagors or persons.

21. Acknowledgment to one of several mortgagees — Where there are more mortgagees than one or more persons than one claiming the estate or interest of the mortgagee or mortgagees, the acknowledgment, signed by one or more of the mortgagees or persons, is effectual only as against the person or persons so signing, and the person or persons claiming any part of the mortgage money or land or rent by, from, or under the person or persons, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of the person's or the persons' estate or estates, interest or interests, and does not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent; and where such of the mortgagees or persons as have given the acknowledgment are entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors are entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money that bears the

same proportion to the whole of the mortgage money as the value of the divided part of the land or rent bears to the value of the whole of the land or rent comprised in the mortgage.

22. Limitation where mortgage in arrear — Any person entitled to or claiming under a mortgage of land may make an entry or bring an action to recover the land at any time within ten years next after the last payment of any part of the principal money or interest secured by the mortgage, although more than ten years have elapsed since the time at which the right to make such entry or bring such action first accrued.

23. (1) Limitation where money charged upon land and legacies — No action shall be brought to recover out of any land or rent any sum of money secured by any mortgage or lien, or otherwise charged upon or payable out of the land or rent, or to recover any legacy, whether it is or is not charged upon land, but within ten years next after a present right to receive it accrued to some person capable of giving a discharge for, or release of it, unless in the meantime some part of the principal money or some interest thereon has been paid, or some acknowledgment in writing of the right thereto signed by the person by whom it is payable, or the person's agent, has been given to the person entitled thereto or that person's agent, and in such case no action shall be brought but within ten years after the payment or acknowledgment, or the last of the payments or acknowledgments if more than one, was made or given.

(2) Execution against land — Despite subsection (1), a lien or charge created by the placing of an execution or other process against land in the hands of the sheriff or other officer to whom it is directed, remains in force so long as the execution or other process remains in the hands of the sheriff or officer for execution and is kept alive by renewal or otherwise.

24. Time for recovering charges and arrears of interest not to be enlarged by express trusts for raising same — No action shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust.

25. Limitation of action of dower — Subject to section 26, no action of dower shall be brought but within ten years from the death of the husband of the doweress, despite any disability of the doweress or of any person claiming under her.

26. Time from which right to bring action of dower to be computed — Where a doweress has, after the death of her husband, actual possession of the land of which she is dowable, either alone or with an heir or devisee of, or a person claiming by devolution from her husband, the period of ten years within which her action of dower is to be brought shall be computed from the time when such possession of the doweress ceased.

27. Maximum of arrears of dower recoverable — No arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action for a longer period than six years next before the commencement of such action.

28. Cases where fraud remains concealed — In every case of a concealed fraud, the right of a person to bring an action for the recovery of any land or rent of which the person or any person through whom that person claims may have been deprived by the fraud shall be deemed to have first accrued at and not before the time at which the fraud was or with reasonable diligence might have been first known or discovered.

29. Case of purchaser in good faith for value without notice — Nothing in section 28 enables any owner of land or rent to bring an action for the recovery of the land or rent, or for setting aside any conveyance thereof, on account of fraud against any purchaser in good faith for valuable consideration, who has not assisted in the commission of the fraud, and who, at the time of making the purchase did not know, and had no reason to believe, that any such fraud had been committed.

30. Limitation in case of profits — No claim that may be made lawfully at the common law, by custom, prescription or grant, to any profit or benefit to be taken or enjoyed from or upon any land of the Crown, or of any person, except such matters or things as are hereinafter specially provided for, and except rent and services, where the profit or benefit has been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of thirty years, shall be defeated or destroyed by showing only that the profit or benefit was first taken or enjoyed at any time prior to the period of thirty years, but nevertheless the claim may be defeated in any other way by which it is now liable to be defeated, and when the profit or benefit has been so taken and enjoyed for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that it was taken and enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.

31. Right of way easement, etc. — No claim that may be made lawfully at the common law, by custom, prescription or grant, to any way or other easement, or to any water course, or the use of any water to be enjoyed, or derived upon, over or from any land or water of the Crown or being the property of any person, when the way or other matter as herein last before-mentioned has been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years shall be defeated

or destroyed by showing only that the way or other matter was first enjoyed at any time prior to the period of twenty years, but, nevertheless the claim may be defeated in any other way by which it is now liable to be defeated, and where the way or other matter as herein last before-mentioned has been so enjoyed for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that it was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.

32. How period to be calculated, and what acts deemed an interruption —

Each of the respective periods of years mentioned in sections 30 and 31 shall be deemed and taken to be the period next before some action wherein the claim or matter to which such period relates was or is brought into question, and no act or other matter shall be deemed an interruption within the meaning of those sections, unless the same has been submitted to or acquiesced in for one year after the person interrupted has had notice thereof, and of the person making or authorizing the same to be made.

33. Right to access and use of light by prescription abolished —

No person shall acquire a right by prescription to the access and use of light or to the access and use of air to or for any dwelling-house, work-shop or other building, but this section does not apply to any such right acquired by twenty years use before the 5th day of March, 1880.

34. Necessity for strict proof — In the cases mentioned in and provided for by this Act, of claims to ways, water courses or other easements, no presumption shall be allowed or made in favour or support of any claim upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as is applicable to the case and to the nature of the claim.

35. Easements not acquired for carrying wires and cables — No easement in respect of wires or cables attached to property or buildings or passing through or carried over such property or buildings shall be deemed to have been acquired or shall hereafter be acquired by prescription or otherwise than by grant from the owner of the property or buildings.

36. Persons under disability at the time when the right of action accrues —

If at the time at which the right of a person to make an entry or distress, or to bring an action to recover any land or rent, first accrues, as herein mentioned, such person is a minor or is incapable as defined in the *Substitute Decisions Act, 1992*, whether or not the person has a guardian, such person, or the person claiming through him or her, even if the period of ten years or five years, as the case may be, hereinbefore limited has expired, may make an entry or distress, or bring an action, to recover the land or rent at any time within five years next after the time at which the person to whom the right first accrued ceased to be under any such minority or incapacity, or died, whichever of those two events first happened.

2006, c. 19, Sched. B, s. 20(1); 2009, c. 33, Sched. 2, s. 63(1)

37. Utmost allowance for disabilities —

No entry, distress or action, shall be made or brought by any person, who, at the time at which his or her right to make any entry or distress, or to bring an action, to recover any land or rent first accrued was under any of the disabilities hereinbefore mentioned, or by any person claiming through him or her, but within twenty years next after the time at which the right first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of the twenty years, or although the term of five years from the time at which the person ceased to be under any such disability or died, may not have expired.

38. Succession of disabilities — Where a person is under any of the disabilities hereinbefore mentioned, at the time at which his or her right to make an entry or distress, or to bring an action to recover any land or rent first accrues, and dies without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover the land or rent beyond the period of ten years next after the right of such person to make an entry or distress, or to bring an action to recover the land or rent, first accrued or the period of five years next after the time at which such person died, shall be allowed by reason of any disability of any other person.

39. Persons under disability when right accrues — The time during which any person otherwise capable of resisting any claim to any of the matters mentioned in sections 30 to 35, is a minor, is incapable as defined in the *Substitute Decisions Act*, 1992, whether or not the person has a guardian, or is a tenant for life, or during which any action has been pending and has been diligently prosecuted, shall be excluded in the computation of the period mentioned in such sections, except only in cases where the right or claim is thereby declared to be absolute and indefeasible.

2006, c. 19, Sched. B, s. 20(2); 2009, c. 33, Sched. 2, s. 63(2)

40. Exclusion of terms of years, etc., from computation in certain cases — Where any land or water upon, over or from which any such way or other easement, water course or use of water has been enjoyed or derived, has been held under or by virtue of any term of life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before-mentioned during the continuance of such term shall be excluded in the computation of the period of forty years mentioned in section 31, if the claim is, within three years next after the end or sooner determination of such term, resisted by any person en-

titled to any reversion expectant on the determination thereof.

41. Exception as to lands of the Crown not duly surveyed and laid out —

Nothing in sections 30 to 35 supports or maintains any claim to any profit or benefit to be taken or enjoyed from or upon any land of the Crown, or to any way or other easement, or to any water course or the use of any water to be enjoyed or derived upon, over or from any land or water of the Crown, unless the land, way, easement, water course or other matter lies and is situated within the limits of some town or township, or other parcel or tract of land duly surveyed and laid out by authority of the Crown.

[PART] [II] — (SS. 42–44)

[Heading repealed 2002, c. 24, Sched. B, s. 26(1).]

The text in square brackets has been editorially added by Carswell and does not form part of the legislation.

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42. Express trust: when right of beneficiary accrues — Where land or rent is vested in a trustee upon an express trust, the right of the beneficiary of the trust or a person claiming through the beneficiary to bring an action against the trustee or a person claiming through the trustee to recover the land or rent, shall be deemed to have first accrued, according to the meaning of this Act, at and not before the time at which the land or rent has been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through the purchaser.

2002, c. 24, Sched. B, s. 26(1)

43. (1) Mortgage covenant — No action upon a covenant contained in an indenture of mortgage or any other instrument made on or after July 1, 1894 to repay the whole

S. 43(1)

Real Property Limitations Act

or part of any money secured by a mortgage shall be commenced after the later of,

- (a) the expiry of 10 years after the day on which the cause of action arose; and
- (b) the expiry of 10 years after the day on which the interest of the person liable on the covenant in the mortgaged lands was conveyed or transferred.

(2) Equity of redemption — No action by a mortgagee against a grantee of the equity of redemption under section 20 of the *Mortgages Act* shall be commenced after the

expiry of 10 years after the day on which the cause of action arose.

(3) Same — Subsections (1) and (2) do not extend the time for bringing an action if the time for bringing it is limited by any other Act.

2002, c. 24, Sched. B, s. 26(1)

44. [Repealed 2002, c. 24, Sched. B, s. 26(1).]

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REGISTRY ACT

R.S.O. 1990, c. R.20, as am. S.O. 1993, c. 27, Sched.; 1994, c. 27, ss. 43(2), 99; 1997, c. 31, s. 177; 1998, c. 15, Sched. E, s. 43; 1998, c. 18, Sched. E, ss. 207–264 [ss. 235, 262 not in force at date of publication. Repealed 2006, c. 21, Sched. F, s. 10.1(1).]; 1999, c. 12, Sched. F, ss. 34–39, Sched. M, s. 32; 2000, c. 26, Sched. B, s. 17; 2001, c. 9, Sched. D, s. 13; 2002, c. 14, Sched., s. 12; 2002, c. 17, Sched. F, s. 1; 2002, c. 18, Sched. E, s. 8; 2004, c. 19, s. 19; 2006, c. 21, Sched. F, ss. 130, 136(1), Table 1; 2006, c. 34, s. 22; 2006, c. 35, Sched. C, s. 115; 2009, c. 33, Sched. 2, s. 64, Sched. 6, s. 83, Sched. 17, s. 12, Sched. 22, s. 10; 2009, c. 34, Sched. T, s. 3; 2010, c. 1, Sched. 6, s. 11; 2012, c. 8, Sched. 51, ss. 1–54 [ss. 1(1)–(4), 2–6, 7(2), 9–41, 43–48, 50–53 not in force at date of publication.]; 2015, c. 28, Sched. 1, s. 156; 2017, c. 20, Sched. 9, s. 13; 2017, c. 24, s. 81(1) (Fr.), (2), (3) (Fr.), (4); 2019, c. 7, Sched. 17, s. 151; 2020, c. 11, Sched. 15, s. 58 [Not in force at date of publication.].

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PART I — ORGANIZATION AND ADMINISTRATION (SS. 3–104)

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Records of Office

18.

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(6) General registrations — The following instruments when received for registration shall be registered as general registrations and, except as otherwise provided in this Act, shall not be recorded in the abstract index:

1. Wills or notarial copies of them.
2. Letters probate or notarial copies of them.
3. Letters of administration or notarial copies of them.
4. General appointments of new trustees or notarial copies of those appointments.
5. Certificates or certified or notarial copies of judgments or of court orders appointing or removing executors, administrators, guardians or trustees.
6. Certificates or certified or notarial copies of orders made under the *Substitute Decisions Act, 1992* or the *Mental Health Act*.
7. Certificates, certified or notarial copies of orders of change of name by an Ontario court and certificates of change of name issued by the Registrar General.
8. Powers of attorney or revocations of them, or notarial copies of powers of attorney or those revocations.
9. Orders in council of Canada or Ontario, or certified copies thereof, not containing local descriptions.
10. Notarial copies of,
 - i. letters patent or certificates of incorporation,
 - ii. supplementary letters patent or certificates, or
 - iii. certificates of continuance.
11. Notarial copies of letters patent or certificates changing names of corporations or amalgamating corporations.
12. Notarial copies of certificates of amalgamation of loan or trust corporations.

S. 18(6)

Registry Act

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| 13. Notarial copies of extra-provincial licences under the <i>Extra-Provincial Corporations Act</i> . | Sched. B, s. 17(1); 2009, c. 33, Sched. 2, s. 64(1) |
| 14. General bars of dower. | |
| 15. Notarial copies of licences in mortmain. | |
| 16. Certificates of appointment of estate trustees or notarial copies of those certificates. | |
| 17. Certificates of appointment of statutory guardians under the <i>Substitute Decisions Act, 1992</i> or notarial copies of those certificates. | |
| 17.1 General conveyances and transfers of assets of a corporation to another corporation. | |
| 18. Instruments of a class prescribed by the Minister. | |
| (7) <i>Idem</i> — Where, under subsection (6), a notarial copy of an instrument is specified, there may be registered, in lieu of such notarial copy, a copy of the instrument certified by the proper officer of the government of Canada or Ontario. 1993, c. 27, Sched.; 1998, c. 18, Sched. E, s. 216; 1999, c. 12, Sched. F, s. 35; 2000, c. 26, | — 1998, c. 18, Sched. E, s. 217(4): — 1998, c. 18, Sched. E, s. 231(2): — 1998, c. 18, Sched. E, s. 257(2) [Amended 2000, c. 26, Sched. B, s. 17(21).]: — 1998, c. 18, Sched. E, s. 257(3) [Amended 2000, c. 26, Sched. B, s. 17(22).]: — 1998, c. 18, Sched. E, s. 257(4) [Amended 2000, c. 26, Sched. B, s. 17(23).]: — 1998, c. 18, Sched. E, s. 258(2), (4): — 1998, c. 18, Sched. E, s. 259(2), (3): |

RESIDENTIAL TENANCIES ACT, 2006

An Act to revise the law governing residential tenancies

S.O. 2006, c. 17, as am. S.O. 2006, c. 17, s. 261; 2006, c. 32, Sched. C, s. 56, Sched. E, s. 7(4), (5); 2006, c. 35, Sched. C, s. 118; 2007, c. 8, s. 226; 2007, c. 13, s. 48; 2008, c. 14, s. 58; 2009, c. 33, Sched. 8, s. 15, Sched. 18, s. 30, Sched. 21, s. 11; 2010, c. 8, s. 39; 2011, c. 6, Sched. 1, s. 188, Sched. 3; 2012, c. 6; 2013, c. 3, ss. 20–28, 29 (Fr.), 30, 31, 32 (Fr.), 33–56; 2015, c. 38, Sched. 7, s. 60; 2016, c. 2, Sched. 6; 2016, c. 23, s. 66; 2016, c. 25, Sched. 5; 2017, c. 13; 2017, c. 14, Sched. 4, s. 33; 2017, c. 25, Sched. 9, s. 116 [Not in force at date of publication.]; 2017, c. 34, Sched. 46, s. 50; 2018, c. 6, Sched. 3, s. 12 [Not in force at date of publication.]; 2018, c. 17, Sched. 36; 2019, c. 7, Sched. 17, s. 153; 2020, c. 1, s. 36 [Not in force at date of publication.]; 2020, c. 16, Sched. 3, s. 12, Sched. 4, ss. 1, 2, 3(1), (2) (Fr.), 4–40 [Sched. 3, s. 12, Sched. 4, ss. 3(2), 9–13, 18–21, 26–29, 32, 34, 38(2), (3), 39(1) not in force at date of publication.]; 2020, c. 23, Sched. 7.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART V — SECURITY OF TENURE AND TERMINATION OF TENANCIES (SS. 37–94)

Death of Tenant

91. (1) Death of tenant — If a tenant of a rental unit dies and there are no other tenants of the rental unit, the tenancy shall be deemed to be terminated 30 days after the death of the tenant.

(2) Reasonable access — The landlord shall, until the tenancy is terminated under subsection (1),

- (a) preserve any property of a tenant who has died that is in the rental unit or the residential complex other than property that is unsafe or unhygienic; and
- (b) afford the executor or administrator of the tenant's estate, or if there is no executor or administrator, a member of the tenant's family reasonable access to the rental unit and the residential complex for the purpose of removing the tenant's property.

92. (1) Landlord may dispose of property — The landlord may sell, retain for the landlord's own use or otherwise dispose of property of a tenant who has died that is in a rental unit and in the residential complex in which the rental unit is located,

- (a) if the property is unsafe or unhygienic, immediately; and
- (b) otherwise, after the tenancy is terminated under section 91.

(2) Same — Subject to subsections (3) and (4), a landlord is not liable to any person for selling, retaining or otherwise disposing of the property of a tenant in accordance with subsection (1).

(3) Same — If, within six months after the tenant's death, the executor or administrator of the estate of the tenant or, if there is no executor or administrator, a member of the tenant's family claims any property of the tenant that the landlord has sold, the landlord shall pay to the estate the amount by which the proceeds of sale exceed the sum of,

- (a) the landlord's reasonable out-of-pocket expenses for moving, storing, securing or selling the property; and
- (b) any arrears of rent.

(4) Same — If, within the six-month period after the tenant's death, the executor or administrator of the estate of the tenant or, if there is no executor or administrator, a member of the tenant's family claims any property of the tenant that the landlord has retained for the landlord's own use, the landlord shall return the property to the tenant's estate.

(5) Agreement — A landlord and the executor or administrator of a deceased ten-

ant's estate may agree to terms other than those set out in this section with regard to the termination of the tenancy and disposal of the tenant's property.

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PART X — MOBILE HOME PARKS AND LAND LEASE COMMUNITIES (SS. 152—167)

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Termination of Tenancies

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163. Death of mobile home owner — Sections 91 and 92 do not apply if the tenant owns the mobile home.

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SETTLED ESTATES ACT

R.S.O. 1990, c. S.7, as am. S.O. 1994, c. 27, s. 43(2); 1997, c. 24, s. 221; 2002, c. 17, Sched. F, s. 1; 2006, c. 19, Sched. C, s. 1(1); 2006, c. 32, Sched. C, s. 59; 2009, c. 33, Sched. 2, s. 68.

1. (1) Definitions —

“court” means the Superior Court of Justice;

“income” includes rents and profits;

“land” includes incorporeal hereditaments and an undivided share in land;

“possession” includes receipt of income;

“settled estate” means land and all estates or interests in land that are the subject of a settlement;

“settlement” means a statute, deed, agreement, will or other instrument, or any number of such instruments, under or by virtue of which land or any estate or interest in land stands limited to or in trust for any persons by way of succession, including any such instruments affecting the estates of any one or more of such persons exclusively.

(2) Estates in remainder or reversion not disposed of by settlement — All estates or interests in remainder or reversion not disposed of by the settlement, and reverting to a settlor or descending to the heir, or as upon an intestacy to the representative of a testator, shall be deemed to be estates coming to such settlor, heir or representative under or by virtue of the settlement.

(3) Determining what are settled estates — In determining what are settled estates within the meaning of this Act the court shall be governed by the state of facts and by the trusts or limitations of the settle-

ment at the time of the settlement taking effect.

2006, c. 19, Sched. C, s. 1(1)

2. (1) Power to authorize leases of settled estates — The court, if it considers it proper and consistent with a due regard for the interests of all persons entitled under the settlement, and subject to the provisions and restrictions of this Act, may authorize leases of any settled estate or of any rights or privileges over or affecting any settled estate, for any purpose whatsoever, the following conditions being observed:

1. When lease to take effect — Every such lease shall be made to take effect in possession at or within one year after the making thereof, and shall be for such term of years as the court shall direct, where the court is satisfied that it is beneficial to the inheritance to grant a lease.

2. Best rent to be reserved/exception — On every such lease shall be reserved the best rent or reservation in the nature of rent, either uniform or not, that can be reasonably obtained, to be made payable half-yearly or more often, and to be incident to the immediate reversion; but in the case of a mining lease, a repairing lease or a building lease a nominal rent or any smaller rent than the rent to be ultimately made payable may, if the court thinks fit so to direct, be made payable during all or any part of the first five years of the term of the lease.

3. Reservation of rent in leases of earth, coal, stone or mineral — Where any such lease is of any earth, coal, stone or mineral a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested, when and so long as the person for the time being entitled to the receipt of the rent is a person who by reason of the person's estate or by virtue of any declaration in the settlement is entitled to work the earth, coal,

stone, or mineral for the person's own benefit, one-fourth part of the rent, and in other cases three-fourth parts thereof, and in every such lease sufficient provision shall be made to ensure such application of that portion of the rent by the appointment of trustees or otherwise, as the court considers expedient.

4. Cutting timber — No such lease shall authorize the cutting of any timber or the felling of any trees except in the ordinary course of husbandry, or so far as shall in the judgment of the court be necessary, nor shall it be made without impeachment of waste.

5. Form of lease — Every such lease shall be by deed, in duplicate, executed by the lessor and lessee, and shall be subject to the statutory right of re-entry for non-payment of rent contained in the *Commercial Tenancies Act*.

(2) **Agreements for renewal** — Any such lease may contain an agreement for the renewal or renewals thereof if the court thinks fit, and the court may determine the length of time for which the renewal or renewals, if any, may be made.

1997, c. 24, s. 221(1)

3. Special covenants — Subject and in addition to the conditions hereinbefore mentioned every such lease shall contain such covenants, conditions and stipulations as the court considers expedient with reference to the special circumstances of the demise.

4. Leases of parts of settled estates — The power to authorize leases conferred by this Act authorizes leases either of the whole or any part of the settled estate, and may be exercised from time to time.

5. Surrender and renewal — A lease, whether granted in pursuance of this Act or otherwise, may be surrendered either for the purpose of obtaining a renewal of it or not, and the power to authorize leases conferred by this Act shall authorize a new lease of the

whole or any part of the hereditaments comprised in any surrendered lease.

6. Preliminary contracts — The power to authorize leases conferred by this Act extends to authorize preliminary contracts to grant such leases, and any of the terms of such contracts may be varied in the leases.

7. Mode in which leases may be authorized — The power to authorize leases conferred by this Act may be exercised by the court either by approving of a particular lease or by ordering that the power of leasing in conformity with this Act shall be vested in trustees in the manner hereinafter mentioned.

8. What evidence to be produced on an application to authorize leases — Where application is made to the court either to approve of a particular lease or to vest any power of leasing in trustees, the court shall require the applicant to produce such evidence as it considers sufficient to enable it to ascertain the nature, value and circumstances of the estate and the terms and conditions on which leases thereof ought to be authorized.

9. Direction as to who shall be lessor — Where a particular lease or contract for a lease has been approved by the court, the court shall direct what person shall execute the same as lessor, and the lease or contract executed by such person shall take effect in all respects as if the person had been at the time of the execution thereof absolutely entitled to the whole estate or interest that is bound by the settlement, and had immediately afterwards settled the same according to the settlement, and so as to operate if necessary by way of revocation and appointment of the use or otherwise as the court directs.

10. When powers of leasing may be vested in trustees — Where the court considers it expedient that any general power of leasing any settled estate conform-

able with this Act should be vested in trustees it may, by order, vest any such power accordingly either in the existing trustees of the settlement or in any other person or persons, and the power, when exercised by such trustees, shall take effect in all respects as if the power so vested in them had been originally contained in the settlement, and so as to operate if necessary by way of revocation and appointment of the use or otherwise as the court directs, and in every such case the court may impose any conditions as to consents or otherwise on the exercise of the power and may also authorize the insertion of provisions in any such order for the appointment of new trustees from time to time for the purpose of exercising the power of leasing.

11. Conditions that leases be settled by the court — In any order under this Act for vesting any power of leasing in any trustees or other person or persons no conditions shall be inserted requiring that the lease thereby authorized shall be submitted to or be settled by the court or be made conformable with a model lease, unless the person applying for the order desires to have any such condition inserted or it appears to the court that there is some special reason for the insertion of such a condition.

12. (1) Striking out such conditions — In any order, whether under this Act or under any other Act, in which any such condition has been inserted, any person interested may apply to the court to alter the order by striking out the condition, and the court may alter the order accordingly, and the order so altered has the same validity as if it had originally been made in its altered state.

(2) Idem — The court may decline to act under this section in any case in which it appears to the court that for any special reason such a condition is necessary or expedient.

13. (1) Powers of court — The court, if it considers it proper and consistent with a due

regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act, may

(a) **to authorize mortgages for purpose of repairs, etc.** — from time to time authorize a mortgage of the whole or any part of any settled estate for the purpose of raising money to repair, rebuild or alter any existing building upon the estate, or otherwise to build upon or improve the same, or for the purpose of raising money to pay off and discharge wholly or in part any encumbrance thereon;

(b) **to authorize sales of settled estates and of timber** — from time to time authorize a sale of the whole or any part of any settled estate or of any easement, right or privilege, of any kind, over or in relation to the same, or of any timber not being ornamental timber growing on the settled estate;

(c) **to sanction proceedings for protection of estate** — sanction any action, defence, petition to the Legislature or other proceeding appearing to the court necessary for the protection of any settled estate, and order that all or any part of the costs and expenses in relation thereto be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estate, or be raised and paid out of the rents and profits of the settled estate, or out of any money or investment representing money liable to be laid out in the purchase of land to be settled in the same manner as the settled estate, or out of the income of such money or investment, or out of any accumulations of rents, profits or income.

(2) When mortgages authorized — Such mortgage shall be authorized where the court is of the opinion that the interests of the estate or any part thereof or of the persons entitled to the estate or any part thereof require, or will be substantially promoted by such mortgage.

(3) How sales conducted — Every such sale shall be conducted and confirmed in the same manner as by the rules and practice of the court is required in the sale of land under an order of the court.

14. Rental as consideration for land sold for building — Where land is sold for building purposes, the court may allow the whole or any part of the consideration to be a rent issuing out of the land, which may be secured and settled in such manner as the court approves.

15. What may be reserved — On any sale of land, any earth, coal, stone or mineral may be excepted and any rights or privileges may be reserved, and the purchaser may be required to enter into any covenants or submit to any restrictions that the court considers advisable.

16. (1) Dedications for streets, etc. — The court, if it considers it proper and consistent with a due regard for the interests of all persons entitled under the settlement and subject to the provisions and restrictions of this Act, may from time to time direct that any part of any settled estate be laid out for streets, roads, paths, squares, gardens, or other open spaces, or for sewers, drains or watercourses, either to be dedicated to the public or not, and may direct that the parts so laid out shall, subject to this Act, remain vested in the trustees of the settlement or be conveyed to or vested in any other trustees upon such trusts for securing the continued appropriation thereof to such purposes in all respects and with such provisions for the appointment of new trustees when required as the court considers advisable.

(2) How provision made for laying out streets, etc. — Where any part of any settled estate is directed to be laid out for such purposes the court may direct that open spaces, sewers, drains or watercourses, including all necessary and proper fences, pavings, connections and other works incidental thereto, be made and executed, and

that all or any part of the expenses in relation to such laying out and making and execution be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estate, or be raised and paid out of the rents and profits of the settled estate or any part thereof, or out of any money or investments representing money liable to be laid out in the purchase of land to be settled in the same manner as the settled estate, or out of the income of such money or investments, or out of any accumulations of rents, profits or income, and the court may also give such directions as it considers advisable for any repair or maintenance of any such streets, roads, paths, squares, gardens or other open spaces, sewers, drains or watercourses or other works out of any such rents, profits, income or accumulations during such period as the court considers advisable.

(3) Restrictions — The powers hereby granted shall be exercised subject to the *Registry Act*, the *Land Titles Act*, the *Municipal Act, 2001*, the *City of Toronto Act, 2006*, the *Planning Act* and any other Act dealing with the subdivision of land and the registration of plans.

2002, c. 17, Sched. F, s. 1; 2006, c. 32, Sched. C, s. 59

17. Directions as to execution of deeds — On every sale, mortgage or dedication made under the authority of this Act, the court may direct what person shall execute the deed of conveyance or mortgage, and the deed or mortgage executed by such person shall take effect as if the settlement had contained a power enabling such person to effect the sale, mortgage or dedication, and so as to operate if necessary by way of revocation and appointment of the use or otherwise as the court directs.

18. (1) Who may apply for exercise of powers — Any of the persons authorized by section 32 to make a demise of a settled estate, and any person entitled to the possession or to the receipt of the rents and profits of a settled estate for any greater estate than

the estate mentioned in that section and the assigns of any such person may apply to the court to exercise the powers conferred by this Act.

(2) Where jointly entitled — Where two or more persons are entitled as tenants in common, joint tenants or coparceners, any or either of them may make the application.

19. (1) Consent to application — Subject to this section, every application to the court under this Act shall be made with the concurrence or consent of all those in existence having any estate or beneficial interest under the settlement and of all trustees having any estate or interest on behalf of any unborn child.

(2) Notice to persons who do not consent or concur — Where the concurrence or consent of any person mentioned in subsection (1) has not been obtained, notice shall be given to such person in such manner as the court directs, requiring the person to notify within a time to be specified in the notice whether the person assents to or dissents from the application or submits the person's rights or interests, or so far as they may be affected by the application, to be dealt with by the court, and every notice shall specify to whom and in what manner the notification is to be delivered or left.

(3) Effect of non-reply — If no notification is delivered or left in accordance with the notice and within the time thereby limited, the person to or for whom the notice has been given or left shall be deemed to have submitted the person's rights and interests to be dealt with by the court.

(4) When court may dispense with notice — Where the concurrence or consent of any such person has not been obtained, and if such person cannot be found or if it is uncertain whether the person is living or dead, or if it appears to the court that the notice cannot be given to the person without expense disproportionate to the value of the subject-matter of the application, the court if it thinks fit, either on the ground of the

rights or interests of such person being small or remote or being similar to the rights or interests of any other person or on any other ground, may by order dispense with notice to such person, and such person shall thereupon be deemed to have submitted the person's rights and interests to be dealt with by the court.

(5) When court may dispense with consent — An order may be made despite the fact that the concurrence or consent of any such person has not been obtained or has been refused, but the court, in considering the application, shall have regard to the number of persons who concur in or consent to the application and who dissent therefrom or who submit or are to be deemed to submit their rights or interests to be dealt with by the court, and to the estates or interests that such persons respectively have or claim to have in the estate, and every order made upon such application has the same effect as if all such persons had been consenting parties thereto.

(6) Order saving rights of non-consenting parties — The court may give effect to any application subject to and so as not to affect the rights, estate or interest of any person whose concurrence or consent has been refused, or who has not submitted or is not deemed to have submitted the person's rights or interests to be dealt with by the court, or whose rights, estate or interest ought in the opinion of the court to be excepted.

20. Notice to trustees, etc. — Notice of any application under this Act shall be served on all trustees who are seized or possessed of any estate in trust for any person whose consent to or concurrence in the application is hereby required, and on any other persons who in the opinion of the court ought to be so served, unless the court dispenses with such notice.

21. When notice of application to be given in the newspapers — Notice of any application, if the court so directs but

not otherwise, shall be published in such newspapers as the court directs, and any person, whether interested in the estate or not, may be heard in opposition to or in support of the application, and the court may permit such person to appear and be heard in opposition to or in support of the application on such terms as to costs or otherwise and in such manner as it thinks fit.

22. Where a similar application has been rejected by the Legislature

The court shall not grant an application where the applicant, or any person entitled, has previously applied to the Legislature for a private Act to effect the same or a similar object, and such application has been rejected on its merits, or reported against by the judges to whom the Bill was referred.

23. Application of money arising from sales, etc. — All money to be received on any sale effected under the authority of this Act, or to be set aside out of the rent or payments reserved on any lease of earth, coal, stone or mineral may, if the court thinks fit, be paid to any trustees of whom it shall approve, otherwise the same shall be paid into court, and such money shall be applied as the court from time to time directs to one or more of the following purposes:

1. The payment of any costs that the court orders to be paid.
2. The discharge of any encumbrance affecting the land in respect of which the money was paid, or affecting any other land subject to the same uses or trusts.
3. The purchase of other land to be settled in the same manner as the land in respect of which the money was paid.
4. The payment of the expenses connected with any buildings, repairs, rebuilding, alterations or improvements authorized to be made upon the settled estate.
5. The payment to any person becoming absolutely entitled.

24. Application of money in certain cases without application to court —

The application of the money, if the court so directs, may be made by the trustees to whom the court has authorized the money to be paid, without any application to the court, or upon an order of the court upon the petition of the person who would be entitled to the possession or the receipt of the rents and profits of the land if the money had been invested in the purchase of land.

25. Payment of interest — Until the money can be so applied, the interest accruing thereon shall be paid as the court directs to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

26. Application of money in respect of leases or reversions — Where any purchase money paid into court or to trustees under this Act has been paid in respect of a lease for a life or lives or years, or for a life or lives and years, or of any estate in land less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, the court may, on the petition of any person interested in the money, order that the interest that accrues thereon be paid in such manner as the court considers will give to the parties interested in the money the same benefit therefrom as they might lawfully have had from the lease, estate or reversion in respect of which the money has been paid, or as near thereto as may be.

27. (1) Court may exercise powers repeatedly — The court may exercise any of the powers conferred on it by this Act whether the court has already exercised any of such powers in respect of the same property or not, but no such powers shall be exercised if any express declaration that they shall not be exercised is contained in the settlement.

(2) Despite express powers — The circumstance that the settlement contains pow-

ers to effect similar purposes does not preclude the court from exercising any of the powers conferred by this Act if it thinks that the powers contained in the settlement ought to be extended.

28. Extent of powers — Nothing in this Act empowers the court to authorize any lease, mortgage, sale or other act beyond the extent to which, in the opinion of the court, the same might have been authorized in and by the settlement by the settlor.

29. Validity of acts — After the completion of any lease, mortgage or sale, or other act under the authority of the court and purporting to be in pursuance of this Act, the same is not invalidated on the ground that the court was not empowered to authorize the same.

30. (1) Orders of court conclusive — An order of the court under jurisdiction conferred by this Act is not, as against a lessee, mortgagee or purchaser, invalidated on the ground of want of jurisdiction or of want of any concurrence, consent, notice or service, whether the lessee, mortgagee or purchaser had or had not notice of any such want.

(2) Scope of section — This section has effect with respect to any lease, mortgage, sale or other act under the authority of the court and purporting to be in pursuance of this Act, or to be in pursuance of any former Act, despite any exception in any former Act.

31. Costs — The court may order that any costs or expenses of any persons of and incident to any application under the Act shall be a charge on the land that is the subject of the application, or on any other land included in the same settlement and subject to the same limitations, or may direct the same to be paid out of the corpus or income of any fund realized by the sale, mortgage or lease of such estate under this Act, and the court may also direct that the costs and expenses, to be assessed and paid as the court directs,

shall be raised by a sale or mortgage of a sufficient part of such land or out of the rents or profits thereof.

32. (1) Power to make leases for 21 years — The following persons, unless the settlement contains an express declaration that it is not lawful for them to make the demise, may from time to time and without any application to the court, except as hereinafter mentioned, demise the settled estate or any part thereof for any term, not exceeding twenty-one years, to take effect in possession at or within one year next after the making thereof:

1. A person entitled to the possession or to the receipt of the rents and profits of any settled estate, for an estate for life or for a term of years determinable with any life or lives or for any greater estate not holding merely under a lease at a rent.
2. A tenant in fee simple with an executory limitation, gift or disposition over on failure of the tenant's issue or in any other event.
3. A tenant for years determinable on life not holding merely under a lease at a rent.
4. A tenant for the life of another not holding merely under a lease at a rent.
5. A tenant for the tenant's own or any other life or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate or by conditional limitation or otherwise, or to be defeated by an executory limitation, gift or disposition over, or is subject to a trust for accumulation of income for payment of debts or any other purpose.
6. A person entitled to the income of land under a trust or direction for payment thereof to the person during the person's own or any other life whether subject to expenses of management or not or until sale of the land or until for-

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feiture of the person's interest therein on bankruptcy or other event.

(2) Courtesy and dower — The powers conferred by subsection (1) may be exercised by a person entitled to the possession or to the receipt of the rents and profits of unsettled land as tenant by the courtesy or tenant in dower.

(3) Additional powers — Any of the persons empowered by subsections (1) and (2) to make a demise may also make,

(a) a lease for giving effect to a contract entered into by any of the person's predecessors in title for making a lease that, if made by the predecessor, would have been binding on the successors in title; and

(b) a lease for giving effect to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled estate; and

(c) a lease for confirming, as far as may be, a previous lease being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted under this Act, or otherwise as the case may require.

(4) Joint action — Where two or more persons are under the same settlement or otherwise entitled in possession to concurrent estates for life, or are concurrently entitled to the possession or receipts of the rents and profits as in subsection (1) mentioned, they shall, for the purposes of this section, act concurrently.

(5) Form of lease — Every demise made under this section shall be by deed in duplicate, and for the best rent that can reasonably be obtained, which rent shall be incident to the immediate reversion and shall be made payable half-yearly or oftener.

(6) Conditions — Such demise shall not be made without impeachment of waste and shall not authorize the cutting of any timber

or felling of any trees except in the ordinary course of husbandry, and shall contain a covenant for payment of the rent and such other usual and proper covenants as the lessor thinks fit, and shall be subject to the statutory right of re-entry for non-payment of rent in the *Commercial Tenancies Act*.

1997, c. 24, s. 221(2)

33. (1) Against whom leases valid — Every demise of a settled estate authorized by section 32 is valid against the person granting the demise and all other persons entitled to estates subsequent to the person's estate under or by virtue of the same settlement.

(2) Idem — Every demise of unsettled land by a tenant by the courtesy or by a tenant in dower is valid against the person granting the demise and all other persons entitled to an estate subsequent to the estate of such tenant.

34. (1) Provisions as to persons under disability — All powers given by this Act, and all applications to the court under this Act and consents to and notifications respecting them, may be executed, made or given by, and all notices under this Act may be given to the guardian of property, attorney acting under a continuing power of attorney for property or litigation guardian on behalf of persons who are incapable as defined in the *Substitute Decisions Act, 1992*, and by or to trustees or assignees of the property of bankrupts, debtors in liquidation or insolvents, and the Children's Lawyer or any other litigation guardian may consent to, and give notifications respecting such applications, and give all notices under this Act on behalf of any minor.

(2) Court approval — All consents, notifications or notices respecting an application that are given by a guardian of property, attorney acting under a continuing power of attorney for property or litigation guardian on behalf of a person who is incapable as defined in the *Substitute Decisions Act, 1992*, or by the Children's Lawyer or other

litigation guardian on behalf of a minor, are subject to court approval.

1994, c. 27, s. 43(2); 2009, c. 33, Sched. 2, s. 68

35. No obligation to make or consent to application — Nothing in this Act imposes any obligation on any person to make or consent to any application to the court or to exercise any power.

36. Tenants for life, etc., to be deemed entitled despite encumbrances — A person shall be deemed to be entitled to the

possession or to the receipt of the rents and profits of an estate although the person's estate may be charged or encumbered, either by the person or by the settlor or otherwise, to any extent, but the estates or interests of the persons entitled to the charge or encumbrance are not affected by the acts of such persons unless they concur therein.

37. Powers conferred by other Acts — Nothing in this Act interferes with the exercise of any powers to authorize or grant leases conferred by any other statute.

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S.O. 1992, c. 30, as am. S.O. 1994, c. 27, ss. 43(2), 62; 1996, c. 2, ss. 3–60; 1998, c. 26, s. 108; 2001, c. 13, s. 30; 2002, c. 17, Sched. F, s. 1; 2002, c. 18, Sched. A, s. 20; 2004, c. 3, Sched. A, s. 97; 2005, c. 5, s. 65(1) (Fr.), (2)–(5); 2006, c. 19, Sched. B, s. 22; 2006, c. 34, s. 24; 2007, c. 8, s. 229; 2008, c. 14, s. 59; 2009, c. 33, Sched. 2, s. 71, Sched. 8, s. 16, Sched. 18, s. 33; 2016, c. 5, Sched. 27, ss. 1, 2(1) (Fr.), (2), 3–5; 2016, c. 23, s. 70(1), (2) (Fr.), (3) (Fr.); 2017, c. 14, Sched. 4, s. 34; 2017, c. 25, Sched. 5, s. 73, Sched. 8, s. 3, Sched. 9, s. 120 [Sched. 5, s. 73, Sched. 9, s. 120 not in force at date of publication.]; 2018, c. 3, Sched. 5, s. 59 [Not in force at date of publication. Repealed 2019, c. 1, Sched. 3, s. 5.]; 2018, c. 6, Sched. 3, s. 14 [Not in force at date of publication.]; 2019, c. 1, Sched. 4, s. 57 [Not in force at date of publication.]; 2019, c. 5, Sched. 3, s. 23 [s. 23(2) not in force at date of publication.]; 2019, c. 7, Sched. 17, s. 162; 2020, c. 11, Sched. 15, s. 59 [Not in force at date of publication.].

GENERAL

1. (1) Definitions — In this Act,

“accessible format” may include, but is not limited to, large print, recorded audio and electronic formats, braille and other formats usable by persons with disabilities, within the meaning of the *Accessibility for Ontarians with Disabilities Act, 2005*;

“advocate” [Repealed 1996, c. 2, s. 3(1).]

“assessor” means a member of a class of persons who are designated by the regulations as being qualified to do assessments of capacity;

“capable” means mentally capable, and “capacity” has a corresponding meaning;

“controlled-access residence” means premises, other than a facility, where one or more persons live and that are operated for remuneration by a person who controls access to the premises;

“court” means the Superior Court of Justice;

“defendant” means a person to whom another has an obligation to provide support;

“facility” means,

(a) a facility governed or funded under an Act mentioned in the Schedule,

(a.1) a facility that is a supported group living residence or an intensive support residence under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*,

(b) police detention facilities provided by a municipality under the *Police Services Act*,

Proposed Repeal — 1(1) “facility” (b)

(b) [Repealed 2019, c. 1, Sched. 4, s. 57(1). Not in force at date of publication.]

(c) a detention facility maintained under section 16.1 of the *Police Services Act*, or

Proposed Repeal — 1(1) “facility” (c)

(c) [Repealed 2019, c. 1, Sched. 4, s. 57(1). Not in force at date of publication.]

(d) a prescribed facility;

“incapable” means mentally incapable, and “incapacity” has a corresponding meaning;

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“partner” means,

- (a) [Repealed 2005, c. 5, s. 65(2).]
- (b) either of two persons who have lived together for at least one year and have a close personal relationship that is of primary importance in both persons’ lives.

“prescribed” means prescribed by the regulations;

“psychiatric facility” has the same meaning as in the *Mental Health Act*;

“regulations” means the regulations made under this Act;

“spouse” means a person,

- (a) to whom the person is married, or
- (b) with whom the person is living in a conjugal relationship outside marriage, if the two persons,
 - (i) have cohabited for at least one year,
 - (ii) are together the parents of a child, or
 - (iii) have together entered into a cohabitation agreement under section 53 of the *Family Law Act*.

“will” has the same meaning as in the *Succession Law Reform Act*.

(2) [Repealed 2002, c. 18, Sched. A, s. 20(3).]

(2.1) **Relatives** — For the purposes of this Act, a relative includes a person related to another person by marriage or adoption.

(3) **Meaning of “explain”** — A person whom this Act requires to explain a matter satisfies that requirement by explaining the matter to the best of his or her ability and in a manner that addresses the special needs of the person receiving the explanation, whether that person understands it or not.

1996, c. 2, s. 3; 2002, c. 17, Sched. F, s. 1;
2002, c. 18, Sched. A, s. 20; 2005, c. 5, s.
65(2), (3); 2008, c. 14, s. 59(1); 2009, c. 33,
Sched. 8, s. 16; 2016, c. 5, Sched. 27, s. 1;
2016, c. 23, s. 70(1)

2. (1) Presumption of capacity — A person who is eighteen years of age or more is presumed to be capable of entering into a contract.

(2) Same — A person who is sixteen years of age or more is presumed to be capable of giving or refusing consent in connection with his or her own personal care.

(3) Exception — A person is entitled to rely upon the presumption of capacity with respect to another person unless he or she has reasonable grounds to believe that the other person is incapable of entering into the contract or of giving or refusing consent, as the case may be.

(4) Onus of proof, contracts and gifts — In a proceeding in respect of a contract entered into or a gift made by a person while his or her property is under guardianship, or within one year before the creation of the guardianship, the onus of proof that the other person who entered into the contract or received the gift did not have reasonable grounds to believe the person incapable is on that other person.

3. (1) Counsel for person whose capacity is in issue — If the capacity of a person who does not have legal representation is in issue in a proceeding under this Act,

- (a) the court may direct that the Public Guardian and Trustee arrange for legal representation to be provided for the person; and
- (b) the person shall be deemed to have capacity to retain and instruct counsel.

(2) Responsibility for legal fees — If legal representation is provided for a person in accordance with clause (1)(a) and no certificate is issued under the *Legal Aid Services Act, 1998* in connection with the proceeding, the person is responsible for the legal fees.

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|--|--|
| <p>(2) Responsibility for legal fees — If legal representation is provided for a person in accordance with clause (1)(a) and the person is not eligible to receive comparable legal aid services under the <i>Legal Aid Services Act, 2020</i> in connection with the proceeding, the person is responsible for the legal fees.</p> <p style="text-align: right;">2020, c. 11, Sched. 15, s. 59 [Not in force at date of publication.]</p> | <p>7. (1) Continuing power of attorney for property — A power of attorney for property is a continuing power of attorney if,</p> <ul style="list-style-type: none"> (a) it states that it is a continuing power of attorney; or (b) it expresses the intention that the authority given may be exercised during the grantor's incapacity to manage property. <p><i>[Note: Subsection 7(1), as re-enacted by 1996, c. 2, s. 4(1), applies to powers of attorney given before or after March 29, 1996. See 1996, c. 2, s. 4(5).]</i></p> |
| <p>(3) Same — Nothing in subsection (2) affects any right of the person to an assessment of a solicitor's bill under the <i>Solicitors Act</i> or other review of the legal fees and, if it is determined that the person is incapable of managing property, the assessment or other review may be sought on behalf of the person by,</p> <ul style="list-style-type: none"> (a) the person's guardian of property; or (b) the person's attorney under a continuing power of attorney for property. <p style="text-align: right;">1998, c. 26, s. 108; 2009, c. 33, Sched. 2, s. 71(1)</p> | <p>(2) Same — The continuing power of attorney may authorize the person named as attorney to do on the grantor's behalf anything in respect of property that the grantor could do if capable, except make a will.</p> <p>(3) P.G.T. may be attorney — The continuing power of attorney may name the Public Guardian and Trustee as attorney if his or her consent in writing is obtained before the power of attorney is executed.</p> <p>(4) Two or more attorneys — If the continuing power of attorney names two or more persons as attorneys, the attorneys shall act jointly, unless the power of attorney provides otherwise.</p> <p>(5) Death, etc., of joint attorney — If two or more attorneys act jointly under the continuing power of attorney and one of them dies, becomes incapable of managing property or resigns, the remaining attorney or attorneys are authorized to act, unless the power of attorney provides otherwise.</p> <p>(6) Conditions and restrictions — The continuing power of attorney is subject to this Part, and to the conditions and restrictions that are contained in the power of attorney and are consistent with this Act.</p> <p>(7) Postponed effectiveness — The continuing power of attorney may provide</p> |
| <p>PART I — PROPERTY (SS. 4–42)</p> <p>General</p> <p>4. Application of Part — This Part applies to decisions on behalf of persons who are at least eighteen years old.</p> <p>5. Age — To exercise a power of decision under this Part on behalf of another person, a person must be at least eighteen years old.</p> <p>6. Incapacity to manage property — A person is incapable of managing property if the person is not able to understand information that is relevant to making a decision in the management of his or her property, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.</p> | |

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that it comes into effect on a specified date or when a specified contingency happens.

(7.1) Form — The continuing power of attorney need not be in any particular form.

(8) Same — The continuing power of attorney may be in the prescribed form.

1996, c. 2, s. 4

8. (1) Capacity to give continuing power of attorney — A person is capable of giving a continuing power of attorney if he or she,

- (a) knows what kind of property he or she has and its approximate value;
- (b) is aware of obligations owed to his or her dependants;
- (c) knows that the attorney will be able to do on the person's behalf anything in respect of property that the person could do if capable, except make a will, subject to the conditions and restrictions set out in the power of attorney;
- (d) knows that the attorney must account for his or her dealings with the person's property;
- (e) knows that he or she may, if capable, revoke the continuing power of attorney;
- (f) appreciates that unless the attorney manages the property prudently its value may decline; and
- (g) appreciates the possibility that the attorney could misuse the authority given to him or her.

(2) Capacity to revoke — A person is capable of revoking a continuing power of attorney if he or she is capable of giving one.

9. (1) Validity despite incapacity — A continuing power of attorney is valid if the grantor, at the time of executing it, is capable of giving it, even if he or she is incapable of managing property.

(2) Same — The continuing power of attorney remains valid even if, after executing it,

the grantor becomes incapable of giving a continuing power of attorney.

(3) Determining incapacity — If the continuing power of attorney provides that it comes into effect when the grantor becomes incapable of managing property but does not provide a method for determining whether that situation has arisen, the power of attorney comes into effect when,

- (a) the attorney is notified in the prescribed form by an assessor that the assessor has performed an assessment of the grantor's capacity and has found that the grantor is incapable of managing property; or
- (b) the attorney is notified that a certificate of incapacity has been issued in respect of the grantor under the *Mental Health Act*.

1996, c. 2, s. 5

10. (1) Execution — A continuing power of attorney shall be executed in the presence of two witnesses, each of whom shall sign the power of attorney as witness.

(2) Persons who shall not be witnesses — The following persons shall not be witnesses:

1. The attorney or the attorney's spouse or partner.
2. The grantor's spouse or partner.
3. A child of the grantor or a person whom the grantor has demonstrated a settled intention to treat as his or her child.
4. A person whose property is under guardianship or who has a guardian of the person.
5. A person who is less than eighteen years old.

(3) [Repealed 1996, c. 2, s. 6(2).]

(4) Non-compliance — A continuing power of attorney that does not comply with subsections (1) and (2) is not effective, but the court may, on any person's application, declare the continuing power of attorney to

be effective if the court is satisfied that it is in the interests of the grantor or his or her dependants to do so.

1996, c. 2, s. 6

11. (1) Resignation of attorney — An attorney under a continuing power of attorney may resign but, if the attorney has acted under the power of attorney, the resignation is not effective until the attorney delivers a copy of the resignation to,

- (a) the grantor;
- (b) any other attorneys under the power of attorney;
- (c) the person named by the power of attorney as a substitute for the attorney who is resigning, if the power of attorney provides for the substitution of another person; and
- (d) unless the power of attorney provides otherwise, the grantor's spouse or partner and the relatives of the grantor who are known to the attorney and reside in Ontario, if
 - (i) the attorney is of the opinion that the grantor is incapable of managing property, and
 - (ii) the power of attorney does not provide for the substitution of another person or the substitute is not able and willing to act.

(1.1) Exception — Clause (1)(d) does not require a copy of the resignation to be delivered to,

- (a) the grantor's spouse, if the grantor and the spouse are living separate and apart as a result of a breakdown of their relationship; or
- (b) a relative of the grantor, if the grantor and the relative are related only by marriage and the grantor and his or her spouse are living separate and apart as a result of a breakdown of their relationship.

(2) Notice to other persons — An attorney who resigns shall make reasonable efforts to give notice of the resignation to per-

sons with whom the attorney previously dealt on behalf of the grantor and with whom further dealings are likely to be required on behalf of the grantor.

(3) Accessible format for notice of resignation — If an attorney has reason to believe that a person entitled to receive a copy of the attorney's resignation needs it to be provided in an accessible format, or if the person has requested an accessible format, the attorney shall provide the person with a copy of the resignation in a format that is accessible to that person.

(4) Explanation of resignation — If an attorney has reason to believe that a person entitled to receive a copy of the attorney's resignation needs it to be explained, or if the person has requested an explanation, the attorney shall explain the effect of the resignation to the person.

(5) Effectiveness of resignation not affected — Despite subsections (3) and (4), the attorney's resignation is effective when the copies of the resignation are delivered under subsection (1).

1996, c. 2, s. 7; 2005, c. 5, s. 65(4); 2016, c. 5, Sched. 27, s. 2(2)

12. (1) Termination — A continuing power of attorney is terminated,

- (a) when the attorney dies, becomes incapable of managing property or resigns, unless,
 - (i) another attorney is authorized to act under subsection 7(5), or
 - (ii) the power of attorney provides for the substitution of another person and that person is able and willing to act;
- (b) [Repealed 1996, c. 2, s. 8(2).]
- (c) when the court appoints a guardian of property for the grantor under section 22;
- (d) when the grantor executes a new continuing power of attorney, unless the grantor provides that there shall be

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multiple continuing powers of attorney;

(e) when the power of attorney is revoked;

(f) when the grantor dies.

(2) Execution of revocation — The revocation shall be in writing and shall be executed in the same way as a continuing power of attorney.

1996, c. 2, s. 8

13. (1) Exercise after termination or invalidity — If a continuing power of attorney is terminated or becomes invalid, any subsequent exercise of the power by the attorney is nevertheless valid as between the grantor or the grantor's estate and any person, including the attorney, who acted in good faith and without knowledge of the termination or invalidity.

(2) Same, improper execution — If a continuing power of attorney is ineffective because a person listed in subsection 10(2) witnessed its execution, subsection (1) applies, with necessary modifications.

14. Certain existing powers of attorney preserved — Despite the repeal of section 5 of the *Powers of Attorney Act*, by subsection 24(3) of the *Consent and Capacity Statute Law Amendment Act, 1992*, a power of attorney that is executed on or before the day this Act comes into force or within six months after that day shall be deemed to be a continuing power of attorney for the purposes of this Act if,

(a) it contains a provision expressly stating that it may be exercised during any subsequent legal incapacity of the grantor, as described in section 5 of the *Powers of Attorney Act*; and

(b) it is executed in accordance with the *Powers of Attorney Act* and is otherwise valid.

Statutory Guardians of Property

15. P.G.T. as statutory guardian — If a certificate is issued under the *Mental Health Act* certifying that a person who is a patient of a psychiatric facility is incapable of managing property, the Public Guardian and Trustee is the person's statutory guardian of property.

1996, c. 2, s. 9

[Note: If a notice of continuance was issued under section 59 of the *Mental Health Act* in respect of a patient before April 3, 1995, the Public Guardian and Trustee is the patient's statutory guardian of property as if the guardianship had been created under section 15 of this Act. See: 1992, c. 32, s. 20(61), (62).]

16. (1) Assessment of capacity for statutory guardianship — A person may request an assessor to perform an assessment of another person's capacity or of the person's own capacity for the purpose of determining whether the Public Guardian and Trustee should become the statutory guardian of property under this section.

(2) Form of request — No assessment shall be performed unless the request is in the prescribed form and, if the request is made in respect of another person, the request states that,

(a) the person requesting the assessment has reason to believe that the other person may be incapable of managing property;

(b) the person requesting the assessment has made reasonable inquiries and has no knowledge of the existence of any attorney under a continuing power of attorney that gives the attorney authority over all of the other person's property; and

(c) the person requesting the assessment has made reasonable inquiries and has no knowledge of any spouse, partner or relative of the other person

who intends to make an application under section 22 for the appointment of a guardian of property for the other person.

(3) Certificate of incapacity — The assessor may issue a certificate of incapacity in the prescribed form if he or she finds that the person is incapable of managing property.

(4) Copies — The assessor shall ensure that copies of the certificate of incapacity are promptly given to the incapable person and to the Public Guardian and Trustee.

(5) Statutory guardianship — As soon as he or she receives the copy of the certificate, the Public Guardian and Trustee is the person's statutory guardian of property.

(6) Information to be given — After becoming a person's statutory guardian of property under subsection (5), the Public Guardian and Trustee shall ensure that the person is informed, in a manner that the Public Guardian and Trustee considers appropriate, that,

(a) the Public Guardian and the Trustee has become the person's statutory guardian of property; and

(b) the person is entitled to apply to the Consent and Capacity Board for a review of the assessor's finding that the person is incapable of managing property.

1994, c. 27, s. 62(1); 1996, c. 2, s. 10

[*Note: If, before April 3, 1995, a certificate of incompetence was issued or deemed to have been issued under section 10 of the Developmental Services Act in respect of a resident, the Public Guardian and Trustee is the resident's statutory guardian of property as if the guardianship had been created under section 16 of this Act. See: Statutes of Ontario, 1992, chapter 32, subsection 7(2).]*

[*Note: If a notice of continuance was issued under section 15 of the Developmental Services Act before April 3, 1995, the Public Guardian and Trustee is the resident's statutory guardian of property as if the guardian-*

ship had been created under section 16 of this Act. See: Statutes of Ontario, 1992, chapter 32, subsections 7(5) and (6).]

[*Note: If, before April 3, 1995, a certificate of incapacity was issued under 54 of the Mental Health Act in respect of an out-patient, the Public Guardian and Trustee is the out-patient's statutory guardian of property as if the guardianship had been created under section 16 of this Act. See: Statutes of Ontario, 1992, chapter 32, subsection 20(58).]*

[*Note: The Public Guardian and Trustee is the statutory guardian of property, as if the guardianship had been created under section 16 of this Act, for certain persons who were discharged from a psychiatric facility to a home for special care before April 3, 1995. See: Statutes of Ontario, 1996, chapter 2, subsection 76(2).]*

16.1 (1) Termination by attorney — A statutory guardianship of property is terminated if,

(a) the incapable person gave a continuing power of attorney before the certificate of incapacity was issued;

(b) the power of attorney gives the attorney authority over all of the incapable person's property;

(c) the Public Guardian and Trustee receives,

(i) the original power of attorney, or a copy of it that is authenticated in a manner satisfactory to the Public Guardian and Trustee,

(ii) a written undertaking signed by the attorney to act in accordance with the power of attorney, and

(iii) proof satisfactory to the Public Guardian and Trustee of the identity of the person named as the attorney in the power of attorney; and

(d) if someone has replaced the Public Guardian and Trustee as the statutory

guardian under section 17, the statutory guardian receives,

- (i) a copy of the power of attorney that is authenticated in a manner satisfactory to the statutory guardian, and
- (ii) a written undertaking signed by the attorney to act in accordance with the power of attorney.

(2) Attorney resigns — If a statutory guardianship of property is terminated under subsection (1) and, within six months after the termination, the power of attorney is terminated under section 12 because of the attorney's resignation, the Public Guardian and Trustee or the person who replaced the Public Guardian and Trustee as statutory guardian under section 17, as the case may be, may elect to resume being the incapable person's statutory guardian of property until another person is appointed as guardian of property under section 17 or 22.

(3) Exception — Subsection (2) does not apply if any of the events described in paragraph 1, 3 or 4 of subsection 20(1) has occurred since the termination of the statutory guardianship of property under subsection (1).

1996, c. 2, s. 10; 2009, c. 33, Sched. 2, s. 71(2), (3); 2016, c. 5, Sched. 27, s. 3

17. (1) Application to replace P.G.T. — Any of the following persons may apply to the Public Guardian and Trustee to replace the Public Guardian and Trustee as an incapable person's statutory guardian of property:

1. The incapable person's spouse or partner.
2. A relative of the incapable person.
3. The incapable person's attorney under a continuing power of attorney, if the power of attorney was made before the certificate of incapacity was issued and does not give the attorney authority over all of the incapable person's property.

4. A trust corporation within the meaning of the *Loan and Trust Corporations Act*, if the incapable person has a spouse or partner who consents in writing to the application.

(2) Form of application — The application shall be in the prescribed form.

(3) Management plan — The application shall be accompanied by a management plan for the property in the prescribed form.

(4) Appointment — Subject to subsection (6), the Public Guardian and Trustee shall appoint the applicant as the incapable person's statutory guardian of property if the Public Guardian and Trustee is satisfied that the applicant is suitable to manage the property and that the management plan is appropriate.

(5) Considerations — The Public Guardian and Trustee shall consider the incapable person's current wishes, if they can be ascertained, and the closeness of the applicant's relationship to the person.

(6) Security — The Public Guardian and Trustee may refuse to appoint the applicant unless the applicant provides security, in a manner approved by the Public Guardian and Trustee, for an amount fixed by the Public Guardian and Trustee.

(7) Same — If security is required under subsection (6), the court may, on application, order that security be dispensed with, that security be provided in a manner not approved by the Public Guardian and Trustee, or that the amount of security be reduced, and may make its order subject to conditions.

(8) Certificate — The Public Guardian and Trustee shall give the person appointed as statutory guardian of property a certificate certifying the appointment.

(9) Effect of certificate — The certificate is proof of the guardian's authority.

(10) Conditions — The Public Guardian and Trustee may make an appointment

under this section subject to conditions specified in the certificate.

(11) Two or more guardians — The Public Guardian and Trustee may certify that two or more applicants are joint statutory guardians of property, or that each of them is guardian for a specified part of the property.

(12) Duty of guardian — A person who replaces the Public Guardian and Trustee as statutory guardian of property shall, subject to any conditions imposed by the Public Guardian and Trustee or the court, manage the property in accordance with the management plan.

1996, c. 2, s. 11; 2006, c. 19, Sched. B, s. 22(1)

18. (1) Refusal to issue certificate — If the Public Guardian and Trustee refuses to issue a certificate for a statutory guardian of property under subsection 17, he or she shall give the applicant reasons, in writing, for the refusal.

(2) Dispute, application to court — If the applicant disputes the refusal by giving the Public Guardian and Trustee notice in writing, the Public Guardian and Trustee shall apply to the court to decide the matter.

(3) Review by court — The court shall decide whether the applicant should, in the circumstances, replace the Public Guardian and Trustee.

(4) Criteria — The court shall take into consideration the incapable person's current wishes, if they can be ascertained, and the closeness of the applicant's relationship to the person.

(5) Order — The court may, in its order, impose such conditions on the guardian's powers as it considers appropriate.

1996, c. 2, s. 12

19. (1) Death, etc., of statutory guardian — If a statutory guardian of property dies, becomes incapable of managing property or gives notice to the Public Guardian

and Trustee of his or her resignation, the Public Guardian and Trustee may elect to become the incapable person's statutory guardian until another person is appointed as guardian of property under section 17 or 22.

(2) Delivery of accounts, etc. — If a statutory guardian of property gives notice to the Public Guardian and Trustee of his or her resignation, the Public Guardian and Trustee may require the guardian to provide the Public Guardian and Trustee with his or her accounts in respect of the guardianship, any property in his or her possession or control that is subject to the guardianship and any information requested by the Public Guardian and Trustee in respect of the guardianship.

(3) Same — Subsection (2) applies with necessary modifications to the personal representative of a statutory guardian of property who dies.

(4) Exception, remaining statutory guardian — If there is a remaining statutory guardian as described in subsection (5),

- (a) the remaining statutory guardian continues to have power to act; and
- (b) subsections (1), (2) and (3) do not apply.

(5) Same — There is a remaining statutory guardian for the purposes of subsection (4), unless the certificate of statutory guardianship provides otherwise, if the following conditions are satisfied:

1. Before the event described in paragraph 2, there are two or more joint statutory guardians of property.
2. One of the joint statutory guardians of property dies, becomes incapable of managing property or gives notice to the Public Guardian and Trustee of his or her resignation.

1996, c. 2, s. 13; 2006, c. 19, Sched. B, s. 22(2)

20. (1) Termination of statutory guardianship — A statutory guardianship of pro-

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perty for a person is terminated if any of the following events occurs:

1. A guardian is appointed for the person by the court under section 22.
 - 1.1 The statutory guardianship is terminated under subsection 16.1(1), except as provided by subsection 16.1(2).
2. Notice of the guardian's resignation is given by the guardian to,
 - i. the person, and
 - ii. the Public Guardian and Trustee, if the Public Guardian and Trustee is not the guardian.
3. In the case of a statutory guardianship created under section 15,
 - i. notice is given to the guardian that the certificate of incapacity has been cancelled under section 56 of the *Mental Health Act*,
 - ii. notice is given to the guardian that the person has been discharged, unless the guardian has also received a notice of continuance issued under subsection 57(2) of the *Mental Health Act*,
 - iii. notice is given to the guardian from an assessor or from a physician who has authority to issue certificates of incapacity under the *Mental Health Act* stating that the assessor or physician has performed an assessment of the person's capacity and is of the opinion that the person is capable of managing property, if the person has been discharged and a notice of continuance was issued under subsection 57(2) of the *Mental Health Act*,
 - iv. the time for appeal from a decision of the Consent and Capacity Board on an application under section 20.2 of this Act or section 60 of the *Mental Health Act* has expired, if the Board determines that the person is capable of managing property and no appeal is taken, or
 - v. an appeal from a decision of the Consent and Capacity Board on an application under section 20.2 of this Act or section 60 of the *Mental Health Act* is finally disposed of, if an appeal is taken and it is finally determined that the person is capable of managing property.
4. In the case of a statutory guardianship created under section 16,
 - i. notice is given to the guardian from an assessor stating that the assessor has performed an assessment of the person's capacity and is of the opinion that the person is capable of managing property,
 - ii. the time for appeal from a decision of the Consent and Capacity Board on an application under section 20.2 has expired, if the Board determines that the person is capable of managing property and no appeal is taken, or
 - iii. an appeal from a decision of the Consent and Capacity Board on an application under section 20.2 is finally disposed of, if an appeal is taken and it is finally determined that the person is capable of managing property.
5. The person dies.

(2) **Accessible format for notice of resignation** — If a statutory guardian of property has reason to believe that a person entitled to notice of the guardian's resignation under subparagraph 2 i of subsection (1) needs it to be provided in an accessible format, or if the person has requested an accessible format, the guardian shall provide the person with a copy of the notice in a format that is accessible to that person.

(3) **Explanation of resignation** — If a statutory guardian of property has reason to believe that a person entitled to notice of the

guardian's resignation under subparagraph 2 i of subsection (1) needs it to be explained, or if the person has requested an explanation, the guardian shall explain the effect of the resignation to the person.

(4) Effectiveness of resignation not affected — Despite subsections (2) and (3), the statutory guardianship of property is terminated when notice of the guardian's resignation is given under paragraph 2 of subsection (1).

1996, c. 2, s. 13; 2009, c. 33, Sched. 2, s. 71(4); 2016, c. 5, Sched. 27, s. 4

20.1 (1) Assessment — A statutory guardian of property shall, on behalf of the incapable person, assist in arranging an assessment of the person's capacity by an assessor if the assessment is requested by the incapable person and,

(a) in the case of a statutory guardianship created under section 15, the person has been discharged from the psychiatric facility, a notice of continuance was issued under subsection 57(2) of the *Mental Health Act*, and six months have elapsed since the notice of continuance was issued; or

(b) in the case of a statutory guardianship created under section 16, six months have elapsed since the guardianship was created.

(2) Limit — Subsection (1) does not require a statutory guardian of property to assist in arranging an assessment if an assessment has been performed in the six months before the request.

1996, c. 2, s. 13

20.2 (1) Application for review of finding of incapacity — A person who has a statutory guardian of property may apply to the Consent and Capacity Board for a review of a finding that the person is incapable of managing property,

(a) in the case of a statutory guardianship created under section 15, if the finding was made by an assessor, or by

a physician who has authority to issue certificates of incapacity under the *Mental Health Act*, following an assessment of capacity that was performed after a notice of continuance was issued in respect of the person under subsection 57(2) of the *Mental Health Act*; or

(b) in the case of a statutory guardianship created under section 16, if the finding,

(i) resulted in the issuance of the certificate of incapacity under subsection 16(3), or

(ii) was made by an assessor following an assessment of capacity that was performed after the creation of the statutory guardianship.

(2) Limit — A person may not make an application under this section if he or she made an application under this section in the previous six months.

(3) Time for application — An application under this section must be made within six months after the finding of incapacity was made.

(4) Parties — The parties to the application are:

1. The applicant.
2. The assessor or physician who made the finding of incapacity.
3. Any other person whom the Board specifies.

(5) Power of Board — The Board may confirm the finding of incapacity or may determine that the person is capable of managing property, and in doing so may substitute its opinion for that of the assessor or physician.

(6) Procedure — Section 73 to 80 of the *Health Care Consent Act, 1996* apply with necessary modifications to an application under this section.

1996, c. 2, s. 13

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20.3 (1) Termination by court — The court may, on application by a person who is subject to a statutory guardianship of property, terminate the statutory guardianship.

(2) Suspension — In an application under this section, the court may suspend the powers of the statutory guardian.

(3) Procedure — Subsections 69(0.1), (8) and (9) apply to an application under this section and, except for the purpose of subsection 69(9), subsection 69(6) does not apply.

1996, c. 2, s. 13

21. Notices — If the Public Guardian and Trustee receives a notice concerning a statutory guardianship although another person is the guardian, he or she shall ensure that it is promptly forwarded to that person.

Court-Appointed Guardians of Property

22. (1) Application for appointment — The court may, on any person's application, appoint a guardian of property for a person who is incapable of managing property if, as a result, it is necessary for decisions to be made on his or her behalf by a person who is authorized to do so.

(2) Same — An application may be made under subsection (1) even though there is a statutory guardian.

(3) Prohibition — The court shall not appoint a guardian if it is satisfied that the need for decisions to be made will be met by an alternative course of action that,

(a) does not require the court to find the person to be incapable of managing property; and

(b) is less restrictive of the person's decision-making rights than the appointment of a guardian.

Transition — Certain orders under the Mental Health Act

[Note: Transitional Provision S.O. 1996, c. 2, s. 76(1), provides as follows:

76. (1) The Public Guardian and Trustee shall be deemed to be a person's guardian of property appointed under section 22 of the Substitute Decisions Act, 1992 if,

(a) immediately before April 3, 1995, the Public Trustee was managing the person's estate pursuant to an order under section 72 of the Mental Health Act, as it then read; and

(b) no order was made after April 2, 1995 and before the day this section comes into force relinquishing the management of the estate by the Public Guardian and Trustee.]

23. Procedure — Part III (Procedure) applies to applications to appoint guardians of property.

24. (1) Who may not be appointed guardian — A person who provides health care or residential, social, training or support services to an incapable person for compensation shall not be appointed under section 22 as his or her guardian of property.

(2) Exception — Subsection (1) does not apply to the incapable person's spouse, partner or relative or to the following persons:

1. [Repealed 1996, c. 2, s. 14(3).]

2. The attorney for personal care.

3. The attorney under a continuing power of attorney.

(2.1) P.G.T. — The court shall not appoint the Public Guardian and Trustee as a guardian under section 22 unless,

- (a) the application proposes the Public Guardian and Trustee as guardian;
- (b) the application is accompanied by the Public Guardian and Trustee's written consent to the appointment; and
- (c) there is no other suitable person who is available and willing to be appointed.

(3) Non-residents — A person who does not reside in Ontario shall not be appointed as a guardian of property unless the person provides security, in a manner approved by the court, for the value of the property.

(4) Same — The court may order that the requirement for security under subsection (3) does not apply to a person or that the amount required be reduced, and may make its order subject to conditions.

(5) Criteria — Except in the case of an application that is being dealt with under section 77 (summary disposition), the court shall consider,

- (a) whether the proposed guardian is the attorney under a continuing power of attorney;
- (b) the incapable person's current wishes, if they can be ascertained; and
- (c) the closeness of the relationship of the applicant to the incapable person and, if the applicant is not the proposed guardian, the closeness of the relationship of the proposed guardian to the incapable person.

(6) Two or more guardians — The court may, with their consent, appoint two or more persons as joint guardians of property or may appoint each of them as guardian for a specified part of the property.

1996, c. 2, s. 14; 2006, c. 19, Sched. B, s. 22(3); 2009, c. 33, Sched. 2, s. 71(5)

25. (1) Finding of incapacity — An order appointing a guardian of property for a person shall include a finding that the person is incapable of managing property and that, as a result, it is necessary for decisions to be made on his or her behalf by a person who is authorized to do so.

(2) Contents of order — An order appointing a guardian of property may,

- (a) require that the guardian post security in the manner and amount that the court considers appropriate;
- (b) make the appointment for a limited period as the court considers appropriate;
- (c) impose such other conditions on the appointment as the court considers appropriate.

(3) Exception — Clause (2)(a) does not apply if the guardian is the Public Guardian and Trustee or a trust corporation within the meaning of the *Loan and Trust Corporations Act*.

26. (1) Variation or substitution — The court may vary an order appointing a guardian of property under section 22 or substitute another person as guardian, on motion in the proceeding in which the guardian was appointed.

(2) Who may make motion — A motion under subsection (1) may be made by the guardian, the applicant in the proceeding in which the guardian was appointed, or any person who was entitled under section 69 to be served with notice of that proceeding.

(3) Motion to vary — Subsection 69(2), subsections 69(5) to (9) and section 77 apply, with necessary modifications, to a motion to vary an order.

(4) Motion to substitute — Subsection 69(1), subsections 69(5) to (9), subsection 70(1) and section 77 apply, with necessary modifications, to a motion to substitute another person as guardian.

1996, c. 2, s. 15

(27. (1) Serious adverse effects — Loss of a significant part of a person's property, or a person's failure to provide necessities of life for himself or herself or for dependants, are serious adverse effects for the purposes of this section.

(2) Duty to investigate — The Public Guardian and Trustee shall investigate any allegation that a person is incapable of managing property and that serious adverse effects are occurring or may occur as a result.

(3) Extent of investigation — In conducting an investigation under subsection (2), the Public Guardian and Trustee is not required to take any steps that, in his or her opinion, are unnecessary for the purpose of determining whether an application to the court is required under subsection (3.1).

(3.1) Application for temporary guardianship — If, as a result of the investigation, the Public Guardian and Trustee has reasonable grounds to believe that a person is incapable of managing property and that the prompt appointment of a temporary guardian of property is required to prevent serious adverse effects, the Public Guardian and Trustee shall apply to the court for an order appointing him or her as temporary guardian of property.

(4) Notice — Notice of the application shall be served on the person alleged to be incapable, unless the court dispenses with notice in view of the nature and urgency of the matter.

(5) [Repealed 1996, c. 2, s. 16(2).]

(6) Order appointing temporary guardian — The court may by order appoint the Public Guardian and Trustee as temporary guardian of property for a period not exceeding ninety days.

(7) Same — The order shall set out the temporary guardian's powers and any conditions imposed on the guardianship.

(8) Power of attorney — The order may suspend the powers of any attorney under a

continuing power of attorney during the term of the temporary guardianship.

(9) Service of order — If the order was made without notice, it shall be served on the person as soon as possible.

(9.1) Termination, variation — On motion by the Public Guardian and Trustee or by the person whose property is under guardianship, the court may terminate the guardianship, reduce or extend its term, or otherwise vary the order.

(10) Duty if no application made — If the public Guardian and Trustee conducts an investigation under this section and decides not to make an application under subsection (3.1), the Public Guardian and Trustee shall, within three years,

(a) destroy all information collected during the investigation and during any previous investigations in respect of the person under this section; and

(b) notify the person who was alleged to be incapable that,

(i) an allegation was made that the person was incapable of managing property and that serious adverse effects were occurring or might occur as a result,

(ii) the Public Guardian and Trustee investigated the allegation as required by this Act and decided not to make an application for temporary guardianship, and

(iii) the Public Guardian and Trustee has destroyed all information collected during the investigation.

(11) Exception — Subsection (10) does not apply if, within three years after the decision is made not to make an application under subsection (3.1),

(a) another investigation is commenced in respect of the person under this section or section 62; or

(b) the Public Guardian and Trustee becomes the person's guardian of property or guardian of the person.
1996, c. 2, s. 16

[Note: Subsections 27(10) and (11), as enacted by 1996, c. 2, s. 16(4), apply in respect of investigations commenced under s. 27, before or after March 29, 1996. See 1996, c. 2, s. 16(5).]

28. (1) Termination — The court may terminate a guardianship created under section 22, on motion in the proceeding in which the guardian was appointed.

(2) Who may make motion — A motion under subsection (1) may be made by the guardian, the applicant in the proceeding in which the guardian was appointed, or any person who was entitled under section 69 to be served with notice of that proceeding.
1996, c. 2, s. 17

29. Suspension — In a motion to terminate a guardianship or temporary guardianship, the court may suspend the powers of the guardian or temporary guardian.
1996, c. 2, s. 17

30. Procedure — Part III (Procedure) applies to motions to terminate guardianships of property.
1996, c. 2, s. 18

Property Management

31. (1) Powers of guardian — A guardian of property has power to do on the incapable person's behalf anything in respect of property that the person could do if capable, except make a will.

(2) [Repealed 1996, c. 2, s. 19.]

(3) Same — The guardian's powers are subject to this Act and to any conditions imposed by the court.
1996, c. 2, s. 19

31.1 Access to personal information — Any person who has personal infor-

mation about an incapable person to which the incapable person would be entitled to have access if capable, including health information and records, shall disclose it to the incapable person's guardian of property on request.

2006, c. 19, Sched. B, s. 22(4)

32. (1) Duties of guardian — A guardian of property is a fiduciary whose powers and duties shall be exercised and performed diligently, with honesty and integrity and in good faith, for the incapable person's benefit.

(1.1) Personal comfort and well-being — If the guardian's decision will have an effect on the incapable person's personal comfort or well-being, the guardian shall consider that effect in determining whether the decision is for the incapable person's benefit.

(1.2) Personal care — A guardian shall manage a person's property in a manner consistent with decisions concerning the person's personal care that are made by the person who has authority to make those decisions.

(1.3) Exception — Subsection (1.2) does not apply in respect of a decision concerning the person's personal care if the decision's adverse consequences in respect of the person's property significantly outweigh the decision's benefits in respect of the person's personal care.

(2) Explanation — The guardian shall explain to the incapable person what the guardian's powers and duties are.

(3) Participation — A guardian shall encourage the incapable person to participate, to the best of his or her abilities, in the guardian's decisions about the property.

(4) Family and friends — The guardian shall seek to foster regular personal contact between the incapable person and supportive family members and friends of the incapable person.

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(5) Consultation — The guardian shall consult from time to time with,

- (a) supportive family members and friends of the incapable person who are in regular personal contact with the incapable person; and
- (b) the persons from whom the incapable person receives personal care.

(6) Accounts — A guardian shall, in accordance with the regulations, keep accounts of all transactions involving the property.

(7) Standard of care — A guardian who does not receive compensation for managing the property 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.

(8) Same — A guardian who receives compensation for managing the property 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.

(9) P.G.T. — Subsection (8) applies to the Public Guardian and Trustee.

(10) Management plan, policies of P.G.T. — A guardian shall act in accordance with the management plan established for the property, if the guardian is not the Public Guardian and Trustee, or with the policies of the Public Guardian and Trustee, if he or she is the guardian.

(11) Amendment of plan — If there is a management plan, it may be amended from time to time with the Public Guardian and Trustee's approval.

(12) Application of Trustee Act — The *Trustee Act* does not apply to the exercise of a guardian's powers or the performance of a guardians' duties.

1996, c. 2, s. 20

33. (1) Liability of guardian — A guardian of property is liable for damages resulting from a breach of the guardian's duty.

(2) Same — If the court is satisfied that a guardian of property who has committed a breach of duty has nevertheless acted honestly, reasonably and diligently, it may relieve the guardian from all or part of the liability.

(3) Exception, corporate directors — Subsection (2) does not apply to a guardian acting as a director of a corporation in which the incapable person is a shareholder unless the guardian has acted honestly, reasonably and diligently with a view to the best interests of the corporation.

(4) Breach of duty — For the purposes of this section, a breach of duty includes a breach of a duty or other obligation by a guardian acting as a director of a corporation, whether arising in equity, at common law or by statute.

2006, c. 34, s. 24(1)

33.1 Will — A guardian of property shall make reasonable efforts to determine,

- (a) whether the incapable person has a will; and
- (b) if the incapable person has a will, what the provisions of the will are.

1996, c. 2, s. 21

33.2 (1) Property in another person's control — A person who has custody or control of property belonging to an incapable person shall,

- (a) provide the incapable person's guardian of property with any information requested by the guardian that concerns the property and that is known to the person who has custody or control of the property; and
- (b) deliver the property to the incapable person's guardian of property when required by the guardian.

(2) Property includes will — For the purposes of subsection (1), the property belonging to a person includes the person's will.

(3) Copies of documents — A person who has custody or control of any document

relating to an incapable person's property that was signed by or given to the incapable person shall, on request, provide the incapable person's guardian of property with a copy of the document.

1996, c. 2, s. 21

33.3 (1) Existing corporate debts and liabilities — Despite any other Act, where a person who is acting as the guardian of property under this Act becomes the director of a corporation by reason of acting in that capacity, the guardian is not liable as a director for any debt or other liability or obligation of the corporation in existence at the time the guardian became a director.

(2) Estate remains liable — Nothing in this section affects the liability of the estate on whose behalf a guardian is acting with respect to any debt or other liability or obligation of the corporation.

2006, c. 34, s. 24(2)

34. Completion of transactions — A guardian of property has power to complete a transaction that the incapable person entered into before becoming incapable.

35. (1) P.G.T., powers of executor — If the Public Guardian and Trustee is the guardian of property for an incapable person immediately before the person's death, the Public Guardian and Trustee may, but need not, exercise the powers of an executor to whom the incapable person's property is given in trust for the payment of debts and the distribution of the residue, until notified of another person's appointment as personal representative.

(2) Same — If the Public Guardian and Trustee exercises powers under subsection (1), it may be with respect to all of the property or such portion of the property as the Public Guardian and Trustee determines.

(3) Same — If the Public Guardian and Trustee exercises powers under subsection (1) only with respect to a portion of the property, the duties and responsibilities of the

Public Guardian and Trustee in respect of the property are limited to that portion.

2009, c. 33, Sched. 2, s. 71(6)

35.1 (1) Disposition of property given by will — A guardian of property shall not dispose of property that the guardian knows is subject to a specific testamentary gift in the incapable person's will.

(2) Application — Subsection (1) does not apply in respect of a specific testamentary gift of money.

(3) Permitted dispositions — Despite subsection (1),

(a) the guardian may dispose of the property if the disposition of that property is necessary to comply with the guardian's duties; or

(b) the guardian may make a gift of the property to the person who would be entitled to it under the will, if the gift is authorized by section 37.

1996, c. 2, s. 22

36. (1) Proceeds of disposition — The doctrine of ademption does not apply to property that is subject to a specific testamentary gift and that a guardian of property disposes of under this Act, and any one who would have acquired a right to the property on the death of the incapable person is entitled to receive from the residue of the estate the equivalent of a corresponding right in the proceeds of the disposition of the property, without interest.

(2) If residue insufficient — If the residue of the incapable person's estate is not sufficient to pay all entitlements under subsection (1) in full, the persons entitled under subsection (1) shall share the residue in amounts proportional to the amounts to which they would otherwise have been entitled.

(3) Will prevails — Subsections (1) and (2) are subject to a contrary intention in the incapable person's will.

1996, c. 2, s. 23

36.1 Recitals — A recital, in a document executed by the Public Guardian and Trustee, that the Public Guardian and Trustee is the incapable person's guardian of property under this Act is proof of the facts recited, in the absence of evidence to the contrary.

1994, c. 27, s. 62(2)

37. (1) Required expenditures — A guardian of property shall make the following expenditures from the incapable person's property:

1. The expenditures that are reasonably necessary for the person's support, education and care.
2. The expenditures that are reasonably necessary for the support, education and care of the person's dependants.
3. The expenditures that are necessary to satisfy the person's other legal obligations.

(2) Guiding principles — The following rules apply to expenditures under subsection (1):

1. The value of the property, the accustomed standard of living of the incapable person and his or her dependants and the nature of other legal obligations shall be taken into account.
2. Expenditures under paragraph 2 may be made only if the property is and will remain sufficient to provide for expenditures under paragraph 1.
3. Expenditures under paragraph 3 may be made only if the property is and will remain sufficient to provide for expenditures under paragraphs 1 and 2.

(3) Optional expenditures — The guardian may make the following expenditures from the incapable person's property:

1. Gifts or loans to the person's friends and relatives.
2. Charitable gifts.

(4) Guiding principles — The following rules apply to expenditures under subsection (3):

1. They may be made only if the property is and will remain sufficient to satisfy the requirements of subsection (1).
 2. Gifts or loans to the incapable person's friends or relatives may be made only if there is reason to believe, based on intentions the person expressed before becoming incapable, that he or she would make them if capable.
 3. Charitable gifts may be made only if,
 - i. the incapable person authorized the making of charitable gifts in a power of attorney executed before becoming incapable, or
 - ii. there is evidence that the person made similar expenditures when capable.
 4. If a power of attorney executed by the incapable person before becoming incapable contained instructions with respect to the making of gifts or loans to friends or relatives or the making of charitable gifts, the instructions shall be followed, subject to paragraphs 1, 5 and 6.
 5. A gift or loan to a friend or relative or a charitable gift shall not be made if the incapable person expresses a wish to the contrary.
 6. The total amount or value of charitable gifts shall not exceed the lesser of,
 - i. 20 per cent of the income of the property in the year in which the gifts are made, and
 - ii. the maximum amount or value of charitable gifts provided for in a power of attorney executed by the incapable person before becoming incapable.
- (5) Increase, charitable gifts** — The court may authorize the guardian to make a

charitable gift that does not comply with paragraph 6 of subsection (4),

- (a) on motion by the guardian in the proceeding in which the guardian was appointed, if the guardian was appointed under section 22 or 27; or
- (b) on application, if the guardian is the statutory guardian of property.

(6) Expenditures for person's benefit — Expenditures made under this section shall be deemed to be for the incapable person's benefit.

1996, c. 2, s. 24

38. (1) Attorney under continuing power of attorney — Section 32, except subsections (10) and (11), and sections 33, 33.1, 33.2, 34, 35.1, 36 and 37 also apply, with necessary modifications, to an attorney acting under a continuing power of attorney if the grantor is incapable of managing property or the attorney has reasonable grounds to believe that the grantor is incapable of managing property.

(2) Authority under subs. 37(5) — An attorney under a continuing power of attorney shall make an application to the court to obtain the authority referred to in subsection 37(5).

1996, c. 2, s. 25

39. (1) Directions from court — If an incapable person has a guardian of property or an attorney under a continuing power of attorney, the court may give directions on any question arising in connection with the guardianship or power of attorney.

(2) Form of request — A request for directions shall be made,

- (a) on application, if no guardian of property has been appointed under section 22 or 27; or
- (b) on motion in the proceeding in which the guardian was appointed, if a guardian of property has been appointed under section 22 or 27.

(3) Applicant; moving party — An application or motion under this section may be made by the incapable person's guardian of property, attorney under a continuing power of attorney, defendant, guardian of the person or attorney under a power of attorney for personal care, by the Public Guardian and Trustee, or by any other person with leave of the court.

(4) Order — The court may by order give such directions as it considers to be for the benefit of the person and his or her dependants and consistent with this Act.

(5) Variation of order — The court may, on motion by a person referred to in subsection (3), vary the order.

1996, c. 2, s. 26; 2006, c. 19, Sched. B, s. 22(5)

40. (1) Compensation — A guardian of property or attorney under a continuing power of attorney may take annual compensation from the property in accordance with the prescribed fee scale.

(2) Same — The compensation may be taken monthly, quarterly or annually.

(3) Same — The guardian or attorney may take an amount of compensation greater than the prescribed fee scale allows,

(a) in the case where the Public Guardian and Trustee is not the guardian or attorney, if consent in writing is given by the Public Guardian and Trustee and by the incapable person's guardian of the person or attorney under a power of attorney for personal care, if any; or

(b) in the case where the Public Guardian and Trustee is the guardian or attorney, if the court approves.

(4) Effect of power of attorney — Subsections (1) to (3) are subject to provisions respecting compensation contained in a continuing power of attorney executed by the incapable person if,

(a) the compensation is taken by the attorney under the power of attorney; or

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(b) the compensation is taken by a guardian of property who was the incapable person's attorney under the power of attorney.

1996, c. 2, s. 27

41. [Repealed 1996, c. 2, s. 28.]

42. (1) Passing of accounts — The court may, on application, order that all or a specified part of the accounts of an attorney or guardian of property be passed.

(2) Attorney's accounts — An attorney, the grantor or any of the persons listed in subsection (4) may apply to pass the attorney's accounts.

(3) Guardian's accounts — A guardian of property, the incapable person or any of the persons listed in subsection (4) may apply to pass the accounts of the guardian of property.

(4) Others entitled to apply — The following persons may also apply:

1. The grantor's or incapable person's guardian of the person or attorney for personal care.
2. A dependant of the grantor or incapable person.
3. The Public Guardian and Trustee.
4. The Children's Lawyer.
5. A judgment creditor of the grantor or incapable person.
6. Any other person, with leave of the court.

(5) P.G.T. a party — If the Public Guardian and Trustee is the applicant or the respondent, the court shall grant the application, unless it is satisfied that the application is frivolous or vexatious.

(6) Filing of accounts — The accounts shall be filed in the court office and the procedure in the passing of the accounts is the same and has the same effect as in the passing of executors' and administrators' accounts.

(7) Powers of court — In an application for the passing of an attorney's accounts the court may, on motion or on its own initiative,

- (a) direct the Public Guardian and Trustee to bring an application for guardianship of property;
- (b) suspend the power of attorney pending the determination of the application;
- (c) appoint the Public Guardian and Trustee or another person to act as guardian of property pending the determination of the application;
- (d) order an assessment of the grantor of the power of attorney under section 79 to determine his or her capacity; or
- (e) order that the power of attorney be terminated.

(8) Same — In an application for the passing of the accounts of a guardian of property the court may, on motion or on its own initiative,

- (a) adjust the guardian's compensation in accordance with the value of the services performed;
- (b) suspend the guardianship pending the determination of the application;
- (c) appoint the Public Guardian and Trustee or another person to act as guardian of property pending the determination of the application; or
- (d) order that the guardianship be terminated.

1994, c. 27, s. 43(2)

**PART II — THE PERSON
(SS. 43–68)*****General***

43. Application of Part — This Part applies to decisions on behalf of persons who are at least sixteen years old.

44. Age — To exercise a power of decision under this Part on behalf of another person, a person must be at least sixteen years old.

45. Incapacity for personal care — A person is incapable of personal care if the person is not able to understand information that is relevant to making a decision concerning his or her own health care, nutrition, shelter, clothing, hygiene or safety, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

Powers of Attorney for Personal Care

46. (1) Power of attorney for personal care — A person may give a written power of attorney for personal care, authorizing the person or persons named as attorneys to make, on the grantor's behalf, decisions concerning the grantor's personal care.

(2) P.G.T. may be attorney — The power of attorney may name the Public Guardian and Trustee as attorney if his or her consent in writing is obtained before the power of attorney is executed.

(3) Prohibition — A person may not act as an attorney under a power of attorney for personal care, unless the person is the grantor's spouse, partner or relative, if the person,

- (a) provides health care to the grantor for compensation; or
- (b) provides residential, social, training or support services to the grantor for compensation.

(4) Two or more attorneys — If the power of attorney names two or more persons as attorneys, the attorneys shall act jointly, unless the power of attorney provides otherwise.

(5) Death, etc., of joint attorney — If two or more attorneys act jointly under the power of attorney and one of them dies, becomes incapable of personal care or resigns,

the remaining attorney or attorneys are authorized to act, unless the power of attorney provides otherwise.

(6) Conditions and restrictions — The power of attorney is subject to this Part, and to the conditions and restrictions that are contained in the power of attorney and are consistent with this Act.

(7) Instructions — The power of attorney may contain instructions with respect to the decisions the attorney is authorized to make.

(8) Form — The power of attorney need not be in any particular form

(9) Same — The power of attorney may be in the prescribed form.

(10) [Repealed 1996, c. 2, s. 30(6).]

(11) [Repealed 1996, c. 2, s. 30(6).]

(12) [Repealed 1996, c. 2, s. 30(6).]
1996, c. 2, s. 30

47. (1) Capacity to give power of attorney for personal care — A person is capable of giving a power of attorney for personal care if the person,

- (a) has the ability to understand whether the proposed attorney has a genuine concern for the person's welfare; and
- (b) appreciates that the person may need to have the proposed attorney make decisions for the person.

(2) Validity — A power of attorney for personal care is valid if, at the time it was executed, the grantor was capable of giving it even if the grantor is incapable of personal care.

(3) Capacity to revoke — A person is capable of revoking a power of attorney for personal care if he or she is capable of giving one.

(4) Capacity to give instructions — Instructions contained in a power of attorney for personal care with respect to a decision the attorney is authorized to make are valid

if, at the time the power of attorney was executed, the grantor had the capacity to make the decision.

48. (1) Execution — A power of attorney for personal care shall be executed in the presence of two witnesses, each of whom shall sign the power of attorney as witness.

(2) Persons who shall not be witnesses — The persons referred to in subsection 10 (2) shall not be witnesses.

(3) [Repealed 1996, c. 2, s. 31(2).]

(4) Non-compliance — A power of attorney for personal care that does not comply with subsections (1) and (2) is not effective, but the court may, on any person's application, declare the power of attorney for personal care to be effective if the court is satisfied that it is in the grantor's interests to do so.

1996, c. 2, s. 31

49. (1) When power of attorney effective — A provision in a power of attorney for personal care that confers authority to make a decision concerning the grantor's personal care is effective to authorize the attorney to make the decision if,

(a) the *Health Care Consent Act, 1996* applies to the decision and that Act authorizes the attorney to make the decision; or

(b) the *Health Care Consent Act, 1996* does not apply to the decision and the attorney has reasonable grounds to believe that the grantor is incapable of making the decision, subject to any condition in the power of attorney that prevents the attorney from making the decision unless the fact that the grantor is incapable of personal care has been confirmed.

(2) Method for confirmation — A power of attorney that contains a condition described in clause (1)(b) may specify the method for confirming whether the grantor is incapable of personal care and, if no

method is specified, that fact may be confirmed by notice to the attorney in the prescribed form from an assessor stating that the assessor has performed an assessment of the grantor's capacity and has found that the grantor is incapable of personal care.

(3) Instructions to assessor — A power of attorney that contains a condition described in clause (1)(b) may require an assessor who performs an assessment of the grantor's capacity to consider factors described in the power of attorney.

(4) Application — This section applies to powers of attorney given before or after the coming into force of section 32 of the *Advocacy, Consent and Substitute Decisions Statute Law Amendment Act, 1996*.

1996, c. 2, s. 32

50. (1) Special provisions — A power of attorney for personal care may contain one or more of the provisions described in subsection (2), but a provision is not effective unless both of the following circumstances exist:

1. At the time the power of attorney was executed or within 30 days afterwards, the grantor made a statement in the prescribed form indicating that he or she understood the effect of the provision and of subsection (4).

2. Within 30 days after the power of attorney was executed, an assessor made a statement in the prescribed form,

i. indicating that, after the power of attorney was executed, the assessor performed an assessment of the grantor's capacity,

ii. stating the assessor's opinion that, at the time of the assessment, the grantor was capable of personal care and was capable of understanding the effect of the provision and of subsection (4), and

iii. setting out the facts on which the opinion is based.

(2) List of provisions — The provisions referred to in subsection (1) are:

1. A provision that authorizes the attorney and other persons under the direction of the attorney to use force that is necessary and reasonable in the circumstances,
 - i. to determine whether the grantor is incapable of making a decision to which the *Health Care Consent Act, 1996* applies,
 - ii. to confirm, in accordance with subsection 49(2), whether the grantor is incapable of personal care, if the power of attorney contains a condition described in clause 49(1)(b), or
 - iii. to obtain an assessment of the grantor's capacity by an assessor in any other circumstances described in the power of attorney.
2. A provision that authorizes the attorney and other persons under the direction of the attorney to use force that is necessary and reasonable in the circumstances to take the grantor to any place for care or treatment, to admit the grantor to that place and to detain and restrain the grantor in that place during the care or treatment.
3. A provision that waives the grantor's right to apply to the Consent and Capacity Board under sections 32, 50 and 65 of the *Health Care Consent Act, 1996* for a review of a finding of incapacity that applies to a decision to which that Act applies.

**Proposed Amendment —
50(2), para. 3**

3. A provision that waives the grantor's right to apply to the Consent and Capacity Board under sections 32, 50, 54.14 and 65 of the *Health Care Consent Act, 1996* for a review of a finding of incapacity that applies to a decision to which that Act applies.

2017, c. 25, Sched. 5, s. 73 [Not in force at date of publication.]

(3) Conditions and restrictions — A provision described in subsection (2) that is contained in a power of attorney for personal care is subject to any conditions and restrictions contained in the power of attorney that are consistent with this Act.

(4) Revocation — If a provision described in subsection (2) is contained in a power of attorney for personal care and both of the circumstances described in subsection (1) exist, the power of attorney may be revoked only if, within 30 days before the revocation is executed, an assessor performed an assessment of the grantor's capacity and made a statement in the prescribed form,

- (a) indicating that, on a date specified in the statement, the assessor performed an assessment of the grantor's capacity;
- (b) stating the assessor's opinion that, at the time of the assessment, the grantor was capable of personal care; and
- (c) setting out the facts on which the opinion is based.

(5) Use of force — No action lies against an attorney, a police services board, a police officer or any other person arising from the use of force that is authorized by a provision described in subsection (2) that is effective under subsection (1).

Proposed Amendment — 50(5)

(5) Use of force — No action lies against an attorney, a police service board, a police officer or any other person arising from the use of force that is authorized by a provision described in subsection (2) that is effective under subsection (1).

2019, c. 1, Sched. 4, s. 57(2) [Not in force at date of publication.]

1996, c. 2, s. 32

[Note: If a power of attorney for personal care was accepted for registration under section 50 of the Act before March 29, 1996, the power of attorney shall be deemed to contain all the provisions described in subsection 50(2) of the Act, as re-enacted by 1996, c. 2, s. 32(1), and both of the circum-

stances described in subsection 50(1) of the Act, as re-enacted by 1996, c. 2, s. 32(1), shall be deemed to exist in respect of each provision. See: 1996, c. 2, s. 32(2).]

51. (1) Assessment — The attorney under a power of attorney for personal care shall, on the request of and on behalf of the grantor, assist in arranging an assessment of the grantor's capacity by an assessor.

(2) Limit — Subsection (1) does not require an attorney to assist in arranging an assessment if an assessment has been performed in the six months before the request.

1996, c. 2, s. 32

52. (1) Resignation of attorney — An attorney under a power of attorney for personal care may resign but, if the attorney has acted under the power of attorney, the resignation is not effective until the attorney delivers a copy of the resignation to,

- (a) the grantor;
- (b) any other attorneys under the power of attorney;
- (c) the person named by the power of attorney as a substitute for the attorney who is resigning, if the power of attorney provides for the substitution of another person; and
- (d) unless the power of attorney provides otherwise, the grantor's spouse or partner and the relatives of the grantor who are known to the attorney and reside in Ontario, if the power of attorney does not provide for the substitution of another person or the substitute is not able and willing to act.

(1.1) Exception — Clause (1)(d) does not require a copy of the resignation to be delivered to,

- (a) the grantor's spouse, if the grantor and the spouse are living separate and apart as a result of a breakdown of their relationship; or
- (b) a relative of the grantor, if the grantor and the relative are related only by

marriage and the grantor and his or her spouse are living separate and apart as a result of a breakdown of their relationship.

(2) Notice to other persons — An attorney who resigns shall make reasonable efforts to give notice of the resignation to persons with whom the attorney previously dealt on behalf of the grantor and with whom further dealings are likely to be required on behalf of the grantor.

(3) Accessible format for notice of resignation — If an attorney has reason to believe that a person entitled to receive a copy of the attorney's resignation needs it to be provided in an accessible format, or if the person has requested an accessible format, the attorney shall provide the person with a copy of the resignation in a format that is accessible to that person.

(4) Explanation of resignation — If an attorney has reason to believe that a person entitled to receive a copy of the attorney's resignation needs it to be explained, or if the person has requested an explanation, the attorney shall explain the effect of the resignation to the person.

(5) Effectiveness of resignation not affected — Despite subsections (3) and (4), the attorney's resignation is effective when the copies of the resignation are delivered under subsection (1).

1996, c. 2, s. 33; 2005, c. 5, s. 65(5); 2016, c. 5, Sched. 27, s. 5

53. (1) Termination — A power of attorney for personal care is terminated,

- (a) when the attorney dies, becomes incapable of personal care or resigns, unless,
 - (i) another attorney is authorized to act under subsection 46(5), or
 - (ii) the power provides for the substitution of another person and that person is able and willing to act;

(b) when the court appoints a guardian for the grantor under section 55;

(c) when the grantor executes a new power of attorney for personal care, unless the grantor provides that there shall be multiple powers of attorney for personal care;

(d) when the power of attorney is revoked.

(2) Execution of revocation — A revocation shall be in writing and shall be executed in the same way as a power of attorney for personal care.

(3) [Repealed 1996, c. 2, s. 34(3).]
1996, c. 2, s. 34

54. [Repealed 1996, c. 2, s. 35.]

Court-Appointed Guardians of the Person

55. (1) Application for appointment — The court may, on any person's application, appoint a guardian of the person for a person who is incapable of personal care and, as a result, needs decisions to be made on his or her behalf by a person who is authorized to do so.

(2) Prohibition — The court shall not appoint a guardian if it is satisfied that the need for decisions to be made will be met by an alternative course of action that,

(a) does not require the court to find the person to be incapable of personal care; and

(b) is less restrictive of the person's decision-making rights than the appointment of a guardian.

[Note: The committee of the person appointed under the Mental Incompetency Act before April 3, 1995, for a person who has been declared mentally incompetent shall be deemed to be his or her guardian of the person appointed under s. 55 of this Act, subject to the restrictions contained in the order appointing the committee. See: 1992, c. 32, s.

21(4) and (6), (7)–(11), as enacted by 1996, c. 2, s. 64(3).]

56. Procedure — Part III (Procedure) applies to applications to appoint guardians of the person.

57. (1) Who may not be appointed guardian — A person who provides health care or residential, social, training or support services to an incapable person for compensation shall not be appointed under section 55 as his or her guardian of the person.

(2) Exception — Subsection (1) does not apply to the incapable person's spouse, partner or relative or to the following persons:

1. The incapable person's guardian of property.
2. The attorney for personal care.
3. The attorney under a continuing power of attorney for property.

(2.1) Exception — Subsection (1) does not apply to a person if the court is satisfied that there is no other suitable person who is available and willing to be appointed.

(2.2) P.G.T. — The court shall not appoint the Public Guardian and Trustee as a guardian under section 55 unless,

- (a) the application proposes the Public Guardian and Trustee as guardian;
- (b) the application is accompanied by the Public Guardian and Trustee's written consent to the appointment; and
- (c) there is no other suitable person who is available and willing to be appointed.

(3) Criteria — Except in the case of an application that is being dealt with under section 77 (summary disposition), the court shall consider,

- (a) whether the proposed guardian is the attorney under a continuing power of attorney for property;

(b) the incapable person's current wishes, if they can be ascertained; and
(c) the closeness of the relationship of the applicant to the incapable person and, if the applicant is not the proposed guardian, the closeness of the relationship of the proposed guardian to the incapable person.

(4) Two or more guardians — The court may, with their consent, appoint two or more persons as joint guardians of the person or may appoint each of them as guardian in respect of a specified period.

1996, c. 2, s. 36; 2006, c. 19, Sched. B, s. 22(6); 2009, c. 33, Sched. 2, s. 71(7)

58. (1) Finding of incapacity — An order appointing a guardian of the person shall include a finding that the person is incapable in respect of the functions referred to in section 45, or in respect of some of them, and, as a result, needs decisions to be made on his or her behalf by a person who is authorized to do so.

(2) Contents of order — An order appointing a guardian may,

- (a) make the appointment for a limited period as the court considers appropriate;
- (b) impose such other conditions on the appointment as the court considers appropriate.

(3) Full or partial guardianship — The order shall specify whether the guardianship is full or partial.

59. (1) Full guardianship — The court may make an order for full guardianship of the person only if the court finds that the person is incapable in respect of all the functions referred to in section 45.

(2) Powers of guardian — Under an order for full guardianship, the guardian may,

- (a) exercise custodial power over the person under guardianship, determine his or her living arrangements and provide for his or her shelter and safety;

(b) be the person's litigation guardian, except in respect of litigation that relates to the person's property or to the guardian's status or powers;

(c) settle claims and commence and settle proceedings on the person's behalf, except claims and proceedings that relate to the person's property or to the guardian's status or powers;

(d) have access to personal information, including health information and records, to which the person would be entitled to have access if capable, and consent to the release of that information to another person, except for the purposes of litigation that relates to the person's property or to the guardian's status or powers;

(e) on behalf of the person, make any decision to which the *Health Care Consent Act, 1996* applies;

(e.1) make decisions about the person's health care, nutrition and hygiene;

(f) make decisions about the person's employment, education, training, clothing and recreation and about any social services provided to the person; and

(g) exercise the other powers and perform the other duties that are specified in the order.

(3) Power to apprehend person — If the guardian has custodial power over the person and the court is satisfied that it may be necessary to apprehend him or her, the court may in its order authorize the guardian to do so; in that case the guardian may, with the assistance of a police officer, enter the premises specified in the order, between 9 a.m. and 4 p.m. or during the hours specified in the order, and search for and remove the person, using such force as may be necessary.

(4) Matters excluded unless expressly stated — Unless the order expressly pro-

vides otherwise, the guardian does not have power,

(a) [Repealed 1996, c. 2, s. 37(2).]

(b) to change existing arrangements in respect of custody of or access to a child, or to give consent on the person's behalf to the adoption of a child.

(5) Same — If the order provides that the guardian has a power referred to in subsection (4), the order may specify that the power may be exercised from time to time as the need arises.

1996, c. 2, s. 37; 2006, c. 19, Sched. B, s. 22(7)

59.1 Access to personal information — Any person who has personal information about an incapable person to which the incapable person would be entitled to have access if capable, including health information and records, shall disclose it to the incapable person's guardian of the person on request if the guardian has the power referred to in clause 59(2)(d).

2006, c. 19, Sched. B, s. 22(8)

60. (1) Partial guardianship — The court may make an order for partial guardianship of the person for an incapable person if it finds that he or she is incapable in respect of some but not all of the functions referred to in section 45.

(2) Same — The order shall specify in respect of which functions the person is found to be incapable.

(3) Powers of guardian — Under an order for partial guardianship, the guardian may exercise those of the powers set out in subsections 59(2), (3), (4) and (5) that are specified in the order.

1996, c. 2, s. 38

61. (1) Variation or substitution — The court may vary an order appointing a guardian of the person under section 55 or substitute another person as guardian, on motion in the proceeding in which the guardian was appointed.

(2) Who may make motion — A motion under subsection (1) may be made by the guardian, the applicant in the proceeding in which the guardian was appointed, or any person who was entitled under section 69 to be served with notice of that proceeding.

(3) Motion to vary — Subsection 69(4) to (9) and section 77 apply, with necessary modifications, to a motion to vary an order.

(4) Motion to substitute — Subsection 69(3), subsections 69(5) to (9), subsection 70(2) and section 77 apply, with necessary modifications, to a motion to substitute another person as guardian.

1996, c. 2, s. 39

62. (1) Serious adverse effects — Serious illness or injury, or deprivation of liberty or personal security, are serious adverse effects for the purposes of this section.

(2) Duty to investigate — The Public Guardian and Trustee shall investigate any allegation that a person is incapable of personal care and that serious adverse effects are occurring or may occur as a result.

(3) Extent of investigation — In conducting an investigation under subsection (2), the Public Guardian and Trustee is not required to take any steps that, in his or her opinion, are unnecessary for the purpose of determining whether an application to the court is required under subsection (3.1).

(3.1) Application for temporary guardianship — If, as a result of the investigation, the Public Guardian and Trustee has reasonable grounds to believe that a person is incapable of personal care and that the prompt appointment of a temporary guardian of the person is required to prevent serious adverse effects, the Public Guardian and Trustee shall apply to the court for an order appointing him or her as the incapable person's temporary guardian of the person.

(4) Notice — Notice of the application shall be served on the person alleged to be incapable, and his or her attorney for personal care, if known, unless the court dis-

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penses with notice in view of the nature and urgency of the matter.

(5) [Repealed 1996, c. 2, s. 40(3).]

(6) Order appointing temporary guardian — The court may by order appoint the Public Guardian and Trustee as temporary guardian.

(7) Duration of appointment — The appointment is valid for a period fixed by the court that does not exceed 90 days.

(8) Contents of order — The order shall set out the Public Guardian and Trustee's powers as temporary guardian and any conditions imposed on the guardianship.

(9) Power of attorney — The order may suspend the powers of any attorney under a power of attorney for personal care during the term of the temporary guardianship.

(9.1) Service of order — If the order was made without notice, it shall be served on the person as soon as possible.

(10) Power to apprehend person — If the Public Guardian and Trustee has custodial power over the person and the court is satisfied that it may be necessary to apprehend him or her, the court may authorize the Public Guardian and Trustee to do so; in that case the Public Guardian and Trustee may, with the assistance of a police officer, enter the premises specified in the order, between 9 a.m. and 4 p.m. or during the hours specified in the order, and search for and remove the person, using such force as may be necessary.

(11) Termination, variation — On motion by the Public Guardian and Trustee or by the person under guardianship, the court may terminate the guardianship, reduce or extend its term, or otherwise vary the order.

(12) Duty if no application made — If the Public Guardian and Trustee conducts an investigation under this section and decides not to make an application under subsection

(3.1), the Public Guardian and Trustee shall, within three years,

- (a) destroy all information collected during the investigation and during any previous investigations in respect of the person under this section; and
- (b) notify the person who was alleged to be incapable that,

- (i) an allegation was made that the person was incapable of personal care and that serious adverse effects were occurring or might occur as a result,

- (ii) the Public Guardian and Trustee investigated the allegation as required by this Act and decided not to make an application for temporary guardianship, and

- (iii) the Public Guardian and Trustee has destroyed all information collected during the investigation.

(13) Exception — Subsection (12) does not apply if, within three years after the decision is made not to make an application under subsection (3.1),

- (a) another investigation is commenced in respect of the person under this section or section 27; or

- (b) the Public Guardian and Trustee becomes the person's guardian of property or guardian of the person.

1996, c. 2, s. 40

[Note: Subsections 62(12) and (13) of the Act as re-enacted by 1996, c. 2, s. 40(6), apply in respect of investigations commenced under s. 62 before or after March 29, 1996. See 1996, c. 2, s. 40(7).]

63. (1) Termination — The court may terminate a guardianship created under section 55, on motion in the proceeding in which the guardian was appointed.

(2) Who may make motion — A motion under subsection (1) may be made by the guardian, the applicant in the proceeding in

which the guardian was appointed, or any person who was entitled under section 69 to be served with notice of that proceeding.

1996, c. 2, s. 41

64. Suspension — In a motion to terminate a guardianship or temporary guardianship, the court may suspend the powers of the guardian or temporary guardian.

1996, c. 2, s. 41

65. Procedure — Part III (Procedure) applies to motions to terminate guardianships of the person.

1996, c. 2, s. 42

Duties of Guardians of the Person and Attorneys for Personal Care

66. (1) Duties of guardian — The powers and duties of a guardian of the person shall be exercised and performed diligently and in good faith.

(2) Explanation — The guardian shall explain to the incapable person what the guardian's powers and duties are.

(2.1) Decisions under *Health Care Consent Act, 1996* — The guardian shall make decisions on the incapable person's behalf to which the *Health Care Consent Act, 1996* applies in accordance with that Act.

(3) Other decisions — The guardian shall make decisions on the incapable person's behalf to which the *Health Care Consent Act, 1996* does not apply in accordance with the following principles:

1. If the guardian knows of a wish or instruction applicable to the circumstances that the incapable person expressed while capable, the guardian shall make the decision in accordance with the wish or instruction.

2. The guardian shall use reasonable diligence in ascertaining whether there are such wishes or instructions.

3. A later wish or instruction expressed while capable prevails over an earlier wish or instruction.

4. If the guardian does not know of a wish or instruction applicable to the circumstances that the incapable 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 in the incapable person's best interests.

(4) Best interests — In deciding what the person's best interests are for the purpose of subsection (3), the guardian shall take into consideration,

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

1. Whether the guardian's decision is likely to,

- i. improve the quality of the person's life,
- ii. prevent the quality of the person's life from deteriorating, or
- iii. reduce the extent to which, or the rate at which, the quality of the person's life is likely to deteriorate.

2. Whether the benefit the person is expected to obtain from the decision outweighs the risk of harm to the person from an alternative decision.

(4.1) Records of decisions — The guardian shall, in accordance with the regulations, keep records of decisions made by the guardian on the incapable person's behalf.

(5) Participation — The guardian shall encourage the person to participate, to the best of his or her abilities, in the guardian's decisions on his or her behalf.

(6) Family and friends — The guardian shall seek to foster regular personal contact between the incapable person and supportive family members and friends of the incapable person.

(7) Consultation — The guardian shall consult from time to time with,

- (a) supportive family members and friends of the incapable person who are in regular personal contact with the incapable person; and
- (b) the persons from whom the incapable person receives personal care.

(8) Independence — The guardian shall, as far as possible, seek to foster the person's independence.

(9) Least restrictive course of action — The guardian shall choose the least restrictive and intrusive course of action that is available and is appropriate in the particular case.

(10) Confinement, restraint and monitoring devices — The guardian shall not use confinement or monitoring devices or restrain the person physically or by means of drugs, and shall not give consent on the person's behalf to the use of confinement, monitoring devices or means of restraint, unless,

- (a) the practice is essential to prevent serious bodily harm to the person or to others, or allows the person greater freedom or enjoyment;
- (b) [Repealed 1996, c. 2, s. 43(4).]

(11) Common law — Nothing in this Act affects the common law duty of caregivers to restrain or confine persons when immediate action is necessary to prevent serious bodily harm to them or to others.

(12) Electric shock as aversive conditioning — The guardian shall not use elec-

tric shock as aversive conditioning and shall not give consent on the person's behalf to the use of electric shock as aversive conditioning unless the consent is given to a treatment in accordance with the *Health Care Consent Act, 1996*.

(13) Research — Nothing in this Act affects the law relating to giving or refusing consent on another person's behalf to a procedure whose primary purpose is research.

(14) Sterilization, transplants — Nothing in this Act affects the law relating to giving or refusing consent on another person's behalf to one of the following procedures:

1. Sterilization that is not medically necessary for the protection of the person's health.
2. The removal of regenerative or non-regenerative tissue for implantation in another person's body.

(15) Guardianship plan — A guardian shall act in accordance with the guardianship plan.

(16) Amendment of plan — If there is a guardianship plan, it may be amended from time to time with the Public Guardian and Trustee's approval.

(17) [Repealed 1996, c. 2, s. 43(6).]

(18) [Repealed 1996, c. 2, s. 43(6).]

(19) Immunity — No proceeding for damages shall be commenced against a guardian for anything done or omitted in good faith in connection with the guardian's powers and duties under this Act.

1996, c. 2, s. 43

67. Duties of attorney — Section 66, except subsections 66(15) and (16), applies with necessary modifications to an attorney who acts under a power of attorney for personal care.

1996, c. 2, s. 44

68. (1) Directions from court — If an incapable person has a guardian of the person or an attorney under a power of attorney for

personal care, the court may give directions on any question arising in the guardianship or under the power of attorney.

(2) Form of request — A request for directions shall be made,

(a) on application, if no guardian of the person has been appointed under section 55 or 62; or

(b) on motion in the proceeding in which the guardian was appointed, if a guardian of the person has been appointed under section 55 or 62.

(3) Applicant; moving party — An application or motion under this section may be made by the incapable person's guardian of the person, attorney under a power of attorney for personal care, dependant, guardian of property or attorney under a continuing power of attorney, by the Public Guardian and Trustee, or by any other person with leave of the court.

(4) Order — The court may by order give such directions as it considers to be for the benefit of the person and consistent with this Act.

(5) Variation of order — The court may, on motion by a person referred to in subsection (3), vary the order.

1996, c. 2, s. 44

PART III — PROCEDURE IN GUARDIANSHIP APPLICATIONS (SS. 69–77)

Transitional Provision

[Note: Transitional Provision 1996, c. 2, s. 77, provides as follows:

77. Nothing in this Act invalidates a power of attorney given before Part III (Substitute Decisions Act, 1992) comes into force.]

69. Service of notices — (0.1)
Application to terminate statutory guardianship of property — Notice of an application to terminate a statutory guard-

ianship of property shall be served on the following persons:

1. The statutory guardian of property.
2. The applicant's guardian of the person, if known.
3. The applicant's attorney for personal care, if known.
4. The Public Guardian and Trustee, if he or she is not the statutory guardian.

(1) Application to appoint guardian of property — Notice of an application to appoint a guardian of property shall be served on the following persons, together with the documents referred to in subsection 70(1), and those referred to in section 72 if applicable:

1. The person alleged to be incapable of managing property.
2. The attorney under his or her continuing power of attorney, if known.
3. His or her guardian of the person, if known.
4. His or her attorney for personal care, if known.
5. The Public Guardian and Trustee.
6. The proposed guardian of property.

(2) Motion to terminate guardianship of property — Notice of a motion to terminate a guardianship of property shall be served on the following persons, together with the documents referred to in section 73 if applicable:

1. The person whose property is under guardianship.
2. His or her guardian of the person, if known.
3. His or her attorney for personal care, if known.
4. The Public Guardian and Trustee.
5. The guardian of property.

(3) Application to appoint guardian of the person — Notice of an application to appoint a guardian of the person shall be served on the following persons, together

with the documents referred to in subsection 70(2), and those referred to in subsection 71(1) and section 74 if applicable:

1. The person alleged to be incapable of personal care.
2. The attorney under his or her continuing power of attorney, if known.
3. His or her guardian of property, if known.
4. His or her attorney for personal care, if known.
5. The Public Guardian and Trustee.
6. The proposed guardian of the person.

(4) Motion to terminate guardianship of the person — Notice of a motion to terminate a guardianship of the person shall be served on the following persons, together with the documents referred to in section 75 if applicable:

1. The person under guardianship.
2. His or her guardian of property, if known.
3. The attorney under his or her continuing power of attorney, if known.
4. The Public Guardian and Trustee.
5. The guardian of the person.

(5) Same — The notice and accompanying documents need not be served on the applicant or moving party.

(6) Service on family — The notice and accompanying documents shall also be served on all of the following persons who are known, by ordinary mail sent to the person's last known address:

1. The spouse or partner of the person who is alleged to be incapable of managing property, whose property is under guardianship, who is alleged to be incapable of personal care or who is under guardianship of the person, as the case may be.
2. The person's children who are at least 18 years old, in the case of an application or motion under Part I, or at

least 16 years old, in the case of an application or motion under Part II.

3. The person's parents.
4. The person's brothers and sisters who have attained the relevant age referred to in paragraph 2.

(7) Exception — Subsection (6) does not require service on a person whose existence or address cannot be ascertained by the use of reasonable diligence.

(8) Parties — The parties to the application or motion are the applicant or moving party and the persons served under subsection (0.1), (1), (2), (3) or (4), as the case may be.

(9) Adding parties — Any of the following persons in entitled to be added as a party at any stage in the application or motion:

1. A person referred to in paragraph 2 or 3 of subsection (0.1), paragraph 2, 3 or 4 of subsection (1), paragraph 2 or 3 of subsection (2), paragraph 2, 3 or 4 of subsection (3) or paragraph 2 or 3 of subsection (4), as the case may be, who was not served with the notice of application or notice of motion.
2. A person referred to in subsection (6), whether or not served with the notice of application or notice of motion.

(10) [Repealed 1996, c. 2, s. 45(6).]

(11) [Repealed 1996, c. 2, s. 45(6).]
1996, c. 2, s. 45

70. (1) Required documents, application to appoint guardian of property — An application to appoint a guardian of property shall be accompanied by,

- (a) the proposed guardian's consent;
- (b) if the proposed guardian is not the Public Guardian and Trustee, a plan of management for the property, in the prescribed form; and
- (c) a statement signed by the applicant,
 - (i) indicating that the person alleged to be incapable has been in-

formed of the nature of the application and the right to oppose the application, and describing the manner in which the person was informed, or

(ii) if it was not possible to give the person alleged to be incapable the information referred to in subclause (i), describing why it was not possible.

(2) Same, application to appoint guardian of the person — An application to appoint a guardian of the person shall be accompanied by,

- (a) the proposed guardian's consent;
- (b) if the proposed guardian is not the Public Guardian and Trustee, a guardianship plan, in the prescribed form; and
- (c) a statement signed by the applicant,
 - (i) indicating that the person alleged to be incapable has been informed of the nature of the application and the right to oppose the application, and describing the manner in which the person was informed, or
 - (ii) if it was not possible to give the person alleged to be incapable the information referred to in subclause (i), describing why it was not possible.

1996, c. 2, s. 46

71. Optional documents — (1) Application to appoint guardian of the person — An application to appoint a guardian of the person may also be accompanied by one or more statements, each made in the prescribed form by a person who knows the person alleged to be incapable and has been in personal contact with him or her during the twelve months before the notice of application was issued.

(2) Motion to terminate guardianship of the person — A motion to terminate a guardianship of the person may be accompa-

nied by one or more statements, each made in the prescribed form by a person who knows the person under guardianship and has been in personal contact with him or her during the twelve months before the notice of motion was filed with the court.

1996, c. 2, s. 47

72. (1) Required documents, summary disposition, application to appoint guardian of property — If the applicant wishes an application to appoint a guardian of property to be dealt with under section 77 (summary disposition), it shall also be accompanied by two statements made in the prescribed form, one by an assessor and the other by an assessor or by a person who knows the person alleged to be incapable and has been in personal contact with him or her during the twelve months before the notice of application was issued.

(2) Contents of statements — Each statement shall,

- (a) indicate that its maker is of the opinion that the person is incapable of managing property, and set out the facts on which the opinion is based; and
- (b) indicate that its maker can expect no direct or indirect pecuniary benefit as the result of the appointment of a guardian of property.

(3) Same — The statement may also indicate that its maker is of the opinion that it is necessary for decisions to be made on the person's behalf by a person who is authorized to do so and, in that case, shall set out the facts on which the opinion is based.

(4) Assessment — A statement made by an assessor may be used for the purpose of subsection (1) only if,

- (a) the statement indicates that the assessor performed an assessment of the person's capacity and specifies the date on which the assessment was performed; and

(b) the assessment was performed during the six months before the notice of application was issued.

1996, c. 2, s. 48

73. (1) Required documents, summary disposition, motion to terminate guardianship of property — If the moving party wishes a motion to terminate a guardianship of property to be dealt with under section 77 (summary disposition), it shall be accompanied by two statements made in the prescribed form, one by an assessor and the other by an assessor or by a person who knows the person whose property is under guardianship and has been in personal contact with him or her during the twelve months before the notice of motion was filed with the court.

(2) Contents of statements — Each statement shall,

(a) indicate that the maker of the statement is of the opinion that the person is capable of managing property, and set out the facts on which the opinion is based; and

(b) indicate that the maker of the statement can expect no direct or indirect pecuniary benefit as the result of the termination of the guardianship.

(3) Assessment — A statement made by an assessor may be used for the purpose of subsection (1) only if,

(a) the statement indicates that the assessor performed an assessment of the person's capacity and specifies the date on which the assessment was performed; and

(b) the assessment was performed during the six months before the notice of motion was filed with the court.

1996, c. 2, s. 49

74. (1) Required documents, summary disposition, application to appoint guardian of the person — If the applicant wishes an application to appoint a guardian of the person to be dealt with under

section 77 (summary disposition), the application shall also be accompanied by two statements, each made in the prescribed form by an assessor.

(2) Contents of statement — Each statement shall indicate that its maker is of the opinion that the person is incapable in respect of the functions referred to in section 45 (personal care), or in respect of some of them, and shall set out the facts on which the opinion is based.

(3) Same — The statement may also indicate that its maker is of the opinion that the person needs decisions to be made on his or her behalf by a person who is authorized to do so and, in that case, shall set out the facts on which the opinion is based.

(4) Same — Each statement shall,

(a) [Repealed 1996, c. 2, s. 50(1).]

(b) contain an evaluation of the nature and extent of the person's incapacity, setting out the facts on which the evaluation is based.

(5) Assessment — A statement may be used for the purpose of subsection (1) only if,

(a) the statement indicates that the assessor performed an assessment of the person's capacity and specifies the date on which the assessment was performed; and

(b) the assessment was performed during the six months before the notice of application was issued.

1996, c. 2, s. 50

75. (1) Required documents, summary disposition, motion to terminate guardianship of the person — If the moving party wishes a motion to terminate a guardianship of the person to be dealt with under section 77 (summary disposition), the motion shall also be accompanied by two statements, each made in the prescribed form by an assessor.

(2) Contents of statements — Each statement shall indicate that its maker is of the opinion that the person is capable of personal care, and shall set out the facts on which the opinion is based.

(3) Assessment — A statement may be used for the purpose of subsection (1) only if,

(a) the statement indicates that the assessor performed an assessment of the person's capacity and specifies the date on which the assessment was performed; and

(b) the assessment was performed during the six months before the notice of motion was filed with the court.

1996, c. 2, s. 51

76. [Repealed 1996, c. 2, s. 52.]

77. (1) Summary disposition — In an application to appoint a guardian of property or guardian of the person or a motion to terminate a guardianship of property or guardianship of the person, the court may, in the circumstances described in subsection (2), make an order without anyone appearing before it and without holding a hearing.

(2) Same — The registrar of the court shall submit the notice of application or notice of motion, and the accompanying documents, to a judge of the court if,

(a) in the case of an application, the applicant certifies in writing that,

(i) no person has delivered a notice of appearance,

(ii) the documents required by this Part accompany the application,

(iii) in the case of an application to appoint a guardian of property, at least one of the statements referred to in section 72 indicates that its maker is of the opinion that it is necessary for decisions to be made on the person's behalf

by a person who is authorized to do so, and

(iv) in the case of an application to appoint a guardian of the person, at least one of the statements referred to in section 74 indicates that its maker is of the opinion that the person needs decisions to be made on his or her behalf by a person who is authorized to do so;

(b) in the case of a motion, the moving party certifies in writing that,

(i) the documents required by this Part accompany the motion, and

(ii) every person entitled to be served with the notice of motion has filed with the court a statement indicating that they do not intend to appear at the hearing of the motion.

(3) Order — On considering the application or motion, the judge may,

(a) grant the relief sought;

(b) require the parties or their counsel to adduce additional evidence or make representations; or

(c) order that the application or motion proceed to a hearing or order the trial of an issue, and give such directions as the judge considers just.

1996, c. 2, s. 53

PART IV — MISCELLANEOUS (SS. 79—93)

78. (1) Right to refuse assessment — An assessor shall not perform an assessment of a person's capacity if the person refuses to be assessed.

(2) Information to be provided — Before performing an assessment of capacity, the assessor shall explain to the person to be assessed,

(a) the purpose of the assessment;

(b) the significance and effect of a finding of capacity or incapacity; and
(c) the person's right to refuse to be assessed.

(3) Application — Subsections (1) and (2) do not apply to an assessment if,

- (a) the assessment was ordered by the court under section 79; or
- (b) a power of attorney for personal care contains a provision that authorizes the use of force to permit the assessment and the provision is effective under subsection 50(1).

(4) Use of prescribed form — An assessor who performs an assessment of a person's capacity shall use the prescribed form in performing the assessment.

(5) Notice of findings — An assessor who performs an assessment of a person's capacity shall give the person written notice of the assessor's findings.

1996, c. 2, s. 54

79. (1) Order for assessment — If a person's capacity is in issue in a proceeding under this Act and the court is satisfied that there are reasonable grounds to believe that the person is incapable, the court may, on motion or on its own initiative, order that the person be assessed by one or more assessors named in the order, for the purpose of giving an opinion as to the person's capacity.

(2) Same — The order may require the person,

- (a) to submit to the assessment;
- (b) to permit entry to his or her home for the purpose of the assessment;
- (c) to attend at such other places and at such times as are specified in the order.

(3) Place of assessment — The order shall specify the place or places where the assessment is to be performed.

(4) Same — If possible, the assessment shall be performed in the person's home.

(5) Health facility — An order that specifies a health facility as the place where the assessment is to be performed authorizes the person's admission to the facility for the purpose of the assessment.

80. (1) Restraining order — When an order for an assessment has been made, the court may, on motion, make an order restraining a person other than the one whose capacity is in issue from hindering or obstructing the assessment.

(2) [Repealed 1996, c. 2, s. 55.]

(3) Notice to person — The party moving for the restraining order shall serve notice of the motion on the person against whom the order is sought.

1996, c. 2, s. 55

81. (1) Order for enforcement of assessment order — When an order for an assessment has been made under section 79, the court may, on motion, order the applicant in the proceeding in which the person's capacity is in issue, together with a police officer, to apprehend the person, take him or her into custody and bring him or her to a specified place to be assessed there, if the court is satisfied that,

- (a) the assessor named in the order under section 79 has made all efforts that are reasonable in the circumstances to assess the person;
- (b) the assessor was prevented from assessing the person by the actions of the person or of others;
- (c) a restraining order is not appropriate in the circumstances, or has already been used without success; and
- (d) there is no less intrusive means of permitting the assessment to be performed than an order under this subsection.

(2) Duration of order — The order is valid for seven days.

(3) Execution of order — The person named in the order and a police officer may

enter the place specified in the order, between 9 a.m. and 4 p.m. or during the hours specified in the order, and may search for and remove the person, using such force as may be necessary.

(4) Health facility — An order under subsection (1) that specifies a health facility as the place where the assessment is to be conducted authorizes the person's admission to the facility and his or her detention there, for the purpose of the assessment.

(5) Restrictions — The person shall not be held in custody longer than is necessary for the purpose of the assessment, and in any case not for a period exceeding 72 hours, and while in custody shall not be confined in a manner that exceeds what is necessary for the purpose of the assessment.

(6) [Repealed 2006, c. 19, Sched. B, s. 22(9).]
1996, c. 2, s. 56; 2006, c. 19, Sched. B, s. 22(9)

82. (1) P.G.T.'s powers of entry — The Public Guardian and Trustee may exercise a right of entry conferred by this section only for the purpose of an investigation required by section 27 or 62.

(2) Entry to certain premises — The Public Guardian and Trustee is entitled to enter a facility or controlled-access residence, without a warrant and at any time that is reasonable in the circumstances, if he or she has reasonable grounds to believe that,

- (a) the person who is alleged to be incapable is in the premises; and
- (b) a meeting with the person is necessary for the purposes of the investigation.

(3) Controlled-access residences — The right to enter a controlled-access residence under subsection (2) applies only to the common areas of the premises, including the entryways, hallways, elevators and stairs, and the Public Guardian and Trustee may enter a private dwelling unit in the controlled-access residence without the consent

or acquiescence of the occupier only if authorized under subsection (4) or (8).

(4) Warrant for entry — A justice of the peace may issue a warrant to the Public Guardian and Trustee for entry to premises if the justice of the peace is satisfied that the person who is alleged to be incapable is in the premises and,

- (a) the Public Guardian and Trustee has been prevented from exercising a right of entry to the premises under subsection (2); or
- (b) a meeting with the person is necessary for the purposes of the investigation.

(5) Authority conferred by warrant — The warrant authorizes the Public Guardian and Trustee to enter the premises specified in the warrant, between 8 a.m. and 8 p.m. or during the hours specified in the warrant, and to remain there for a reasonable time.

(6) Duration — A warrant is valid for seven days.

(7) Police assistance — The Public Guardian and Trustee may call on a police officer for assistance in executing it.

(8) Other entry without warrant — The Public Guardian and Trustee is entitled to enter premises other than premises that he or she is entitled to enter under subsection (2), without a warrant and between 8 a.m. and 8 p.m., if he or she has reasonable grounds to believe that,

- (a) the person who is alleged to be incapable is in the premises;
- (b) a meeting with the person is necessary for the purposes of the investigation; and
- (c) it is impractical, by reason of the location of the premises, to obtain a warrant under subsection (4).

(9) Meeting — When the Public Guardian and Trustee exercises a right of entry under this section, he or she is entitled to meet

with the person who is alleged to be incapable without interference and in private.

(10) Obligation to leave premises —

The Public Guardian and Trustee must leave the premises promptly if the person who is alleged to be incapable indicates that he or she does not want to meet with the Public Guardian and Trustee.

(11) Identification — A person exercising a right of entry under this section shall, on request, present identification.

(12) References to P.G.T. — A reference in this section to the Public Guardian and Trustee includes any person he or she designates for the purpose of this section.

83. (1) P.G.T.'s access to records —

The Public Guardian and Trustee is entitled to have access, for the purpose of an investigation required by section 27 or 62, to any record relating to the person who is alleged to be incapable that the Public Guardian and Trustee reasonably believes to be relevant to the investigation and that is in the custody or control of,

- (a) the person's guardian of property or guardian of the person;
- (b) the person's attorney under a power of attorney that confers authority in respect of the person's property or under a power of attorney for personal care;
- (c) a member of the College of a health profession as defined in the *Regulated Health Professions Act, 1991*;
- (d) a facility;
- (e) a person who operates a controlled-access residence;
- (f) a bank, loan or trust corporation, credit union or other financial institution;
- (g) an administrator of a pension fund;
- (h) a real estate broker or agent; or
- (i) any other person or class of persons designated by the regulations.

(2) Exception, solicitor-client privilege — Subsection (1) does not override any solicitor-client privilege to which a record is subject.

(3) Exception, law enforcement — The Public Guardian and Trustee is not entitled to have access to a record or part of a record whose disclosure could reasonably be expected to produce one of the results described in subsection 14(1) of the *Freedom of Information and Protection of Privacy Act*.

(4) Rules re access to record — The following rules apply when the Public Guardian and Trustee is entitled to have access to a record:

1. The Public Guardian and Trustee is entitled to be given access to the record no later than four business days after requesting access.
2. The Public Guardian and Trustee is not entitled to have access to any information in the record that is personal information, as defined in the *Freedom of Information and Protection of Privacy Act*, relating to an individual other than the person who is alleged to be incapable.
3. The Public Guardian and Trustee is not entitled to make a search among the records kept by the person who has custody or control of the record.
4. The Public Guardian and Trustee is entitled to make copies or extracts from the record in any manner that does not damage the record.
5. At the Public Guardian and Trustee's request and within a reasonable time, the person who has custody or control of a record shall provide the Public Guardian and Trustee with photocopies of all or part of the record. The Public Guardian and Trustee shall pay the prescribed amount for any photocopies in excess of twenty pages.
6. If the person who has custody or control of records consents, the Public

Guardian and Trustee may remove records for copying.

7. The Public Guardian and Trustee shall give a receipt for the records being removed and shall return them within two business days.

8. Records needed for the current care of the person who is alleged to be incapable shall not be removed.

(5) Warrant for access to record — A justice of the peace may issue a warrant for access to a record to the Public Guardian and Trustee if satisfied that,

(a) the Public Guardian and Trustee is entitled to access to the record under this section; and

(b) the Public Guardian and Trustee has been refused access to the record, or has been refused copies and has been refused permission to remove the record for copying.

(6) Authority conferred by warrant — The warrant authorizes the Public Guardian and Trustee to,

(a) inspect the record specified in the warrant, between 9 a.m. and 4 p.m. or during the hours specified in the warrant, subject to paragraph 2 of subsection (4);

(b) make copies or extracts from the record in any manner that does not damage the record; and

(c) remove the record, subject to paragraphs 7 and 8 of subsection (4).

(7) Duration of warrant — The warrant is valid for seven days.

(8) Execution — The Public Guardian and Trustee may call on a police officer for assistance in executing the warrant.

(9) Notice of access — If the Public Guardian and Trustee obtains access to one or more records under this section, the Public Guardian and Trustee shall, unless it is not appropriate in the circumstances, notify

the person who is alleged to be incapable as soon as reasonably possible that,

(a) an allegation was made that the person is incapable of managing property or incapable of personal care and that serious adverse effects are occurring or might occur as a result;

(b) the Public Guardian and Trustee is investigating the allegation as required by this Act; and

(c) the Public Guardian and Trustee has obtained access to one or more records under this section for the purposes of the investigation.

(10) Other acts — This section prevails over any other Act.

(11) References to P.G.T. — A reference in this section to the Public Guardian and Trustee includes any person he or she designates for the purpose of this section.

1996, c. 2, s. 57; 2004, c. 3, Sched. A, s. 97(1);
2009, c. 33, Sched. 2, s. 71(8), (9)

84. Statements as evidence — For the purposes of this Act, a statement in the prescribed form that purports to be signed by its maker is admissible in evidence without proof of his or her signature, office or professional qualifications.

85. (1) Conflict of laws, formalities — As regards the manner and formalities of executing a continuing power of attorney or power of attorney for personal care, the power of attorney is valid if at the time of its execution it complied with the internal law of the place where,

(a) the power of attorney was executed;

(b) the grantor was then domiciled; or

(c) the grantor then had his or her habitual residence.

(2) “Internal law” — For the purpose of subsection (1), “internal law”, in relation to any place, excludes the choice of law rules of that place.

(3) Revocation — Subsections (1) and (2) apply with necessary modifications to the revocation of a continuing power of attorney or power of attorney for personal care.

(4) Legal requirements outside Ontario — If, under this section or otherwise, a law in force outside Ontario is to be applied in relation to a continuing power of attorney or a power of attorney for personal care, the following requirements of that law shall be treated, despite any rule of that law to the contrary, as formal requirements only:

1. Any requirement that special formalities be observed by grantors answering a particular description.
2. Any requirement that witnesses to the execution of the power of attorney possess certain qualifications.

(5) Alteration in law — In determining for the purposes of this section whether or not the execution of a continuing power of attorney or power of attorney for personal care conforms to a particular law, regard shall be had to the formal requirements of that law at the time the power of attorney was executed, but account shall be taken of an alteration of law affecting powers of attorney executed at that time if the alteration enables the power of attorney to be treated as properly executed.

(6) Application — This section applies to a continuing power of attorney or power of attorney for personal care executed either in or outside Ontario.

86. (1) Foreign orders — In this section, “foreign order” means an order made by a court outside Ontario that appoints, for a person who is sixteen years of age or older, a person having duties comparable to those of a guardian of property or guardian of the person.

(2) Resealing — Any person may apply to the court for an order resealing a foreign order that was made in a province or territory of Canada or in a prescribed jurisdiction.

(3) Certificate from foreign court — An order resealing a foreign order shall not be made unless the applicant files with the court,

- (a) a copy of the foreign order bearing the seal of the court that made it or a copy of the foreign order certified by the registrar, clerk or other officer of the court that made it; and
- (b) a certificate signed by the registrar, clerk or other officer of the court that made the foreign order stating that the order is unrevoked and of full effect.

(4) Effect of resealing — A foreign order that has been resealed,

- (a) has the same effect in Ontario as if it were an order under this Act appointing a guardian of property or guardian of the person, as the case may be;
- (b) is subject in Ontario to any condition imposed by the court that the court may impose under this Act on an order appointing a guardian of property or guardian of the person, as the case may be; and
- (c) is subject in Ontario to the provisions of this Act respecting guardians of property or guardians of the person, as the case may be.

87. (1) Volunteers — The Public Guardian and Trustee may appoint volunteers to provide advice and assistance under this Act.

(2) Protection from liability — No proceeding for damages shall be instituted against a volunteer appointed under this section for any act done in good faith in the execution or intended execution of the volunteer’s powers and duties or for any alleged neglect or default in the execution in good faith of the volunteer’s powers or duties.

(3) Same — Despite subsection 8(3) of the *Crown Liability and Proceedings Act, 2019*, subsection (2) does not relieve the Crown of

any liability to which the Crown would otherwise be subject.

1996, c. 2, s. 58; 2019, c. 7, Sched. 17, s. 162

88. Mediation — The Public Guardian and Trustee may mediate,

(a) a dispute that arises between a person's guardian of property or attorney under a continuing power of attorney and the person's guardian of the person or attorney for personal care, if the dispute arises in the performance of their duties;

(b) a dispute that arises between joint attorneys under a person's continuing power of attorney or power of attorney for personal care, if the dispute arises in the performance of their duties; or

(c) a dispute that arises between joint guardians of property or joint guardians of the person, if the dispute arises in the performance of their duties.

1996, c. 2, s. 58

89. (1) Offence: obstruction — No person shall hinder or obstruct,

(a) a person who is conducting an assessment ordered under section 79, or is seeking to do so;

(b) a person who is exercising a power of entry conferred by subsection 82(2), or is seeking to do so;

(c) [Repealed 1996, c. 2, s. 59(1).]

(2) Penalty — A person who contravenes subsection (1) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$5,000.

(3) Exception — Subsection (1) does not apply to,

(a) the person who is subject of the order for assessment; or

(b) the person in respect of whom the power of entry is being exercised or is sought to be exercised.

(c) [Repealed 1996, c. 2, s. 59(2).]

(4) Offence: restraining order — A person who contravenes a restraining order made under subsection 80(1) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$5,000.

(5) Offence: false statement — No person shall, in a statement made in a prescribed form, assert something that he or she knows to be untrue or profess an opinion that he or she does not hold.

(6) Penalty — A person who contravenes subsection (5) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000.

(7) Offence: personal information — A person who obtains personal information under the authority of a regulation made under subclause 90(1)(e.4)(ii) and who contravenes a regulation made under clause 90(1)(e.5) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000.

1996, c. 2, s. 59

90. (1) Regulations — The Lieutenant Governor in Council may make regulations,

(a) prescribing forms;

(b) prescribing facilities for the purpose of the definition of "facility" in subsection 1(1);

(c) prescribing a fee scale for the compensation of guardians of property and attorneys under continuing powers of attorney, including annual percentage charges on revenue and on capital;

(c.1) prescribing circumstances in which a person's guardian of the person or attorney under a power of attorney for personal care may be compensated from the person's property for services performed as guardian or attorney, and prescribing the amount of the compensation or a method for determining the amount of the compensation;

(c.2) governing the keeping of accounts and other records by attorneys

S. 90(1)(c.2)

Substitute Decisions Act, 1992

under continuing powers of attorney, attorneys under powers of attorney for personal care, guardians of property and guardians of the person, and requiring them to provide information from the records to persons specified by the regulations;

(c.3) establishing a public record of information relating to guardians of property, guardians of the person, attorneys under continuing powers of attorney or attorneys under powers of attorney for personal care, prescribing the contents of the record, governing the maintenance of the record, requiring persons to provide information for the purpose of the record and governing the disclosure of information from the record;

(d) designating classes of persons, including persons who have successfully completed prescribed courses of training, as being qualified to do assessments of capacity or specific types of assessments of capacity;

(e) prescribing courses of training for assessors;

(e.1) prescribing standards for the performance of assessments of capacity by assessors;

(e.2) regulating the fees that may be charged by assessors;

(e.3) for the purpose of sections 38 and 39 of the *Freedom of Information and Protection of Privacy Act*, authorizing the Public Guardian and Trustee or an institution that has responsibilities related to assessments of capacity to collect personal information, directly or indirectly, for a purpose relating to this Act;

(e.4) authorizing a member of a College as defined in the *Regulated Health Professions Act, 1991* or a person who provides health care or residential, social, training or support services, despite any other Act or the regulations

under any other Act, to disclose personal information about a person,

(i) to an assessor, if the information is relevant to an assessment of capacity being performed by the assessor,

(ii) to a person who makes a statement in the prescribed form indicating that the person has made or intends to make an application to appoint a guardian of property or guardian of the person, if the information is relevant to the application, or

(iii) to the Public Guardian and Trustee, if the information is relevant to the making of an allegation described in subsection 27(2) or 62(2) or to an investigation being conducted under section 27 or 62;

(e.5) governing the use, disclosure and retention of personal information obtained under the authority of a regulation made under clause (e.4);

(e.6) designating persons or classes of persons from whom the Public Guardian and Trustee may obtain access to records under clause 83(1)(i);

(f) prescribing an amount per page to be paid for photocopies under paragraph 5 of subsection 83(4);

(g) prescribing jurisdictions for the purpose of section 86.

(2) Regulations under cl. (1)(e.4) — A regulation may not be made under clause (1)(e.4) unless a regulation has been made under clause (1)(e.5).

(3) General or particular — A regulation made under subsection (1) may be general or particular in its application.

1996, c. 2, s. 60; 2004, c. 3, Sched. A, s. 97(2);
2006, c. 19, Sched. B, s. 22(10)

91. Transition — Subject to subsections 46(10) and (11), if a power of attorney for personal care is made in accordance with

Schedule [1]

Sch. [1]

this Act before this Act comes into force, the power of attorney takes effect when this Act comes into force.

[*Note: A transitional provision to this Act provided that, if a power of attorney for personal care was made in accordance with this Act before April 3, 1995, the power of attorney would take effect on April 3, 1995. See: 1992, c. 30, ss. 91, 92.*]

[*Note: A transitional provision to the Advocacy, Consent and Substitute Decisions Statute Law Amendment Act, 1996 provided that nothing in that Act invalidated a power of attorney given before March 29, 1996. See: 1996, c. 2, s. 77.*]

92. Commencement — This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

93. Short title — The short title of this Act is the *Substitute Decisions Act, 1992*.

SCHEDULE [1]

The number in square brackets has been editorially added by Carswell.

Subsection 1(1) — “Facility”

Alcoholism and Drug Addiction Research Foundation Act

Child, Youth and Family Services Act, 2017

Proposed Addition — Connecting Care Act, 2019

Connecting Care Act, 2019

2019, c. 5, Sched. 3, s. 23(2) [Not in force at date of publication.]

Proposed Addition — Correctional Services and Reintegration Act, 2018

Correctional Services and Reintegration Act, 2018

2018, c. 6, Sched. 3, s. 14 [Not in force at date of publication.]

General Welfare Assistance Act

Homes for Special Care Act

Independent Health Facilities Act

Proposed Repeal — Independent Health Facilities Act

[Repealed 2017, c. 25, Sched. 9, s. 120(1). Not in force at date of publication.]

Long-Term Care Homes Act, 2007

Mental Health Act

Ministry of Community and Social Services Act

Ministry of Correctional Services Act

Proposed Repeal — Ministry of Correctional Services Act

[Repealed 2018, c. 6, Sched. 3, s. 14. Not in force at date of publication.]

Ministry of Health and Long-Term Care Act

Proposed Addition — Oversight of Health Facilities and Devices Act, 2017

Oversight of Health Facilities and Devices Act, 2017

2017, c. 25, Sched. 9, s. 120(1) [Not in force at date of publication.]

Private Hospitals Act

Proposed Repeal — Private Hospitals Act

[Repealed 2017, c. 25, Sched. 9, s. 120(2). Not in force at date of publication.]

Public Hospitals Act

2001, c. 13, s. 30(2); 2006, c. 19, Sched. B, s. 22(11); 2007, c. 8, s. 229; 2008, c. 14, s. 59(2); 2009, c. 33, Sched. 18, s. 33; 2017, c. 14, Sched. 4, s. 34; 2017, c. 25, Sched. 8, s. 3; 2019, c. 5, Sched. 3, s. 23(1)

**ONT. REG. 100/96 —
ACCOUNTS AND RECORDS
OF ATTORNEYS AND
GUARDIANS**

made under the *Substitute
Decisions Act, 1992*

O. Reg. 100/96

APPLICATION

1. This Regulation applies to attorneys under continuing powers of attorney, statutory guardians of property, court-appointed guardians of property, attorneys under powers of attorney for personal care and guardians of the person.

**FORM OF ACCOUNTS AND
RECORDS**

2. (1) The accounts maintained by an attorney under a continuing power of attorney and a guardian of property shall include,

(a) a list of all the incapable person's assets as of the date of the first transaction by the attorney or guardian on the incapable person's behalf, including real property, money, securities, investments, motor vehicles and other personal property;

(b) an ongoing list of assets acquired and disposed of on behalf of the incapable person, including the date of and reason for the acquisition or disposition and from or to whom the asset is acquired or disposed;

(c) an ongoing list of all money received on behalf of the incapable person, including the amount, date, from whom it was received, the reason for

the payment and the particulars of the account into which it was deposited;

(d) an ongoing list of all money paid out on behalf of the incapable person, including the amount, date, purpose of the payment and to whom it was paid;

(e) an ongoing list of all investments made on behalf of the incapable person, including the amount, date, interest rate and type of investment purchased or redeemed;

(f) a list of all the incapable person's liabilities as of the date of the first transaction by the attorney or guardian on the incapable person's behalf;

(g) an ongoing list of liabilities incurred and discharged on behalf of the incapable person, including the date, nature of and reason for the liability being incurred or discharged;

(h) an ongoing list of all compensation taken by the attorney or guardian, if any, including the amount, date and method of calculation;

(i) a list of the assets, and value of each, used to calculate the attorney's or guardian's care and management fee, if any.

2. (2) An attorney under a continuing power of attorney and a guardian of property shall also keep, together with the accounts described in subsection (1), a copy of the continuing power of attorney, certificate of statutory guardianship or court order constituting the authority of the attorney or guardian, a copy of the management plan, if any, and a copy of any court orders relating to the attorney's or guardian's authority or to the management of the incapable person's property.

3. (1) The records maintained by an attorney under a power of attorney for personal care and a guardian of the person shall include,

(a) a list of all decisions regarding health care, safety and shelter made on behalf of the incapable person, includ-

S. 3(1)(a)Ont. Reg. 100/96 — Accounts and Records of Attorneys and Guardians

ing the nature of each decision, the reason for it and the date;

(b) a copy of medical reports or other documents, if any, relating to each decision;

(c) the names of any persons consulted, including the incapable person, in respect of each decision and the date;

(d) a description of the incapable person's wishes, if any, relevant to each decision, that he or she expressed when capable and the manner in which they were expressed;

(e) a description of the incapable person's current wishes, if ascertainable and if they are relevant to the decision;

(f) for each decision taken, the attorney's or guardian's opinion on each of the factors listed in clause 66(4)(c) of the Act.

(2) An attorney under a power of attorney for personal care and a guardian of the person shall also keep a copy of the power of attorney for personal care or court order appointing the attorney or guardian, a copy of the guardianship plan, if any, and a copy of any court orders relating to the attorney's or guardian's authority or the incapable person's care.

CONFIDENTIALITY AND DISCLOSURE OF ACCOUNTS AND RECORDS

4. An attorney or guardian shall not disclose any information contained in the accounts and records except,

(a) as required by section 5 or permitted by section 6;

(b) as required by a court order;

(c) as required otherwise under the Act or any other Act; or

(d) as is consistent with or related to his or her duties as attorney or guardian.

5. (1) An attorney under a continuing power of attorney shall give a copy of the accounts and records he or she keeps in accordance with section 2 to any of the following persons who requests it:

1. The incapable person.

2. The incapable person's attorney for personal care or guardian of the person.

(2) A guardian of property shall give a copy of the accounts and records he or she keeps in accordance with section 2 to any of the following persons who requests it:

1. The incapable person.

2. The incapable person's attorney for personal care or guardian of the person.

3. If the Public Guardian and Trustee is the guardian of property, the incapable person's spouse, except a spouse from whom the incapable person is living separate and apart within the meaning of the *Divorce Act* (Canada), or the incapable person's partner, child, parent, brother or sister.

4. The Public Guardian and Trustee, if he or she is not the incapable person's guardian of property or guardian of the person.

(3) An attorney for personal care shall give a copy of the records he or she keeps in accordance with section 3 to any of the following persons who requests it:

1. The incapable person.

2. The incapable person's attorney under a continuing power of attorney or guardian of property.

(4) A guardian of the person shall give a copy of the records he or she keeps in accordance with section 3 to any of the following persons who requests it:

1. The incapable person.

2. The incapable person's attorney under a continuing power of attorney or guardian of property.

3. The Public Guardian and Trustee, if he or she is not the incapable person's guardian of property or of the person.

RETENTION OF ACCOUNTS AND RECORDS

6. (1) Every attorney and guardian shall retain the accounts and records required by this Regulation until he or she ceases to have authority and one of the following occurs:

1. The attorney or guardian obtains a release of liability from a person who has the authority to give the release.
2. Another person has acquired the authority to manage the incapable person's property or make decisions concerning the incapable person's personal care, as the case may be, and the attorney or guardian delivers the accounts or records to that person.
3. The incapable person has died and the attorney or guardian delivers the accounts or records to the incapable person's personal representative.

4. The attorney or guardian is discharged by the court on a passing of accounts under section 42 of the Act and either the time for appealing the decision relating to the discharge has expired with no appeal being taken or an appeal from the decision relating to the discharge is finally disposed of and the attorney or guardian is discharged on the appeal.

5. A court order is obtained directing the attorney or guardian to destroy or otherwise dispose of the accounts or records.

(2) Subsection (1) applies, with necessary modifications, to former attorneys and guardians.

7. This Regulation comes into force on the day Part III of the *Advocacy, Consent and Substitute Decisions Statute of Law Amendment Act, 1996* comes into force.

ONT. REG. 460/05 — CAPACITY ASSESSMENT

made under the *Substitute
Decisions Act, 1992*

O. Reg. 460/05

- 1. Definition** — In this Regulation,
“qualification date”, when used in reference to a person, means,

- (a) the date he or she successfully completes the qualifying course required by clause 2(1)(b), or
- (b) December 1, 2005, in the case of a person who, on November 30, 2005, is qualified to do assessments of capacity under Ontario Regulation 293/96 (*Capacity Assessment*) made under the Act.

- 2. Persons qualified to do assessments of capacity** — (1) A person is qualified to do assessments of capacity if he or she,

- (a) satisfies one of the conditions set out in subsection (2);
- (b) has successfully completed the qualifying course for assessors described in section 4;
- (c) complies with section 5 (continuing education courses);
- (d) complies with section 6 (minimum annual number of assessments); and
- (e) is covered by professional liability insurance of not less than \$1,000,000, in respect of assessments of capacity, or belongs to an association that provides protection against professional liability, in respect of assessments of capacity, in an amount not less than \$1,000,000.

(2) The following are the conditions mentioned in clause (1)(a):

1. Being a member of the College of Physicians and Surgeons of Ontario.
2. Being a member of the College of Psychologists of Ontario.
3. Being a member of the Ontario College of Social Workers and Social Service Workers and holding a certificate of registration for social work.
4. Being a member of the College of Occupational Therapists of Ontario.
5. Being a member of the College of Nurses of Ontario and holding a general certificate of registration as a registered nurse or an extended certificate of registration as a registered nurse.

(3) The requirement that the person hold a general certificate of registration as a registered nurse or an extended certificate of registration as a registered nurse, as set out in paragraph 5 of subsection (2), does not apply to a member of the College of Nurses of Ontario who, on November 30, 2005, is qualified to do assessments of capacity under Ontario Regulation 293/96 (*Capacity Assessment*) made under the Act.

(4) Clause (1)(b) does not apply to a person who, on November 30, 2005, is qualified to do assessments of capacity under Ontario Regulation 293/96 (*Capacity Assessment*) made under the Act.

3. Guidelines — (1) The “Guidelines for Conducting Assessments of Capacity” established by the Attorney General, dated May, 2005 and available on the internet website of the Ministry of the Attorney General at <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/capacity.asp> are prescribed.

(2) An assessor is required to comply with the prescribed guidelines.

(3) Failure to comply with the prescribed guidelines may result in a complaint to the

S. 3(3)

Ont. Reg. 460/05 — Capacity Assessment

college of the regulated health profession of which the assessor is a member.

4. Qualifying course — The qualifying course required by clause 2(1)(b) shall be given or approved by the Attorney General, and shall include,

- (a) instruction in,
 - (i) the *Substitute Decisions Act, 1992*,
 - (ii) best practices in completing forms and reports under that Act,
 - (iii) standards for the performance of assessments of capacity, as set out in the guidelines referred to in section 3, and
 - (iv) procedures for determining if a person needs decisions to be made on his or her behalf by a person authorized to do so, as set out in the guidelines referred to in section 3; and
- (b) an evaluation of the trainee's mastery of the training.

5. Continuing education courses — (1)

To remain qualified to do assessments of capacity, an assessor is required to successfully complete a continuing education course given or approved by the Attorney General,

- (a) on or before the second anniversary of his or her qualification date; and
- (b) thereafter, at intervals of two years or less.

(2) A continuing education course shall include,

- (a) participation in one or more training activities; and
- (b) submission to the Ministry of the Attorney General, for review and comment, of at least two recently completed Statements of Assessor in Form A or Form B and the recently completed corresponding Assessment Reports in Form C.

(3) Personal information shall be removed from forms before they are submitted under clause (2)(b).

6. Minimum annual number of assessments — To remain qualified to do assessments of capacity, an assessor is required to do at least five assessments,

- (a) during the two-year period following his or her qualification date; and
- (b) thereafter, during each two-year period.

7. Forms — The following forms provided by the Attorney General and available on the internet website of the Ministry of the Attorney General at <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/capacity.asp> are prescribed:

- 1. “Form A: Statement of Assessor — Determination of Capacity/Incapacity or Certificate of Incapacity — Property” for the purpose of subsection 9(3) or 16(3) or section 72 or 73 of the Act, dated May, 2005.
- 2. “Form B: Statement of Assessor — Determination of Capacity/Incapacity — Personal Care” for the purpose of subsection 49(2) or section 74 or 75 of the Act, dated May, 2005.
- 3. “Form C: Assessment Report” for the purpose of subsection 78(4) of the Act, dated May, 2005.
- 4. “Form D: Statement of Assessor — Regarding Capacity to Grant a Power of Attorney for Personal Care with Special Provisions” for the purpose of paragraph 2 of subsection 50(1) of the Act, dated May, 2005.
- 5. “Form E: Statement of Assessor — Regarding Capacity to Revoke a Power of Attorney for Personal Care with Special Provisions” for the purpose of subsection 50(4) of the Act, dated May, 2005.

8. Revocation — Ontario Regulation 293/96 is revoked.

9. Commencement — This Regulation comes into force on December 1, 2005.

ONT. REG. 26/95 — GENERAL

made under the *Substitute
Decisions Act, 1992*

O. Reg. 26/95, as am. O. Reg.
101/96; 159/00; 411/12; 272/15, ss. 1
(Fr.), 2–4.

1. For the purposes of subsection 40(1) of the Act, a guardian of property or any attorney under a continuing power of attorney shall be entitled, subject to an increase under subsection 40(3) of the Act or an adjustment pursuant to a passing of the guardian's or attorney's accounts under section 42 of the Act, to compensation of,

- (a) 3 per cent on capital and income receipts;
- (b) 3 per cent on capital and income disbursements; and
- (c) three-fifths of 1 per cent on the annual average value of the assets as a care and management fee.

O. Reg. 159/00, s. 1

2. The prescribed amount per page to be paid for photocopies under paragraph 5 of subsection 83(4) of the Act is 50 cents.

3. (1) An application to replace the Public Guardian and Trustee as statutory guardian of property by a person authorized to apply under subsection 17(1) of the Act shall be in Form 1.

(2) A management plan required by subsection 17(3) or clause 70(1)(b) of the Act shall be in Form 2.

(3) A guardianship plan required by clause 70(2)(b) of the Act shall be in Form 3.

(4) A request for an assessment of one's own or another person's capacity under subsection 16(1) of the Act shall be in Form 4.

(5) A statement required by paragraph 1 of subsection 50(1) of the Act shall be in Form 5.

(6) A statement in support of an application under subsection 71(1) of the Act shall be in Form 6.

(7) A statement in support of a motion under subsection 71(2) of the Act shall be in Form 7.

(8) A statement of a person who is not an assessor under section 72 of the Act shall be in Form 8.

(9) A statement of a person who is not an assessor under section 73 of the Act shall be in Form 9.

O. Reg. 101/96, s. 1

4. For the purposes of clause (d) of the definition of "facility" in subsection 1(1) of the Act, a facility that receives funding for emergency shelter solutions or housing with related supports under the Community Homelessness Prevention Initiative of the Ministry of Municipal Affairs and Housing is a prescribed facility.

O. Reg. 411/12, s. 1

5. In this Regulation, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of this Regulation and is available on the website of the Government of Ontario Central Forms Repository.

O. Reg. 272/15, s. 2

Table of Forms [1]

The number in square brackets has been editorially added by Carswell

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Canada**

Table of Forms [1]

Ont. Reg. 26/95 — General

| Form Number | Form Name | Date of Form |
|--------------------|---|---------------------|
| 1 | Application to Replace the Public Guardian and Trustee as Statutory Guardian of Property under Section 17 | November 2014 |
| 2 | Management Plan | November 2014 |
| 3 | Guardianship Plan | November 2014 |
| 4 | Request for Assessment of Capacity under Section 16 | November 2014 |
| 5 | Statement of Grantor under Subsection 50(1) | November 2014 |
| 6 | Optional Statement to Appoint a Guardian of the Person under Subsection 71(1) | November 2014 |
| 7 | Optional Statement to Terminate Guardianship of the Person under Subsection 71(2) | November 2014 |
| 8 | Statement to Appoint a Guardian of Property by Summary Disposition under Section 72 | November 2014 |
| 9 | Statement to Terminate Guardianship of Property by Summary Disposition under Section 73 | November 2014 |

O. Reg. 272/15, s. 4

Form 1 — Application to Replace the Public Guardian and Trustee as Statutory Guardian of Property under Section 17

Substitute Decisions Act, 1992, O. Reg. 26/95

[Repealed O. Reg. 272/15, s. 3.]

[Editor's Note: Forms 1 to 9 of General, O. Reg. 26/95 have been repealed by O. Reg. 272/15, s. 3 effective September 1, 2015. Pursuant to General, O. Reg. 26/95, s. 5, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ontario

Ministry of the Attorney General

Note: Attach additional pages if more space is needed.

Name of Incapable Person

| | | |
|-----------|------------|-----------------------------|
| Last Name | First Name | Mid- dle Init- ial |
|-----------|------------|-----------------------------|

Date of Birth (yyyy/mm/dd) Home Telephone Number

| | | | |
|----------------|------------------|-------------|-----------|
| Unit Number | Street Number | Street Name | PO Box |
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| | | |
|-----------|----------|---------------------|
| City/Town | Province | Pos- tal Code |
|-----------|----------|---------------------|

Form 1 — Application to Replace the Public Guardian and Trustee as ... Form 1

Your relationship to the incapable person is:

- * "Spouse" means a person,
 - a. to whom the person is married, or
 - b. with whom the person is living in a conjugal relationship outside marriage, if the two persons,
 - i. have cohabited for at least one year,
 - ii. are together the parents of a child, or
 - iii. have together entered into a cohabitation agreement under section 53 of the *Family Law Act*; ("conjoint")

** Two persons are "partners" if they have lived together for at least one year and have close personal relationship that is of primary importance in both persons' lives.

1. Spouse* 2. Partner** 3. Relative (describe relation)

Or, you are a

4. Trust corporation 5. Attorney under a continuing power of attorney made prior to the date the Certificate of Incapacity was issued and which does not give the attorney authority over all of the incapable person's property

Attachment(s) required

If box 4 above is completed, copy of the consent of the incapable person's spouse or partner

If box 5 above is completed, copy of continuing power of attorney

Please list any other person who is entitled to apply under subsection 17(1) *** who is known to you.

Please state whether you have informed each person listed on your application for statutory guardianship and indicate if they have

informed you of whether they support or oppose your appointment.

*** Any of the following persons may apply to the Public Guardian and Trustee to replace the Public Guardian and Trustee as an incapable person's statutory guardian of property.

- i. the incapable person's spouse or partner,
- ii. a relative of the incapable person,
- iii. the incapable person's attorney under a continuing power of attorney, if the power of attorney was made before the Certificate of Incapacity was issued and does not give the attorney authority over all of the incapable person's property, or
- iv. a trust corporation within the meaning of the *Loan and Trust Corporations Act*, if the incapable person's spouse or partner consents in writing to the application.

| Name (Last, First Name) | Person Informed Yes/No | Relationship to Incapable Person | Address | Telephone Number | Support Number or Oppose Application |
|----------------------------------|------------------------------|---|---------|---------------------|--|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Applicant's Statement

1. Have you been in personal contact with the incapable person during the preceding 12-month period?

Or, if you are a trust corporation, has the incapable person's spouse or partner been in personal contact with the incapable person during the preceding 12-month period?

Yes No

2. Are you willing to perform all duties required of a guardian in respect of the incapable person's property and do you agree to

Form 1

Ont. Reg. 26/95 — General

act in accordance with the Management Plan?

Yes No

3. To the best of my knowledge and belief, the total approximate value of the property of the incapable person is \$.....

Particulars of the assets and their respective approximate value are listed on the attached Management Plan, forming part of this application.

(If you are a trust corporation, please skip questions 4–8)

4. Is your relationship with the incapable person a friendly one?

Yes No

5. Have you been found guilty of any offence relating to financial mismanagement under the *Criminal Code*?

Yes No

6. Are you an undischarged bankrupt?

Yes No

7. Have you been held liable in a civil proceeding relating to fraud, breach of trust or any other type of financial mismanagement?

Yes No

8. I understand that the Public Guardian and Trustee may refuse my application unless I provide a bond securing the value of the incapable person's property in a form and amount agreeable to the Public Guardian and Trustee of Ontario.

Yes No

Note: Attach Management Plan

Subsections 89(5) and (6) of the Substitute Decisions Act, 1992 provide:

ss. 89(5): No person shall, in a statement made in a prescribed form, assert something that he or she knows to be untrue or profess an opinion that he or she does not hold.

ss. 89(6): A person who contravenes subsection (5) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000.00.

| | |
|---|----------------------|
| Signature of proposed statutory guardian(s) of property or, if a trust corporation, an authorized signing officer | Date (yyyy/mm/dd) |
|---|----------------------|

| | | |
|--------------|------------|----------------|
| 1. Last Name | First Name | Middle Initial |
|--------------|------------|----------------|

| | | | |
|----------------|------------------|-------------|-----------|
| Unit Number | Street Number | Street Name | PO Box |
|----------------|------------------|-------------|-----------|

| | | |
|-----------|----------|----------------|
| City/Town | Province | Postal Code |
|-----------|----------|----------------|

Telephone Number

Note: If you are proposing the appointment of two or more persons as joint statutory guardians, please indicate to which applicant the property and accounts, if applicable, and the Certificate of Statutory Guardianship should be delivered if the appointment is made:

Name of Proposed Statutory Guardian of Property

| | | | |
|----------------|------------------|-------------|-----------|
| Unit Number | Street Number | Street Name | PO Box |
|----------------|------------------|-------------|-----------|

| | | |
|-----------|----------|----------------|
| City/Town | Province | Postal Code |
|-----------|----------|----------------|

Telephone Number

Notice to the Applicants:

The personal information contained in your application is collected under the authority

Form 2 — Management Plan

Form 2

of section 17 of the *Substitute Decisions Act*, 1992, and will be used to process your application to replace the Public Guardian and Trustee as statutory guardian of property in accordance with the law and policies of the Office of the Public Guardian and Trustee. Questions about this collection of information should be directed to:

Office of the Public Guardian and Trustee
595 Bay Street, Suite 800
Toronto ON M5G 2M6
Tel: 416 314-2800
Attention: Screening Unit

November 2014

Form 2 — Management Plan

Substitute Decisions Act, 1992, O. Reg. 26/95

[*Repealed O. Reg. 272/15, s. 3.*]

[Editor's Note: Forms 1 to 9 of General, O. Reg. 26/95 have been repealed by O. Reg. 272/15, s. 3 effective September 1, 2015. Pursuant to General, O. Reg. 26/95, s. 5, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

| |
|----------------|
| Court File No. |
|----------------|

Ontario

Ministry of the Attorney General

Note: Where the document is completed as part of an application for court appointed guardianship of property, please insert general heading and court file number.

A. This Management Plan is provided as part of the application made by:

| Full name(s) of applicant(s) | | |
|------------------------------|------------|----------------|
| Last Name | First Name | Middle Initial |
| | | |

to be appointed as guardian of the property of (Full name of person for whom guardianship is sought)

| Last Name | First Name | Middle Initial |
|-----------|------------|----------------|
| | | |

To the best of my knowledge and belief, the assets, liabilities, income and expenditures of (Name of person for whom guardianship is sought)

| Last Name | First Name | Middle Initial |
|-----------|------------|----------------|
| | | |

at this date are stated below. My plans for managing them and the reasons for these plans are as follows:

Complete the parts below that apply to the finances of the person for whom guardianship is sought. Attach additional pages if the space below is insufficient. Where a part does not apply, write "None" or "Not Applicable" in the space provided.

B. Land

| Type of Address of Property or Properties | Estimated Market Value |
|---|------------------------|
| | |
| <i>Total</i> | |

Plan

For each of the above noted properties indicate your plans (e.g., sell at market value, lease at market value, other), the anticipated time frame for completing the transactions, if applicable, and your reasons for these plans.

Form 2

Ont. Reg. 26/95 — General

.....

C. General Household Items and Vehicles
 (Give general description for vehicles, list year, model, make.)

| Item | Particulars | Estimated Current Market Value |
|-------------------|-------------|--------------------------------|
| General Household | | |
| Vehicles | | |
| <i>Total</i> | | |

Plan

Explain your plans for these items (e.g., retain for use of person for whom guardianship is sought, sell at market value, place in storage, gift, other) and your reasons for these plans.

.....

D. Valuables (including antiques, art, collectibles, jewellery)

| Item | Particulars | Estimated Current Market Value |
|--------------|-------------|--------------------------------|
| | | |
| <i>Total</i> | | |

Plan

Explain your plans for these items (e.g., sell at market value, place in storage, other) and your reasons for these plans.

.....

E. Savings and Savings Plans (include cash, assets in financial institutions, registered re-

tirement or other savings plans, deposit receipts, pension plans etc.)

| Category | Institution | Account Number | Current Amount or Value |
|--------------|-------------|----------------|-------------------------|
| | | | |
| <i>Total</i> | | | |

Plan

Explain your plans for the savings described above (e.g., close current accounts and consolidate in a trust account, deposit cash, maintain savings plans, collapse plans as required to meet ongoing expenditures, etc.) and your reasons for these plans.

.....

F. Securities and Investments (include bonds, shares, warrants, options, debentures, notes and any other securities)

| Category | Institution | Account Number | Estimated Current Market Value |
|--------------|-------------|----------------|--------------------------------|
| | | | |
| <i>Total</i> | | | |

Plan

Explain your plans with respect to the above-noted securities and investments (e.g., maintain in current form, renew as required, convert, redeem, etc.) and your reasons for these plans.

.....

G. Accounts Receivable (include all debts owing to person for whom guardianship is sought)

| Particulars | Amount |
|--------------|--------|
| | |
| <i>Total</i> | |

Plan

Form 2 — Management Plan

Form 2

Explain your plans regarding collection of the above-noted debts and your reasons for these plans.

.....
.....
.....

H. Business Interests (Show any interests owned by the person for whom guardianship is sought in an unincorporated business. An interest in an incorporated business may be shown here or under Securities.)

| Name of Firm or Company | Interest | Estimated Current Value |
|-------------------------|----------|-------------------------|
| | | |
| <i>Total</i> | | |

Plan

Explain your plans regarding the above-noted business interests (e.g., maintain, dissolve, sell, etc.) and your reasons for these plans.

.....
.....
.....

I. Other Property (Show any other property owned by the person for whom guardianship is sought and which is not shown above.)

| Category | Particulars | Estimated Current Market Value |
|--------------|-------------|--------------------------------|
| | | |
| <i>Total</i> | | |

Plan

Explain your plans for the property described above and the reasons for these plans.

.....
.....
.....

J. Liabilities (Show the debts owed by the person for whom guardianship is sought including personal loans, credit card balances, outstanding bills, income tax owing, etc.)

| Description of Debt | Particulars | Amount of Debt |
|---------------------|-------------|----------------|
| | | |
| <i>Total</i> | | |

Plan

Explain your plans with respect to these debts and the reasons for these plans.

.....
.....
.....

K. Income (Show net income from all sources estimated on an annual basis.)

| Type of Income | Particulars | Approximate Annual Amount |
|----------------|-------------|---------------------------|
| Pension | | |
| Employment | | |
| Interest | | |
| Rental | | |
| Business | | |
| Other | | |
| <i>Total</i> | | |

Plan

Explain your plans for the collection, deposit and allocation of the income described above.

.....
.....
.....

L. Expenses (Describe the expenses, calculated on an annual basis, which you anticipate will be required to be made on behalf of the person for whom guardianship is sought.)

Form 2

Ont. Reg. 26/95 — General

| Expense | Particulars | Approximate Annual Amount |
|----------------------------|--------------------|----------------------------------|
| Residential | | |
| Utilities | | |
| Recreational/Entertainment | | |
| Travel | | |
| Personal Care | | |
| Support for Dependents | | |
| Property Maintenance | | |
| Gifts | | |
| Loans | | |
| Charitable Donations | | |
| Other | | |
| <i>Total</i> | | |

Plan

Explain below

- a. Whether any of the payments described above are of direct or indirect financial benefit to you, a person you live with or to whom you are related. If so, please explain why these payments are necessary and appropriate.
-
.....
.....

- b. Whether any significant increases or decreases in the above expenditures are anticipated, or whether any additional expenditures are likely. If so, please explain.
-
.....
.....

- c. Whether the expenditures listed above will adequately meet the personal needs and

maximize the enjoyment of life of the person for whom guardianship is sought.

.....
.....
.....

d. If you are planning to make gifts, loans or charitable donations, please explain the reasons why you believe these expenditures are appropriate.

.....
.....
.....

e. If payments to dependents, or for their benefit, are required please provide details about the nature of these payments and the reasons for them.

.....
.....
.....

f. Are there any expenditures which others have recommended which you are *not* planning to make? If so, please explain.

.....
.....
.....

M. Legal Proceedings (Identify any current legal proceedings relating to property to which he or she is a party including any civil or criminal proceedings.)

| Nature of Legal Proceedings | Status of Proceedings |
|------------------------------------|------------------------------|
| | |

Plan

- a. Please explain your plans in respect of these proceedings.
-
.....
.....

Do you anticipate that legal proceedings may need to be commenced or defended on the person's behalf in re-

Form 2 — Management Plan

Form 2

| | |
|--|---|
| <p>spect of his or her property? If so, please explain.</p> <p>.....</p> <p>b. What arrangements for legal representation for the person have been made or do you propose?</p> <p>.....</p> <p>c. Are you aware of any existing court orders or judgement which are relevant to the management of the person's property? If yes, describe or attach copies.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No If yes, describe.</p> <p>.....</p> | <p>.....</p> <p>d. I am aware of my duty to encourage the participation of the person for whom guardianship is sought in decisions I may make and to consult with supportive family and friends and caregivers. My plans to do so are as follows (briefly describe).</p> <p>.....</p> <p>e. I am aware that I would, as guardian of property, be required to make reasonable efforts to determine whether the person for whom guardianship is sought has a will and, if so, what the provisions of the will are and I am entitled to obtain the incapable person's will. My plans to do so are as follows.</p> <p>.....</p> <p>f. I am aware that I am <i>not</i> to dispose of property that I know is subject to a specific testamentary gift in the will of the person for whom guardianship is sought unless the specific testamentary gift is of money or if the disposition of that property is necessary to comply with my duties as guardian of property or to make a gift of the property to the person who would be entitled to it under the will, if the gift is authorized by section 37 of the <i>Substitute Decisions Act, 1992</i>.</p> <p>.....</p> <p><i>Subsections 32(10) and 32(11) of the Substitute Decisions Act, 1992 provide:</i></p> <p>ss. 32(10): A guardian shall act in accordance with the management plan.</p> <p>ss. 32(11): If there is a management plan, it may be amended from time to time with the Public Guardian and Trustee's approval.</p> |
|--|---|

Form 2

Ont. Reg. 26/95 — General

Subsections 89(5) and 89(6) of the Substitute Decisions Act, 1992 provide:

- ss. 89(5): *No person shall, in a statement made in a prescribed form, assert something that he or she knows to be untrue or profess an opinion that he or she does not hold.*
- ss. 89(6): *A person who contravenes subsection (5) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000.00.*

| | | | |
|--|---------------|----------------------|----------------|
| 1. Signature of proposed guardian(s) of property | | Date (yyyy/mm/dd) | |
| Last Name | | First Name | Middle Initial |
| Unit Number | Street Number | Street Name | PO Box |
| City/Town | | Province | Postal Code |
| Telephone Number | | | |

September 2018

Form 3 — Guardianship Plan

Substitute Decisions Act, 1992, O. Reg. 26/95

[Repealed O. Reg. 272/15, s. 3.]

[Editor's Note: Forms 1 to 9 of General, O. Reg. 26/95 have been repealed by O. Reg. 272/15, s. 3 effective September 1, 2015. Pursuant to General, O. Reg. 26/95, s. 5, when a form is referred to by number, the reference is to the form with that number]

that is described in the Table of Forms at the end of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ontario

Ministry of the Attorney General

| |
|----------------|
| Court File No. |
|----------------|

Note:

Where this document is completed as part of an application for court appointed guardianship of property, please insert general heading and court file number.

(Attach additional pages if more space is needed)

Section I — Identifying Information

- A. This plan is for:

Name in full (Referred to throughout this guardianship plan as "the person")

| | | |
|-----------|------------|----------------|
| Last Name | First Name | Middle Initial |
|-----------|------------|----------------|

| | | |
|-------------------------------|-----------------------|---------------------------|
| Date of Birth (yyyy/mm/dd) | Home Telephone Number | Business Telephone Number |
| ext. | | |

| | | | |
|-------------|---------------|-------------|--------|
| Unit Number | Street Number | Street Name | PO Box |
|-------------|---------------|-------------|--------|

| | | |
|-----------|----------|-------------|
| City/Town | Province | Postal Code |
|-----------|----------|-------------|

- B. (1) As the proposed guardian of the person [or attorney for personal care] for I have consulted with

the following persons in preparation of this guardianship plan: (check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> The person identified in A | <input type="checkbox"/> Family members of the person | <input type="checkbox"/> Friends of the person |
| <input type="checkbox"/> Care providers to the person | <input type="checkbox"/> The person's guardian of property [attorney under a continuing power of attorney] | |
| <input type="checkbox"/> Others (specify relationship) | | |

Section II — Areas Where Personal Care Decision Making Authority is Sought

A. I am seeking personal care decision making authority in the following areas (mark applicable boxes).

- Health Care (including decisions to which the *Health Care Consent Act, 1996* applies)
- Nutrition
- Shelter/Accommodation
- Clothing
- Hygiene
- Safety

B. Powers Requiring Specific Court Authorization (this section is only to be completed by applicants for court-appointed guardianship of the person).

1. I am asking the court for an order authorizing me to apprehend the person [Section 59(3)].

- Yes
- No

2. I am asking the court for an order authorizing me to change existing arrangements in respect of custody of or access to a child, or to give consent on the person's behalf to the adoption of a child [Section 59 (4)].

- Yes
- No

3.

a. I am asking the court for an order permitting me to exercise

other powers or perform other duties in addition to those set out in the *Substitute Decision Act, 1992* [Section 59(2)(g)].

- Yes
- No

b. If the answer to 3a is yes, please identify the other powers and duties.

.....

C. Notice Regarding Extraordinary Matters

The law limits or restricts a guardian's authority to make decisions in the following areas relating to personal care.

Sterilization

The law prohibits a substitute decision maker from consenting to non-therapeutic sterilization of a person who is mentally incapable of such a decision. Any proposal to consent on behalf of the person to their sterilization as medically necessary for the protection of the person's health must be consistent with the law and should appear in the Guardianship Plan or be the subject of an amendment to the Guardianship Plan prior to consent being given.

Regenerative Tissue Donation

The law restricts the authority of a substitute decision maker regarding decisions to permit regenerative tissue donations by a person who is mentally incapable of such a decision. Any proposal to authorize the removal of regenerative tissue for implantation in another person's body must be consistent with the law and should appear in the Guardianship Plan or be the subject of an amendment to the Guardianship Plan prior to permission being given.

Section III — The Plan for Personal Decision Making

(Please complete only those sections where decision making authority is sought, and attach any additional relevant documentation.)

Form 3

Ont. Reg. 26/95 — General

**Health Care (Including Treatment),
Nutrition and Hygiene****Background**

- a. Describe the current status of the health, nutrition and hygiene of the person, including all known health conditions for which treatment is being received or is proposed.
-

- b. Describe any wishes or instructions made by the person while capable that are known by you and that relate to their preferences about health care, treatment, nutrition and hygiene and attach a copy of any written wishes or instructions (e.g., a written advance directive, power of attorney for personal care, living will, etc.).
-

Plan

- c. Describe the long term goals (2–6 years) for decisions under this heading.
-

- d. Describe the steps you propose to take (within the next 12 months) to achieve the goals under this heading.
-

- e. Briefly describe your reasons for these plans.
-

Shelter/Living Arrangements and Safety**Background**

- a. Describe the current status of the person's living arrangements, including any factors relating to safety.
-

- b. Describe any known wishes or instructions made by the person while capable that relate to their preferences about living arrangements and safety issues and attach a copy of any written wishes or instructions.
-

Plan

- c. Describe the long term goals (2–6 years) for decisions under this heading.
-

- d. Describe the steps you propose to take (within the next 12 months) to achieve the goals under this heading.
-

- e. Briefly describe your reasons for these plans.
-

Legal Proceedings**Background**

- a. Describe the current status of any existing or anticipated legal proceedings relating to this person, (including divorce, custody, access, adoption, restraining orders, criminal matters, landlord and tenant matters).
-

- b. Describe any known wishes or instructions made by the person while capable that relate to their preferences about existing or anticipated legal proceedings and attach a copy of any written wishes or instructions.
-

- c. If legal proceedings are in progress, describe arrangements for legal representation of the person, if known.
-

- d. Where there is a guardian of property or attorney under a continuing power of attorney, are they aware of the existing or anticipated legal proceedings described in (a)? If so, please describe their involvement.
-

- e. Are you aware of any existing court orders or judgements against the person?

Yes No

If yes, describe or attach copies.

.....

f. Is the person on probation or are there pending criminal proceedings in which the person is involved?

Yes No

If yes, please provide details.

.....

Plan

g. Describe the long-term goals (2–6 years) for decisions under this heading.

.....

h. Briefly describe your reasons for these plans.

.....

Employment, Education, and Training

Background

a. Is the person employed, or involved in any educational or training programs?

Yes No

If yes, please describe current status.

.....

b. Describe any known wishes or instructions made by the person while capable that relate to their preferences about participation in employment, education or training programs.

.....

Plan

c. Describe the long term goals (2–6 years) for decisions under this heading.

.....

d. Describe the steps you propose to take (within the next 12 months) to achieve the goals under this heading.

.....

e. Briefly describe your reasons for these plans.

.....

Recreational, Social, and Cultural Activities

Background

a. Describe the activities that the person is involved in (or significant activities that the person was involved in), including hobbies, clubs, affiliations, volunteering.

.....

b. Describe any known wishes or instructions made by the person while capable that relate to their preferences about participation in recreational, social and cultural activities.

.....

Plan

c. Describe the long term goals (2–6 years) for decisions under this heading.

.....

d. Describe the steps you propose to take (within the next 12 months) to achieve the goals under this heading.

.....

e. Briefly describe your reasons for these plans.

.....

Social and Support Services

Background

a. Describe social and support services received by the person within the past year, including any services currently received.

.....

b. Describe any known wishes or instructions made by the person while capable that relate to their preferences about receipt of social and support services.

.....

Plan

c. Describe the long term goals (2–6 years) for decisions under this heading.

.....

Form 3

Ont. Reg. 26/95 — General

d. Describe the steps you propose to take (within the next 12 months) to achieve the goals under this heading.

.....

e. Briefly describe your reasons for these plans.

.....

Section IV — Additional Information

a. I have consulted with the person for whom guardianship is sought in making this plan (check one).

Yes No

If no, please provide reasons.

.....

b. I have consulted with the following other people in preparing this plan (Please provide full names, addresses, telephone numbers and relationship to the person, of the people you consulted with).

| 1. Last Name | First Name | Middle Initial |
|--------------|------------|----------------|
|--------------|------------|----------------|

| | | | |
|-------------|---------------|-------------|--------|
| Unit Number | Street Number | Street Name | PO Box |
|-------------|---------------|-------------|--------|

| | | |
|-----------|----------|-------------|
| City/Town | Province | Postal Code |
|-----------|----------|-------------|

| | |
|-----------------------|----------------------------|
| Home Telephone Number | Relationship to the person |
|-----------------------|----------------------------|

c. If consultation did not occur with any of the persons identified in Section I—B(1) above, provide reasons why.

.....

d. To the best of my knowledge, the person for whom guardianship is sought would not

object to any aspect of this guardianship plan. (check one)

Yes, would object No, would not object

If yes, please explain.

.....

e. I am aware of my duty as a guardian of the person to foster the person's independence, to encourage the person's participation in decisions I make on their behalf, and to consult with supportive family and friends and caregivers. My plans to do so are as follows: (briefly describe)

.....

Subsections 66(15) and 66(16) of the Substitute Decisions Act, 1992 provide:

ss.
66(15): *A guardian shall act in accordance with the guardianship plan.*

ss.
66(16): *If there is a guardianship plan, it may be amended from time to time with the Public Guardian and Trustee's approval.*

Subsections 67 of the Substitute Decisions Act, 1992 provides:

s. 67: *Section 66, except Subsections 66(15) and (16), applies with necessary modifications to an attorney who acts under a power of attorney for personal care.*

Subsections 89(5) and (6) of the Substitute Decisions Act, 1992 provide:

s. 89(5): *No person shall, in a statement made in a prescribed form, assert something that he or she knows to be untrue or profess an opinion that he or she does not hold.*

Form 4 — Request for Assessment of Capacity under Section 16 **Form 4**

| | | | |
|--|---|-----------|------------|
| <i>ss. 89(6): A person who contravenes subsection (5) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000.00.</i> | <i>Ministry of the Attorney General</i> | | |
| 1. Signature of proposed guardian(s) / attorney(s) for personal care | Date (yyyy/mm/dd) | Last Name | First Name |
| Mid- dle In- itial | | | |

| | | | |
|--------------------------|--------------------------------------|-----------------------------|-----------|
| Last Name | First Name | Mid- dle In- itial | |
| Unit Num- ber | Street Num- ber | Street Name | PO Box |
| City/Town | Province | Postal Code | |
| Home Telephone Number | Business Telephone Number ext. | | |

September 2018

**Form 4 — Request for
Assessment of Capacity
under Section 16**

*Substitute Decisions Act, 1992, O.
Reg. 26/95*

[Repealed O. Reg. 272/15, s. 3.]

[Editor's Note: Forms 1 to 9 of General, O. Reg. 26/95 have been repealed by O. Reg. 272/15, s. 3 effective September 1, 2015. Pursuant to General, O. Reg. 26/95, s. 5, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ontario

| | | |
|--|------------|-----------------------------|
| <i>of the</i> | | |
| <i>(City, Town, etc.)</i> | | |
| in the request that an assessor perform | | |
| <i>(County, Municipality)</i> | | |
| an assessment of (Full name of person to be assessed) | | |
| Last Name | First Name | Mid- dle In- itial |

for the purpose of determining whether
the Public Guardian and Trustee
should become their statutory guardian
of property.

*Items 2, 3 and 4 are to be completed only
if the request is made in respect of another
person.*

| | | |
|--|------------|-----------------------------|
| 2. I have reason to believe that (Full name of person to be assessed) | | |
| Last Name | First Name | Mid- dle In- itial |

of the may be in-
capable of managing property.

| | | |
|--|------------|-----------------------------|
| <i>(County, Municipality)</i> | | |
| 3. I have made reasonable inquiries and I have no knowledge of the existence of any attorney under a continuing power of attorney that gives the attorney auth- ority over all the property of (Full name of person to be assessed) | | |
| Last Name | First Name | Mid- dle In- itial |

Form 4

Ont. Reg. 26/95 — General

| | | |
|--|------------|----------------|
| 4. I have made reasonable inquiries and I have no knowledge of any spouse, partner or relative of (Full name of person to be assessed) | | |
| Last Name | First Name | Middle Initial |
| | | |

who intends to make an application under section 22 of the *Substitute Decisions Act, 1992* for the appointment of a guardian of property for them.

Subsections 89(5) and (6) of the Substitute Decisions Act, 1992 provide::

- ss. 89(5): *No person shall, in a statement made in a prescribed form, assert something that he or she knows to be untrue or profess an opinion that he or she does not hold.*
- ss. 89(6): *A person who contravenes subsection (5) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000.00.*

Dated 20.....

Signature of person making the request

| | | | |
|-------------|---------------|-------------|----------------|
| Last Name | | First Name | Middle Initial |
| Unit Number | Street Number | Street Name | PO Box |
| City/Town | | Province | Postal Code |

Telephone Number (include area code)

To: (Name of assessor)

| Last Name | First Name | Middle Initial |
|-----------|------------|----------------|
| | | |

July 2018

Form 5 — Statement of Grantor under Subsection 50(1)

Substitute Decisions Act, 1992, O. Reg. 26/95

[Repealed O. Reg. 272/15, s. 3.]

[Editor's Note: Forms 1 to 9 of General, O. Reg. 26/95 have been repealed by O. Reg. 272/15, s. 3 effective September 1, 2015. Pursuant to General, O. Reg. 26/95, s. 5, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ontario

Ministry of the Attorney General

1. I,

| Last Name | First Name | Middle Initial |
|-----------|------------|----------------|
| | | |

am the grantor of a power of attorney for personal care
signed on the day of 20..... that contains one or more of the provisions described in subsection 50(2) of the *Substitute Decisions Act, 1992* ("SDA").

2. I understand that by including one or more of these provisions I am:

- i. waiving rights that I would otherwise have by law; and

Form 6 — Optional Statement to Appoint a Guardian of the Person under **Form 6**

- ii. giving to my designated attorney for personal care powers that he or she would not otherwise have.
3. I understand the effect of the provision(s) that I have chosen to include in my power of attorney for personal care.
4. I understand the effect of subsection 50(4) of the *Substitute Decisions Act, 1992* that provides that I cannot revoke this power of attorney for personal care unless I obtain an assessment from an assessor within 30 days before the revocation is signed confirming that I am capable of personal care.
5. I am aware that I cannot be forced to include any of the provisions described in subsection 50(2) of *SDA* in my power of attorney for personal care. I am also aware that these provisions will not be effective unless an assessor makes a statement in the prescribed form indicating that he/she performed an assessment of my capacity within 30 days after the power of attorney was executed and that, in the assessor's opinion, at the time of the assessment I was:
- capable of personal care;
 - capable of understanding the effect of the provision(s) included in my power of attorney;
 - capable of understanding the effect of subsection 50(4) of the *SDA*.
6. I have signed the power of attorney for personal care and this statement of my own free will.

| | |
|--------------------------------|----------------------|
| Name of grantor (Last Name) | First Name |
| Signature of grantor | Date (yyyy/mm/dd) |

November 2014

Form 6 — Optional Statement to Appoint a Guardian of the Person under Subsection 71(1)

Substitute Decisions Act, 1992, O. Reg. 26/95

[Repealed O. Reg. 272/15, s. 3.]

[Editor's Note: Forms 1 to 9 of General, O. Reg. 26/95 have been repealed by O. Reg. 272/15, s. 3 effective September 1, 2015. Pursuant to General, O. Reg. 26/95, s. 5, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ontario

Ministry of the Attorney General

| |
|----------------|
| Court File No. |
|----------------|

Superior Court of Justice

Between:

Applicant

| (Full name), | | |
|--------------|------------|----------------|
| Last Name | First Name | Middle Initial |
| | | |

— and —

Respondent

(Full name),

Form 6

Ont. Reg. 26/95 — General

| | | | |
|-----------|------------|-----------------------------|--|
| Last Name | First Name | Mid- dle Ini- tial | |
|-----------|------------|-----------------------------|--|

I (Full name),

| | | | |
|-----------|------------|-----------------------------|---|
| Last Name | First Name | Mid- dle Ini- tial | , |
|-----------|------------|-----------------------------|---|

of the , in the
..... state that:

(City, Town, etc.) (County, Regional,
Municipality, etc.)

1. I know the person alleged to be incapable (Full name of person).

| | | | |
|-----------|------------|-----------------------------|--|
| Last Name | First Name | Mid- dle Ini- tial | |
|-----------|------------|-----------------------------|--|

2. I have been in personal contact with (Full name of person alleged to be incapable).

| | | | |
|-----------|------------|-----------------------------|--|
| Last Name | First Name | Mid- dle Ini- tial | |
|-----------|------------|-----------------------------|--|

during the twelve months before the notice of application to appoint a guardian of the person was issued.

3. If desired, set out additional statements in support of the application.

(Where more space is required, additional pages may be attached.)

Subsections 89(5) and (6) of the Substitute Decisions Act, 1992 provide:

- ss. 89(5): *No person shall, in a statement made in a prescribed form, assert something that he or she knows to be untrue or profess an opinion that he or she does not hold.*
- ss. 89(6): *A person who contravenes subsection (5) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000.00.*

Dated the
day of
20.....

Signature
November 2014

Form 7 — Optional Statement to Terminate Guardianship of the Person under Subsection 71(2)

*Substitute Decisions Act, 1992, O.
Reg. 26/95*

[Repealed O. Reg. 272/15, s. 3.]

[Editor's Note: Forms 1 to 9 of General, O. Reg. 26/95 have been repealed by O. Reg. 272/15, s. 3 effective September 1, 2015. Pursuant to General, O. Reg. 26/95, s. 5, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

*Ontario
Ministry of the Attorney General*

Form 8 — Statement to Appoint a Guardian of Property by Summary ... **Form 8**

| | | | | |
|---|--|-------|------------|-------|
| | Court File No. | | | |
| Superior Court of Justice | | | | |
| <i>Between:</i> | | | | |
| <i>Applicant</i> | | | | |
| (Full name), Last Name | First Name | Mid- | First Name | Mid- |
| | | dle | | dle |
| | | In- | | In- |
| | | itial | | itial |
| <hr/> | | | | |
| — and — | | | | |
| <i>Respondent</i> | | | | |
| (Full name), Last Name | First Name | Mid- | First Name | Mid- |
| | | dle | | dle |
| | | In- | | In- |
| | | itial | | itial |
| <hr/> | | | | |
| I (Full name), Last Name | First Name | Mid- | First Name | Mid- |
| | | dle | | dle |
| | | In- | | In- |
| | | itial | | itial |
| , | | | | |
| of the in the state that: | | | | |
| (City, Town, etc.) | (County, Regional, Municipality, etc.) | | | |
| 1. I know the person under guardianship (Full name of person). | | | | |
| Last Name | First Name | Mid- | First Name | Mid- |
| | | dle | | dle |
| | | In- | | In- |
| | | itial | | itial |
| <hr/> | | | | |
| 2. I have been in personal contact with (Full name of person under guardianship) | | | | |
| Last Name | First Name | Mid- | First Name | Mid- |
| | | dle | | dle |
| | | In- | | In- |
| | | itial | | itial |
| <hr/> | | | | |
| during the twelve months before the motion to terminate the guardianship was filed. | | | | |
| 3. If desired, set out additional statements in support of the motion. (Where more space is required, additional pages may be attached.) | | | | |
| <hr/> | | | | |
| <i>Subsections 89(5) and (6) of the Substitute Decisions Act, 1992 provide:</i> | | | | |
| ss. 89(5): <i>No person shall, in a statement made in a prescribed form, assert something that he or she knows to be untrue or profess an opinion that he or she does not hold.</i> | | | | |
| ss. 89(6): <i>A person who contravenes subsection (5) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000.00.</i> | | | | |
| Dated the day of, 20..... | | | | |
| Signature November 2014 | | | | |
| Form 8 — Statement to Appoint a Guardian of Property by Summary Disposition under Section 72 | | | | |
| <i>Substitute Decisions Act, 1992, O. Reg. 26/95</i> | | | | |
| <i>[Repealed O. Reg. 272/15, s. 3.]</i> | | | | |

Form 8

Ont. Reg. 26/95 — General

[Editor's Note: Forms 1 to 9 of General, O. Reg. 26/95 have been repealed by O. Reg. 272/15, s. 3 effective September 1, 2015. Pursuant to General, O. Reg. 26/95, s. 5, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

*Ontario**Ministry of the Attorney General*

| |
|----------------|
| Court File No. |
|----------------|

**Appointment of Guardian of Property
by Summary Disposition**

I (Full name),

Last Name

First Name

Mid-
dle
Ini-
tial

,

of the

(City, Town, etc.)

in the state that:

(County, Regional, Municipality, etc.)

1. I know (Full name of person alleged to be incapable).

Last Name

First Name

Mid-
dle
Ini-
tial

2. I have been in personal contact with (Full name of person alleged to be incapable)

Last Name

First Name

Mid-
dle
Ini-
tial

during the twelve months before the notice of application was issued.

3. The notice of application was issued on (day, month, year)
4. I am of the opinion that (Full name of person alleged to be incapable)

| Last Name | First Name | Mid- dle Ini- tial |
|-----------|------------|-----------------------------|
| | | |

is incapable of managing property.

5. I base my opinion on the following: (Set out the statements of fact in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact. Give dates wherever possible.)

.....

6. I can expect no direct or indirect pecuniary benefit as the result of the appointment of a guardian of property.
7. (Cross out if not applicable) I am of the opinion that it is necessary for decisions to be made on behalf of (Full name of person alleged to be incapable)

| Last Name | First Name | Mid- dle Ini- tial |
|-----------|------------|-----------------------------|
| | | |

by a person who is authorized to do so, and I base this opinion on the following: (Set out the statements of fact in consecutively numbered paragraphs, with each paragraph being confined as far as possible to a particular statement of fact. Give dates wherever possible).

.....

Dated the day of, 20.....

Signature
November 2014

Form 9 — Statement to Terminate Guardianship of Property by Summary .**Form 9**

**Form 9 — Statement to
Terminate Guardianship of
Property by Summary
Disposition under Section
73**

*Substitute Decisions Act, 1992, O.
Reg. 26/95*

[Repealed O. Reg. 272/15, s. 3.]

[Editor's Note: Forms 1 to 9 of General, O. Reg. 26/95 have been repealed by O. Reg. 272/15, s. 3 effective September 1, 2015. Pursuant to General, O. Reg. 26/95, s. 5, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of this Regulation and which is available on the website of the Government of Ontario Central Forms Repository. For your convenience, the government form as published on this website is reproduced below.]

Ontario

Ministry of the Attorney General

| |
|-------------------|
| Court File No. |
|-------------------|

**Termination of Guardianship of
Property by Summary Disposition**

| | | |
|-----------------------------|------------|----------------------------|
| I (Full name), Last Name | First Name | Mid- dle Initia l |
|-----------------------------|------------|----------------------------|

, of the

(City, Town, etc.)

in the state that:

(County, Regional, Municipality, etc.)

- I know (Full name of person whose property is under guardianship).

| | | |
|-----------|------------|----------------------------|
| Last Name | First Name | Mid- dle Initia l |
|-----------|------------|----------------------------|

- I have been in personal contact with (Full name of person whose property is under guardianship)

| | | |
|-----------|------------|----------------------------|
| Last Name | First Name | Mid- dle Initia l |
|-----------|------------|----------------------------|

during the twelve months before the notice of motion was filed with the court.

- The notice of motion was filed with the court on (day, month, year)
.....
- I am of the opinion that (Full name of person whose property is under guardianship)

| | | |
|-----------|------------|----------------------------|
| Last Name | First Name | Mid- dle Initia l |
|-----------|------------|----------------------------|

is incapable of managing property.

- I base my opinion on the following:
(Set out the statements of fact in consecutively numbered paragraphs, with each paragraph being confined as far as possible to the particular statement of fact. Give dates wherever possible.)
.....

- I can expect no direct or indirect pecuniary benefit as the result of the termination of the guardianship of property.

Dated the
day of,
20.....

Signature
November 2014

ONT. REG. 99/96 — REGISTER

made under the *Substitute
Decisions Act, 1992*

O. Reg. 99/96

- 1.** The Public Guardian and Trustee shall establish and maintain a register of,
 - (a) guardians of property; and
 - (b) guardians of the person.
- 2.** The Public Guardian and Trustee shall open a file relating to a person and shall incorporate the file in the register when the first of the following events occurs:
 1. The Public Guardian and Trustee becomes the person's statutory guardian of property.
 2. The court appoints someone as the person's guardian of property or guardian of the person.
- 3. (1)** A file in the register relating to a person shall contain the following information that is in the possession of the Public Guardian and Trustee:
 1. The name and address of the person.
 2. The name, address and telephone number of the person's guardian of property, if any, and guardian of the person, if any.
 3. For each guardian referred to in paragraph 2, information concerning,
 - i. how the guardian acquired his or her authority,
 - ii. any restrictions on the guardian's authority,
 - iii. with respect to a guardian of the person, whether the authority is full or partial and, if partial, the

areas of personal care decision making in which the guardian has authority, and

iv. the date that the guardian's authority took effect, terminated or changed.

(2) The Public Guardian and Trustee shall update the information contained in the register whenever he or she receives new information referred to in subsection (1).

4. A guardian of property or guardian of the person shall promptly notify the Public Guardian and Trustee in writing of,

- (a) any change in the name, address or telephone number of the guardian; and
- (b) any change in the name or address of the person.

5. When the court makes an order relating to the appointment or authority of a guardian of property or guardian of the person, the person who made the application shall promptly send the Public Guardian and Trustee a copy of the order.

6. (1) The Public Guardian and Trustee shall provide information contained in the register under section 3 to any person who requests the information, by telephone or otherwise, if the person identifies by name the person to whom the file relates.

(2) The Public Guardian and Trustee shall not provide any information in response to a request under subsection (1) except as authorized by that subsection.

7. The Public Guardian and Trustee shall inform every guardian about whom information is kept in the register about,

- (a) the existence of the register;
- (b) the nature of the information kept in the register, as set out in section 3; and
- (c) the circumstances, as set out in section 6, under which information from the register may be released.

S. 8

Ont. Reg. 99/96 — Register

8. This Regulation comes into force on the day Part III of the *Advocacy, Consent and Substitute Decisions Statute Law Amendment Act, 1996* comes into force.

SUCCESSION LAW REFORM ACT

R.S.O. 1990, c. S.26, as am. S.O. 1994, c. 27, s. 63; 1997, c. 25, Sched. E, s. 12; 1999, c. 6, s. 61; 1999, c. 12, Sched. B, s. 17; 2001, c. 13, s. 31 (Fr.); 2002, c. 17, Sched. F, s. 1; 2005, c. 5, s. 66(1), (2) (Fr.), (3)–(5), (6)–(8) (Fr.), (9)–(12); 2006, c. 19, Sched. C, s. 1(1); 2006, c. 21, Sched. C, s. 135; 2008, c. 14, s. 60; 2009, c. 33, Sched. 8, s. 17; 2009, c. 34, Sched. T, s. 4; CTS 30 AU 10 – 1; 2015, c. 38, Sched. 4, s. 30; 2016, c. 23, s. 71; 2017, c. 8, Sched. 29; 2020, c. 7, Sched. 15, s. 1.

1. (1) Definitions — In this Act,

“**child**” includes,

- (a) a child conceived before and born alive after the parent’s death, and
- (b) a child conceived and born alive after the parent’s death, if the conditions in subsection 1.1(1) are met;

“**grandchild**” means the child of a child;

“**issue**” includes,

- (a) a descendant conceived before and born alive after the person’s death, and
- (b) a descendant conceived and born alive after the person’s death, if the

conditions in subsection 1.1(1) are met;

“**parent**” [Repealed 2016, c. 23, s. 71(3).]

“**personal representative**” means an executor, an administrator or an administrator with will annexed;

“**spouse**”, except in Part V, has the same meaning as in section 1 of the *Family Law Act*;

“**will**” includes,

- (a) a testament,
- (b) a codicil,
- (c) an appointment by will or by writing in the nature of a will in exercise of a power, and
- (d) any other testamentary disposition.

(2) [Repealed 2016, c. 23, s. 71(5).]

(3) **Relationship of persons born outside marriage** — In this Act, and in any will unless a contrary intention is shown in the will, a reference to a person in terms of a relationship to another person determined by blood or marriage shall be deemed to include a person who comes within the description despite the fact that he or she or any other person through whom the relationship is traced was born outside marriage.

(4) **Application of subs. (3)** — Subsection (3) applies in respect of wills made on or after 31st day of March, 1978.

2005, c. 5, s. 66(1); 2016, c. 23, s. 71(1)–(5)

1.1 (1) Posthumous conception, conditions — The following conditions respecting a child conceived and born alive after a person's death apply for the purposes of this Act:

1. The person who, at the time of the death of the deceased person, was his or her spouse, must give written notice to the Estate Registrar for Ontario that the person may use reproductive material or an embryo to attempt to conceive, through assisted reproduction and with or without a surrogate, a child in relation to which the deceased person intended to be a parent.
2. The notice under paragraph 1 must be in the form provided by the Ministry of the Attorney General and given no later than six months after the deceased person's death.
3. The posthumously-conceived child must be born no later than the third anniversary of the deceased person's death, or such later time as may be specified by the Superior Court of Justice under subsection (3).
4. A court has made a declaration under section 12 of the *Children's Law Reform Act* establishing the deceased person's parentage of the posthumously-conceived child.

(2) Interpretation — For the purposes of paragraph 1 of subsection (1), “assisted reproduction”, “embryo”, “reproductive material”, “spouse” and “surrogate” have the same meaning as in section 1 of the *Children's Law Reform Act*.

(3) Extension of time — On motion or application, as the case may be, by a surviving spouse who gives notice under paragraph 1 of subsection (1), the Superior Court of Justice may make an order extending the period referred to in paragraph 3 of that subsection, if the Court considers it appropriate in the circumstances.

2016, c. 23, s. 71(6)

PART I — TESTATE SUCCESSION (SS. 2–43)

General

2. Power to dispose of property by will — A person may by will devise, bequeath or dispose of all property (whether acquired before or after making his or her will) to which at the time of his or her death he or she is entitled either at law or in equity, including,

- (a) estates for another's life, whether there is or is not a special occupant and whether they are corporeal or incorporeal hereditaments;
- (b) contingent, executory or other future interests in property, whether the testator is or is not ascertained as the person or one of the persons in whom those interests may respectively become vested, and whether he or she is entitled to them under the instrument by which they were respectively created or under a disposition of them by deed or will; and
- (c) rights of entry, whether for conditions broken or otherwise.

3. Will to be in writing — A will is valid only when it is in writing.

4. (1) Execution — Subject to sections 5 and 6, a will is not valid unless,

- (a) at its end it is signed by the testator or by some other person in his or her presence and by his or her direction;
- (b) the testator makes or acknowledges the signature in the presence of two or more attesting witnesses present at the same time; and
- (c) two or more of the attesting witnesses subscribe the will in the presence of the testator.

(2) Idem — Where witnesses are required by this section, no form of attestation is necessary.

5. (1) Will of member of forces on active service — A person who is,

- (a) a member of the Canadian Forces placed on active service under the *National Defence Act* (Canada);
- (b) a member of any other naval, land or air force while on active service; or
- (c) a sailor when at sea or in the course of a voyage,

may make a will by a writing signed by him or her or by some other person in his or her presence and by his or her direction without any further formality or any requirement of the presence of or attestation or signature by a witness.

(2) Certificate of active service — For the purposes of this section, a certificate purporting to be signed by or on behalf of an officer having custody of the records certifying that he or she has custody of the records of the force in which a person was serving at the time the will was made, setting out that the person was on active service at that time, is proof, in the absence of evidence to the contrary, of that fact.

(3) Where certificate not available — For the purposes of this section, if a certificate under subsection (2) is not available, a member of a naval, land or air force is deemed to be on active service after he or she has taken steps under the orders of a superior officer preparatory to serving with or being attached to or seconded to a component of such a force that has been placed on active service.

6. Holograph wills — A testator may make a valid will wholly by his or her own handwriting and signature, without formality, and without the presence, attestation or signature of a witness.

7. (1) Position of signature — In so far as the position of the signature is concerned, a will, whether holograph or not, is valid if the signature of the testator made either by him or her or the person signing for him or

her is placed at, after, following, under or beside or opposite to the end of the will so that it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as his or her will.

(2) Idem — A will is not rendered invalid by the circumstance that,

- (a) the signature does not follow or is not immediately after the end of the will;
- (b) a blank space intervenes between the concluding words of the will and the signature;
- (c) the signature,
 - (i) is placed among the words of a testimonium clause or of a clause of attestation,
 - (ii) follows or is after or under a clause of attestation either with or without a blank space intervening, or
 - (iii) follows or is after, under or beside the name of a subscribing witness;
- (d) the signature is on a side, page or other portion of the paper or papers containing the will on which no clause, paragraph or disposing part of the will is written above the signature; or
- (e) there appears to be sufficient space on or at the bottom of the preceding side, page or other portion of the same paper on which the will is written to contain the signature.

(3) Idem — The generality of subsection (1) is not restricted by the enumeration of circumstances set out in subsection (2), but a signature in conformity with section 4, 5 or 6 or this section does not give effect to,

- (a) a disposition or direction that is underneath the signature or that follows the signature; or
- (b) a disposition or direction inserted after the signature was made.

S. 8(1)

Succession Law Reform Act

8. (1) Wills by minors — A will made by a person who is under the age of eighteen years is not valid unless at the time of making the will the person,

- (a) is or has been married;
- (b) is contemplating marriage and the will states that it is made in contemplation of marriage to a named person except that such a will is not valid unless and until the marriage to the named person takes place;
- (c) is a member of a component of the Canadian Forces,
 - (i) that is referred to in the *National Defence Act* (Canada) as a regular force, or
 - (ii) while placed on active service under the *National Defence Act* (Canada); or
- (d) is a sailor and at sea or in the course of a voyage.

(2) Certificate of active service — A certificate purporting to be signed by or on behalf of an officer having custody of the records certifying that he or she has custody of the records of the force in which a person was serving at the time the will was made, setting out that the person was at that time a member of a regular force or was on active service within clause (1)(c), is proof, in the absence of evidence to the contrary, of that fact.

(3) Revocation — A person who has made a will under subsection (1) may, while under the age of eighteen years, revoke the will.

9. Exercise of appointments by will — No appointment made by will in exercise of any power is valid unless the appointment is executed in the manner hereinbefore required, and every will executed in the manner hereinbefore required is, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by will, despite the fact that it has been expressly required that a will made in exercise of such power shall be executed with some

additional or other form of execution or solemnity.

10. Publication unnecessary — A will made in accordance with this Part is valid without other publication.

11. Effect of incompetency of witness — Where a person who attested a will was at the time of its execution or afterward has become incompetent as a witness to prove its execution, the will is not on that account invalid.

12. (1) Bequests to witness void — Where a will is attested by a person to whom or to whose then spouse a beneficial devise, bequest or other disposition or appointment of or affecting property, except charges and directions for payment of debts, is thereby given or made, the devise, bequest or other disposition or appointment is void so far only as it concerns,

- (a) the person so attesting;
- (b) the spouse; or
- (c) a person claiming under either of them,

but the person so attesting is a competent witness to prove the execution of the will or its validity or invalidity.

(2) Where will signed for testator by another person — Where a will is signed for the testator by another person in accordance with section 4, to whom or to whose then spouse a beneficial devise, bequest or other disposition or appointment of or affecting property, except charges and directions for payment of debts, is thereby given or made, the devise, bequest, or other disposition is void so far only as it concerns,

- (a) the person so signing;
- (b) the spouse; or
- (c) a person claiming under either of them,

but the will is not invalid for that reason.

(3) Where no undue influence — Despite anything in this section, where the Superior Court of Justice is satisfied that neither the person so attesting or signing for the testator nor the spouse exercised any improper or undue influence upon the testator, the devise, bequest or other disposition or appointment is not void.

(4) Exception — Where a will is attested by at least two persons who are not within subsection (1) or where no attestation is necessary, the devise, bequest or other disposition or appointment is not void under that subsection.

2006, c. 19, Sched. C, s. 1(1)

13. Creditor as witness — Where property is charged by a will with a debt and a creditor or the spouse of a creditor whose debt is so charged attests a will, the person so attesting, despite the charge, is a competent witness to prove the execution of the will or its validity or invalidity.

14. Executor as witness — A person is not incompetent as a witness to prove the execution of a will or its validity or invalidity solely because he or she is an executor.

15. Revocation — A will or part of a will is revoked only by,

- (a) marriage, subject to section 16;
- (b) another will made in accordance with the provisions of this Part;
- (c) a writing,
 - (i) declaring an intention to revoke, and
 - (ii) made in accordance with the provisions of this Part governing making of a will; or
- (d) burning, tearing or otherwise destroying it by the testator or by some person in his or her presence and by his or her direction with the intention of revoking it.

16. Revocation by marriage — A will is revoked by the marriage of the testator except where,

- (a) there is a declaration in the will that it is made in contemplation of the marriage;
- (b) the spouse of the testator elects to take under the will, by an instrument in writing signed by the spouse and filed within one year after the testator's death in the office of the Estate Registrar for Ontario; or
- (c) the will is made in exercise of a power of appointment of property which would not in default of the appointment pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator if he or she died intestate.

17. (1) Change in circumstances — Subject to subsection (2), a will is not revoked by presumption of an intention to revoke it on the ground of a change in circumstances.

(2) Exception on termination of marriage — Except when a contrary intention appears by the will, where, after the testator makes a will, his or her marriage is terminated by a judgment absolute of divorce or is declared a nullity,

- (a) a devise or bequest of a beneficial interest in property to his or her former spouse;
- (b) an appointment of his or her former spouse as executor or trustee; and
- (c) the conferring of a general or special power of appointment on his or her former spouse,

are revoked and the will shall be construed as if the former spouse had predeceased the testator.

18. (1) Alterations in will — Subject to subsection (2), unless an alteration that is made in a will after the will has been made is made in accordance with the provisions of

this Part governing making of the will, the alteration has no effect except to invalidate words or the effect of the will that it renders no longer apparent.

(2) How validly made — An alteration that is made in a will after the will has been made is validly made when the signature of the testator and subscription of witnesses to the signature of the testator to the alteration, or, in the case of a will that was made under section 5 or 6, the signature of the testator, are or is made,

- (a) in the margin or in some other part of the will opposite or near to the alteration; or
- (b) at the end of or opposite to a memorandum referring to the alteration and written in some part of the will.

19. (1) Revival — A will or part of a will that has been in any manner revoked is revived only,

- (a) by a will made in accordance with the provisions of this Part; or
- (b) by a codicil that has been made in accordance with the provisions of this Part,

that shows an intention to give effect to the will or part that was revoked, or,

- (c) by re-execution thereof with the required formalities, if any.

(2) As to part formerly revoked — Except when a contrary intention is shown, when a will which has been partly revoked and afterward wholly revoked is revived, the revival does not extend to the part that was revoked before the revocation of the whole.

20. (1) Operation of will as to interest left in testator — A conveyance of or other act relating to property that is the subject of a devise, bequest or other disposition, made or done after the making of a will, does not prevent operation of the will with respect to any estate or interest in the property that the testator had power to dispose of by will at the time of his or her death.

(2) Rights in place of property devised — Except when a contrary intention appears by the will, where a testator at the time of his or her death,

- (a) has a right, chose in action or equitable estate or interest that was created by a contract respecting a conveyance of, or other act relating to, property that was the subject of a devise or bequest, made before or after the making of a will;
- (b) has a right to receive the proceeds of a policy of insurance covering loss of or damage to property that was the subject of a devise or bequest, whether the loss or damage occurred before or after the making of the will;
- (c) has a right to receive compensation for the expropriation of property that was the subject of a devise or bequest, whether the expropriation occurred before or after the making of the will; or
- (d) has a mortgage, charge or other security interest in property that was the subject of a devise or bequest, taken by the testator on the sale of such property, whether such mortgage, charge or other security interest was taken before or after the making of the will,

the devisee or donee of that property takes the right, chose in action, equitable estate or interest, right to insurance proceeds or compensation, or mortgage, charge or other security interest of the testator.

21. When revived will deemed made — When a will has been revived in the manner described in section 19, the will shall be deemed to have been made at the time at which it was so revived.

22. Will to speak from death — Except when a contrary intention appears by the will, a will speaks and takes effect as if it had been made immediately before the death of the testator with respect to,

- (a) the property of the testator; and

(b) the right, chose in action, equitable estate or interest, right to insurance proceeds or compensation, or mortgage, charge or other security interest of the testator under subsection 20(2).

23. Disposition of property in void devise — Except when a contrary intention appears by the will, property or an interest therein that is comprised or intended to be comprised in a devise or bequest that fails or becomes void by reason of,

- (a) the death of the devisee or donee in the lifetime of the testator; or
- (b) the devise or bequest being disclaimed or being contrary to law or otherwise incapable of taking effect,

is included in the residuary devise or bequest, if any, contained in the will.

24. Leasehold estates under devise of real property — Except when a contrary intention appears by the will, where a testator devises,

- (a) his or her real property;
- (b) his or her real property in a place mentioned in the will, or in the occupation of a person mentioned in the will;
- (c) real property described in a general manner; or
- (d) real property described in a manner that would include a leasehold estate if the testator had no freehold estate which could be described in the manner used,

the devise includes the leasehold estates of the testator or any of them to which the description extends, as well as freehold estates.

25. (1) Disposition of real property over which testator has power of appointment under devise — Except when a contrary intention appears by the will, a general devise of,

- (a) the real property of the testator;

(b) the real property of the testator,

- (i) in a place mentioned in the will, or
- (ii) in the occupation of a person mentioned in the will; or

- (c) real property described in a general manner,

includes any real property, or any real property to which the description extends, which he or she has power to appoint in any manner he or she thinks proper and operates as an execution of the power.

(2) Disposition of personal property over which testator has power of appointment under bequest — Except when a contrary intention appears by the will, a bequest of,

- (a) the personal property of the testator; or
- (b) personal property described in a general manner,

includes any personal property, or any personal property to which the description extends, which he or she has power to appoint in any manner he or she thinks proper and operates as an execution of the power.

26. Real property passing under devise without words of limitation —

Except when a contrary intention appears by the will, where real property is devised to a person without words of limitation, the devise passes the fee simple or the whole of any other estate or interest that the testator had power to dispose of by will in the real property.

27. Meaning of “heir” in devise of property — Except when a contrary intention appears by the will, where property is devised or bequeathed to the “heir” or “heirs” of the testator or of another person, the words “heir” or “heirs” mean the person to whom the beneficial interest in the property would have gone under the law of Ontario if the testator or the other person died intestate.

28. (1) Import of words “die without issue”, etc. — Subject to subsection (2), in a devise or bequest of property,

- (a) the words,
 - (i) “die without issue”,
 - (ii) “die without leaving issue”, or
 - (iii) “have no issue”; or
- (b) other words importing either a want or failure of issue of a person in his or her lifetime or at the time of his or her death or an indefinite failure of his or her issue,

mean a want or failure of issue in the lifetime or at the time of death of that person, and do not mean an indefinite failure of his or her issue unless contrary intention appears by the will.

(2) Cases to which Part not to extend — This Part does not extend to cases where the words defined in subsection (1) import,

- (a) if no issue described in a preceding gift be born; or
- (b) if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to that issue.

29. Devise to trustee or executor — Except when there is devised to a trustee expressly or by implication an estate for a definite term of years absolute or determinable or an estate of freehold, a devise of real property to a trustee or executor passes the fee simple or the whole of any other estate or interest that the testator had power to dispose of by will in the real property.

30. When devise to trustee to pass whole estate beyond what is requisite for trust — Where real property is devised to a trustee without express limitation of the estate to be taken by the trustee and the ben-

eficial interest in the real property or in the surplus rents and profits,

- (a) is not given to a person for life; or
- (b) is given to a person for life but the purpose of the trust may continue beyond his or her life,

the devise vests in the trustee the fee simple or the whole of any other legal estate that the testator had power to dispose of by will in the real property and not an estate determinable when the purposes of the trust are satisfied.

31. Substitutional gifts — Except when a contrary intention appears by the will, where a devise or bequest is made to a child, grandchild, brother or sister of the testator who dies before the testator, either before or after the testator makes his or her will, and leaves a spouse or issue surviving the testator, the devise or bequest does not lapse but takes effect as if it had been made directly to the persons among whom and in the shares in which the estate of that person would have been divisible,

- (a) if that person had died immediately after the death of the testator;
- (b) if that person had died intestate;
- (c) if that person had died without debts; and
- (d) if section 45 had not been passed.

32. (1) Primary liability of real property to satisfy mortgage — Where a person dies possessed of, or entitled to, or under a general power of appointment by his or her will disposes of, an interest in freehold or leasehold property which, at the time of his or her death, is subject to a mortgage, and the deceased has not, by will, deed or other document, signified a contrary or other intention,

- (a) the interest is, as between the different persons claiming through the deceased, primarily liable for the payment or satisfaction of the mortgage debt; and

(b) every part of the interest, according to its value, bears a proportionate part of the mortgage debt on the whole interest.

(2) Consequence of general direction to pay debts out of personality or residue — A testator does not signify a contrary or other intention within subsection (1) by,

(a) a general direction for the payment of debts or of all the debts of the testator out of his or her personal estate, his or her residuary real or personal estate or his or her residuary real estate; or

(b) a charge of debts upon that estate,

unless he or she further signifies that intention by words expressly or by necessary implication referring to all or some part of the mortgage debt.

(3) Saving of mortgagee's rights — Nothing in this section affects a right of a person entitled to the mortgage debt to obtain payment or satisfaction either out of the other assets of the deceased or otherwise.

(4) Definitions — In this section,

“mortgage” includes an equitable mortgage, and any charge whatsoever, whether equitable, statutory or of other nature, including a lien or claim upon freehold or leasehold property for unpaid purchase money, and “mortgage debt” has a meaning similarly extended.

33. (1) Undisposed of residue — Where a person dies having by will appointed a person executor, the executor is a trustee of any residue not expressly disposed of, for the person or persons, if any, who would be entitled to that residue in the event of intestacy in respect of it, unless it appears by the will that the person so appointed executor was intended to take the residue beneficially.

(2) Where no person entitled to residue — Nothing in this section prejudices any right in respect of any residue not expressly disposed of to which, if this Part had

not been passed, an executor would have been entitled where there is not any person who would be entitled to the testator's estate under Part II in case of an intestacy.

Conflict of Laws

34. Interpretation — In sections 36 to 41,

(a) an interest in land includes a leasehold estate as well as a freehold estate in land, and any other estate or interest in land whether the estate or interest is real property or is personal property;

(b) an interest in movables includes an interest in a tangible or intangible thing other than land, and includes personal property other than an estate or interest in land;

(c) “internal law” in relation to any place excludes the choice of law rules of that place.

35. Wills made in or out of Ontario — Sections 36 to 41 apply to a will made either in or out of Ontario.

36. (1) Formalities, re interests in land — The manner and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in land, are governed by the internal law of the place where the land is situated.

(2) Re interests in movables — Subject to other provisions of this Part, the manner and formalities of making a will, and its essential validity and effect, so far as it relates to an interest in movables, are governed by the internal law of the place where the testator was domiciled at the time of his or her death.

37. (1) Formalities re interests in movables or in land — As regards the manner and formalities of making a will of an interest in movables or in land, a will is valid and admissible to probate if at the time

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of its making it complied with the internal law of the place where,

- (a) the will was made;
- (b) the testator was then domiciled;
- (c) the testator then had his or her habitual residence; or
- (d) the testator then was a national if there was in that place one body of law governing the wills of nationals.

(2) Idem — As regards the manner and formalities of making a will of an interest in movables or in land, the following are properly made,

- (a) a will made on board a vessel or aircraft of any description, if the making of the will conformed to the internal law in force in the place with which, having regard to its registration, if any, and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;
- (b) a will so far as it revokes a will which under sections 34 to 42 would be treated as properly made or revokes a provision which under those sections would be treated as comprised in a properly made will, if the making of the later will conformed to any law by reference to which the revoked will or provision would be treated as properly made; and
- (c) a will so far as it exercises a power of appointment, if the making of the will conforms to the law governing the essential validity of the power.

38. Change of domicile — A change of domicile of the testator occurring after a will is made does not render it invalid as regards the manner and formalities of its making or alter its construction.

39. Construction of will — Nothing in sections 34 to 42 precludes resort to the law of the place where the testator was domiciled at the time of making a will in aid of

its construction as regards an interest in land or an interest in movables.

40. Movables used in relation to land — Where the value of a thing that is movable consists mainly or entirely in its use in connection with a particular parcel of land by the owner or occupier of the land, succession to an interest in the thing under a will is governed by the law that governs succession to the interest in the land.

41. (1) Where law outside Ontario to be applied to will — Where, whether under sections 34 to 42 or not, a law in force outside Ontario is to be applied in relation to a will, any requirement of that law that,

- (a) special formalities are to be observed by testators answering a particular description; or
 - (b) witnesses to the making of a will are to possess certain qualifications,
- shall be treated, despite any rule of that law to the contrary, as a formal requirement only.

(2) Formal requirements of law — In determining for the purposes of sections 34 to 40 whether or not the making of a will conforms to a particular law, regard shall be had to the formal requirements of that law at the time the will was made, but account shall be taken of an alteration of law affecting wills made at that time if the alteration enables the will to be treated as properly made.

International Wills

42. (1) Convention on form of international will — In this section,

“convention” means the convention providing a uniform law on the form of international will, a copy of which is set out in the Schedule to this section.

(2) Effective date — The convention is in force in Ontario and applies to wills as law of Ontario and the rules regarding an inter-

national will set out in the Annex to the convention are law in Ontario.

(3) Persons authorized under convention — All persons licensed under the *Law Society Act* to practise law in Ontario as barristers and solicitors are designated as persons authorized to act in connection with international wills.

(4) Validity of wills under other laws — Nothing in this section detracts from or affects the validity of a will that is valid under the laws in force in Ontario other than this section.

Schedule

[1] — CONVENTION PROVIDING A UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL

The number in square brackets has been editorially added by Carswell

The States signatory to the present Convention,

DESIRING to provide to a greater extent for the respecting of last wills by establishing an additional form of will hereinafter to be called an “international will” which, if employed, would dispense to some extent with the search for the applicable law;

HAVE RESOLVED to conclude a Convention for this purpose and have agreed upon the following provisions:

Article I

1. Each Contracting Party undertakes that not later than six months after the date of entry into force of this Convention in respect of that Party it shall in-

duce into its law the rules regarding an international will set out in the Annex to this Convention.

2. Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.

3. Each Contracting Party may introduce into its law such further provisions as are necessary to give the provisions of the Annex full effect in its territory.

4. Each Contracting Party shall submit to the Depositary Government the text of the rules introduced into its national law in order to implement the provisions of this Convention.

Article II

1. Each Contracting Party shall implement the provisions of the Annex in its law, within the period provided for in the preceding article, by designating the persons who, in its territory, shall be authorized to act in connection with international wills. It may also designate as a person authorized to act with regard to its nationals its diplomatic or consular agents abroad in so far as the local law does not prohibit it.

2. The Party shall notify such designation, as well as any modifications thereof, to the Depositary Government.

Article III

The capacity of the authorized person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognized in the territory of the other Contracting Parties.

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Article IV

The effectiveness of the certificate provided for in Article 10 of the Annex shall be recognized in the territories of all Contracting Parties.

Article V

1. The conditions requisite to acting as a witness of an international will shall be governed by the law under which the authorized person was designated. The same rule shall apply as regards an interpreter who is called upon to act.

2. Nonetheless no one shall be disqualified to act as a witness of an international will solely because he is an alien.

Article VI

1. The signature of the testator, of the authorized person, and of the witnesses to an international will, whether on the will or on the certificate, shall be exempt from any legalization or like formality.

2. Nonetheless, the competent authorities of any Contracting Party may, if necessary, satisfy themselves as to the authenticity of the signature of the authorized person.

Article VII

The safekeeping of an international will shall be governed by the law under which the authorized person was designated.

Article VIII

No reservation shall be admitted to this Convention or to its Annex.

Article IX

1. The present Convention shall be open for signature at Washington from October 26, 1973, until December 31, 1974.

2. The Convention shall be subject to ratification.

3. Instruments of ratification shall be deposited with the Government of the United States of America, which shall be the Depositary Government.

Article X

1. The Convention shall be open indefinitely for accession.

2. Instruments of accession shall be deposited with the Depositary Government.

Article XI

1. The present Convention shall enter into force six months after the date of deposit of the fifth instrument of ratification or accession with the Depositary Government.

2. In the case of each State which ratifies this Convention or accedes to it after the fifth instrument of ratification or accession has been deposited, this Convention shall enter into force six months after the deposit of its own instrument of ratification or accession.

Article XII

1. Any Contracting Party may denounce this Convention by written notification to the Depositary Government.

2. Such denunciation shall take effect twelve months from the date on which the Depositary Government has received the notification, but such denunciation shall not affect the validity of any will made during the period that the Convention was in effect for the denouncing State.

Article XIII

1. Any State may, when it deposits its instrument of ratification or accession or at any time

thereafter, declare, by a notice addressed to the Depositary Government, that this Convention shall apply to all or part of the territories for the international relations of which it is responsible.

2. Such declaration shall have effect six months after the date on which the Depositary Government shall have received notice thereof or, if at the end of such period the Convention has not yet come into force, from the date of its entry into force.

3. Each Contracting Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article XII, denounce this Convention in relation to all or part of the territories concerned.

Article XIV

1. If a State has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, it may at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

2. These declarations shall be notified to the Depositary Government and shall state expressly the territorial units to which the Convention applies.

Article XV

If a Contracting Party has two or more territorial units in which different systems of law apply in relation to matters respecting the form of wills, any reference to the internal law of the place where the will is

made or to the law under which the authorized person has been appointed to act in connection with international wills shall be construed in accordance with the constitutional system of the Party concerned.

Article XVI

1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

2. The Depositary Government shall give notice to the signatory and acceding States, and to the International Institute for the Unification of Private Law, of:

- (a) any signature;
- (b) the deposit of any instrument of ratification or accession;
- (c) any date on which this Convention enters into force in accordance with Article XI;
- (d) any communication received in accordance with Article I, paragraph 4;
- (e) any notice received in accordance with Article II, paragraph 2;
- (f) any declaration received in accordance with Article XIII, paragraph 2, and the date on which such declaration takes effect;
- (g) any denunciation received in accordance with Article XII, para-

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graph 1, or Article XIII, paragraph 3, and the date on which the denunciation takes effect;

(h) any declaration received in accordance with Article XIV, paragraph 2, and the date on which the declaration takes effect.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

DONE at Washington this twenty-sixth day of October, one thousand nine hundred and seventy-three.

Annex**[1] — UNIFORM LAW
ON THE FORM OF
AN INTERNATIONAL
WILL**

The number in square brackets has been editorially added by Carswell 

Article 1

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.

2. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Article 3

1. The will shall be made in writing.
2. It need not be written by the testator himself.
3. It may be written in any language, by hand or by any other means.

Article 4

1. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof.
2. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

Article 5

1. In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.
2. When the testator is unable to sign, he shall indicate the reason therefor to the authorized person who shall make note of this on the will. Moreover, the testator may be authorized by the law under which the authorized person was designated to direct another person to sign on his behalf.
3. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

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Article 6

1. The signatures shall be placed at the end of the will.
2. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

Article 7

1. This date of the will shall be the date of its signature by the authorized person.
2. This date shall be noted at the end of the will by the authorized person.

Article 8

In the absence of any mandatory rule pertaining to the safekeeping of the will, the authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator the place where he intends to have his will kept shall be mentioned in the certificate provided for in Article 9.

Article 9

The authorized person shall attach to the will a certificate in the form prescribed in Article 10 establishing that the obligations of this law have been complied with.

Article 10

The certificate drawn up by the authorized person shall be in the following form or in a substantially similar form:

Certificate (Convention of October 26, 1973)

1. I,
(name, address and capacity), a person authorized to act in connection with international wills
2. Certify that on
(date) at
(place)
3. (testator)
(name, address, date and place of birth) in my presence and that of the witnesses
- 4.(a)
(name, address, date and place of birth),
- 4.(b)
(name, address, date and place of birth) has declared that the attached document is his will and that he knows the contents thereof.
5. I furthermore certify that:
- 6.(a) in my presence and in that of the witnesses
 - (1) the testator has signed the will or has acknowledged his signature previously affixed.

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| <p>*(2) following a declaration of the testator stating that he was unable to sign his will for the following reason</p> <p>.....</p> <p>* — I have mentioned this declaration on the will</p> <p>.....</p> <p>* — the signature has been affixed by</p> <p>.....</p> <p>(name, address)</p> <p>7.(b) the witnesses and I have signed the will;</p> <p>8.*(c) each page of the will has been signed by</p> <p>.....</p> <p>and numbered;</p> <p>9.(d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;</p> <p>10.(e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;</p> <p>11.*(f) the testator has requested me to include the following</p> | <p>statement concerning the safekeeping of his will:</p> <p>12. PLACE</p> <p>13. DATE</p> <p>14. SIGNATURE and, if necessary, SEAL</p> <p>*To be completed if appropriate.</p> |
|--|--|

Article 11

The authorized person shall keep a copy of the certificate and deliver another to the testator.

Article 12

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this Law.

Article 13

The absence or irregularity of a certificate shall not affect the formal validity of a will under this Law.

Article 14

The international will shall be subject to the ordinary rules of revocation of wills.

Article 15

In interpreting and applying the provisions of this law, regard shall be had to its international origin and to the need for uniformity in its interpretation.

2006, c. 21, Sched. C, s. 135

43. Application of Part — This Part applies to wills made before, on or after the 31st day of March, 1978 where the testator has not died before that date.

PART II — INTESTATE SUCCESSION (SS. 44–49)

44. Intestacy where spouse and no issue — Where a person dies intestate in respect of property and is survived by a spouse and not survived by issue, the spouse is entitled to the property absolutely.

45. (1) Preferential share of spouse — Subject to subsection (3), where a person dies intestate in respect of property having a net value of not more than the preferential share and is survived by a spouse and issue, the spouse is entitled to the property absolutely.

(2) Same — Subject to subsection (3), where a person dies intestate in respect of property having a net value of more than the preferential share and is survived by a spouse and issue, the spouse is entitled to the preferential share absolutely.

(3) Same — Despite subsection (1), where a person dies testate as to some property and intestate as to other property and is survived by a spouse and issue, and,

(a) where the spouse is entitled under the will to nothing or to property having a net value of less than the preferential share, the spouse is entitled out of the intestate property to the amount by which the preferential share exceeds the net value of the property, if any, to which the spouse is entitled under the will;

(b) where the spouse is entitled under the will to property having a net value of more than the preferential share, subsections (1) and (2) do not apply.

(4) Definition — In this section,

“net value” means the value of the property after payment of the charges thereon and the debts, funeral expenses and expenses of administration.

(5) Preferential share — The preferential share is the amount prescribed by a regulation made under subsection (6).

(6) Regulation — The Lieutenant Governor in Council may, by regulation, prescribe the amount of the preferential share.

1994, c. 27, s. 63; 2009, c. 34, Sched. T, s. 4

[Editor’s Note: Section 45 of the Succession Law Reform Act, which deals with the preferential share of a spouse in intestate estates, was amended by 1994, c. 27, s. 63(1) and (2). This amendment is applicable to the estate of persons who died on or after April 1, 1995, the date on which the amendments came into force.]

The estates of persons, who died before April 1995, are governed by s. 45 as it read immediately before the amendments came into force.]

46. (1) Residue: spouse and one child — Where a person dies intestate in respect of property and leaves a spouse and one child, the spouse is entitled to one-half of the residue of the property after payment under section 45, if any.

(2) Idem: spouse and two or more children — Where a person dies intestate in respect of property and leaves a spouse and more than one child, the spouse is entitled to one-third of the residue of the property after payment under section 45, if any.

(3) Idem: issue of predeceased children — Where a child has died leaving issue living at the date of the intestate’s death, the spouse’s share shall be the same as if the child had been living at that date.

47. (1) Issue — Subject to subsection (2), where a person dies intestate in respect of property and leaves issue surviving him or her, the property shall be distributed, subject to the rights of the spouse, if any, equally among his or her issue who are of the nearest degree in which there are issue surviving him or her.

(2) Share of predeceasing issue — Where any issue of the degree entitled under subsection (1) has predeceased the intestate, the share of such issue shall be distributed among his or her issue in the manner set out in subsection (1) and the share devolving upon any issue of that and subsequent degrees who predecease the intestate shall be similarly distributed.

(3) Parents — Where a person dies intestate in respect of property and leaves no spouse or issue, the property shall be distributed between the parents of the deceased equally or, where there is only one parent surviving the deceased, to that parent absolutely.

(4) Brothers and sisters — Where a person dies intestate in respect of property and there is no surviving spouse, issue or parent, the property shall be distributed among the surviving brothers and sisters of the intestate equally, and if any brother or sister predeceases the intestate, the share of the deceased brother or sister shall be distributed among his or her children equally.

(5) Nephews and nieces — Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother or sister, the property shall be distributed among the nephews and nieces of the intestate equally without representation.

(6) Next of kin — Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew or niece, the property shall be distributed among the next of kin of equal degree of consanguinity to the intestate equally without representation.

(7) Crown — Where a person dies intestate in respect of property and there is no surviving spouse, issue, parent, brother, sister, nephew, niece or next of kin, the property becomes the property of the Crown, and the *Escheats Act, 2015* applies.

(8) Degrees of kindred — For the purposes of subsection (6), degrees of kindred shall be computed by counting upward from

the deceased to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

(9) Descendants conceived but unborn — For the purposes of this section, descendants and relatives of the deceased conceived before and born alive after the death of the deceased shall inherit as if they had been born in the lifetime of the deceased and had survived him or her.

(10) Descendants posthumously conceived — For the purposes of this section, descendants and relatives of the deceased conceived and born alive after the death of the deceased shall inherit as if they had been born in the lifetime of the deceased and had survived him or her, if the conditions in subsection 1.1(1) are met.

(11) Right to inherit — The right of a descendant or relative to whom subsection (10) applies to inherit begins on the day he or she is born.

2015, c. 38, Sched. 4, s. 30; 2016, c. 23, s. 71(7)

48. Abolition of courtesy — The common law right of a widower to courtesy is abolished.

49. Application — This Part applies to an intestacy upon a death occurring on or after the 31st day of March, 1978.

PART III — DESIGNATION OF BENEFICIARIES OF INTEREST IN FUNDS OR PLANS (SS. 50–54.1)

50. Definitions — In this Part,

“**participant**” means a person who is entitled to designate another person to receive a benefit payable under a plan on the participant’s death;

“plan” means,

- (a) a pension, retirement, welfare or profit-sharing fund, trust, scheme, contract or arrangement or a fund, trust, scheme, contract or arrangement for other benefits for employees, former employees, directors, former directors, agents or former agents of an employer or their dependants or beneficiaries,
- (b) a fund, trust, scheme, contract, or arrangement for the payment of a periodic sum for life or for a fixed or variable term, or
- (c) a fund, trust, scheme, contract or arrangement of a class that is prescribed for the purposes of this Part by a regulation made under section 53.1,

and includes a retirement savings plan, a retirement income fund and a home ownership savings plan as defined in the *Income Tax Act* (Canada) and an Ontario home ownership savings plan under the *Ontario Home Ownership Savings Plan Act*.

1994, c. 27, s. 63(4)

51. (1) Designation of beneficiaries —

A participant may designate a person to receive a benefit payable under a plan on the participant’s death,

- (a) by an instrument signed by him or her or signed on his or her behalf by another person in his or her presence and by his or her direction; or
- (b) by will,

and may revoke the designation by either of those methods.

(1.1) Same — A designation under clause (1)(a) may be provided electronically in accordance with the *Electronic Commerce Act, 2000*.

(2) Idem — A designation in a will is effective only if it relates expressly to a plan, either generally or specifically.

2020, c. 7, Sched. 15, s. 1

52. (1) Revocation of designation — A revocation in a will is effective to revoke a

designation made by instrument only if the revocation relates expressly to the designation, either generally or specifically.

(2) Idem — Despite section 15, a later designation revokes an earlier designation, to the extent of any inconsistency.

(3) Idem — Revocation of a will revokes a designation in the will.

(4) Where will invalid — A designation or revocation contained in an instrument purporting to be a will is not invalid by reason only of the fact that the instrument is invalid as a will.

(5) Idem — A designation in an instrument that purports to be but is not a valid will is revoked by an event that would have the effect of revoking the instrument if it had been a valid will.

(6) Earlier designations not revived — Revocation of a designation does not revive an earlier designation.

(7) Effective date — Despite section 22, a designation or revocation in a will is effective from the time when the will is signed.

53. Payment and enforcement —

Where a participant in a plan has designated a person to receive a benefit under the plan on the death of the participant,

(a) the person administering the plan is discharged on paying the benefit to the person designated under the latest designation made in accordance with the terms of the plan, in the absence of actual notice of a subsequent designation or revocation made under section 51 but not in accordance with the terms of the plan; and

(b) the person designated may enforce payment of the benefit payable to him under the plan but the person administering the plan may set up any defence that he could have set up against the participant or his or her personal representative.

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53.1 Regulations — The Lieutenant Governor in Council may make regulations prescribing classes of funds, trusts, schemes, contracts or arrangements for the purposes of this Part.

1994, c. 27, s. 63(5)

54. (1) Application of Part to plan — Where this Part is inconsistent with a plan, this Part applies, unless the inconsistency relates to a designation made or proposed to be made after the making of a benefit payment where the benefit payment would have been different if the designation had been made before the benefit payment, in which case the plan applies.

(2) Exception — This Part does not apply to a contract or to a designation of a beneficiary to which the *Insurance Act* applies.

54.1 (1) Application to retirement income funds — This Part applies to the designation of a beneficiary of a retirement income fund, whether the designation was made before or after the effective date, and even if the participant who made the designation died before the effective date.

(2) Exception — Despite subsection (1), this Part as it read immediately before the effective date continues to apply in a particular case if applying the Part as it read after the effective date would,

(a) change the result in a proceeding in which a judgment or final order was made before the effective date, even if the judgment or order is subject to appeal; or

(b) make a person liable to repay or account for retirement income fund proceeds received or paid by the person before the effective date.

(3) Definition — In this section, “**effective date**” means the date on which the *Statute Law Amendment Act (Government Management and Services), 1994* received Royal Assent.

1994, c. 27, s. 63(5)

PART IV — SURVIVORSHIP (SS. 55, 56)

55. (1) Survivorship as to succession — Where two or more persons die at the same time or in circumstances rendering it uncertain which of them survived the other or others, the property of each person, or any property of which he or she is competent to dispose, shall be disposed of as if he or she had survived the other or others.

(2) Simultaneous death of joint tenants — Unless a contrary intention appears, where two or more persons hold legal or equitable title to property as joint tenants, or with respect to a joint account, with each other, and all of them die at the same time or in circumstances rendering it uncertain which of them survived the other or others, each person shall be deemed, for the purposes of subsection (1), to have held as tenant in common with the other or with each of the others in that property.

(3) Provision in will for substitute representative — Where a will contains a provision for a substitute personal representative operative if an executor designated in the will,

- (a) dies before the testator;
- (b) dies at the same time as the testator; or
- (c) dies in circumstances rendering it uncertain which of them survived the other,

and the designated executor dies at the same time as the testator or in circumstances rendering it uncertain which of them survived the other, then, for the purpose of probate, the case for which the will provides shall be deemed to have occurred.

(4) Proceeds of insurance — The proceeds of a policy of insurance shall be paid in accordance with sections 215 and 319 of the *Insurance Act* and thereafter this Part applies to their disposition.

56. Application of Part — This Part applies in respect of deaths occurring on or after the 31st of March, 1978.

PART V — SUPPORT OF DEPENDANTS (SS. 57–79)

57. (1) Definitions — In this Part,

“**child**” means a child as defined in subsection 1(1) and includes a grandchild and a person whom the deceased has demonstrated a settled intention to treat as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;

“**cohabit**” means to live together in a conjugal relationship, whether within or outside marriage;

“**court**” means the Superior Court of Justice;

“**dependant**” means,

- (a) the spouse of the deceased,
- (b) a parent of the deceased,
- (c) a child of the deceased, or
- (d) a brother or sister of the deceased,

to whom the deceased was providing support or was under a legal obligation to provide support immediately before his or her death;

“**letters probate**” and “**letters of administration**” include letters probate, letters of administration or other legal documents purporting to be of the same legal nature granted by a court in another jurisdiction and resealed in this province;

“**parent**” includes a grandparent and a person who has demonstrated a settled intention to treat the deceased as a child of his or her family, except under an arrangement where the deceased was placed for valuable consideration in a foster home by a person having lawful custody;

“**same-sex partner**” [Repealed 2005, c. 5, s. 66(4).]

“**spouse**” has the same meaning as in section 29 of the *Family Law Act* and in addition includes either of two persons who were married to each other by a marriage that was terminated by divorce.

(2) Dependant posthumously-conceived child — For the purposes of clause (c) of the definition of “dependant” in subsection (1), where the conditions in subsection 1.1(1) are met in relation to a child conceived and born alive after the death of the deceased, the deceased is deemed to have been, immediately before his or her death, under a legal obligation to provide support to the child.

1999, c. 6, s. 61(1), (2); 2005, c. 5, s. 66(3)–(5); 2006, c. 19, Sched. C, s. 1(1); 2016, c. 23, s. 71(8), (9); 2017, c. 8, Sched. 29, s. 1

58. (1) Order for support — Where a deceased, whether testate or intestate, has not made adequate provision for the proper support of his dependants or any of them, the court, on application, may order that such provision as it considers adequate be made out of the estate of the deceased for the proper support of the dependants or any of them.

(2) Applicants — An application for an order for the support of a dependant may be made by the dependant or the dependant’s parent.

(3) Same — An application for an order for the support of a dependant may also be made by one of the following agencies,

- (a) the Ministry of Community and Social Services in the name of the Minister;
- (b) a municipality, excluding a lower-tier municipality in a regional municipality;
- (c) a district social services administration board under the *District Social Services Administration Boards Act*;

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(d) a band approved under section 15 of the *General Welfare Assistance Act*; or,

(e) a delivery agent under the *Ontario Works Act, 1997*,

if the agency is providing or has provided a benefit under the *Family Benefits Act*, assistance under the *General Welfare Assistance Act* or the *Ontario Works Act, 1997* or income support under the *Ontario Disability Support Program Act, 1997* in respect of the dependant's support, or if an application for such a benefit, assistance or income support has been made to the agency by or on behalf of the dependant.

(4) Idem — The adequacy of provision for support under subsection (1) shall be determined as of the date of the hearing of the application.

1997, c. 25, Sched. E, s. 12; 2002, c. 17, Sched. F, s. 1

59. (1) Suspensory order — On an application by or on behalf of the dependants or any of them, the court may make an order suspending in whole or in part the administration of the deceased's estate, for such time and to such extent as the court may decide.

(2) Posthumous child not yet conceived — An application may be made under subsection (1) by a surviving spouse who gives notice under paragraph 1 of subsection 1.1(1) on behalf of a child of the deceased that is referred to in the notice and is not yet conceived, if the application is made no later than six months after the death of the deceased.

2016, c. 23, s. 71(10)

60. (1) Application — An application under this Part may be made to the court by notice of application in accordance with the practice of the court.

(2) Idem — Where an application for an order under section 58 is made by or on behalf of any dependant,

(a) it may be dealt with by the court as; and

(b) in so far as the question of limitation is concerned, it shall be deemed to be,

an application on behalf of all persons who might apply.

61. (1) Limitation period — Subject to subsection (2), no application for an order under section 58 may be made after six months from the grant of letters probate of the will or of letters of administration.

(2) Exception — The court, if it considers it proper, may allow an application to be made at any time as to any portion of the estate remaining undistributed at the date of the application.

62. (1) Determination of amount — In determining the amount and duration, if any, of support, the court shall consider all the circumstances of the application, including,

(a) the dependant's current assets and means;

(b) the assets and means that the dependant is likely to have in the future;

(c) the dependant's capacity to contribute to his or her own support;

(d) the dependant's age and physical and mental health;

(e) the dependant's needs, in determining which the court shall have regard to the dependant's accustomed standard of living;

(f) the measures available for the dependant to become able to provide for his or her own support and the length of time and cost involved to enable the dependant to take those measures;

(g) the proximity and duration of the dependant's relationship with the deceased;

- (h) the contributions made by the dependant to the deceased's welfare, including indirect and non-financial contributions;
- (i) the contributions made by the dependant to the acquisition, maintenance and improvement of the deceased's property or business;
- (j) a contribution by the dependant to the realization of the deceased's career potential;
- (k) whether the dependant has a legal obligation to provide support for another person;
- (l) the circumstances of the deceased at the time of death;
- (m) any agreement between the deceased and the dependant;
- (n) any previous distribution or division of property made by the deceased in favour of the dependant by gift or agreement or under court order;
- (o) the claims that any other person may have as a dependant;
- (p) if the dependant is a child,
- (i) the child's aptitude for and reasonable prospects of obtaining an education, and
 - (ii) the child's need for a stable environment;
- (q) if the dependant is a child of the age of sixteen years or more, whether the child has withdrawn from parental control;
- (r) if the dependant is a spouse,
- (i) a course of conduct by the spouse during the deceased's lifetime that is so unconscionable as to constitute an obvious and gross repudiation of the relationship,
 - (ii) the length of time the spouses cohabited,
 - (iii) the effect on the spouse's earning capacity of the responsi-
- bilities assumed during cohabitation,
- (iv) whether the spouse has undertaken the care of a child who is of the age of eighteen years or over and unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents,
- (v) whether the spouse has undertaken to assist in the continuation of a program of education for a child eighteen years of age or over who is unable for that reason to withdraw from the charge of his or her parents,
- (vi) any housekeeping, child care or other domestic service performed by the spouse for the family, as if the spouse had devoted the time spent in performing that service in remunerative employment and had contributed the earnings to the family's support,
- (vi.1) [Repealed 2005, c. 5, s. 66(10).]
- (vii) the effect on the spouse's earnings and career development of the responsibility of caring for a child,
- (viii) the desirability of the spouse remaining at home to care for a child; and
- (s) any other legal right of the dependant to support, other than out of public money.
- (2) Evidence** — In addition to the evidence presented by the parties, the court may direct other evidence to be given as the court considers necessary or proper.
- (3) Idem** — The court may accept such evidence as it considers proper of the deceased's reasons, so far as ascertainable, for making the dispositions in his or her will, or for not making adequate provision for a de-

pendant, as the case may be, including any statement in writing signed by the deceased.

(4) Idem — In estimating the weight to be given to a statement referred to in subsection (3), the court shall have regard to all the circumstances from which an inference can reasonably be drawn as to the accuracy of the statement.

1999, c. 6, s. 61(3)–(5); 2005, c. 5, s. 66(9)–(11)

63. (1) Conditions and restrictions —

In any order making provision for support of a defendant, the court may impose such conditions and restrictions as the court considers appropriate.

(2) Contents of order — Provision may be made out of income or capital or both and an order may provide for one or more of the following, as the court considers appropriate,

- (a) an amount payable annually or otherwise whether for an indefinite or limited period or until the happening of a specified event;
- (b) a lump sum to be paid or held in trust;
- (c) any specified property to be transferred or assigned to or in trust for the benefit of the defendant, whether absolutely, for life or for a term of years;
- (d) the possession or use of any specified property by the dependent for life or such period as the court considers appropriate;
- (e) a lump sum payment to supplement or replace periodic payments;
- (f) the securing of payment under an order by a charge on property or otherwise;
- (g) the payment of a lump sum or of increased periodic payments to enable a defendant spouse or child to meet debts reasonably incurred for his or her own support prior to an application under this Part;

(h) that all or any of the money payable under the order be paid to an appropriate person or agency for the benefit of the defendant;

(i) the payment to an agency referred to in subsection 58(3) of any amount in reimbursement for an allowance or benefit granted in respect of the support of the defendant, including an amount in reimbursement for an allowance paid or benefit provided before the date of the order.

(3) Idem — Where a transfer or assignment of property is ordered, the court may,

- (a) give all necessary directions for the execution of the transfer or assignment by the executor or administrator or such other person as the court may direct; or
- (b) grant a vesting order.

(4) Agreement or waiver — An order under this section may be made despite any agreement or waiver to the contrary.

(5) Notice to parties before order — The court shall not make any order under this section until it is satisfied upon oath that all persons who are or may be interested in or affected by the order have been served with notice of the application as provided by the rules of court, and every such person is entitled to be present and to be heard in person or by counsel at the hearing.

(6) Exception — Despite subsection (5), where, in the opinion of the court,

- (a) every reasonable effort has been made to serve those entitled to notice; or
- (b) after every reasonable effort has been made, it is not possible to identify one or more of the persons entitled to notice,

the court may dispense with the requirement of notice in respect of any person who has not been served.

1999, c. 6, s. 61(6); 2005, c. 5, s. 66(12)

64. Interim order — Where an application is made under this Part and the applicant is in need of and entitled to support but any or all of the matters referred to in section 62 or 63 have not been ascertained by the court, the court may make such interim order under section 63 as it considers appropriate.

65. Inquiries and further orders

Where an order has been made under this Part, the court at any subsequent date may,

- (a) inquire whether the dependant benefitted by the order has become entitled to the benefit of any other provision for his or her support;
- (b) inquire into the adequacy of the provision ordered; and
- (c) discharge, vary or suspend the order, or make such other order as the court considers appropriate in the circumstances.

66. Further powers of court — The court may at any time,

- (a) fix a periodic payment or lump sum to be paid by a legatee, devisee or beneficiary under an intestacy to represent, or in commutation of, such proportion of the sum ordered to be paid as falls upon the portion of the estate in which he or she is interested;
- (b) relieve such portion of the estate from further liability; and
- (c) direct,
 - (i) the manner in which such periodic payment is to be secured, or
 - (ii) to whom such lump sum is to be paid and the manner in which it is to be dealt with for the benefit of the person to whom the commuted payment is payable.

67. (1) Distribution stayed — Where an application is made and notice thereof is served on the personal representative of the deceased, he or she shall not, after service of the notice upon him or her, unless all per-

sons entitled to apply consent or the court otherwise orders, proceed with the distribution of the estate until the court has disposed of the application.

(2) Exception — Nothing in this Part prevents a personal representative from making reasonable advances for support to dependants who are beneficiaries.

(3) Liability of personal representative — Where a personal representative distributes any portion of the estate in violation of subsection (1), if any provision for support is ordered by the court to be made out of the estate, the personal representative is personally liable to pay the amount of the distribution to the extent that such provision or any part thereof ought, pursuant to the order or this Part, to be made out of the portion of the estate distributed.

68. (1) Incidence of provision ordered — Subject to subsection (2), the incidence of any provision for support ordered shall fall rateably upon that part of the deceased's estate to which the jurisdiction of the court extends.

(2) Idem — The court may order that the provision for support be made out of and charged against the whole or any portion of the estate in such proportion and in such manner as to the court seems proper.

69. Further directions — The court may give such further directions as it considers necessary for the purpose of giving effect to an order.

70. (1) Certified copy of order filed with the local registrar of the court — A certified copy of every order made under this Part shall be filed with the local registrar of the court out of which the letters probate or letters of administration issued.

(2) Idem — A memorandum of the order shall be endorsed on or annexed to the copy, in the custody of the local registrar, of the letters probate or letters of administration, as the case may be.

71. Property devised — Where a deceased,

- (a) has, in his or her lifetime, in good faith and for valuable consideration, entered into a contract to devise or bequeath any property; and
- (b) has by his or her will devised or bequeathed that property in accordance with the provisions of the contract,

the property is not liable to the provisions of an order made under this Part except to the extent that the value of the property in the opinion of the court exceeds the consideration therefor.

72. (1) Value of certain transactions deemed part of estate — Subject to section 71, for the purpose of this Part, the capital value of the following transactions effected by a deceased before his or her death, whether benefitting his or her dependant or any other person, shall be included as testamentary dispositions as of the date of the death of the deceased and shall be deemed to be part of his or her net estate for purposes of ascertaining the value of his or her estate, and being available to be charged for payment by an order under clause 63(2)(f),

- (a) gifts *mortis causa*;
- (b) money deposited, together with interest thereon, in an account in the name of the deceased in trust for another or others with any bank, savings office, credit union or trust corporation, and remaining on deposit at the date of the death of the deceased;
- (c) money deposited, together with interest thereon, in an account in the name of the deceased and another person or persons and payable on death under the terms of the deposit or by operation of law to the survivor or survivors of those persons with any bank, savings office, credit union or trust corporation, and remaining on deposit at the date of the death of the deceased;
- (d) any disposition of property made by a deceased whereby property is held

at the date of his or her death by the deceased and another as joint tenants;

- (e) any disposition of property made by the deceased in trust or otherwise, to the extent that the deceased at the date of his or her death retained, either alone or in conjunction with another person or persons by the express provisions of the disposing instrument, a power to revoke such disposition, or a power to consume, invoke or dispose of the principal thereof, but the provisions of this clause do not affect the right of any income beneficiary to the income accrued and undistributed at the date of the death of the deceased;
- (f) any amount payable under a policy of insurance effected on the life of the deceased and owned by him or her;
- (f.1) any amount payable on the death of the deceased under a policy of group insurance; and
- (g) any amount payable under a designation of beneficiary under Part III.

(2) Idem — The capital value of the transactions referred to in clauses (1)(b), (c) and (d) shall be deemed to be included in the net estate of the deceased to the extent that the funds on deposit were the property of the deceased immediately before the deposit or the consideration for the property held as joint tenants was furnished by the deceased.

(3) Burden of proof — Dependents claiming under this Part shall have the burden of establishing that the funds or property, or any portion thereof, belonged to the deceased.

(4) Idem — Where the other party to a transaction described in clause (1)(c) or (d) is a dependant, he or she shall have the burden of establishing the amount of his or her contribution, if any.

(5) Exception — This section does not prohibit any corporation or person from paying or transferring any funds or property, or any portion thereof, to any person otherwise entitled thereto unless there has been person-

ally served on the corporation or person a certified copy of a suspensory order made under section 59 enjoining such payment or transfer.

(6) Suspensory order — Personal service upon the corporation or person holding any such fund or property of a certified copy of a suspensory order shall be a defence to any action or proceeding brought against the corporation or person with respect to the fund or property during the period the order is in force.

(7) Rights of creditor — This section does not affect the rights of creditors of the deceased in any transaction with respect to which a creditor has rights.

1999, c. 12, Sched. B, s. 17

73. Validity of mortgage, etc. — Where provision for the support of a defendant is ordered under this Part, a mortgage, charge or assignment of or with respect to such provision, made before the order of the court making such provision is entered, is invalid.

74. (1) Persons in institutions — Where a person by whom, or on whose behalf, an application may be made under this Part is a patient in a psychiatric facility under the *Mental Health Act* or a resident in a supported group living residence or an intensive support residence under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008* at the time of the deceased's death or at any time before the application under this Part is heard and disposed of, notice of the application for letters probate or letters of administration shall be served upon the Public Guardian and Trustee on behalf of that person, and the time within which the Public Guardian and Trustee may make an application under this Part runs from the date of the service of the notice.

(2) Notice to Public Guardian and Trustee — Where a person interested in the estate in respect of which an application is made under this Part is a patient in a psy-

chiatric facility under the *Mental Health Act* or a resident in a supported group living residence or an intensive support residence under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*, notice of the application shall in every case be served upon the Public Guardian and Trustee, who has the right to appear and be heard upon the application.

2008, c. 14, s. 60; 2009, c. 33, Sched. 8, s. 17;
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75. Costs — The court may direct that the costs of the application be paid out of the estate or otherwise as it thinks proper, and may fix the amount of the costs payable by any party, exclusive of necessary disbursements, at a lump sum having regard to the value of the estate and the amount of any support applied for or directed by its order.

76. Appeal — An appeal lies to the Divisional Court from any order of the court made under this Part.

77. (1) Enforcement — An order or direction made under this Part may be enforced against the estate of the deceased in the same way and by the same means as any other judgment or order of the court against the estate may be enforced.

(2) Realization of security — Where a court orders security for the payment under an order under this Part or charges a property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge.

78. Crown bound — This Part binds the Crown.

79. Application of Part — This Part does not apply where the deceased died before the 31st day of March, 1978, but an application may be made under section 65 regardless of the time of the deceased's death.

**ONT. REG. 54/95 —
GENERAL**

made under the *Succession
Law Reform Act*

O. Reg. 54/95, as am. O. Reg.
203/09; 69/16 (Fr.); 122/21.

[Note: The title of this Regulation was changed from "Preferential Share" to "General" by O. Reg. 203/09, s. 1.]

1. Preferential share — For the purpose of section 45 of the Act, the amount of the preferential share is prescribed as,

(a) \$200,000, for the estates of persons who die before March 1, 2021; and

(b) \$350,000, for the estates of persons who die on or after March 1, 2021.
O. Reg. 122/21, s. 1

2. Prescribed plans — Tax free savings accounts within the meaning of the *Income Tax Act* (Canada) are prescribed as plans for the purposes of Part III of the Act, regardless of when the designation of a beneficiary was made.

O. Reg. 203/09, s. 2

TRILLIUM GIFT OF LIFE NETWORK ACT

R.S.O. 1990, c. H.20, as am. S.O. 1998, c. 18, Sched. G, s. 58; 1999, c. 6, s. 29; 2000, c. 39, ss. 1, 2, 3 (Fr.), 4-8; 2002, c. 18, Sched. I, s. 20; 2004, c. 3, Sched. A, s. 98; 2004, c. 8, s. 46; 2005, c. 5, s. 70; 2006, c. 21, Sched. F, s. 136(1), Table 1; CTS 30 AU 10 - 1; 2010, c. 15, s. 246 [Not in force at date of publication. Repealed 2019, c. 5, Sched. 3, s. 27.]; 2014, c. 14, Sched. 1, s. 15; 2016, c. 23, s. 73 (Fr.); 2017, c. 34, Sched. 46, s. 54; 2019, c. 5, Sched. 3, s. 25 [s. 25(1)-(6), (8)-(11) not in force at date of publication.]; 2019, c. 7, Sched. 17, s. 168.

[Note: The title of this Act was changed from "Human Tissue Gift Act" to "Trillium Gift of Life Network Act" by 2000, c. 39, s. 1. The title of this Act was changed from "Trillium Gift of Life Network Act" to "Gift of Life Act" by 2019, c. 5, Sched. 3, s. 25(1). Not in force at date of publication.]

1. Definitions — In this Act,

Proposed Addition — 1 "Agency"

"**Agency**" means the corporation continued by section 3 of the *Connecting Care Act*, 2019;

2019, c. 5, Sched. 3, s. 25(3) [Not in force at date of publication.]

"**consent**" means a consent given under this Act;

"**designated facility**" means a hospital, health facility or other entity designated as a member of a prescribed class of facilities under section 8.2;

"**General Manager**" means the General Manager appointed under the *Health Insurance Act*;

"**hospital**" means a hospital approved as a public hospital under the *Public Hospitals Act*;

"**Minister**" means the Minister of Health and Long-Term Care or such other member of the Executive Council as may be designated under the *Executive Council Act* to administer this Act;

"**Ministry**" means the ministry of the Minister;

"**Network**" means the Trillium Gift of Life Network established by subsection 8.7(1);

Proposed Repeal — 1 "Network"

"**Network**" [Repealed 2019, c. 5, Sched. 3, s. 25(2). Not in force at date of publication.]

"**personal information**" includes personal information as defined in the *Freedom of Information and Protection of Privacy Act* and personal health information as defined in the *Personal Health Information Protection Act*, 2004;

"**physician**" means a member of the College of Physicians and Surgeons of Ontario.

"**prescribed**" means prescribed by a regulation made under this Act;

"**substitute**" means, when used in relation to a patient, the person described in clause 5(2)(a), (b), (c), (d), (e) or (f), as the case may be.

"**tissue**" means a part of a living or dead human body and includes an organ but, unless otherwise prescribed by the Lieutenant Governor in Council, does not include bone marrow, spermatozoa, an ovum, an embryo, a foetus, blood or blood constituents.

"**transplant**" as a noun means the removal of tissue from a human body, whether living or dead, and its implantation in a living human body, and in its other forms it has corresponding meanings;

“writing” for the purposes of Part II includes a will and any other testamentary instrument whether or not probate has been applied for or granted and whether or not the will or other testamentary instrument is valid.

1998, c. 18, Sched. G, s. 58; 2000, c. 39, s. 2; 2004, c. 3, Sched. A, s. 98(1)

PART I — INTER-VIVOS GIFTS FOR TRANSPLANTS (SS. 2, 3)

2. Transplants under Act are lawful —
A transplant from one living human body to another living human body may be done in accordance with this Act, but not otherwise.

3. (1) Consent for transplant — Any person who has attained the age of sixteen years, is mentally competent to consent, and is able to make a free and informed decision may in a writing signed by the person consent to the removal forthwith from his or her body of the tissue specified in the consent and its implantation in the body of another living person.

(2) Consent of person under age, etc. — Despite subsection (1), a consent given thereunder by a person who had not attained the age of sixteen years, was not mentally competent to consent, or was not able to make a free and informed decision is valid for the purposes of this Act if the person who acted upon it had no reason to believe that the person who gave it had not attained the age of sixteen years, was not mentally competent to consent, and was not able to make a free and informed decision, as the case may be.

(3) Consent is full authority to proceed — A consent given under this section is full authority for any physician,

(a) to make any examination necessary to assure medical acceptability of the tissue specified therein; and

(b) to remove forthwith such tissue from the body of the person who gave the consent.

(4) Stale consent void — If for any reason the tissue specified in the consent is not removed in the circumstances to which the consent relates, the consent is void.

PART II — POST MORTEM GIFTS FOR TRANSPLANTS AND OTHER USES (SS. 4—8)

4. (1) Consent by person for use of his or her body after death — Any person who has attained the age of sixteen years may consent,

(a) in a writing signed by the person at any time; or

(b) orally in the presence of at least two witnesses during the person’s last illness,

that the person’s body or the part or parts thereof specified in the consent be used after the person’s death for therapeutic purposes, medical education or scientific research.

(2) Where donor under age — Despite subsection (1), a consent given by a person who had not attained the age of sixteen years is valid for the purposes of this Act if the person who acted upon it had no reason to believe that the person who gave it had not attained the age of sixteen years.

(3) Consent is full authority, exception — Upon the death of a person who has given a consent under this section, the consent is binding and is full authority for the use of the body or the removal and use of the specified part or parts for the purpose specified, except that no person shall act upon a consent given under this section if the person has reason to believe that it was subsequently withdrawn.

5. (1) “spouse” and “same-sex partner” defined — In this section,

Part II — Post Mortem Gifts for Transplants and Other Uses (ss. 4–8) **S. 5(5)(b)**

“same-sex partner” [Repealed 2005, c. 5, s. 70(1).]

“spouse” means a person,

- (a) to whom the person is married; or
- (b) with whom the person is living or, immediately before the person’s death, was living in a conjugal relationship outside marriage, if the two persons,
 - (i) have cohabited for at least one year,
 - (ii) are together the parents of a child, or
 - (iii) have together entered into a cohabitation agreement under section 53 of the *Family Law Act*.

(2) Consent by spouse, etc., for use of body after death — Where a person who has not given or cannot give a consent under section 4 dies, or in the opinion of a physician is incapable of giving a consent by reason of injury or disease and the person’s death is imminent,

- (a) the person’s spouse; or
- (b) if none or if the spouse is not readily available, any one of the person’s children; or
- (c) if none or if none is readily available, either one of the person’s parents; or
- (d) if none or if neither is readily available, any one of the person’s brothers or sisters; or
- (e) if none or if none is readily available, any other of the person’s next of kin; or
- (f) if none or if none is readily available, the person lawfully in possession of the body other than, where the person died in hospital, the administrative head of the hospital,

may consent,

- (g) in a writing signed by the spouse, relative or other person; or

(h) orally by the spouse, relative or other person in the presence of at least two witnesses; or

(i) by the telegraphic, recorded telephonic, or other recorded message of the spouse, relative or other person,

to the body or the part or parts thereof specified in the consent being used after death for therapeutic purposes, medical education or scientific research.

(3) Prohibition — No person shall give a consent under this section if the person has reason to believe that the person who died or whose death is imminent would have objected.

(4) Consent is full authority, exceptions — Upon the death of a person in respect of whom a consent was given under this section the consent is binding and is, subject to section 6, full authority for the use of the body or for the removal and use of the specified part or parts for the purpose specified except that no person shall act on a consent given under this section if the person has actual knowledge of an objection thereto by the person in respect of whom the consent was given or by a person of the same or closer relationship to the person in respect of whom the consent was given than the person who gave the consent.

(4.1) Consent is full authority, personal information — The authority to give consent under this section includes the authority to consent to the collection, use or disclosure of personal information that is necessary for, or ancillary to, a decision about the gift.

(5) Person lawfully in possession of body, exceptions — In subsection (2), person lawfully in possession of the body does not include,

- (a) the Chief Coroner or a coroner in possession of the body for the purposes of the *Coroners Act*;
- (b) the Public Guardian and Trustee in possession of the body for the purpose

of its burial under the *Crown Administration of Estates Act*;

(c) an embalmer or funeral director in possession of the body for the purpose of its burial, cremation, or other disposition; or

(d) the superintendent of a crematorium in possession of the body for the purpose of its cremation.

1999, c. 6, s. 29; 2004, c. 3, Sched. A, s. 98(2);
2005, c. 5, s. 70; CTS 30 AU 10 – 1

6. Coroner's direction — Where, in the opinion of a physician, the death of a person is imminent by reason of injury or disease and the physician has reason to believe that section 10 of the *Coroners Act* may apply when death does occur and a consent under this Part has been obtained for a *post mortem* transplant of tissue from the body, a coroner having jurisdiction, despite the fact that death has not yet occurred, may give such directions as the coroner thinks proper respecting the removal of such tissue after the death of the person, and every such direction has the same force and effect as if it had been made after death under section 11 of the *Coroners Act*.

7. (1) Determination of death — For the purposes of a *post mortem* transplant, the fact of death shall be determined by at least two physicians in accordance with accepted medical practice.

(2) Prohibition — No physician who has had any association with the proposed recipient that might influence the physician's judgment shall take any part in the determination of the fact of death of the donor.

(3) Idem — No physician who took any part in the determination of the fact of death of the donor shall participate in any way in the transplant procedures.

(4) Exception — Nothing in this section in any way affects a physician in the removal of eyes for cornea transplants.

8. Where specified use fails — Where a gift under this Part cannot for any reason be used for any of the purposes specified in the consent, the subject-matter of the gift and the body to which it belongs shall be dealt with and disposed of as if no consent had been given.

PART II.1 — NOTICE AND CONSENT (SS. 8.1–8.6)

[Heading added 2000, c. 39, s. 4.
Amended to “Designated Facilities — Routine Notification and Required Consent”, 2019, c. 5, Sched. 3, s. 25(5). Not in force at date of publication.]

8.1 (1) Notice of death, imminent death — A designated facility shall notify the Network as soon as possible when a patient at the facility has died or a physician is of the opinion that the death of a patient at the facility is imminent by reason of injury or disease.

(2) Exception — Despite subsection (1), a designated facility is not required to notify the Network if the Network has established requirements that set out circumstances in which notice is not required and those circumstances exist.

(3) Information in notice — The designated facility shall give a notice in accordance with such requirements as may be established by the Network and the notice must include the information required by the Network.

(4) Determination — When the designated facility gives notice to the Network, the Network shall determine whether the facility is required to contact the patient or the patient's substitute concerning consent for tissue donation, and shall make the determination in consultation with the facility.

(5) Query about consent — If the Network advises the designated facility that it is required to contact the patient or the pa-

tient's substitute, the facility shall make reasonable efforts to ensure that,

- (a) the patient or the patient's substitute is contacted to determine whether he or she consents to the removal of tissue from the body of the patient for transplant; and
- (b) the contact is made in a manner that meets the requirements of the Network and by a person who meets such requirements as may be prescribed by the Minister.

(6) Information exchange — The person who contacts the patient or the patient's substitute shall give to the patient or substitute the information required by the Network and shall make reasonable efforts to obtain from him or her the information required by the Network.

(7) Commencement — This section comes into force on a day to be named by proclamation of the Lieutenant Governor, and different subsections may be proclaimed into force at different times.

Proposed Amendment — 8.1

8.1 (1) Notice of death, imminent death — A designated facility shall notify the Agency as soon as possible when a patient at the facility has died or a physician is of the opinion that the death of a patient at the facility is imminent by reason of injury or disease.

(2) Exception — Despite subsection (1), a designated facility is not required to notify the Agency if the Agency has established requirements that set out circumstances in which notice is not required and those circumstances exist.

(3) Information in notice — The designated facility shall give a notice in accordance with such requirements as may be established by the Agency and the notice must include the information required by the Agency.

(4) Determination — When the designated facility gives notice to the Agency, the Agency shall determine whether the facility is required to contact the patient or the patient's substitute concerning consent for tissue donation, and shall make the determination in consultation with the facility.

(5) Query about consent — If the Agency advises the designated facility that it is required to contact the patient or the patient's substitute, the facility shall make reasonable efforts to ensure that,

- (a) the patient or the patient's substitute is contacted to determine whether he or she consents to the removal of tissue from the body of the patient for transplant; and
- (b) the contact is made in a manner that meets the requirements of the Agency and by a person who meets such requirements as may be prescribed by the Minister.

(6) Information exchange — The person who contacts the patient or the patient's substitute shall give to the patient or substitute the information required by the Agency and shall make reasonable efforts to obtain from him or her the information required by the Agency.

(7) Commencement — This section comes into force on a day to be named by proclamation of the Lieutenant Governor, and different subsections may be proclaimed into force at different times.

2019, c. 5, Sched. 3, s. 25(4) [Not in force at date of publication.]

2000, c. 39, s. 4

8.2 (1) Classes of facilities — The Minister may prescribe classes of facilities for the purposes of this Act.

(2) Members of class — The Minister may, by regulation, designate any of the following entities as a member of a prescribed class of facilities:

1. A hospital.
2. A health facility.

S. 8.2(2)

Trillium Gift of Life Network Act

3. Another entity engaged in activities related to tissue donations or transplants.

(3) Confidentiality agreement — Each designated facility, other than a hospital, is required to enter into an agreement with the Minister governing the confidentiality of personal information that is collected, used or disclosed by the facility for the purposes of this Act.

2000, c. 39, s. 4

8.3 (1) Committees, designated facilities — A designated facility shall establish such committees as may be prescribed by the Minister, and the duties of the committees shall include such matters as the Minister may prescribe.

(2) Officials — A designated facility shall designate such persons to perform such duties as may be required by the Network.

(3) Eligibility — A person is not eligible to be designated under subsection (2) unless he or she meets such requirements as may be established by the Network.

Proposed Amendment — 8.3

8.3 (1) Committees, designated facilities — A designated facility shall establish such committees as may be prescribed by the Minister, and the duties of the committees shall include such matters as the Minister may prescribe.

(2) Officials — A designated facility shall designate such persons to perform such duties as may be required by the Agency.

(3) Eligibility — A person is not eligible to be designated under subsection (2) unless he or she meets such requirements as may be established by the Agency.

2019, c. 5, Sched. 3, s. 25(4) [Not in force at date of publication.]

2000, c. 39, s. 4

8.4 (1) Policies and procedures — Every designated facility shall establish such

policies and procedures as may be required by the Network, and they must meet the requirements established by the Network.

Proposed Amendment — 8.4(1)

(1) Policies and procedures — Every designated facility shall establish such policies and procedures as may be required by the Agency, and they must meet the requirements established by the Agency.

2019, c. 5, Sched. 3, s. 25(4) [Not in force at date of publication.]

(2) Public inspection — Every designated facility shall make the policies and procedures it establishes under this Act available for public inspection.

(3) Compliance — Every designated facility shall make reasonable efforts to ensure that it follows the policies and procedures it establishes under this Act.

2000, c. 39, s. 4

8.5 Compliance, requirements — Every designated facility shall make reasonable efforts to ensure that it follows such requirements that apply to it as may be established by the Network.

Proposed Amendment — 8.5

8.5 (1) Agency requirements — The Agency may establish requirements that one or more designated facilities are required to comply with for the purposes of this Act.

(2) Compliance with requirements — Every designated facility shall make reasonable efforts to ensure that it follows such requirements that apply to it as may be established by the Agency.

(3) Public inspection — The Agency shall make details of its requirements established under this Act available for public inspection.

2019, c. 5, Sched. 3, s. 25(6) [Not in force at date of publication.]

2000, c. 39, s. 4

8.6 (1) Minister's directions — The Minister may issue directions to a designated facility on matters relating to the exercise of the facility's rights and powers and the performance of its duties under this Act.

(2) Compliance, directions — A designated facility that receives a direction under subsection (1) shall comply with the direction.

2000, c. 39, s. 4

PART II.2 — TRILLIUM GIFT OF LIFE NETWORK (SS. 8.7–8.16)

[Heading repealed 2019, c. 5, Sched. 3, s. 25(8). Not in force at date of publication.]

8.7 (1) Network established — A corporation without share capital known in English as the Trillium Gift of Life Network and in French as Réseau Trillium pour le don de vie is hereby established.

(2) Composition — The Network is composed of the members of its board of directors.

(3) Status — The Network is not an agent of Her Majesty for any purpose despite the *Crown Agency Act*.

(4) Other Acts — The *Corporations Act* and the *Corporations Information Act* do not apply to the Network.

(5) Conflict of interest and indemnification — Sections 132 and 136 of the *Business Corporations Act* apply to the Network and to the members of its board of directors.

Proposed Repeal — 8.7

8.7 [Repealed 2019, c. 5, Sched. 3, s. 25(8). Not in force at date of publication.]

2000, c. 39, s. 5

8.8 Objects of the Network — The following are the objects of the Network:

1. To plan, promote, co-ordinate and support activities relating to the donation of tissue for transplant and activities relating to education or research in connection with the donation of tissue.
2. To co-ordinate and support the work of designated facilities in connection with the donation and transplant of tissue.
3. To manage the procurement, distribution and delivery of tissue.
4. To establish and manage waiting lists for the transplant of tissue and to establish and manage a system to fairly allocate tissue that is available.
5. To make reasonable efforts to ensure that patients and their substitutes have appropriate information and opportunities to consider whether to consent to the donation of tissue and to facilitate the provision of that information.
6. To provide education to the public and to the health care community about matters relating to the donation and use of tissue and to facilitate the provision of such education by others.
7. To collect, analyse and publish information relating to the donation and use of tissue.
8. To advise the Minister on matters relating to the donation of tissue.
9. To do such other things as the Minister may direct.

Proposed Repeal — 8.8

8.8 [Repealed 2019, c. 5, Sched. 3, s. 25(8). Not in force at date of publication.]

2000, c. 39, s. 5

8.9 (1) Powers of the Network — Except as limited by this Act or by a regulation made by the Minister, the Network has the capacity, rights, powers and privileges of a natural person for carrying out its objects.

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Trillium Gift of Life Network Act

(2) Same — The Network may establish requirements that one or more designated facilities are required to comply with for the purposes of this Act.

(3) Restriction, real property — The Network shall neither acquire nor dispose of real property without the approval of the Lieutenant Governor in Council.

(4) Restriction, borrowing — The Network shall not borrow money on its credit or give security against its property without the approval of the Lieutenant Governor in Council.

Proposed Repeal — 8.9

8.9 [Repealed 2019, c. 5, Sched. 3, s. 25(8). Not in force at date of publication.]

2000, c. 39, s. 5

8.10 (1) Board of directors — The Network shall have a board of directors composed of a maximum of 15 members, appointed by the Lieutenant Governor in Council.

(2) Members — When making appointments to the board, the Lieutenant Governor in Council shall endeavour to ensure that the board includes health professionals, persons representative of the interests of donors and recipients of tissue and of their families and persons with appropriate financial and governance skills.

(3) Chair and vice-chair — The Lieutenant Governor in Council may designate a chair and a vice-chair of the board from among the members of the board.

(4) Remuneration — The members of the board shall be paid such remuneration and expenses as the Lieutenant Governor in Council determines.

Proposed Repeal — 8.10

8.10 [Repealed 2019, c. 5, Sched. 3, s. 25(8). Not in force at date of publication.]

2000, c. 39, s. 5; 2019, c. 5, Sched. 3, s. 25(7)

8.11 (1) Powers of the board — The board of directors of the Network shall oversee the management of financial and other affairs of the Network.

(2) By-laws — The board may make by-laws regulating its proceedings and generally for the conduct and management of the affairs of the Network.

(3) Delegation — The board may delegate any of its powers or duties under this Act to such person or persons as the board considers appropriate and may impose conditions and restrictions with respect to the delegation.

Proposed Repeal — 8.11

8.11 [Repealed 2019, c. 5, Sched. 3, s. 25(8). Not in force at date of publication.]

2000, c. 39, s. 5

8.12 (1) Minister's directions — If the Minister considers the action necessary, he or she may issue policy directions on matters relating to the exercise of the Network's rights and powers and the performance of its duties under this Act.

(2) Compliance, directions — The Network shall comply with all policy directions given by the Minister.

(3) Legislation Act, 2006 — Part III (Regulations) of the *Legislation Act, 2006* does not apply with respect to the policy directions.

Proposed Repeal — 8.12

8.12 [Repealed 2019, c. 5, Sched. 3, s. 25(8). Not in force at date of publication.]

2000, c. 39, s. 5; 2006, c. 21, Sched. F, s. 136(1), Table 1

8.13 Public inspection — The Network shall make details of its requirements established under this Act available for public inspection.

Proposed Repeal — 8.13

8.13 [Repealed 2019, c. 5, Sched. 3, s. 25(8). Not in force at date of publication.]

2000, c. 39, s. 5

8.14 (1) Auditor — The Network shall appoint one or more auditors licensed under the *Public Accounting Act, 2004* to audit annually the accounts and financial transactions of the Network.

(2) Auditor's report — The Network shall give a copy of every auditor's report to the Minister.

(3) Minister's audit — The Minister may require that any aspect of the affairs of the Network be audited by an auditor appointed by the Minister.

Proposed Repeal — 8.14

8.14 [Repealed 2019, c. 5, Sched. 3, s. 25(8). Not in force at date of publication.]

2000, c. 39, s. 5; 2004, c. 8, s. 46

8.15 (1) Annual report — The Network shall prepare an annual report, provide it to the Minister and make it available to the public.

(2) Same — The Network shall comply with such directives as may be issued by the Management Board of Cabinet with respect to,

- (a) the form and content of the annual report;
- (b) when to provide it to the Minister; and
- (c) when and how to make it available to the public.

(3) Same — The Network shall include such additional content in the annual report as the Minister may require.

Proposed Repeal — 8.15

8.15 [Repealed 2019, c. 5, Sched. 3, s. 25(8). Not in force at date of publication.]

2000, c. 39, s. 5; 2017, c. 34, Sched. 46, s. 54

8.15.1 Tabling of annual report — The Minister shall table the Network's annual report in the Assembly and shall comply with such directives as may be issued by the Management Board of Cabinet with respect to when to table it.

Proposed Repeal — 8.15.1

8.15.1 [Repealed 2019, c. 5, Sched. 3, s. 25(8). Not in force at date of publication.]

2017, c. 34, Sched. 46, s. 54

8.16 (1) Administrator — The Minister may appoint a person as administrator of the Network if the Minister considers it in the public interest.

(2) Powers of administrator — Unless the appointment provides otherwise, the administrator has the exclusive right to exercise all of the rights and powers and perform all of the duties of the Network until the appointment is terminated by the Minister.

(3) Report to the Minister — The administrator shall carry out such directions as the Minister may give and shall report to the Minister as required by the Minister.

(4) Right of access — An administrator has the same rights as the Network in respect of the documents, records and information of the Network.

(5) Additional powers — If the board continues to have any rights or powers or may continue to perform any duties during the term of the administrator's appointment, any act of the board during that time is valid only if approved by the administrator in writing.

(6) Personal information — Any personal information acquired by the administrator in the course of his or her activities under this section is the property of the Ministry and shall be deemed to be under the control of the Ministry for the purposes of the *Freedom of Information and Protection*

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of Privacy Act or the Personal Health Information Protection Act, 2004.

Proposed Repeal — 8.16

8.16 [Repealed 2019, c. 5, Sched. 3, s. 25(8). Not in force at date of publication.]

2000, c. 39, s. 5; 2004, c. 3, Sched. A, s. 98(3)

**PART II.3 —
ADMINISTRATION (SS.
8.17—8.21)**

8.17 (1) Reports — The Minister may request the Network, a designated facility or another person to submit such reports and information that relate to tissue donations and transplants as the Minister may require for purposes relating to tissue donations and transplants.

Proposed Amendment — 8.17(1)

(1) Reports — The Minister may request the Agency, a designated facility or another person to submit such reports and information that relate to tissue donations and transplants as the Minister may require for purposes relating to tissue donations and transplants.

2019, c. 5, Sched. 3, s. 25(4) [Not in force at date of publication.]

(2) Compliance — A person who receives a request from the Minister for information shall comply with the request within the time specified by the Minister and shall submit the report or information to the Ministry or to such other person as may be requested by the Minister.

2000, c. 39, s. 6

8.18 (1) Inspectors — The Minister may appoint inspectors for the purposes of determining compliance with this Act.

(2) Inspection — For the purpose of determining compliance with this Act, an inspector may, without a warrant, enter and inspect the premises of designated facilities and the Network.

Proposed Amendment — 8.18(2)

(2) Inspection — For the purpose of determining compliance with this Act, an inspector may, without a warrant, enter and inspect the premises of designated facilities and the Agency.

2019, c. 5, Sched. 3, s. 25(4) [Not in force at date of publication.]

(3) Restrictions — In an appointment, the Minister may restrict the inspector's powers of entry and inspection to specified premises.

(4) Time of entry — The power to enter and inspect a place without a warrant may be exercised only during the regular business hours of the premises or, during daylight hours if there are no regular business hours.

(5) Identification — An inspector conducting an inspection shall produce, on request, evidence of his or her appointment.

(6) Powers of inspector — An inspector conducting an inspection may,

(a) examine a record or other thing that is relevant to the inspection;

(b) demand the production for inspection of a document or other thing that is relevant to the inspection;

(c) remove for review and copying a record or other thing that is relevant to the inspection;

(d) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business on the premises; and

(e) question a person on matters relevant to the inspection.

(7) Written demand — A demand that a record or other thing be produced for inspection must be in writing and must include a statement of the nature of the record or thing required.

(8) Obligation to produce and assist — If an inspector demands that a record or other thing be produced for inspection, the person who has custody of the record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in a readable form.

(9) Records and things removed from place — A record or other thing that has been removed for review and copying,

- (a) shall be made available to the person from whom it was removed, for review and copying, on request and at a time and place that are convenient for the person and for the inspector; and
- (b) shall be returned to the person within a reasonable time.

(10) Copy admissible in evidence — A copy of a record that purports to be certified by an inspector as being a true copy of the original is admissible in evidence to the same extent as the original, and has the same evidentiary value.

(11) Obstruction — No person shall hinder, obstruct or interfere with an inspector conducting an inspection, refuse to answer questions on matters relevant to the inspection or provide the inspector with information, on matters relevant to the inspection, that the person knows to be false or misleading.

(12) Report to the Minister — An inspector shall report to the Minister on the results of each inspection.

(13) Personal information — Any personal information acquired by any person in the course of an inspection is the property of the Ministry and shall be deemed to be under the control of the Ministry for the purposes of the *Freedom of Information and Protection of Privacy Act* or the *Personal Health Information Protection Act, 2004*.

2000, c. 39, s. 6; 2004, c. 3, Sched. A, s. 98(4)

8.19 (1) Personal information — Subject to such conditions as may be prescribed by the Minister, the Minister, the General Manager and the Network may directly or indirectly collect personal information about individuals for a purpose related to tissue donations or transplants.

(2) Use of information — Subject to such conditions as may be prescribed by the Minister, the Minister, the General Manager and the Network may use personal information that is in his, her or its custody or under his, her or its control for a purpose related to tissue donations or transplants.

(3) Purpose for which information obtained — For the purposes of the *Freedom of Information and Protection of Privacy Act*, personal information used by the Minister, the General Manager or the Network for a purpose related to tissue donations or transplants shall be deemed to have been obtained or compiled for that purpose or for a consistent purpose.

(4) Disclosure by designated facility — A designated facility shall disclose personal information about an individual to the Network, the Minister or the General Manager, as the case may be, if the designated facility is of the opinion that the disclosure is necessary for a purpose related to tissue donations or transplants and shall not disclose the information if the facility is of the opinion that the disclosure is not necessary for that purpose.

(5) Same — Despite subsection (4), a designated facility shall disclose personal information about an individual to the Network, the Minister or the General Manager, as the case may be, if,

- (a) the disclosure is required by the Network, the Minister or the General Manager, as the case may be, for a purpose the Network, the Minister or the General Manager, as the case may be, considers related to tissue donations or transplants; or

(b) the disclosure is required by the Network as part of the information included in a notice under subsection 8.1(3).

(6) Disclosure by Network, etc. — Subject to subsection (7), the Network or a person prescribed by the Minister shall disclose personal information about an individual to any of the following persons for a purpose related to tissue donations or transplants:

1. A designated facility.
2. An employee of the Ministry.
3. A physician.
4. A person or class of persons prescribed by the Minister.

(7) Conditions — A disclosure under subsection (6) shall be made only if,

- (a) such conditions as may be prescribed by the Minister have been met; and
- (b) the person making the disclosure is of the opinion that the disclosure is necessary for a purpose related to tissue donations or transplants.

(8) Exception — No disclosure shall be made under subsection (6) if the person who would otherwise make the disclosure is of the opinion that the disclosure is not necessary for a purpose related to tissue donations or transplants.

(9) Disclosure to Minister, etc. — Despite subsections (7) and (8), the Network or a person prescribed by the Minister shall disclose personal information about an individual to the Minister or to the General Manager if the Minister or the General Manager, as the case may be, requires the personal information for a purpose he or she considers to be related to tissue donations or transplants.

(10) Disclosure by Minister, General Manager — The Minister or the General Manager, as the case may be, shall disclose personal information to a person described in paragraph 1, 2, 3 or 4 of subsection (6) or to the Network if, in the opinion of the Min-

ister or the General Manager, as the case may be, the disclosure is necessary for a purpose related to tissue donations or transplants and if all of the conditions prescribed by the Minister have been met.

(11) Restriction — Despite subsection (10), the Minister or the General Manager shall not disclose the information referred to in that subsection if, in the opinion of the Minister or the General Manager, as the case may be, the disclosure is not necessary for such a purpose.

Proposed Amendment — 8.19

8.19 (1) Personal information — Subject to such conditions as may be prescribed by the Minister, the Minister, the General Manager and the Agency may directly or indirectly collect personal information about individuals for a purpose related to tissue donations or transplants.

(2) Use of information — Subject to such conditions as may be prescribed by the Minister, the Minister, the General Manager and the Agency may use personal information that is in his, her or its custody or under his, her or its control for a purpose related to tissue donations or transplants.

(3) Purpose for which information obtained — For the purposes of the *Freedom of Information and Protection of Privacy Act*, personal information used by the Minister, the General Manager or the Agency for a purpose related to tissue donations or transplants shall be deemed to have been obtained or compiled for that purpose or for a consistent purpose.

(4) Disclosure by designated facility — A designated facility shall disclose personal information about an individual to the Agency, the Minister or the General Manager, as the case may be, if the designated facility is of the opinion that the disclosure is necessary for a purpose related to tissue donations or transplants and shall not disclose the information if the facility is of

the opinion that the disclosure is not necessary for that purpose.

(5) Same — Despite subsection (4), a designated facility shall disclose personal information about an individual to the Agency, the Minister or the General Manager, as the case may be, if,

- (a) the disclosure is required by the Agency, the Minister or the General Manager, as the case may be, for a purpose the Agency, the Minister or the General Manager, as the case may be, considers related to tissue donations or transplants; or
- (b) the disclosure is required by the Agency as part of the information included in a notice under subsection 8.1(3).

(6) Disclosure by Agency, etc. — Subject to subsection (7), the Agency or a person prescribed by the Minister shall disclose personal information about an individual to any of the following persons for a purpose related to tissue donations or transplants:

1. A designated facility.
2. An employee of the Ministry.
3. A physician.
4. A person or class of persons prescribed by the Minister.

(7) Conditions — A disclosure under subsection (6) shall be made only if,

- (a) such conditions as may be prescribed by the Minister have been met; and
- (b) the person making the disclosure is of the opinion that the disclosure is necessary for a purpose related to tissue donations or transplants.

(8) Exception — No disclosure shall be made under subsection (6) if the person who would otherwise make the disclosure is of the opinion that the disclosure is not necessary for a purpose related to tissue donations or transplants.

(9) Disclosure to Minister, etc. — Despite subsections (7) and (8), the Agency or a person prescribed by the Minister shall disclose personal information about an individual to the Minister or to the General Manager if the Minister or the General Manager, as the case may be, requires the personal information for a purpose he or she considers to be related to tissue donations or transplants.

(10) Disclosure by Minister, General Manager — The Minister or the General Manager, as the case may be, shall disclose personal information to a person described in paragraph 1, 2, 3 or 4 of subsection (6) or to the Agency if, in the opinion of the Minister or the General Manager, as the case may be, the disclosure is necessary for a purpose related to tissue donations or transplants and if all of the conditions prescribed by the Minister have been met.

(11) Restriction — Despite subsection (10), the Minister or the General Manager shall not disclose the information referred to in that subsection if, in the opinion of the Minister or the General Manager, as the case may be, the disclosure is not necessary for such a purpose.

2019, c. 5, Sched. 3, s. 25(4) [Not in force at date of publication.]

2000, c. 39, s. 6

8.20 (1) Agreements — The Network, the Minister or the General Manager may enter into agreements with other persons to collect, use or disclose personal information for any purpose related to tissue donations or transplants.

Proposed Amendment — 8.20(1)

(1) Agreements — The Agency, the Minister or the General Manager may enter into agreements with other persons to collect, use or disclose personal information for any purpose related to tissue donations or transplants.

2019, c. 5, Sched. 3, s. 25(4) [Not in force at date of publication.]

S. 8.20(2)

Trillium Gift of Life Network Act

(2) Confidentiality — An agreement under subsection (1) shall provide that personal information collected, used or disclosed under it is confidential and shall establish mechanisms for maintaining the confidentiality of the information.

2000, c. 39, s. 6

8.21 Deletion of names, etc. — Before disclosing personal information about an individual that is obtained under this Act or under an agreement, the person who obtained it shall delete from it all names and identifying numbers, symbols or other particulars assigned to individuals unless disclosure of the names or other identifying information,

- (a) is necessary for a purpose related to tissue donations or transplants;
- (b) is authorized under the *Freedom of Information and Protection of Privacy Act*; or
- (c) is otherwise authorized by law.

2000, c. 39, s. 6

- 2. A member of the medical or other staff of a designated facility.

Proposed Amendment — 9(1), para. 2

- 2. Any other person employed in a designated facility.

2019, c. 5, Sched. 3, s. 25(9) [Not in force at date of publication.]

- 3. Any other person employed in a designated facility.

Proposed Repeal — 9(1), para. 3

3. [Repealed 2019, c. 5, Sched. 3, s. 25(9). Not in force at date of publication.]

(2) Immunity, Crown — Despite section 8 of the *Crown Liability and Proceedings Act*, 2019, no action or other proceeding for damages or otherwise shall be instituted against the Crown, the Minister or an officer, employee or agent of the Crown for any act done or performed in good faith in the performance or intended performance of any duty or function or in the exercise or intended exercise of any power or authority under this Act or for any neglect, default or omission in the performance or execution in good faith of any duty, function, power or authority under this Act.

Proposed Repeal — 9(2)

(2) [Repealed 2019, c. 5, Sched. 3, s. 25(10). Not in force at date of publication.]

2000, c. 39, s. 7; 2002, c. 18, Sched. I, s. 20;
2019, c. 7, Sched. 17, s. 168**PART III — GENERAL (SS. 9—15)**

9. (1) Immunity — No action or other proceeding for damages or otherwise shall be instituted against any of the following individuals for any act done or performed in good faith in the performance or intended performance of any duty or function or in the exercise or intended exercise of any power or authority under this Act or for any neglect, default or omission in the performance or execution in good faith of any duty, function, power or authority under this Act:

- 1. A member of the board of directors of the Network.

Proposed Amendment — 9(1), para. 1

- 1. A member of the medical or other staff of a designated facility.

2019, c. 5, Sched. 3, s. 25(9) [Not in force at date of publication.]

10. (1) Sale, etc., of tissue prohibited — No person shall buy, sell or otherwise deal in, directly or indirectly, for a valuable consideration, any tissue for a transplant, or any body or part or parts thereof, for therapeutic purposes, medical education or scientific research, and any such dealing is invalid as being contrary to public policy.

(2) Blood — Despite anything else in this Act or the regulations, blood and blood constituents shall not be considered to be tissue or part of a body for the purposes of subsection (1).

(3) Voluntary Blood Donations Act, 2014 — Subsection (2) shall not be construed as authorizing anything that is prohibited by the *Voluntary Blood Donations Act, 2014*.

2014, c. 14, Sched. 1, s. 15

11. (1) Disclosure of information — Except where legally required, no person shall disclose or give to any other person any information or document whereby the identity of any person,

- (a) who has given or refused to give a consent;
 - (b) with respect to whom a consent has been given; or
 - (c) into whose body tissue has been, is being or may be transplanted,
- may become known publicly.

(2) Exception — Where the information or document disclosed or given pertains only to the person who disclosed or gave the information or document, subsection (1) does not apply.

12. Offence — Every person who knowingly contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than six months, or to both.

13. Coroners Act not affected — Except as provided in section 6, nothing in this Act affects the operation of the *Coroners Act*.

14. Regulations, Lieutenant Governor in Council — The Lieutenant Governor in Council may, by regulation, provide that the definition of “tissue” in section 1 includes one or more of the following: bone marrow,

spermatozoa, an ovum, an embryo, a foetus, blood or blood constituents.

2000, c. 39, s. 8

15. (1) Regulations, Minister — The Minister may make regulations,

- (a) prescribing those things that are required or permitted to be prescribed by the Minister or to be done by the Minister by regulation;
- (b) prescribing limitations or restrictions on the rights, powers and privileges of the Network.

Proposed Amendment — 15(1)(b)

(b) prescribing limitations or restrictions on the rights, powers and privileges of the Agency under this Act.

2019, c. 5, Sched. 3, s. 25(11) [Not in force at date of publication.]

(2) Classes — A regulation may establish different entitlements, requirements or conditions relating to each prescribed class of facilities.

(3) Exemptions — A regulation may exempt a designated facility or a class of facilities from the application of a specified provision of this Act or a specified provision of a regulation.

(4) Restriction, person who contacts a patient or substitute — The Minister shall consult with the Network before prescribing requirements for the purposes of clause 8.1(5)(b).

Proposed Amendment — 15(4)

(4) Restriction, person who contacts a patient or substitute — The Minister shall consult with the Agency before prescribing requirements for the purposes of clause 8.1(5)(b).

2019, c. 5, Sched. 3, s. 25(4) [Not in force at date of publication.]

2000, c. 39, s. 8

ONT. REG. 179/05 — GENERAL

made under the *Trillium Gift
of Life Network Act*

O. Reg. 179/05

1. Classes of facility — The following are prescribed as classes of facilities for the purposes of the Act:

1. Class A (Hospitals).
2. Class B (Hospitals).
3. Class C (Hospitals).
4. Class D (Tissue Banks).
5. Class E (Transplant Service).
6. Class F (Laboratory Service).

2. Designations as members of a class — Entities are designated as members of prescribed classes of facilities as follows:

1. Any hospital that provides neuro-surgical or trauma services is a member of Class A (Hospitals).
2. Any hospital that does not meet the requirements set out in paragraph 1 and that is able to make a neurological determination of death (“NDD”) in accordance with the medically accepted standards for NDD in Ontario is a member of Class B (Hospitals).

3. Any hospital that does not meet the requirements set out in paragraph 1 or 2 is a member of Class C (Hospitals).

4. Any hospital, health facility or university that participates in the collection, screening, processing, storage or distribution of tissue for transplantation is a member of Class D (Tissue Banks).

5. Any hospital that transplants organs for the direct clinical benefit of patients is a member of Class E (Transplant Service).

6. Any laboratory as defined in section 5 of the *Laboratory and Specimen Collection Centre Licensing Act* is a member of Class F (Laboratory Service) if it performs at least one of the following tests, and is licensed to do so:

- i. tests required to complete standardized screening of potential organ or tissue donors for infectious diseases,
- ii. histocompatibility testing of potential organ donors.

3. Exemption — Members of Class C (Hospitals) are exempt from the application of section 8.1 of the Act.

4. Commencement — This Regulation comes into force on the later of the day that section 8.2 of the Act is proclaimed in force and the day this Regulation is filed.

TRUST BENEFICIARIES' LIABILITY ACT, 2004

S.O. 2004, c. 29, Sched. A

1. (1) Limit on beneficiaries' liability —

The beneficiaries of a trust are not, as beneficiaries, liable for any act, default, obligation or liability of the trust or any of its trustees if, when the act or default occurs or the obligation or liability arises,

- (a) the trust is a reporting issuer under the *Securities Act*; and
- (b) the trust is governed by the laws of Ontario.

(2) Exception — Subsection (1) does not apply with respect to any act or default that occurred or any obligation or liability that arose before this Act came into force.

(3) Governing law — For the purposes of this section,

- (a) a trust shall be deemed to be governed by the laws of Ontario if the trust instrument states that it is governed by the laws of Ontario;

(b) a trust shall be deemed not to be governed by the laws of Ontario if the trust instrument states that the trust is governed by the laws of another jurisdiction; and

(c) in case of a conflict between clauses (a) and (b), the trust is governed by the laws of the jurisdiction specified by the court.

(4) Definition — In this section,

"trust instrument" means, in relation to a trust, the document or documents that establish and govern the trust, but does not include a judgment or order of a court.

2. Liability in other circumstances —

This Act does not affect the liability, if any, of the beneficiaries of a trust in any other circumstances.

3. Commencement — The Act set out in this Schedule comes into force on the day the *Budget Measures Act, 2004 (No. 2)* receives Royal Assent.

4. Short title — The short title of the Act set out in this Schedule is the *Trust Beneficiaries' Liability Act, 2004*.

TRUSTEE ACT

R.S.O. 1990, c. T.23, as am. S.O. 1992, c. 32, s. 27; 1993, c. 27, Sched.; 1994, c. 27, s. 43(2); 1998, c. 18, Sched. B, s. 16; 2000, c. 26, Sched. A, s. 15; 2001, c. 9, Sched. B, s. 13; 2002, c. 24, Sched. B, s. 47; 2005, c. 5, s. 71; 2006, c. 19, Sched. B, s. 23; 2009, c. 34, Sched. T, s. 5; CTS 30 AU 10 – 1.

1. Definitions — In this Act,

“assign” means the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring land of which such person is possessed, either for the whole estate of the person so possessed or for any less estate, and **“assignment”** has a corresponding meaning;

“contingent right” as applied to land includes a contingent and executory interest, and a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility is or is not ascertained, and also a right of entry whether immediate or future, vested or contingent;

“convey” applied to a person means the execution and delivery by such person of every necessary or suitable assurance for conveying or disposing to another land whereof such person is seized, or wherein the person is entitled to a contingent right, either for the whole estate or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, and **“conveyance”** has a corresponding meaning;

“devisee” includes the heir of a devisee, and the devisee of an heir, and any person who may claim right by devolution of title of a similar description;

“instrument” includes a deed, a will and a written document and an Act of the Legislature, but not a judgment or order of a court;

“land” includes messuages, and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be laid out in the purchase of land, and any share of the same hereditaments and properties, or any of them, and any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency;

“mental incompetent” or **“mentally incompetent person”** [Repealed 2006, c. 19, Sched. B, s. 23, item 1.]

“mortgage” is applicable to every estate, interest or property, in land or personal estate, that is merely a security for money, and **“mortgagor”** has a corresponding meaning and includes every person deriving title under the original mortgagee;

“person of unsound mind” [Repealed 2006, c. 19, Sched. B, s. 23, item 2.]

“personal estate” includes leasehold estates and other chattels real, and also money, shares of government and other funds, securities for money (not being real estate), debts, choses in action, rights, credits, goods, and all other property, except real estate, which by law devolves upon the executor or administrator, and any share or interest therein;

“personal representative” means an executor, an administrator, and an administrator with the will annexed;

“possessed” is applicable to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in any land;

“securities” includes stocks, funds and shares;

S. 1 sei

Trustee Act

“**seized**” is applicable to any vested interest for life, or of a greater description, and extends to estates, legal and equitable, in possession, or in futurity, in any land;

“**stock**” includes fully paid-up shares, and any fund, annuity, or security transferable in books kept by any incorporated bank, company or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein;

“**transfer**”, in relation to stock, includes the performance and execution of every deed, power of attorney, act or thing, on the part of the transferor to effect and complete the title in the transferee;

“**trust**” does not mean the duties incident to an estate conveyed by way of mortgage but, with this exception, includes implied and constructive trusts and cases where the trustee has some beneficial estate or interest in the subject of the trust, and extends to and includes the duties incident to the office of personal representative of a deceased person, and “**trustee**” has a corresponding meaning and includes a trustee however appointed and several joint trustees;

“**will**” includes,

- (a) a testament,
- (b) a codicil,
- (c) an appointment by will or by writing in the nature of a will in exercise of a power, and
- (d) any other testamentary disposition.

2006, c. 19, Sched. B, s. 23

RETIREMENT OF TRUSTEES

2. (1) Retirement of trustees — Where there are more than two trustees, if one of them by deed declares a desire to be discharged from the trust, and if the co-trustees and such other person, if any, as is empowered to appoint trustees, consent by deed to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee who desires to be dis-

charged shall be deemed to have retired from the trust, and is, by the deed, discharged therefrom under this Act without any new trustee being appointed.

(2) Application of section — This section does not apply to executors or administrators.

APPOINTMENT OF NEW TRUSTEES

3. (1) Power of appointing new trustees — Where a trustee dies or remains out of Ontario for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on the trustee, or refuses or is unfit to act therein, or is incapable of acting therein, or has been convicted of an indictable offence or is bankrupt or insolvent, the person nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may by writing appoint another person or other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee dying, remaining out of Ontario, desiring to be discharged, refusing or being unfit or incapable.

(2) Survivorship — Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or where there were two or more trustees, of the last surviving or continuing trustee, are or is capable of exercising or performing any power or trust that was given to or capable of being exercised by the sole or last surviving trustee.

4. Authority of surviving trustee to appoint successor by will — Subject to the terms of any instrument creating a trust, the sole trustee or the last surviving or con-

tinuing trustee appointed for the administration of the trust may appoint by will another person or other persons to be a trustee or trustees in the place of the sole or surviving or continuing trustee after his or her death.

5. (1) Power of court to appoint new trustees — The Superior Court of Justice may make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

(2) Limitation of effect of order — An order under this section and any consequential vesting order or conveyance does not operate as a discharge from liability for the acts or omissions of the former or continuing trustees.

2000, c. 26, Sched. A, s. 15(2), item 1

6. What may be done: — On the appointment of a new trustee for the whole or any part of trust property,

(a) **increase in number** — the number of trustees may be increased; and

(b) **separate trustees for distinct trusts** — a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, even though no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part; and

(c) **where not less than two to be appointed** — it is not obligatory to appoint more than one new trustee where only one trustee was originally appointed or to fill up the original number of trustees where more than two trustees were originally appointed but, except where only one trustee was

originally appointed, a trustee shall not be discharged under section 3 from the trust unless there will be a trust corporation or at least two individuals as trustees to perform the trust; and

(d) execution and performance of requisite deeds and acts — any assurance or thing requisite for vesting the trust property, or any part thereof, in the person who is the trustee, or jointly in the persons who are the trustees, shall be executed or done.

7. Powers of new trustee — Every new trustee so appointed, as well before as after all the trust property becomes by law or by assurance or otherwise vested in the trustee, has the same powers, authorities and discretions, and may in all respects act as if the trustee had been originally appointed a trustee by the instrument, if any, creating the trust.

1993, c. 27, Sched.

8. Application of Act — The provisions of this Act relative to the appointment of new trustees apply to the case of a person nominated trustee in a will but dying before the testator.

VESTING INSTRUMENTS

9. (1) Vesting of trust property in new or continuing trustees without conveyance — Where an instrument, executed after the 1st day of July, 1886, by which a new trustee is appointed to perform any trust, contains a declaration by the appointer to the effect that any estate or interest in any land subject to the trust, or in any personal estate so subject, shall vest in the person or persons who, by virtue of such instrument, shall become and be the trustee or trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in the trustee, or in the trustees as joint tenants, and for the purposes of the trust, that estate, interest or right.

(2) On retirement of a trustee — Where such an instrument, by which a retiring trustee is discharged under this Act, contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates.

(3) Application to mortgages, stocks, shares, etc. — This section does not extend to land conveyed by way of mortgage for securing money subject to the trust, or to any share, stock, annuity, or property transferable only in books kept by a company or other body, or in manner prescribed by or under an Act of the Parliament of Canada or of the Legislature.

(4) Interpretation for registration purposes — For the purpose of registration the persons making the declaration shall be deemed the conveying parties, and the conveyance shall be deemed to be made by them under a power conferred by this Act.

VESTING ORDERS, ORDERS RELEASING CONTINGENT RIGHTS, ETC.

10. (1) Vesting Orders — In any of the following cases,

- (a) where the Superior Court of Justice appoints or has appointed a new trustee; or
- (b) where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person is a minor, or is out of Ontario, or cannot be found; or
- (c) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; or

(d) where it is uncertain whether the last trustee known to have been entitled to or possessed of any land is living or dead; or

(e) where there is no heir or personal representative of a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; or

(f) where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required by or on behalf of a person entitled to require a conveyance of the land or a release of the right, to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for fourteen days after the date of the requirement,

the Superior Court of Justice may make an order, vesting the land in any such person in any such manner, and for any such estate, as the court may direct, or releasing, or disposing of the contingent right to such person as the court may direct.

(2) Vesting of estate — Where the order is consequential on the appointment of a new trustee, the land shall be vested for such estate as the court may direct in the persons who, on the appointment, are the trustees.

(3) Where trustee out of Ontario — Where the order relates to a trustee entitled jointly with another person, and such trustee is out of Ontario or cannot be found, the land or right shall be vested in such other person, either alone or with some other person.

2000, c. 26, Sched. A, s. 15(2), item 2

11. Orders as to contingent rights of unborn persons — Where any land is subject to a contingent right in an unborn person, or a class of unborn persons, who, on coming into existence, would, in respect

thereof, become entitled to or possessed of the land on any trust, the Superior Court of Justice may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person, or class of unborn persons, would, on coming into existence, be entitled or possessed in the land.

2000, c. 26, Sched. A, s. 15(2), item 3

12. Vesting order in place of conveyance by minor mortgagee —

Where any person entitled to or possessed of land, or entitled to any contingent right in land, by way of security for money, is a minor, the Superior Court of Justice may make an order vesting or releasing or disposing of the land or right in like manner as in the case of a minor trustee.

2000, c. 26, Sched. A, s. 15(2), item 4

13. (1) Vesting orders as to stock and choses in action — In any of the following cases,

(a) where the Superior Court of Justice appoints, or has appointed, a new trustee; or

(b) where a trustee entitled alone, or jointly with another person, to stock or to a chose in action,

(i) is a minor, or

(ii) is out of Ontario, or

(iii) cannot be found, or

(iv) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for or recover a chose in action, according to the direction of the person absolutely entitled thereto, for fourteen days next after a request in writing has been made to the trustee by the person so entitled, or

(v) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for or recover a chose in action for fourteen days next after an order

of the Superior Court of Justice for that purpose has been served on the trustee; or

(c) where it is uncertain whether a trustee entitled, alone or jointly with another person, to stock or to a chose in action is alive or dead,

the Superior Court of Justice may make an order vesting the right to transfer, or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action, in any such person as the court may appoint.

(2) Vesting in new trustee — Where the order is consequential on the appointment by the court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees.

(3) Vesting in person having joint interest — Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone, or jointly with any other person whom the court may appoint.

(4) Appointment of person to transfer — Where a vesting order may be made under this section, the court may, if it is more convenient, appoint some proper person to make, or join in making, the transfer.

(5) Transfer, how to be made — The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the court under this Act may transfer the stock to himself, herself or itself, or any other person, according to the order, and all incorporated banks and all companies shall obey every order made under this section.

(6) After notice of order, no transfer to be made contrary thereto — After notice in writing of an order under this section, it is not lawful for any incorporated bank or any company to transfer any stock to which the order relates, or to pay any dividends thereon except in accordance with the order.

(7) Court may make declaration — The Superior Court of Justice may make declarations and give directions concerning the manner in which the right to any stock or chose in action, vested under this Act, is to be exercised.

(8) Ships, shares in — The provisions of this Act as to vesting orders apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock.

2000, c. 26, Sched. A, s. 15(2), item 5

TRUSTEES FOR CHARITIES

14. Exercise of powers in favour of charities, etc. — The Superior Court of Justice may exercise the powers herein conferred for the purpose of vesting any land or personal estate in the trustee of any charity or society over which the court would have jurisdiction upon action duly instituted.

2000, c. 26, Sched. A, s. 15(2), item 6

15. (1) Power to order a sale in proper cases — Where land is held by trustees for a charitable purpose and it is made to appear that the land can be no longer advantageously used for such charitable purpose or that for any other reason the land ought to be sold, a judge of the Superior Court of Justice may make an order authorizing the sale thereof and may give such directions in relation thereto and for securing the due investment and application of the money arising from the sale as may be considered proper.

(2) Notice to Public Guardian and Trustee — No such order shall be made unless notice of the application has been given to the Public Guardian and Trustee.

2000, c. 26, Sched. A, s. 15(2), item 7; CTS 30

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WHO MAY APPLY

16. (1) Who may apply for appointment of new trustee, or vesting order, etc. — An order under this Act for the appointment of a new trustee, or

concerning any land or personal estate, subject to a trust, may be made upon the application of any person beneficially interested therein, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof.

(2) In case of mortgaged property — An order concerning any land or personal estate subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgagee.

CERTAIN POWERS AND RIGHTS OF TRUSTEES

17. Power and discretion of trustee for sale — Subject to the *Estate Administration Act*, where a trust for sale or a power of sale of land or personal estate is vested in a trustee, the trustee may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract subject to such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss.

18. (1) Sales by trustees not impeachable on certain grounds — A sale made by a trustee shall not be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made were unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) Collusion between purchaser and trustee — Such sale shall not, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the

sale was made were unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for the sale was made.

19. Dedication or sale of land by trustee for municipal highway — With the approval of the Ontario Municipal Board or of a judge of the Superior Court of Justice, a person who holds land or a charge or claim against it or has control of the legal title, upon any trust or for a specified or particular purpose, may, to the extent of the estate or interest, dedicate or sell, or join in dedicating or selling, to the corporation of the municipality within which it is situate, any portion of the land required by the corporation for the work of establishing, extending, widening or diverting a street, and the Board or the judge may approve thereof if it appears that it will not have the effect of defeating or seriously affecting the substantial objects or intent of the trust or purpose but the approval is not necessary if such dedication or sale is otherwise within such person's powers.

2000, c. 26, Sched. A, s. 15(2), item 8

20. (1) Power to authorize receipt of money by solicitor — A trustee may appoint a solicitor as agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust.

(2) By banker — A trustee may appoint a manager or a branch manager of a bank listed in Schedule I or II to the *Bank Act* (Canada) or a solicitor to be the trustee's agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance or otherwise.

(3) Appointment not a breach of trust — A trustee shall not be charged with a breach of trust by reason only of having made or concurred in making any such appointment.

(4) Liability of trustee, in certain cases, not affected — Nothing in this section exempts a trustee from any liability that would have been incurred if this Act had not been passed, in case the trustee permits any money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor to pay or transfer the same to the trustee.

21. (1) Power to insure buildings — A trustee may insure against loss or damage by fire, tempest or other casualty, any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding three-fourths of the value of such building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income.

(2) Exception — This section does not apply to any building or property that a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

22. (1) Power of trustees of renewable leaseholds to renew — A trustee of any leaseholds for lives or years that are renewable from time to time may, if the trustee thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future or contingent, in the leaseholds, use the trustee's best endeavours to obtain from time to time a renewed lease of the same land on reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite; but where, by the terms of the settlement or will, the person in possession for life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the ex-

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pense of renewal, this section does not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

(2) To raise money for the purpose —

If money is required to pay for the renewal, the trustee effecting the renewal may pay the same out of any money than held in trust for the persons beneficially interested in the land to be comprised in the renewed lease, and, if the trustee does not hold sufficient money for the purpose, the trustee may raise the money required by mortgage of the land to be comprised in the renewed lease, or of any other land for the time being subject to the uses or trusts to which that land is subject, and no person advancing money upon a mortgage purporting to be made under this power is bound to see that the money is wanted, or that no more is raised than is wanted for the purpose or to see to the due application of the money.

23. (1) When trustee may file accounts — A trustee desiring to pass the accounts of dealings with the trust estate may file the accounts in the office of the Superior Court of Justice, and the proceedings and practice upon the passing of such accounts shall be the same and have the like effect as the passing of executors' or administrators' accounts in the court.

(2) Fixing compensation of trustee — Where the compensation payable to a trustee has not been fixed by the instrument creating the trust or otherwise, the judge upon the passing of the accounts of the trustee has power to fix the amount of compensation payable to the trustee and the trustee is thereupon entitled to retain out of any money held the amount so determined.

2000, c. 26, Sched. A, s. 15(2), item 9

23.1 (1) Expenses of trustees — A trustee who is of the opinion that an expense would be properly incurred in carrying out the trust may,

- (a) pay the expense directly from the trust property; or

(b) pay the expense personally and recover a corresponding amount from the trust property.

(2) Later disallowance by court — The Superior Court of Justice may afterwards disallow the payment or recovery if it is of the opinion that the expense was not properly incurred in carrying out the trust.

2001, c. 9, Sched. B, s. 13(1)

24. Receipts of trustees to be effectual discharges — The payment of any money to and the receipt thereof by any person to whom the same is payable upon any trust, or for any limited purpose, and such payment to and receipt by the survivors of two or more mortgagees or holders or the executors or administrators of such survivors or their assigns, effectually discharges the person paying the same from seeing to the application or being answerable for the misapplication thereof.

25. Powers of two or more trustees — Where a power or trust is given to or vested in two or more trustees jointly it may be exercised or performed by the survivor or survivors of them for the time being.

INVESTMENTS

26. Other Acts — If a provision of another Act or the regulations under another Act authorizes money or other property to be invested in property in which a trustee is authorized to invest and the provision came into force before section 16 of Schedule B of the *Red Tape Reduction Act, 1998*, the provision shall be deemed to authorize investment in the property in which a trustee could invest immediately before the coming into force of section 16 of Schedule B of the *Red Tape Reduction Act, 1998*.

1998, c. 18, Sched. B, s. 16(1)

27. (1) Standard of care — In investing trust property, a trustee must exercise the care, skill, diligence and judgment that a

prudent investor would exercise in making investments.

(2) Authorized investments — A trustee may invest trust property in any form of property in which a prudent investor might invest.

(3) Mutual, pooled and segregated funds — Any rule of law that prohibits a trustee from delegating powers or duties does not prevent the trustee from investing in mutual funds, pooled funds or segregated funds under variable insurance contracts, and sections 27.1 and 27.2 do not apply to the purchase of such funds.

(4) Common trust funds — If trust property is held by co-trustees and one of the co-trustees is a trust corporation as defined in the *Loan and Trust Corporations Act*, any rule of law that prohibits a trustee from delegating powers or duties does not prevent the co-trustees from investing in a common trust fund, as defined in that Act, that is maintained by the trust corporation and sections 27.1 and 27.2 do not apply.

(5) Criteria — A trustee must consider the following criteria in planning the investment of trust property, in addition to any others that are relevant to the circumstances:

1. General economic conditions.
2. The possible effect of inflation or deflation.
3. The expected tax consequences of investment decisions or strategies.
4. The role that each investment or course of action plays within the overall trust portfolio.
5. The expected total return from income and the appreciation of capital.
6. Needs for liquidity, regularity of income and preservation or appreciation of capital.
7. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(6) Diversification — A trustee must diversify the investment of trust property to an extent that is appropriate to,

- (a) the requirements of the trust; and
- (b) general economic and investment market conditions.

(7) Investment advice — A trustee may obtain advice in relation to the investment of trust property.

(8) Reliance on advice — It is not a breach of trust for a trustee to rely on advice obtained under subsection (7) if a prudent investor would rely on the advice under comparable circumstances.

(9) Terms of trust — This section and section 27.1 do not authorize or require a trustee to act in a manner that is inconsistent with the terms of the trust.

(10) Same — For the purposes of subsection (9), the constituting documents of a corporation that is deemed to be a trustee under subsection 1(2) of the *Charities Accounting Act* form part of the terms of the trust.

1998, c. 18, Sched. B, s. 16(1); 2001, c. 9, Sched. B, s. 13(2)-(4)

27.1 (1) Trustee may delegate functions to agent — Subject to subsections (2) to (5), a trustee may authorize an agent to exercise any of the trustee's functions relating to investment of trust property to the same extent that a prudent investor, acting in accordance with ordinary investment practice, would authorize an agent to exercise any investment function.

(2) Investment plan or strategy — A trustee may not authorize an agent to exercise functions on the trustee's behalf unless the trustee has prepared a written plan or strategy that,

- (a) complies with section 28; and
- (b) is intended to ensure that the functions will be exercised in the best interests of the beneficiaries of the trust.

(3) Agreement — A trustee may not authorize an agent to exercise functions on the

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trustee's behalf unless a written agreement between the trustee and the agent is in effect and includes,

- (a) a requirement that the agent comply with the plan or strategy in place from time to time; and
- (b) a requirement that the agent report to the trustee at regular stated intervals.

(4) Trustee's duty — A trustee is required to exercise prudence in selecting an agent, in establishing the terms of the agent's authority and in monitoring the agent's performance to ensure compliance with those terms.

(5) Same — For the purpose of subsection (4),

- (a) prudence in selecting an agent includes compliance with any regulation made under section 30; and
- (b) prudence in monitoring an agent's performance includes,
 - (i) reviewing the agent's reports,
 - (ii) regularly reviewing the agreement between the trustee and the agent and how it is being put into effect, including considering whether the plan or strategy of investment should be revised or replaced, replacing the plan or strategy if the trustee considers it appropriate to do so, and assessing whether the plan or strategy is being complied with,
 - (iii) considering whether directions should be provided to the agent or whether the agent's appointment should be revoked, and
 - (iv) providing directions to the agent or revoking the appointment if the trustee considers it appropriate to do so.

2001, c. 9, Sched. B, s. 13(5)

27.2 (1) Duty of agent — An agent who is authorized to exercise a trustee's functions

relating to investment of trust property has a duty to do so,

- (a) with the standard of care expected of a person carrying on the business of investing the money of others;
- (b) in accordance with the agreement between the trustee and the agent; and
- (c) in accordance with the plan or strategy of investment.

(2) No further delegation — An agent who is authorized to exercise a trustee's functions relating to investment of trust property shall not delegate that authority to another person.

(3) Proceeding against agent — If an agent is authorized to exercise a trustee's functions relating to investment of trust property and the trust suffers a loss because of the agent's breach of the duty owed under subsection (1) or (2), a proceeding against the agent may be commenced by,

- (a) the trustee; or
- (b) a beneficiary, if the trustee does not commence a proceeding within a reasonable time after acquiring knowledge of the breach.

2001, c. 9, Sched. B, s. 13(5)

28. Protection from liability — A trustee is not liable for a loss to the trust arising from the investment of trust property if the conduct of the trustee that led to the loss conformed to a plan or strategy for the investment of the trust property, comprising reasonable assessments of risk and return, that a prudent investor could adopt under comparable circumstances.

1998, c. 18, Sched. B, s. 16(1)

29. Assessment of damages — If a trustee is liable for a loss to the trust arising from the investment of trust property, a court assessing the damages payable by the trustee may take into account the overall performance of the investments.

1998, c. 18, Sched. B, s. 16(1)

30. Regulations — The Attorney General may make regulations governing or restricting the classes of persons or the qualifications of persons who are eligible to be agents under section 27.1 and establishing conditions for eligibility.

1998, c. 18, Sched. B, s. 16(1); 2001, c. 9, Sched. B, s. 13(6)

31. Application — Sections 27 to 30 apply to a trust whether it is created before or after the date section 13 of Schedule B to the *Government Efficiency Act, 2001* comes into force.

2001, c. 9, Sched. B, s. 13(6)

32. [Repealed 1998, c. 18, Sched. B, s. 16(1).]

PROTECTION AND INDEMNITY

33. [Repealed 1998, c. 18, Sched. B, s. 16(1).]

34. [Repealed 1998, c. 18, Sched. B, s. 16(1).]

TECHNICAL BREACHES OF TRUST

35. (1) Relief of trustees committing technical breach of trust — If in any proceeding affecting a trustee or trust property it appears to the court that a trustee, or that any person who may be held to be fiduciarily responsible as a trustee, is or may be personally liable for any breach of trust whenever the transaction alleged or found to be a breach of trust occurred, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the court in the matter in which the trustee committed the breach, the court may relieve the trustee either wholly or partly from personal liability for the same.

(2) Application — Subsection (1) does not apply to liability for a loss to the trust arising from the investment of trust property.

1998, c. 18, Sched. B, s. 16(2)

PAYMENT INTO COURT

36. (1) Payment into court by trustees of trust funds or securities by order of court — Where any money belonging to a trust is in the hands or under the control of or is vested in a sole trustee or several trustees and it is the desire of the trustee, or of the majority of the trustees, to pay the money into court, the Superior Court of Justice may order the payment into court to be made by the sole trustee, or by the majority of the trustees, without the concurrence of the other or others if the concurrence cannot be obtained.

(2) Payment or delivery to Accountant of court — Where any such money is deposited with a banker or broker or other depository, the court may order payment thereof to the Accountant of the Superior Court of Justice, and payment made under the order is valid and takes effect as if it had been made on the authority or by the act of all the persons entitled to the money paid.

(3) Payment into court by persons holding trust money for trustee — Where the trustee has been absent from Ontario for a year and is not likely to return at an early date, or in the event of the trustee's death, or where the trustee in Ontario cannot give an acquittance of the money, any person with whom trust money has been deposited or to whose hands trust money has come may make an application similar to that authorized by subsection (1).

(4) Money found to be due minor, etc., on final passing of accounts to be paid into court — Where, on the passing of the final accounts of a personal representative, guardian or trustee by a judge of the Superior Court of Justice, there is found to be in the hands of such personal representative, guardian or trustee any money belong-

ing to a minor or to a mentally incapable person, or to a person whose address is unknown, it is the duty of such personal representative, guardian or trustee to pay the money into the Superior Court of Justice to the credit of the person who is entitled to it.

(5) Accountant to be furnished with copy of order, etc. — A certified copy of the order or report of the judge shall be left with the Accountant when the money is paid in, and the person paying it in is entitled to deduct \$5 for costs.

(6) Payment into court of money to which minor or mentally incapable person entitled — If a minor or mentally incapable person is entitled to any money, the person by whom the money is payable may pay it into court to the credit of the minor or mentally incapable person.

(6.1) Same — The payment shall be made to the Accountant of the Superior Court of Justice.

(6.2) Accompanying affidavit, minor — If the person entitled to the money is a minor, the person by whom it is payable shall deliver an affidavit containing the following to the Accountant at the time of the payment into court:

1. A statement that the money is being paid into court under subsection (6).
2. A statement of the facts entitling the minor to the money.
3. If the affidavit deals with more than one minor beneficiary's entitlement, the amount of each individual entitlement.
4. If the amount being paid into court differs from an amount specified in a document that establishes the minor's entitlement, an explanation of the difference.
5. The minor's date of birth.
6. The full name and postal address of,
 - i. the minor,
 - ii. the minor's parents, or the parent with lawful custody if it is

known that only one parent has lawful custody,

- iii. any person, if known, who has lawful custody of the minor but is not his or her parent, and
- iv. any guardian of property, if known, appointed under section 47 of the *Children's Law Reform Act*.

(6.3) Accompanying affidavit, mentally incapable person — If the person entitled to the money is a mentally incapable person, the person by whom it is payable shall deliver an affidavit containing the following to the Accountant at the time of the payment into court:

1. A statement that the money is being paid into court under subsection (6).
2. A statement of the facts entitling the mentally incapable person to the money.
3. The mentally incapable person's date of birth.
4. The full name and postal address of,
 - i. the mentally incapable person,
 - ii. the mentally incapable person's guardian of property, if any, under the *Substitute Decisions Act, 1992*,
 - iii. the person, if known, who holds a continuing power of attorney for property for the mentally incapable person.

(6.4) Copy of document — An affidavit under subsection (6.2) or (6.3) shall have attached to it, as a schedule, a copy of any document that establishes,

- (a) the person's entitlement to the money;
- (b) the amount to which the person is entitled;
- (c) any conditions to be met before the person is entitled to receive the money, including, in the case of a minor, the attainment of a specified age.

(6.5) Discharge — Payment into court in accordance with subsection (6), (6.2) or (6.3), as the case may be, and with subsection (6.4) is a sufficient discharge for the money paid into court.

(7) Transfer of trust — Where a trustee desires to be relieved from the trust, the court may order all property held for the trust to be transferred to the Public Guardian and Trustee.

(8) Disposition — Money paid into court is subject to the order of the court.

(9) P.G.T. — Where, however, the Public Guardian and Trustee is the guardian of property of the person to whom money is due, as mentioned in subsections (4) and (6), the money shall be paid to the Public Guardian and Trustee.

1992, c. 32, s. 27; 1994, c. 27, s. 43(2); 1998, c. 18, Sched. B, s. 16(3); 2000, c. 26, Sched. A, s. 15(1), (2), item 10, (3); CTS 30 AU 10 – 1

PERSONAL REPRESENTATIVES AND DEVISEES IN TRUST

37. (1) Power of court to remove — The Superior Court of Justice may remove a personal representative upon any ground upon which the court may remove any other trustee, and may appoint some other proper person or persons to act in the place of the executor or administrator so removed.

(2) Security by person appointed — Every person so appointed shall, unless the court otherwise orders, give such security as would be required to be given if letters of administration were granted to the person under the *Estates Act*.

(3) Who may apply — The order may be made upon the application of any executor or administrator desiring to be relieved from the duties of the office, or of any executor or administrator complaining of the conduct of a co-executor or co-administrator, or of any person interested in the estate of the deceased.

(4) When new appointment unnecessary — Where the executor or administrator removed is not a sole executor or administrator, the court need not, unless it sees fit, appoint any person to act in the place of the person removed, and if no such appointment is made the rights and estate of the executor or administrator removed passes to the remaining executor or administrator as if the person so removed had died.

(5) Chain of representation — The executor of any person appointed an executor under this section shall not by virtue of such executorship be an executor of the estate of which his or her testator was appointed executor under this section, whether such person acted alone or was the last survivor of several executors.

(6) Copy of order to be filed — A certified copy of the order of removal shall be filed with the Estate Registrar for Ontario and another copy with the local registrar of the Superior Court of Justice, and such officers shall, at or upon the entry of the grant in the registers of their respective offices, make in red ink a short note giving the date and effect of the order, and shall also make a reference thereto in the index of the register at the place where the grant is indexed.

(7) Endorsement — The date of the grant shall be endorsed on the copy of the order filed with the Estate Registrar for Ontario.

2000, c. 26, Sched. A, s. 15(2), item 11

RIGHTS AND LIABILITIES OF PERSONAL REPRESENTATIVES

**38. (1) Actions by executors and
administrators for torts** — Except in cases of libel and slander, the executor or administrator of any deceased person may maintain an action for all torts or injuries to the person or to the property of the deceased in the same manner and with the same rights and remedies as the deceased would, if living, have been entitled to do, and the damages when recovered shall form part of the personal estate of the deceased; but if death

results from such injuries no damages shall be allowed for the death or for the loss of the expectation of life, but this proviso is not in derogation of any rights conferred by Part V of the *Family Law Act*.

(2) Actions against executors and administrators for torts — Except in cases of libel and slander, if a deceased person committed or is by law liable for a wrong to another in respect of his or her person or to another person's property, the person wronged may maintain an action against the executor or administrator of the person who committed or is by law liable for the wrong.

(3) Limitation of actions — An action under this section shall not be brought after the expiration of two years from the death of the deceased.

39. Action of account — A personal representative has an action of account as the testator or intestate might have had if he or she had lived.

40. Powers of executor to whom probate granted — An administrator with the will annexed or an executor to whom probate is granted has all the power conferred by the testator upon the executor named in his or her will and may in all respects act as effectually as though the administrator or executor alone had been named by the testator as the sole executor.

41. Power of executor to convey land — Where there is in a will a direction, express or implied, to sell, dispose of, appoint, mortgage, encumber or lease any land, and no person is by the will or otherwise by the testator appointed to execute and carry the same into effect, the executor, if any, named in the will may execute and carry into effect every such direction in respect of such land and any estate or interest therein in the same manner and with the same effect as if appointed by the testator for that purpose.

42. Power of administrator with will annexed to convey land — Where from any cause a court of competent jurisdiction has committed to a person, who has given security to the satisfaction of such court for any dealing with such land and its proceeds, letters of administration with a will annexed which contains an express or implied power to sell, dispose of, appoint, mortgage, encumber or lease any land, whether such power is conferred on an executor named in the will or the testator has not by the will or otherwise appointed a person to execute it, the administrator may exercise the power in respect of such land in the same manner and with the same effect as if appointed by the testator for that purpose.

43. Conveyance by personal representative in pursuance of a contract by deceased — Where a person has entered into a contract in writing for the sale and conveyance of land and has died intestate or without providing by will for the conveyance of such land to the person entitled or to become entitled to such conveyance, and where the deceased would be bound, were he or she alive, to execute a conveyance, his or her personal representative shall make and give to the person entitled to the same a good and sufficient conveyance of such land, of such nature as the deceased, if living, would be liable to give, but without covenants, except as against the acts of the grantor, and the conveyance is as valid and effectual as if the deceased were alive at the time of the making thereof, and had executed the same, but does not have any further validity or effect.

44. (1) Power to raise money by sale or mortgage to satisfy charges — Where by any will coming into operation after the 18th day of September, 1865, a testator charges land, or any specific part thereof, with the payment of debts or with the payment of any legacy or other specific sum of money, and devises the land so charged to executors or to a trustee without any express provision for the raising of such debt, legacy

or sum of money out of such land, the devisee may raise such debt, legacy or money by a sale of such land or any part thereof, or by a mortgage of the same.

(2) Purchaser's position — Purchasers or mortgagees are not bound to inquire whether the powers conferred by this section, or any of them, have been duly and correctly exercised by the person acting in virtue thereof.

45. Duties and liabilities of an executor and administrator acting under the powers in this Act — Every personal representative, as respects the additional powers vested by this Act, and any money or assets received in consequence of the exercise of such powers, is subject to all the liabilities, and compellable to discharge all the duties which, as respects the acts to be done under such powers, would have been imposed upon a person appointed by the testator, or would have been imposed by law upon any person appointed by law, or by any court of competent jurisdiction to execute such power.

46. (1) Survivorship — Where there are several personal representatives and one or more of them dies, the powers conferred upon them shall vest in the survivor or survivors, unless there is some provision to the contrary in the will.

(2) Idem — Until the appointment of new personal representatives, the personal representatives or representative for the time being of a sole personal representative, or, where there were two or more personal representatives, of the last surviving or continuing personal representative, may exercise or perform any power or trust that was given to, or capable of being exercised by the sole or last surviving personal representative.

EFFECT OF REVOCATION OF AN ERRONEOUS GRANT

47. (1) Validity of acts done prior to revocation of erroneous grant —

Where a court of competent jurisdiction has admitted a will to probate, or has appointed an administrator, even though the grant of probate or the appointment may be subsequently revoked as having been erroneously made, all acts done under the authority of the probate or appointment, including all payments made in good faith to or by the personal representative, are as valid and effectual as if the same had been rightly granted or made, but upon revocation of the probate or appointment, in cases of an erroneous presumption of death, the supposed decedent, and in other cases the new personal representative may, subject to subsections (2) and (3), recover from the person who acted under the revoked grant or appointment any part of the estate remaining in the person's hands undistributed and, subject to the *Limitations Act, 2002*, from any person who erroneously received any part of the estate as a devisee, legatee or one of the next of kin, or as a spouse of the decedent or supposed decedent, the part so received or the value thereof.

(2) Expenses — The person acting under the revoked probate or appointment may retain out of any part of the estate remaining undistributed the proper costs and expenses incurred in the administration.

(3) Fraud — Nothing in this section protects any person acting as personal representative where the person has been party or privy to any fraud whereby the grant or appointment has been obtained, or after becoming aware of any fact by reason of which revocation thereof is ordered unless, in the latter case, the person acts under a contract for valuable consideration and otherwise binding made before the person becomes aware of the fact.

(4) In this section,

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“spouse” means a spouse as defined in section 1 of the *Family Law Act*.

2002, c. 24, Sched. B, s. 47; 2005, c. 5, s. 71

ADMINISTRATION OF ESTATES

48. (1) Power, to pay debts — A personal representative may pay or allow any debt or claim on any evidence that the representative thinks sufficient.

(2) To compound, etc. — A personal representative, or two or more trustees acting together, or a sole acting trustee, where, by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof may, if and as they may think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator’s or intestate’s estate or to the trust, and for any of these purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as seem expedient without being responsible for any loss occasioned by any act or thing done in good faith.

49. (1) Application of income of estate of deceased person — Unless a contrary intention appears from the will,

- (a) the personal representative of a deceased person, in paying the debts, funeral and testamentary expenses, estate, legacy, and inheritance taxes, legacies or other similar disbursements, shall not apply or be deemed to have applied any income of the estate in or towards the payment of any part of the capital of any such disbursements or of any part of the interest, if any, due thereon at the date of death of such person;
- (b) until the payment of the debts, funeral and testamentary expenses, es-

tate, legacy, and inheritance taxes, legacies, or other similar disbursements mentioned in clause (a), the income from the property required for the payment thereof, with the exception of any part of such income applied in the payment of any interest accruing due thereon after the date of death of the deceased, shall be treated and applied as income of the residuary estate,

but, in any case where the assets of the estate are not sufficient to pay the disbursements in full, the income shall be applied in making up such deficiency.

(2) Idem — Subsection (1) shall be deemed always to have been part of the law of Ontario.

(3) Part application of other rules validated — Despite subsections (1) and (2), in any case in which the personal representative has before the 30th day of May, 1961 applied any rule of law or of administration different from the provisions of subsection (1), such application is valid and effective.

2009, c. 34, Sched. T, s. 5

50. (1) In case of deficiency of assets, debts to rank proportionately — On the administration of the estate of a deceased person, in the case of a deficiency of assets, debts due to the Crown and to the personal representative of the deceased person, and debts to others, including therein debts by judgment or order, and other debts of record, debts by specialty, simple contract debts and such claims for damages as are payable in like order of administration as simple contract debts shall be paid proportionately and without any preference or priority of debts of one rank or nature over those of another but nothing herein prejudices any lien existing during the lifetime of the debtor on any of the debtor’s property.

(2) Overpayment to creditor — Where a personal representative pays more to a creditor or claimant than the entitlement under subsection (1), the overpayment does not entitle any other creditor or claimant to recover

more than the amount to which the creditor or claimant would be entitled if the overpayment had not been made.

(3) Relief from personal liability —

Where a personal representative pays more to a creditor or claimant than the entitlement under subsection (1), the court may relieve the personal representative either wholly or partly from personal liability, if it is satisfied that the personal representative has acted honestly and reasonably and for the protection or conservation of the assets of the estate.

51. (1) As to liability of executor or administrator in respect of covenants, etc., in leases — Where a personal representative, liable as such to the rents, or upon the covenants or agreements contained in a lease or agreement for a lease granted or assigned to the testator or intestate, has satisfied all liabilities under the lease or agreement for a lease, which accrued due and were claimed up to the time of the assignment hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised, or agreed to be demised, although the period for laying out the same may not have arrived, and has assigned the lease, or agreement for lease, to a purchaser thereof, the personal representative may distribute the residuary estate of the deceased to and among the parties entitled thereto, without appropriating any part or any further part thereof, as the case may be, to meet any future liability under the lease or agreement for lease.

(2) No personal liability for subsequent claim — The personal representative so distributing the residuary estate is not personally liable in respect of any subsequent claim under the lease or agreement for lease.

(3) Right to follow assets not affected — Nothing in this section prejudices

the right of the lessor, or those claiming under the lessor, to follow the assets of the deceased into the hands of the person or persons to or among whom they have been distributed.

52. (1) As to liability of personal representative in respect of rents, etc., in conveyances on rent-charge, etc. — Where a personal representative, liable as such to the rent or upon the covenants or agreements contained in any conveyance on chief rent or rent-charge, whether any such rent is by limitation of use, grant or reservation, or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate, has satisfied all liabilities under the conveyance, or agreement for a conveyance, which accrued due and were claimed up to the time of the conveyance hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and has conveyed such property, or assigned such agreement for conveyance to a purchaser thereof, the personal representative may distribute the residuary estate of the deceased to and among the persons entitled thereto, without appropriating any part or any further part thereof, as the case may be, to meet any further liability under the conveyance or agreement for conveyance.

(2) No personal liability for any subsequent claim — A personal representative so distributing the residuary estate is not personally liable in respect of any subsequent claim under the conveyance or agreement for conveyance.

(3) Right of grantor, etc., to follow assets not affected — Nothing in this section prejudices the right of the grantor, or those claiming under the grantor, to follow the assets of the deceased into the hands of

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the person or persons to or among whom they have been distributed.

53. (1) Distribution of assets under trust deeds for benefit of creditors, or of the assets of intestate — A trustee or assignee acting under the trusts of a deed or assignment for the benefit of creditors generally, or of a particular class or classes of creditors, where the creditors are not designated by name therein, or a personal representative who has given such or the like notices as, in the opinion of the court in which such trustee, assignee or personal representative is sought to be charged, would have been directed to be given by the Superior Court of Justice in an action for the execution of the trusts of such deed or assignment, or in an administration suit, for creditors and others to send in to such trustee, assignee or personal representative, their claims against the person for the benefit of whose creditors such deed or assignment is made, or against the estate of the testator or intestate, as the case may be, at the expiration of the time named in the notices, or the last of the notices, for sending in such claims, may distribute the proceeds of the trust estate, or the assets of the testator or intestate, as the case may be, or any part thereof among the persons entitled thereto, having regard to the claims of which the trustee, assignee or representative has then notice, and is not liable for the proceeds of the trust estate, or assets, or any part thereof so distributed to any person of whose claim there was no notice at the time of the distribution.

(2) Right of creditor to follow assets not affected — Nothing in this section prejudices the right of any creditor or claimant to follow the proceeds of the trust estate, or assets, or any part thereof into the hands of persons who have received the same.

(3) Subs. (1) not to apply to heirs, etc. — Subsection (1) does not apply to heirs, next of kin, devisees or legatees claiming as such.

2000, c. 26, Sched. A, s. 15(2), item 12

54. Exercise of general power by will, effect of — Property over which a deceased person had a general power of appointment, which he or she might have exercised for his or her own benefit without the assent of any other person, shall be assets for the payment of his or her debts where the same is appointed by will, and, under an execution against the personal representatives of such deceased person, such assets may be seized and sold after the deceased person's own property has been exhausted.

55. Rights and liabilities of executors of executors — Executors of executors have the same actions for the debts and property of the first testator as he or she would have had if in life, and are answerable for such of the debts and property of the first testator as they recover as the first executors would be if they had recovered the same.

56. Liability of personal representative of one who commits waste — The personal representative of any person who, acting with or without authority as executor or administrator, wastes or converts to his or her own use any part of the estate of any deceased person is liable and chargeable in the same manner as the testator or intestate would have been if he or she had been living.

57. (1) Deficiency of assets — On the administration of the estate of a deceased person, in case of a deficiency of assets, every creditor holding security on the estate of the deceased debtor or on the estate of a third person for whom the estate of the deceased debtor is only indirectly or secondarily liable, shall place a value on such security and the creditor shall rank upon the distribution of assets only upon the unsecured portion of the claim after deducting the value of the security, unless the personal representative elects to take over the security as hereinafter provided.

(2) Where personal representative requires creditor to prove claim — The

personal representative of a deceased person who is of the opinion that there may be a deficiency of assets may require any creditor to prove the claim and to state whether security is held for it or any part thereof, and to give full particulars of the same and if such security is on the estate of the deceased debtor or on the estate of a third person for whom the estate of the deceased debtor is only indirectly or secondarily liable, to place a specified value on such security and the personal representative may either consent to the creditor ranking for the amount of the claim after deducting such valuation or may require from the creditor an assignment of the security at an advance of 10 per cent upon the specified value to be paid out of the estate as soon as the personal representative has realized upon such security or is in a position to make payment out of the assets of the estate and in either case the difference between the value at which the security is retained or taken, as the case may be, and the amount of the claim of the creditor, shall be the amount for which the creditor ranks upon the estate of the deceased debtor.

(3) Inspectors, directing of; remuneration of — Where inspectors have been appointed as hereinafter provided or where the estate is being administered under the direction of or by a court, the personal representative in making an election shall act under the direction of the inspectors or of the court, as the case may be, and the remuneration of the inspectors shall be determined by the judge on the passing of accounts.

(4) Where claim based on negotiable instruments — If the claim of the creditor is based upon a negotiable instrument upon which the estate of the deceased debtor is only indirectly or secondarily liable and which is not mature or exigible, the creditor shall be considered to hold security within the meaning of this section and shall put a value on the liability of the person primarily liable thereon as the security for the payment thereof, but after the maturity of such

liability and its non-payment the creditor is entitled to amend and revalue the claim.

58. When creditor holding security fails to value same — Where a creditor fails to value any security held by the creditor which under this Act the creditor is called upon to value, the personal representative may apply to the Superior Court of Justice for an order that unless a specified value is placed on such security and notified in writing to the personal representative, within a time to be limited by the order, such claimant, in respect of the claim or the part thereof for which security is held, is wholly barred of any right to share in the proceeds of the estate unless the judge upon the application of the creditor extends the time for the valuation of the security.

2000, c. 26, Sched. A, s. 15(2), item 13

59. (1) Calling meeting of creditors where there is a deficiency of assets — Where in the administration of the estate of a deceased person the personal representative fears that there may be a deficiency of assets or that all the creditors will not be paid in full, the personal representative may call a meeting of creditors and lay before them the situation of the estate and at such meeting inspectors may be appointed by the creditors to assist the personal representative in the administration of the estate and to advise with respect thereto.

(2) Creditors' request for meeting — In any such case the personal representative shall call a meeting of creditors for the purpose aforesaid at the request in writing of creditors holding 10 per cent of the amount of claims filed against the estate.

(3) Appointment of creditor as an inspector — In cases where no meeting of creditors has been held, the personal representative may appoint a creditor or creditors as inspector or inspectors to assist in the realizing and management of the estate but in such case the appointment shall be approved by the judge before the inspectors accept office.

APPLICATIONS TO COURT FOR ADVICE

60. (1) Trustee, etc., may apply for advice in management of trust property — A trustee, guardian or personal representative may, without the institution of an action, apply to the Superior Court of Justice for the opinion, advice or direction of the court on any question respecting the management or administration of the trust property or the assets of a ward or a testator or intestate.

(2) Indemnity of trustee, etc., acting as advised — The trustee, guardian or personal representative acting upon the opinion, advice or direction given shall be deemed, so far as regards that person's responsibility, to have discharged that person's duty as such trustee, guardian or personal representative, in the subject-matter of the application, unless that person has been guilty of some fraud, wilful concealment or misrepresentation in obtaining such opinion, advice or direction.

2000, c. 26, Sched. A, s. 15(2), item 14

ALLOWANCE TO TRUSTEES AND PERSONAL REPRESENTATIVES

61. (1) Allowance to trustees, etc. — A trustee, guardian or personal representative is entitled to such fair and reasonable allowance for the care, pains and trouble, and the time expended in and about the estate, as may be allowed by a judge of the Superior Court of Justice.

(2) Though estate not before the court — The amount of such compensation may be settled although the estate is not before the court in an action.

(3) Allowance to personal representative for services — The judge, in passing the accounts of a trustee or of a personal representative or guardian, may from time to time allow a fair and rea-

sonable allowance for care, pains and trouble, and time expended in or about the estate.

(4) Allowance to barrister or solicitor trustee for professional services — Where a barrister or solicitor is a trustee, guardian or personal representative, and has rendered necessary professional services to the estate, regard may be had in making the allowance to such circumstance, and the allowance shall be increased by such amount as may be considered fair and reasonable in respect of such services.

(5) Where allowance fixed by the instrument — Nothing in this section applies where the allowance is fixed by the instrument creating the trust.

2000, c. 26, Sched. A, s. 15(2), item 15

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62. Trustees buying or selling — A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section 1 of the *Vendors and Purchasers Act*.

63. Indemnity — This Act or an order purporting to be made under it is a complete indemnity to all persons for any acts done under the Act or order, as the case may be.

64. Costs may be ordered to be paid out of estate — The Superior Court of Justice may order the costs of and incidental to any application, order, direction, conveyance, assignment or transfer under this Act to be paid or raised out of the property in respect of which it is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as the court considers proper.

2000, c. 26, Sched. A, s. 15(2), item 16

65. Application of Perpetuities Act — Where in the administration of any trust, estate or fund any question relating to the disposition, transmission or devolution of any

property arises, including the right of any person to terminate a trust or an accumulation directed under a trust or other disposition, and it becomes relevant to inquire whether any person is or at a relevant date was or will be capable of procreating or giving birth to a child, section 7 of the *Perpetuities Act* applies to any such question as it applies to questions concerning the rule against perpetuities.

66. Application of Act — Subject to section 67, unless otherwise expressed therein, this Act applies to all trusts whenever created and to all trustees whenever appointed.

67. Additional powers — The powers, rights and immunities conferred by this Act are in addition to those conferred by the instrument creating the trust, and have effect subject to the terms thereof.

68. Express terms of trust instrument to prevail — Nothing in this Act authorizes a trustee to do anything that the trustee is in express terms forbidden to do, or to omit to do anything that the trustee is in express terms directed to do by the instrument creating the trust.

VARIATION OF TRUSTS ACT

R.S.O. 1990, c. V.1, as am. S.O.
2006, c. 19, Sched. C, s. 1(1).

1. (1) Jurisdiction of courts to vary trusts — Where any property is held on trusts arising under any will, settlement or other disposition, the Superior Court of Justice may, if it thinks fit, by order approve on behalf of,

- (a) any person having, directly or indirectly, an interest, whether vested or contingent, under the trusts who by reason of infancy or other incapacity is incapable of assenting;
- (b) any person, whether ascertained or not, who may become entitled, directly or indirectly, to an interest under the trusts as being at a future date or on the

happening of a future event a person of any specified description or a member of any specified class of persons;

- (c) any person unborn; or
- (d) any person in respect of any interest of the person that may arise by reason of any discretionary power given to anyone on the failure or determination of any existing interest that has not failed or determined,

any arrangement, by whomsoever proposed and whether or not there is any other person beneficially interested who is capable of assenting thereto, varying or revoking all or any of the trusts or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts.

(2) Benefit — The court shall not approve an arrangement on behalf of any person coming within clause (1)(a), (b) or (c) unless the carrying out thereof appears to be for the benefit of that person.

2006, c. 19, Sched. C, s. 1(1)

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R.S.O. 1990, c. V.4, as am. S.O. 1993, c. 27, Sched.; 1994, c. 27, s. 102 [s. 102(13)–(15) amended 2002, c. 18, Sched. E, s. 10(3)–(5).]; 1997, c. 9, s. 7; 1998, c. 18, Sched. E, ss. 290(1), (2) (Fr.), (3), 291–303 [s. 303(3), (4) repealed 2019, c. 7, Sched. 61, s. 7.]; 1999, c. 12, Sched. F, ss. 43, 44; 2001, c. 9, Sched. D, s. 13; 2001, c. 21; 2002, c. 17, Sched. F, s. 1; 2002, c. 18, Sched. E, ss. 9, 10(1), (2); 2002, c. 33, s. 153; 2005, c. 25, ss. 1–13; 2006, c. 5, s. 53; 2006, c. 9, Sched. P; 2006, c. 19, Sched. G, s. 12; 2006, c. 21, Sched. F, s. 136(1), Table 1; 2006, c. 34, Sched. A, s. 28(1), (2) (Fr.), (3), (4) (Fr.), (5) (Fr.), Sched. C, s. 28; O. Reg. 214/07, s. 23; 2008, c. 5, ss. 1–11; 2009, c. 11, ss. 51, 52; 2009, c. 33, Sched. 17, s. 13; 2010, c. 16, Sched. 8, s. 4; 2011, c. 1, Sched. 5, s. 7; 2012, c. 8, Sched. 58 [ss. 9, 15, 16(2) not in force at date of publication.]; 2015, c. 27, Sched. 2; 2016, c. 5, Sched. 33, ss. 1–6 [ss. 2, 3 not in force at date of publication.] [ss. 2, 3, 6 repealed 2016, c. 23, s. 74(1)–(3).]; 2016, c. 23, ss. 16(1), (2) (Fr.), (3), 17, 18(1) (Fr.), (2), (3)–(5) (Fr.), (6), (7) (Fr.), (8) (Fr.), (9)–(11), 19–25, 26–32 (Fr.), 33(1), (2) (Fr.), (3) (Fr.), (4), 34 (Fr.); 2017, c. 7, s. 5; 2017, c. 14, Sched. 4, s. 35; 2019, c. 7, Sched. 61, ss. 1–6 [ss. 4–6(2) not in force at date of publication.]; 2020, c. 34, Sched. 3, s. 11 [To come into force April 30, 2021.].

DEFINITIONS

1. Definitions — In this Act,

“adopted person” means a person in respect of whom an order, judgment or decree of adoption is registered under subsection 28(1) or a predecessor of that subsection;

“birth” means the complete expulsion or extraction from a person of a fetus that did at any time after being completely expelled or extracted from the person breathe or show any other sign of life, whether or not the umbilical cord was cut or the placenta attached;

“birth parent”, in relation to an adopted person, means a person whose name appears as a parent on the original registration, if any, of the adopted person’s birth and such other persons as may be prescribed;

“cemetery” includes a vault, a mausoleum and any land that is set apart or used for the interment of the dead or in which bodies are buried;

“cemetery owner” includes the person who is in charge of a cemetery or crematorium under the authority of the owner thereof;

“certificate” means a certified extract of the prescribed particulars of a registration in the records of the Registrar General;

“Child and Family Services Review Board” [Repealed 2008, c. 5, s. 1(1).]

“cremation” means the disposal of a dead body by incineration under the *Funeral, Burial and Cremation Services Act, 2002*;

“Deputy Registrar General” means the Deputy Registrar General appointed under this Act;

“division registrar” means a division registrar as provided for in the regulations;

“divorce” means dissolution and annulment of marriage and includes nullity of marriage;

“error” means any incorrect information and includes omission of information;

“funeral director” means a person who takes charge of the body of a still-born child or a deceased person for the purpose of burial, cremation or other disposition;

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“Indian” means an Indian within the meaning of the *Indian Act* (Canada) but does not include an enfranchised Indian;

c. 8, Sched. 58, s. 1; 2016, c. 23, s. 16(1), (3);
2019, c. 7, Sched. 61, s. 1

“inspector” means an inspector of vital statistics appointed for the purposes of this Act;

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“municipality” means a local municipality;

“notation” means any addition to, or alteration of, a registration in the records of the Registrar General or a division registrar;

“nurse” [Repealed 1994, c. 27, s. 102(1).]

“original registration” means an original registration made under this Act or a predecessor of this Act;

“prescribed”, except in subsection 26(2), means prescribed by the regulations;

“registered adoption order” means an order, judgment or decree of adoption registered under subsection 28(1) or a predecessor of that subsection;

“Registrar General” means the minister responsible for the administration of this Act;

“regulations” means the regulations made under this Act;

“religious body” [Repealed 2019, c. 7, Sched. 61, s. 1.]

“state” means any state or territory of the United States of America, or the District of Columbia;

“still-birth” means the complete expulsion or extraction from a person of a product of conception either after the twentieth week of pregnancy or after the product of conception has attained the weight of 500 grams or more, and where after such expulsion or extraction there is no breathing, beating of the heart, pulsation of the umbilical cord or movement of voluntary muscle.

“superintendent of an Indian agency” [Repealed 1998, c. 18, Sched. E, s. 290(3).]

1994, c. 27, s. 102(1); 1998, c. 18, Sched. E, s. 290(1), (3); 2001, c. 9, Sched. D, s. 13; 2001, c. 21, s. 1; 2002, c. 17, Sched. F, s. 1; 2002, c. 33, s. 153; 2005, c. 25, s. 1; 2008, c. 5, s. 1; 2012,

2001, c. 21, s. 2; 2002, c. 18, Sched. E, s. 9(1)

2. (1) Uniform system of registration — Subject to the regulations, the Registrar General shall direct a uniform system of registration of births, marriages, deaths, still-births, adoptions and changes of name in Ontario, and is charged with the enforcement of the provisions of this Act.

(2) Registrations to be numbered — The Registrar General shall, upon receipt, cause the registrations of births, marriages, deaths, still-births, adoptions and changes of name occurring in Ontario and all other documents required or permitted to be given to the Registrar General to be numbered in separate series according to calendar year.

(3) Indexed — The Registrar General shall cause the registrations and other documents to be indexed separately according to calendar year.

(4) Filed — The Registrar General shall cause the registrations and other documents to be systematically filed.

(5) Safekeeping of registrations — Subject to section 5, the Registrar General shall cause the registrations and other documents to be kept safely by administrative, physical and technological safeguards that are reasonable and are consistent with this Act.

2001, c. 21, s. 2; 2002, c. 18, Sched. E, s. 9(1)

3. (1) Examination of registrations — The Registrar General shall examine the registrations received from the persons required to make registrations and, if the registrations are incomplete or unsatisfactory, the Registrar General shall require such information to be supplied as may be necessary to complete the registration.

(2) Registration not signed — If a registration received from a person required to make the registration is incomplete as to a

required signature, the Registrar General shall cause the registration to be returned in order that the signature may be obtained.

(3) Classification by causes of death — The Registrar General shall cause all deaths registered under this Act to be classified according to the classification of diseases adopted by reference in the regulations.

(4) Publication by Registrar General — The Registrar General may collate, publish and distribute the statistical information that the Registrar General considers to be necessary and in the public interest and that relates to the births, marriages, deaths, still-births, adoptions and changes of name registered during the period that the Registrar General determines.

(5) Same, annual report — After the end of each calendar year, the Registrar General shall publish, in a manner that the Registrar General considers appropriate, a report as to the number of births, marriages, deaths, still-births, adoptions and changes of name registered during the calendar year preceding the one that has ended.

(6) Instructions by Registrar General — The Registrar General may prepare and issue to any persons such detailed instructions as, in the opinion of the Registrar General, may be necessary to procure the uniform observance of the provisions of this Act.

2001, c. 21, s. 3; 2002, c. 18, Sched. E, s. 9(2);
2012, c. 8, Sched. 58, s. 2; 2019, c. 7, Sched.
61, s. 2

4. (1) Registrations to be recorded — The Registrar General may cause the registrations and other documents referred to in subsection 2(2), whether received before or after the 17th day of December, 1990, to be accurately recorded by any technology, if an accurate and easily readable paper copy of the registration or other document can be made from the record.

(2) Documents to be recorded — The Registrar General may cause any other doc-

uments related to the registrations to be recorded as provided in subsection (1).

(3) Notation added directly to record — The Registrar General may use the technology referred to in subsection (1) to add a notation or any other information directly to a record.

(4) Application — This Act applies with the necessary modifications that are consistent with this Act to the records made under this section.

5. (1) Archives — In this section,

“Archives” means the Archives of Ontario continued under the *Archives and Recordkeeping Act, 2006*;

“Archivist” means the Archivist of Ontario appointed under the *Archives and Recordkeeping Act, 2006*.

(2) Registrations transferred to Archives — The Registrar General may cause those registrations and records that are prescribed, and related indexes and documents, to be transferred to the Archives.

(3) Authority of Archivist — The Archivist is authorized and directed to receive and maintain the registrations, records, indexes and documents transferred under subsection (2) as if they were transferred under the *Archives and Recordkeeping Act, 2006*.

(4) Access by Registrar General — Despite subsection (3), the Registrar General shall, for the purpose of administering this Act, have access to any registration, record, index or document that was transferred to the Archives.

(5) Agreements — The Registrar General and the Archivist are authorized to enter into agreements respecting any matter related to the registrations, records, indexes and documents transferred under this section.

2006, c. 34, Sched. A, s. 28(1), (3)

5.1 Delegation by Registrar General —

The Registrar General may delegate in writing any or all of his or her powers and duties

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under this or any other Act to any person, subject to any restrictions set out in the delegation.

2012, c. 8, Sched. 58, s. 3

5.2 (1) Deputy Registrar General — The Registrar General shall appoint a Deputy Registrar General.

(2) Duties — The Deputy Registrar General shall perform the duties delegated to him or her in writing by the Registrar General.

(3) Delegation of powers and duties — The Deputy Registrar General may delegate in writing any or all of his or her powers and duties under this or any other Act to any person, subject to any restrictions set out in the delegation.

(4) Subdelegation — The Deputy Registrar General's power to delegate under subsection (3) includes the power to delegate in writing any or all of the powers and duties that have been delegated to the Deputy Registrar General under this or any other Act.

2012, c. 8, Sched. 58, s. 3

6. Other administrators — **(1) Inspectors** — The Registrar General may appoint inspectors of vital statistics who shall perform the duties assigned to them by the Registrar General.

(1.1) [Repealed 2012, c. 8, Sched. 58, s. 4.]

(2) Affidavits — The Registrar General may appoint any person to take affidavits and statutory declarations that are necessary or incidental to,

(a) the functions of the Registrar General under this or any other Act; or

(b) the administration of this Act, the *Marriage Act* or the *Change of Name Act*.

(3) [Repealed 2012, c. 8, Sched. 58, s. 4.]

1994, c. 27, s. 102(2), (3); 1999, c. 12, Sched. F, s. 43; 2009, c. 33, Sched. 17, s. 13(1); 2012, c. 8, Sched. 58, s. 4

6.1 (1) Designation re ss. 48.1 to 48.5 — The Lieutenant Governor in Council may, by regulation, designate a person to exercise the powers and perform the duties of the Registrar General under sections 48.1 to 48.5.

(2) Same — The designation may be made subject to such conditions and restrictions as the Lieutenant Governor in Council considers appropriate, including a requirement that the designated person enter into and comply with an agreement between the Registrar General and the designated person.

(3) Same — For the purposes of this section, the Registrar General shall disclose to the designated person such information and documents under the custody or control of the Registrar General as the Registrar General considers necessary.

2005, c. 25, s. 2; 2008, c. 5, s. 2

7. (1) Seal of office — The Registrar General shall have a seal of office.

(2) Idem — The seal of office may be reproduced in any manner and has the same effect whether it is manually applied or otherwise reproduced.

7.1 (1) Health insurance information — For the purposes of administering the *Health Insurance Act*, the Registrar General, in collecting information under this Act or the *Change of Name Act*, is authorized to collect personal information and disclose it to persons employed in the Ministry of Health and Long-Term Care, or to persons or entities providing services on behalf of the Ministry of Health and Long-Term Care.

(2) Same — For the purposes of administering this Act, the *Change of Name Act* and the *Health Insurance Act*, the Minister of Health and Long-Term Care is authorized to disclose to the Registrar General or to persons or entities providing services on behalf of the Registrar General, personal informa-

tion recorded under the *Health Insurance Act*.

1994, c. 27, s. 102(4); 2006, c. 19, Sched. G, s. 12; 2012, c. 8, Sched. 58, s. 5

REGISTRATION OF BIRTHS

8. Notice of birth — If required by the regulations, a person who attends at the birth of a child in Ontario shall give notice of the birth in the manner, within the time and to the person prescribed by the regulations.

1994, c. 27, s. 102(5)

9. (1) Certification of birth — The parents of a child born in Ontario, or one of them in such circumstances as may be prescribed, or such other person as may be prescribed, shall certify the child's birth in the manner, including providing such information and documentation as may be prescribed, within the time and to the person prescribed by the regulations.

(2) Same — A person who finds a newborn deserted child or who has received custody or care and control of an abandoned child and any other person as may be prescribed shall provide such information and documentation as may be prescribed in respect of the child and the child's birth in the manner, within the time and to the person prescribed by the regulations.

(3) Registration — The Registrar General, acting on a certification under subsection (1) or information under subsection (2) or on such information as may be prescribed or as he or she considers appropriate, may register the birth of a child in Ontario of which he or she becomes aware.

(4) Additional evidence — Despite the receipt of any documentation or information related to a birth, the Registrar General may refuse to register the birth until he or she is satisfied that the documentation or information correctly states the facts and, for such purposes, he or she may require such supplementary evidence as he or she considers appropriate.

(5) Division registrars — Division registrars shall perform such duties as may be prescribed in respect of the notification, certification and registration of births.

(6) Amendment of registration — The Registrar General may amend a birth registration in the circumstances and upon application by the person or persons prescribed by the regulations.

(7) Same — On receiving a certified copy of a declaratory order under Part I of the *Children's Law Reform Act* respecting the parentage of a child whose birth is registered in Ontario, the Registrar General shall amend the particulars of the child's parents shown on the registration, in accordance with the order.

(8) Same — On receiving a certified copy of an order under section 17 of the *Children's Law Reform Act* respecting a child whose birth is registered in Ontario, the Registrar General shall amend the particulars of the child's surname shown on the registration, in accordance with the order.

(9) [Repealed 1994, c. 27, s. 102(5).]

(10) [Repealed 1994, c. 27, s. 102(5).]

(11) [Repealed 1994, c. 27, s. 102(5).]

(12) [Repealed 1994, c. 27, s. 102(5).]

1994, c. 27, s. 102(5); 2002, c. 18, Sched. E, s. 10(1); 2009, c. 11, s. 51; 2016, c. 23, s. 17

9.1 Still-births — Every still-birth that takes place in Ontario shall be registered in accordance with the regulations.

2002, c. 18, Sched. E, s. 9(3)

10. (1) Child's name — Subject to subsections (2), (4) and (5), a child whose birth is certified under section 9 shall be given at least one forename and a surname.

(2) Exception — A child whose birth is certified under section 9 need not be given a forename if the Registrar General is satisfied that,

(a) the child's sex is undetermined;

- (b) every consent required by the *Child, Youth and Family Services Act, 2017* for the child's adoption has been given or dispensed with; or
(c) the child has died.

(3) How child's surname determined — A child's surname shall be determined as follows:

1. If both parents certify the child's birth, they may agree to give the child a surname chosen by them.
2. If both parents certify the child's birth but do not agree on the child's surname, the child shall be given,
 - i. the parents' surname, if they have the same surname, or
 - ii. a surname consisting of both parents' surnames hyphenated or combined in alphabetical order, if they have different surnames.
3. If one parent certifies the child's birth and the other parent is incapable by reason of illness or death, the parent who certifies the birth may give the child a surname chosen by that parent.
4. If the mother certifies the child's birth and the father is unknown to or unacknowledged by her, she may give the child a surname she chooses.
5. If a person who is not the child's parent certifies the child's birth, the child shall be given,
 - i. the parents' surname, if they have the same surname,
 - ii. a surname consisting of both parents' surnames hyphenated or combined in alphabetical order, if they have different surnames, or
 - iii. if only one parent is known, that parent's surname.

(3.1) How child's surname determined if more than two parents — If a child has more than two parents, subsection (3)

does not apply, and the child's surname shall be determined as follows:

1. If two or more parents certify the child's birth, they may agree to give the child a surname chosen by them.
2. If any of the parents are incapable of certifying the child's birth by reason of illness or death,
 - i. the remaining parents who certify the child's birth may agree to give the child a surname chosen by them, or
 - ii. if there is only one remaining parent who certifies the child's birth, that parent may determine the child's surname.
3. If two or more parents certify the child's birth but do not agree on the child's surname, the child shall be given a surname consisting of each of the certifying parents' surnames hyphenated or combined in alphabetical order, except that if any of those parents share a surname it shall be used only once.
4. If a person who is not the child's parent certifies the child's birth, the child shall be given the surname of the person who gave birth to the child.

(4) Single name — A child may be given a single name that is determined in accordance with the child's traditional culture if,

- (a) the person or persons giving the single name to the child provide the Registrar General with the prescribed evidence, if any; and
- (b) the Registrar General approves the single name.

(5) Who chooses single name — The single name shall be the single name chosen by,

- (a) the child's parents, if they each certify the child's birth and agree on the name; or

(b) the person who certifies the child's birth, if only one person certifies the child's birth.

1994, c. 27, s. 102(6), (7); 2016, c. 5, Sched. 33, s. 1; 2016, c. 23, s. 18(9), (10), (11); 2017, c. 14, Sched. 4, s. 35(1)

11. Continuing obligation and offence — Where a duty has been established by regulations made for the purposes of section 8, 9 or 9.1, and a person fails to perform that duty as provided for in the regulations,

(a) the person remains liable to perform the duty despite the expiry of any time limit and despite any action taken by another person in giving a notice or in certifying or registering a birth or stillbirth; and

(b) the person is guilty of an offence for the initial failure to perform the duty and of a separate offence for each successive period of prescribed time during which the failure to perform continues.

1994, c. 27, s. 102(8); 2002, c. 18, Sched. E, s. 10(2)

12. [Repealed O. Reg. 214/07, s. 23.]

13. [Repealed 2016, c. 23, s. 19.]

14. [Repealed 2016, c. 23, s. 20.]

14.1 [Repealed 2016, c. 23, s. 21(2).]

15. (1) Adding forename to birth registration — If a child's birth was registered under this Act or a predecessor of it and the child was not given a forename under subsection 10(2) or a predecessor of that subsection or under a predecessor of this Act,

(a) the person with lawful custody of the child; or

(b) the child, if he or she has attained the age of eighteen years,

may elect in the prescribed manner to add a forename to the birth registration.

(2) Certificate — Where a person elects under subsection (1), the Registrar General shall note the addition of the forename on the birth registration and issue a birth certificate to the person on payment of the required fee.

1998, c. 18, Sched. E, s. 293; 2016, c. 23, s. 22

16. (1) [Repealed 1994, c. 27, s. 102(12).]

(2) [Repealed 1994, c. 27, s. 102(12).]

(3) [Repealed 1994, c. 27, s. 102(12).]

(4) Subsequent registration if child identified — If, subsequent to a registration under subsection (3) as it read before its repeal or under subsection 9(2), the identity of the child is established to the satisfaction of the Registrar General, he or she may by order set aside the registration made pursuant to this section and cause the substitution of a new registration of the birth in accordance with the actual facts of the birth, and cause the original registration to be withdrawn from the registration files and kept in a separate file and sealed.

(5) Date of registration — Where the identity of the child is established and a new registration is made pursuant to subsection (4), the date of the new registration shall be the date of the original registration.

(6) Cancellation of certificates — The holder of a certificate issued in respect of a registration of a birth made pursuant to subsection (3) as it read before its repeal, or subsection 9(2), which registration has been withdrawn pursuant to subsection (4), shall deliver it forthwith upon demand to the Registrar General for cancellation.

1994, c. 27, s. 102(12)–(14) [s. 102(13) amended 2002, c. 18, Sched. E, s. 10(3); s. 102(14) amended 2002, c. 18, Sched. E, s. 10(4).]

17. [Repealed 2016, c. 23, s. 23.]

REGISTRATION OF STILL-BIRTHS

18. [Repealed 1994, c. 27, s. 102(15). [Amended 2002, c. 18, Sched. E, s. 10(5).]

REGISTRATION OF MARRIAGES

19. (1) **Marriages** — Every marriage that is solemnized in Ontario shall be registered by the person or persons named or described in the regulations and in the prescribed manner and within the prescribed time limits.

(2) **Registration of marriage** — If the Registrar General is satisfied as to the correctness and sufficiency of a statement of marriage forwarded to the Registrar General, the Registrar General shall register the marriage.

1994, c. 27, s. 102(16); 2012, c. 8, Sched. 58, s. 6

20. **Registration of marriage by Registrar General** — If a marriage has not been registered within one year from the day of the marriage, the registration may be made by the Registrar General upon such evidence as may be prescribed by the regulations.

REGISTRATION OF DEATHS

21. (1) **Registration of death** — The death of every person who dies in Ontario shall be registered in accordance with the regulations.

(2) **Same** — Such persons as are described in the regulations shall, in the prescribed circumstances, provide such information as may be prescribed within the time, in the manner and to the person prescribed by the regulations in order to register the death.

(3) **Division registrars** — Division registrars shall perform such duties as may be prescribed in respect of the registration of deaths and the provision of documentation.

(3.1) [Repealed 1994, c. 27, s. 102(17).]

(4) **Copying of medical certificate** —

Except as provided in the regulations or as provided under any other Act, no person shall copy or duplicate a document signed by a legally qualified medical practitioner, or by any other person, who is required to sign the document under this Act or the regulations; nor shall any person obtain or attempt to obtain any such document or a copy of it.

(5) **Death except by disease** — If there is reason to believe that a person has died as a result of any cause other than disease, or has died as a result of negligence, malpractice or misconduct on the part of others or under such circumstances as require investigation, no documentation shall be issued unless,

(a) in accordance with the *Coroners Act*, the body has been examined and an investigation into the circumstances of the death has been made or an inquest has been held;

(b) a coroner has signed the documentation if any that is prescribed; and

(c) the other provisions of this Act and the regulations regarding registration of death have been complied with.

(6) **Coroner's warrant to bury** — If a person has died under any of the circumstances mentioned in subsection (5) and the coroner cannot provide the prescribed information related to the cause of death, the coroner may issue a warrant to bury if the body has been examined as provided in the *Coroners Act* and the coroner shall subsequently complete and deliver such documentation in the manner, within the time and to the person prescribed by the regulations.

(7) **Exception** — Subsections (5) and (6) do not apply if the person has died after receiving medical assistance in dying within the meaning of section 241.1 of the *Criminal Code* (Canada), and a coroner has been given notice of or information about the death under section 10.1 of the *Coroners Act*.

and determined that the death ought not to be investigated.

1994, c. 27, s. 102(17); 1997, c. 9, s. 7(1), (2);
2001, c. 21, s. 16; 2010, c. 16, Sched. 8, s. 4;
2017, c. 7, s. 5

22. (1) Registration before disposition of body — Subject to subsection 21(6) and the regulations, no person shall bury, cremate or otherwise dispose of the body of any person who dies in Ontario or remove the body from the registration division within which the death occurred or the body is found, and no person shall take part in or conduct any funeral or religious service for the purpose of burial, cremation or other disposition of the body of a deceased person, unless the documentation required by the regulations has been obtained.

(2) Record-keeping — Funeral directors and cemetery owners shall keep such documentation related to the burial, cremation or other disposal of a body as may be prescribed and they shall retain it for such time as may be prescribed.

(3) [Repealed 1994, c. 27, s. 102(17).]
1994, c. 27, s. 102(17)

23. [Repealed 1994, c. 27, s. 102(17).]

24. [Repealed 1994, c. 27, s. 102(17).]

25. [Repealed 1994, c. 27, s. 102(17).]

26. (1) Removal of bodies — If the body of a person is to be removed to the place of burial or other disposition by a transportation company or other common carrier, the removal shall not take place until the prescribed documentation has been affixed to the outside of the casket.

(2) Death outside Ontario — If the death occurred outside of Ontario and the burial or other disposition of the body is to take place in Ontario, a burial, transit or removal permit or such other document as may be prescribed or required under the laws of the jurisdiction in which the death occurred,

signed by the proper officer of the place in which the death occurred, is sufficient authority for the burial or other disposition of the body.

1994, c. 27, s. 102(18)

27. [Repealed 1994, c. 27, s. 102(19).]

ADOPTION ORDERS

28. (1) Registration of adoption orders — Upon receipt of a certified copy of an adoption order transmitted under subsection 222(3) of the *Child, Youth and Family Services Act, 2017*, or any predecessor thereof, or a certified copy of an order, judgment or decree of adoption made by a court of competent jurisdiction of another province or territory of Canada or of a foreign state, issued under the seal of the proper certifying authority, the Registrar General shall register the order, judgment or decree.

(2) Change in birth registration — If the birth of the person adopted,

(a) was registered in Ontario before the adoption; or

(b) is registered in Ontario after the adoption in accordance with this Act, the Registrar General, upon production of evidence satisfactory to him or her of the identity of the person together with an application for the registration of the birth in the prescribed form, may by order set aside any registration made under this Act and cause the substitution of a new registration of the birth in accordance with the facts contained in the adoption order, judgment or decree, and cause the original registration to be withdrawn from the registration files and kept in a separate file and sealed, but in every such case, whether or not such an application is made, the Registrar General shall cause a notation of the adoption and of any change of name consequent thereon with a reference to the registration of the order to be made upon the original registration of the birth of the person, and shall cause a reference to the original registration of the

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birth to be endorsed on the copy of the order, judgment or decree.

(3) *Idem* — Where a new registration is made pursuant to subsection (2), the date of the new registration shall be the date of the original registration.

(4) *Birth certificate* — Where a new registration has been made pursuant to subsection (2) and application is made for a birth certificate, the certificate shall be issued in accordance with the new registration.

(5) *Idem* — The holder of a birth certificate in respect of a registration of a birth that has been withdrawn pursuant to subsection (2) or of a certified copy of such a registration shall, forthwith upon demand by the Registrar General, deliver it to the Registrar General for cancellation.

(6) *Restriction on changes, etc., to original registration* — After the original registration is sealed under subsection (2), the Registrar General shall not at any time amend it, add information or particulars to it, correct errors by making notations on it, substitute a subsequent registration for it or cancel it, despite any other provision of this Act.

1994, c. 27, s. 102(20); 2005, c. 25, s. 3; 2006, c. 5, s. 53; 2017, c. 14, Sched. 4, s. 35(2)

29. [Repealed 2005, c. 25, s. 4.]

30. (1) *Child born in another province or state* — If a child born in another province or in any state has been adopted in Ontario under the *Child, Youth and Family Services Act, 2017*, or a predecessor of it, the Registrar General shall transmit a certified copy of the order to the person having charge of the registration of births in the province or state in which the child was born.

(2) *Child born in another jurisdiction* — If a child born in a jurisdiction other than a province or state has been adopted in Ontario under the *Child, Youth and Family Services Act, 2017*, or a predecessor of it,

the Registrar General, upon request, may transmit a certified copy of the order to the person having charge of the registration of births in the jurisdiction in which the child was born.

2017, c. 14, Sched. 4, s. 35(3)

CHANGES OF NAME

30.1 (1) *Registration, name changed in Ontario* — On receiving the fee, if any, and documents required by section 3 of the *Change of Name Act*, the Registrar General shall comply with subsection 3(4) of that Act.

Proposed Repeal — 30.1(1)

(1) [Repealed 2020, c. 34, Sched. 3, s. 11(1). To come into force April 30, 2021.]

(2) *Same* — The Registrar General shall comply with subsections 7(1), (1.1), (1.2), (1.6) and (6) and clauses 8(1)(b) and 8(2)(c) and (d) of the *Change of Name Act* if required to do so by those provisions.

Proposed Addition — 30.1(3)

(3) *Same* — On receiving the fee, if any, and documents required by section 12.0.2 of the *Change of Name Act*, the Registrar General shall comply with subsection 12.0.2(9) of that Act.

2020, c. 34, Sched. 3, s. 11(2) [To come into force April 30, 2021.]

2016, c. 5, Sched. 33, s. 4

31. (1) *Person born in Ontario, name changed outside of Ontario* — If the name of a person whose birth is registered in Ontario has been changed in accordance with the law of a province or territory of Canada, other than Ontario, or of a foreign state, the Registrar General shall note the change on the person's birth registration if,

(a) the Registrar General receives the prescribed evidence that satisfies the Registrar General that the name of the person has so changed; and

(b) the following conditions are met if an applicant has requested the Registrar General to note the change on the birth registration:

- (i) the Registrar General receives evidence that satisfies the Registrar General as to the identity of the person and receives all prescribed documents that are in the person's possession, and
- (ii) the applicant pays the required fee, if any.

(1.1) Return of documents — If the Registrar General has noted a change on a person's birth registration under subsection (1) and no applicant requested that it be done, the Registrar General may request the person to submit all prescribed documents that are in the person's possession and the person shall comply with the request.

(2) Marriage registration — If the Registrar General has noted a change of name on a person's birth registration under subsection (1), if the person is married and if there is a registration of that marriage in Ontario, the Registrar General shall note the change on that registration if the person so requests and pays the required fee, if any.

(2.1) [Repealed 2016, c. 5, Sched. 33, s. 5.]

(2.2) [Repealed 2016, c. 5, Sched. 33, s. 5.]

(2.3) [Repealed 2016, c. 5, Sched. 33, s. 5.]

(3) Birth registration of child — If the Registrar General has noted a change of name on a person's birth registration under subsection (1) and the person is named as a parent on the birth registration of a child born in Ontario, the Registrar General shall note the change on the child's birth registration if,

- (a) the person so requests and pays the required fee, if any; and
- (b) subject to subsections (4), (5) and (6), the child consents, if the child is at least 16 years of age at the time of the request.

(4) If child lacks capacity — The consent of a child under subsection (3) is not required if a legally qualified medical practitioner states in writing, not more than one year before the request under that subsection is made, that in his or her opinion the child does not have capacity to consent.

(5) Application to dispense with consent — If the required consent cannot be obtained or is refused, the person making the request under subsection (3) may apply to the Ontario Court of Justice, the Family Court or the Superior Court of Justice for an order dispensing with the consent.

(6) How application determined — The court shall determine an application under subsection (5) in accordance with the best interests of the child.

(7) Request by child — If the Registrar General has noted a change of name on a person's birth registration under subsection (1), if the person is named as a parent on the birth registration of a child born in Ontario and if the child is at least 16 years of age, the Registrar General shall note the change on the child's birth registration if the child so requests and pays the required fee, if any.

(8) Documents to provide — A person who requests the notation of a change on the person's marriage registration under subsection (2) shall submit, with the request, all the prescribed documents that are in the person's possession.

(8.1) Same, for child's birth registration — A person who requests the notation of a change on a child's birth registration under subsection (3) shall,

- (a) collect from the child all the prescribed documents that are in the child's possession; and
- (b) submit, with the request, all the prescribed documents that are in the person's possession and all the prescribed documents that the person has collected under clause (a).

(9) Documents for request by child —

A child who requests the notation of a change on the child's birth registration under subsection (7) shall,

- (a) collect from the person on whose birth registration the Registrar General noted a change of name under subsection (1) all the prescribed documents that are in the person's possession; and
- (b) submit, with the request, all the prescribed documents that are in the child's possession and all the prescribed documents that the child has collected under clause (a).

(10) Sealing original birth registration —

Upon receipt of evidence satisfactory to the Registrar General that the province or territory of Canada, other than Ontario, or foreign state in which the name of a person described in subsection (1) has been changed in accordance with the law of that province, territory or state, as the case may be, has treated the application for the change of name as confidential in accordance with subsection (11) and upon production of evidence that satisfies the Registrar General as to the identity of the person, the Registrar General may withdraw the original registration of the person's birth in Ontario, seal it in a separate file and replace the registration with a registration of birth in the name as changed.

(11) Confidential application —

Subsection (10) applies to an application for a change of name if the province or territory of Canada, other than Ontario, or foreign state in which the name of the person has been changed,

- (a) has sealed the application in a separate file;
- (b) has not published notice of the change of name or given notice of it to any person; and
- (c) has not entered the change of name in any record open to the public.

(12) Registration, change of name annulled —

Upon receipt of the prescribed

evidence that satisfies the Registrar General that a document effecting a change of name described in subsection (1) has been annulled in accordance with the law of the province or territory of Canada, other than Ontario, or of the foreign state in which the change of name was made and upon production of evidence that satisfies the Registrar General as to the identity of the person, the Registrar General shall note the annulment on,

- (a) the person's birth registration, if any,
- (b) the person's marriage registration, if the change of name that is annulled was noted on that registration under subsection (2); and
- (c) the birth registration of a child, if the change of name that is annulled was noted on that registration under subsection (3) or (7).

(13) Documents to provide —

If the Registrar General notes an annulment of a change of name of a person under subsection (12), the Registrar General may request that,

- (a) the person submit to the Registrar General all of the prescribed documents that are in the person's possession;
- (b) the applicant under subsection (1) submit to the Registrar General all of the prescribed documents that are in the applicant's possession if the applicant is not the person; and
- (c) a child submit to the Registrar General all of the prescribed documents that are in the child's possession if the change of name that is annulled was noted on the birth registration of the child.

(14) Compliance with request —

A person who receives a request under subsection (13) shall comply with it.

1999, c. 12, Sched. F, s. 44; 2012, c. 8, Sched. 58, s. 7; 2016, c. 5, Sched. 33, s. 5; 2016, c. 23, s. 24

31.1 (1) Person born outside of Ontario, name changed outside of Ontario

If the name of a person born outside of Ontario has been changed in accordance with the law of a province or territory of Canada, other than Ontario, or of a foreign state, if the person is married and if there is a registration of that marriage in Ontario, the Registrar General shall note the change on that marriage registration if,

- (a) the person so requests and pays the required fee, if any; and
- (b) the Registrar General receives,
 - (i) evidence that satisfies the Registrar General as to the identity of the person,
 - (ii) the prescribed evidence that satisfies the Registrar General that the name of the person has so changed, and
 - (iii) all prescribed documents that are in the person's possession.

(2) Birth registration of child

If the name of a person born outside of Ontario has been changed in accordance with the law of a province or territory of Canada, other than Ontario, or of a foreign state and if the person is named as a parent on the birth registration of a child born in Ontario, the Registrar General shall note the change on the child's birth registration if,

- (a) the person so requests and pays the required fee, if any;
- (b) the Registrar General receives,
 - (i) evidence that satisfies the Registrar General as to the identity of the person,
 - (ii) the prescribed evidence that satisfies the Registrar General that the name of the person has so changed, and
 - (iii) all prescribed documents that are in the person's possession; and
- (c) subject to subsections (3), (4) and (5), the child consents, if the child is at

least 16 years of age at the time of the request.

(3) If child lacks capacity

The consent of a child under subsection (2) is not required if a legally qualified medical practitioner states in writing, not more than one year before the request under that subsection is made, that in his or her opinion the child does not have capacity to consent.

(4) Application to dispense with consent

If the required consent cannot be obtained or is refused, the person making the request under subsection (2) may apply to the Ontario Court of Justice, the Family Court or the Superior Court of Justice for an order dispensing with the consent.

(5) How application determined

The court shall determine an application under subsection (4) in accordance with the best interests of the child.

(6) Request by child

If the name of a person born outside of Ontario has been changed in accordance with the law of a province or territory of Canada, other than Ontario, or of a foreign state, if the person is named as a parent on the birth registration of a child born in Ontario and if the child is at least 16 years of age, the Registrar General shall note the change on the child's birth registration if,

- (a) the child so requests and pays the required fee, if any; and
- (b) the Registrar General receives,
 - (i) evidence that satisfies the Registrar General as to the identity of the person,
 - (ii) the prescribed evidence that satisfies the Registrar General that the name of the person has so changed, and
 - (iii) all prescribed documents that are in the child's possession.

(7) Documents to provide

A person who requests the notation of a change on a

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child's birth registration under subsection (2) shall,

- (a) collect from the child all the prescribed documents that are in the child's possession; and
- (b) submit, with the request, all the prescribed documents that are in the person's possession and all the prescribed documents that the person has collected under clause (a).

(8) Documents for request by child — A child who requests the notation of a change on the child's birth registration under subsection (6) shall,

- (a) collect from the person whose name has been changed as described in subsection (1) all the prescribed documents that are in the person's possession; and
- (b) submit, with the request, all the prescribed documents that are in the child's possession and all the prescribed documents that the child has collected under clause (a).

(9) Registration, change of name annulled — Upon receipt of the prescribed evidence that satisfies the Registrar General that a document effecting a change of name described in subsection (1) has been annulled in accordance with the law of the province or territory of Canada, other than Ontario, or of the foreign state in which the change of name was made and upon production of evidence that satisfies the Registrar General as to the identity of the person, the Registrar General shall note the annulment on,

- (a) the person's marriage registration, if the change of name that is annulled was noted on that registration under that subsection; and
- (b) the birth registration of a child, if the change of name that is annulled was noted on that registration under subsection (2) or (6).

(10) Documents to provide — If the Registrar General notes an annulment of a

change of name of a person under subsection (9), the Registrar General may request that,

- (a) the person submit to the Registrar General all of the prescribed documents that are in the person's possession; and
- (b) a child submit to the Registrar General all of the prescribed documents that are in the child's possession if the change of name that is annulled was noted on the birth registration of the child.

(11) Compliance with request — A person who receives a request under subsection (10) shall comply with it.

2016, c. 5, Sched. 33, s. 5; 2016, c. 23, s. 25

31.2 Certificate after change of name — If the Registrar General has noted a change of name on a birth or marriage registration and issues a birth or marriage certificate after making the notation, the certificate shall be issued as if the registration had been made in the name as changed.

2016, c. 5, Sched. 33, s. 5

31.3 (1) Sealing original marriage registration — Upon receipt of evidence satisfactory to the Registrar General that both parties to a marriage registered in Ontario, whether or not the parties were born in Ontario, have changed their name in a province or territory of Canada, other than Ontario, or foreign state in accordance with the law of that province, territory or state, as the case may be, and that province, territory or state, as the case may be, has treated the application for the change of name as confidential in accordance with subsection (2) and upon production of evidence, if required, that satisfies the Registrar General as to the identity of the parties, the Registrar General may, upon the request of both parties, withdraw the original registration of the marriage in Ontario, seal it in a separate file and replace the registration with a registration of marriage in the names of the parties as changed.

(2) Confidential application — Subsection (1) applies to an application for a change of name if the province or territory of Canada, other than Ontario, or foreign state in which the name of the person has been changed,

- (a) has sealed the application in a separate file;
- (b) has not published notice of the change of name or given notice of it to any person; and
- (c) has not entered the change of name in any record open to the public.

2016, c. 5, Sched. 33, s. 5

DIVORCE DECREES

32. No certificates of divorce — The Registrar General may not issue a certificate of divorce even if he or she has a record of the divorce.

1994, c. 27, s. 102(21)

REGISTRATION OF BIRTHS AND DEATHS OCCURRING ON BOARD SHIP

33. Births and deaths on board ship — Upon receipt from the Minister of Transport of information transmitted under the *Canada Shipping Act*, respecting the birth of a child or the death of a person on board a ship whose port of registry is within Ontario, the Deputy Registrar General may register the birth or death.

CORRECTION OF ERRORS IN REGISTRATIONS

34. (1) Correction by Registrar General — If, after a registration has been received or made by the Registrar General, it is reported to him or her that an error has been made, the Registrar General shall inquire into the facts and upon the production of evidence satisfactory to him or her, the Registrar General may correct the error by a

notation on the registration without any alteration being made in the registration.

(2) Certificate of registration that has been corrected — If, subsequent to the correction of an error, application is made for a certificate pursuant to this Act, the certificate shall be prepared as if the registration had been made containing correct particulars at the time of registration, but if a certified copy of the registration is required, the certified copy shall contain a copy of the notation made under subsection (1).

(3) Old certificates to be returned — Any person in possession or control of a certificate or certified copy of a registration issued before the registration was corrected shall return the certificate or certified copy to the Registrar General forthwith upon demand.

(4) [Repealed 2012, c. 8, Sched. 58, s. 8.]

(5) [Repealed 2001, c. 21, s. 4.]

(6) [Repealed 2001, c. 21, s. 4.]
2001, c. 21, s. 4; 2012, c. 8, Sched. 58, s. 8;
2019, c. 7, Sched. 61, s. 3

35. (1) Substitute registrations — If, after a registration of birth has been received or made by the Registrar General, it appears or is reported to him or her that, because of incorrect information in the registration, the registration does not comply with the requirements of subsections 6(4) and (7) of the *Vital Statistics Act*, being chapter 524 of the Revised Statutes of Ontario, 1980, as they existed before the 1st day of August, 1986, the Registrar General shall inquire into the facts and, upon production of evidence satisfactory to him or her, supplemented by statutory declaration in the prescribed form, the Registrar General may, instead of correcting the error under section 34, order that the registration be cancelled and that a new registration of the birth be made.

(2) Order to be attached to registration — Where an order is made under subsection (1), the Registrar General shall attach the order to, and cause a notation of the

order to be made on, the existing registration, and the existing registration and order shall be kept in a separate file and sealed.

(3) Certificates and certified copies — Where a substituted registration of birth is made and an application is made for a birth certificate or certified copy of registration in respect of the birth, the certificate or certified copy shall be issued having regard to the substituted registration only.

(4) Old certificates to be returned — Any person in possession or control of a certificate or certified copy of a birth registration issued before the registration was cancelled under subsection (1) shall return the certificate or certified copy to the Registrar General forthwith upon demand.

(5) Births after August 1, 1986 — This section does not apply to a birth registered after the 1st day of August, 1986.

1993, c. 27, Sched.

the applicant should be changed on the registration of birth of the applicant;

(b) a certificate of a medical practitioner who did not perform the transsexual surgery but who is qualified and licensed to practise medicine in Canada certifying that,

(i) he or she has examined the applicant,

(ii) the results of the examination substantiate that transsexual surgery was performed upon the applicant, and

(iii) as a result of the transsexual surgery, the description of the sex of the applicant should be changed on the registration of birth of the applicant; and

(c) evidence satisfactory to the Registrar General as to the identity of the applicant.

(3) Alternate medical evidence — Where it is not possible to obtain the medical certificate referred to in clause (2)(a) or (b), the applicant shall submit such medical evidence of the transsexual surgery as the Registrar General considers necessary.

(4) Notation on birth registration to be consistent with result of surgery — The Registrar General shall, upon application made to him or her in accordance with this section, cause a notation to be made on the birth registration of the applicant so that the registration is consistent with the results of the surgery.

(5) Old certificates to be returned — Any person in possession or control of a certificate or certified copy of a birth registration issued before the making of a notation under subsection (4) shall return the certificate or certified copy to the Registrar General forthwith upon demand.

(6) Birth certificate issued after notation — Every birth certificate issued after the making of a notation under this section shall be issued as if the original registration

CHANGES RESULTING FROM TRANSSEXUAL SURGERY

36. (1) Changing sex designation appearing on registration of birth —

Where the anatomical sex structure of a person is changed to a sex other than that which appears on the registration of birth, the person may apply to the Registrar General to have the designation of sex on the registration of birth changed so that the designation will be consistent with the results of the transsexual surgery.

(2) Application — An application made under subsection (1) shall be accompanied by,

(a) a certificate signed by a medical practitioner legally qualified to practise medicine in the jurisdiction in which the transsexual surgery was performed upon the applicant, certifying that,

(i) he or she performed transsexual surgery on the applicant, and
(ii) as a result of the transsexual surgery, the designation of sex of

of birth had been made showing the designation of sex as changed under this section.

REGISTRATION DIVISIONS

37. (1) Registration divisions — The whole of Ontario shall be divided into registration divisions.

(2) Municipal units — Every municipality is a registration division.

(3) Unorganized territory — The Registrar General may divide that part of Ontario not within a municipality into registration divisions, and may from time to time alter the boundaries of any such registration division or merge it, in whole or in part, with one or more registration divisions and may attach any territory or portion thereof not being part of a municipality to a registration division constituted under subsection (2).

(4) Same — The Registrar General shall maintain a record of all orders made for the purposes of subsection (3) and make them or copies of them available for inspection by the public on request; Part III (Regulations) of the *Legislation Act, 2006* does not apply to the orders.

(5) Same — Registration divisions in existence on the day this subsection comes into force continue until altered or merged by an order made under subsection (3).
1994, c. 27, s. 102(22); 2006, c. 21, Sched. F, s. 136(1), Table 1

APPOINTMENT AND DUTIES OF DIVISION REGISTRARS

38. (1) Division registrars — Division registrars shall be appointed as provided for in the regulations.

(2) Deputy division registrars — A division registrar may, with the approval of the Registrar General, appoint one or more deputy division registrars to act for him or her and any such deputy while so acting has all the powers and duties of the division registrar who appointed the deputy.

(3) Sub-registrars — A division registrar may, with the approval of the Registrar General, appoint sub-registrars who shall perform such duties as may be prescribed.

(4) [Repealed 2001, c. 21, s. 5.]

(5) [Repealed 2001, c. 21, s. 5.]

(6) [Repealed 2001, c. 21, s. 5.]
1994, c. 27, s. 102(23); 1998, c. 18, Sched. E, s. 296; 2001, c. 21, s. 5

39. Division registrars, powers and duties — A division registrar shall perform such duties and have such powers as are set out in this Act and as may be prescribed.
1994, c. 27, s. 102(24)

40. Report of contraventions to Registrar General — Such persons as may be prescribed shall, under the direction of the Registrar General, enforce this Act and shall make an immediate report to the Registrar General of any contravention of this Act of which he or she has knowledge.
2001, c. 21, s. 6

41. [Repealed 1998, c. 18, Sched. E, s. 297.]

FORMS

42. Forms — For the purposes of the administration of this Act, the *Marriage Act* or the *Change of Name Act*, the Registrar General may,

(a) provide for and require the use of forms, statutory declarations or affidavits in addition to or in substitution for forms, statutory declarations or affidavits prescribed by the regulations made under this Act, the *Marriage Act* or the *Change of Name Act*, as the case may be;

(b) require the use of forms, statutory declarations or affidavits supplied by the Registrar General; and

(c) permit information to be supplied in a format acceptable to the Registrar General rather than on forms or in stat-

utory declarations or affidavits that are otherwise provided for or required under this section or the regulations made under this Act, the *Marriage Act* or the *Change of Name Act*, as the case may be.

1994, c. 27, s. 102(25); 1998, c. 18, Sched. E, s. 298

CERTIFICATES AND SEARCHES

43. (1) Contents, of birth certificate — A birth certificate shall contain the following particulars of the registration:

- (a) name of the child;
- (b) date of birth;
- (c) place of birth;
- (d) sex;
- (e) date of registration; and
- (f) registration number.

(2) of death certificate — A death certificate shall contain only the following particulars of the registration:

- (a) name, age and marital status of the deceased;
- (b) date of death;
- (c) place of death;
- (d) sex;
- (e) date of registration; and
- (f) registration number.

(3) of marriage certificate — A marriage certificate shall contain only the following particulars of the registration:

- (a) names of the parties;
- (b) date of the marriage;
- (c) place of the marriage;
- (d) place of birth of each of the parties;
- (e) date of registration; and
- (f) registration number.

(4) Change of name certificate — A change of name certificate shall contain the following particulars of the registration,

- (a) the person's name;

- (b) the person's former name;
- (c) date of registration; and
- (d) registration number.

(5) Still-birth certificate — No still-birth certificate shall be issued.

(6) Certificates under seal — A certificate, order or other document, issued by the Registrar General pursuant to this Act, may bear the seal of office of the Registrar General.

44. (1) Who may obtain, birth certificate — Upon application and upon payment of the required fee, any person who furnishes substantially accurate particulars, and satisfies the Registrar General as to the person's reason for requiring it, may obtain from the Registrar General a birth certificate in respect of any birth of which there is a registration in his or her office.

Proposed Amendment — 44(1)

(1) Who may obtain, birth certificate — Upon application and upon payment of the required fee, any person who furnishes substantially accurate particulars, and satisfies the Registrar General as to the person's reason for requiring it, may obtain from the Registrar General a birth certificate in respect of any birth of which there is a registration with the Registrar General.

2012, c. 8, Sched. 58, s. 9(1) [Not in force at date of publication.]

(2) death certificate — Upon application and upon payment of the required fee, any person may obtain from the Registrar General a death certificate in respect of any death of which there is a registration in his or her office.

Proposed Amendment — 44(2)

(2) death certificate — Upon application and upon payment of the required fee, any person may obtain from the Registrar General a death certificate in respect of any

death of which there is a registration with the Registrar General.

2012, c. 8, Sched. 58, s. 9(1) [Not in force at date of publication.]

of birth, change of name, death or still-birth shall be issued except to a person authorized by the Registrar General or the order of a court and upon payment of the required fee.

(3) marriage certificate — Upon application and upon payment of the required fee,

- (a) one of the parties to the marriage;
- (b) a parent of one of the parties;
- (c) a child of the marriage; or
- (d) any person with the approval of the Registrar General,

may obtain from the Registrar General a marriage certificate in respect of any marriage of which there is a registration in his or her office.

**Proposed Amendment — 44(3)
closing words**

may obtain from the Registrar General a marriage certificate in respect of any marriage of which there is a registration with the Registrar General.

2012, c. 8, Sched. 58, s. 9(1) [Not in force at date of publication.]

(2) Who may obtain copy of registration of marriage — No certified copy of a registration of marriage shall be issued except to one of the parties to the marriage or to a person authorized by the Registrar General or the order of a court and upon payment of the required fee.

1998, c. 18, Sched. E, s. 300

45.1 (1) Guarantee required — The Registrar General may require that an application for any of the following information or documents be guaranteed and may specify the manner in which it must be guaranteed:

1. A certificate.
2. A certified copy of a registration.
- 2.1 The uncertified copies described in subsection 48.1(1).
- 2.2 The information described in subsection 48.2(1).
3. Such other information or documents as may be prescribed.

(1.1) Eligibility to be a guarantor — Such persons as may be prescribed are authorized to act as guarantors for the purposes of this section.

(2) No fee — No person shall charge a fee for acting as a guarantor.

2001, c. 21, s. 7; 2005, c. 25, s. 5

45.2 (1) Limit on birth documents — Unless otherwise permitted by the Registrar General, not more than one certificate and one certified copy of a registration may be issued in respect of a birth.

(2) Other documents — The Registrar General may limit the number of certificates and certified copies of registrations that may be issued in respect of any change of name, death, still-birth or marriage.

(3) Application for reconsideration — On the application of a person who has been

(4) Change of name certificate — Upon application and upon payment of the required fee, any person may obtain from the Registrar General a change of name certificate in respect of any change of name of which there is a registration, made after the 15th day of July, 1987, in his or her office.

Proposed Amendment — 44(4)

(4) Change of name certificate — Upon application and upon payment of the required fee, any person may obtain from the Registrar General a change of name certificate in respect of any change of name of which there is a registration, made after July 15, 1987, with the Registrar General.

2012, c. 8, Sched. 58, s. 9(2) [Not in force at date of publication.]

1998, c. 18, Sched. E, s. 299

45. (1) Who may obtain copy of registration of birth, death or still-birth — No certified copy of a registration

S. 45.2(3)

Vital Statistics Act

refused a birth certificate or a certified copy of a birth registration under section 44 or 45 or who has been refused a birth certificate or a certified copy of a birth registration under this section, the Registrar General shall consider the matter and he or she may grant or refuse the application.

2001, c. 21, s. 7; 2012, c. 8, Sched. 58, s. 10

46. (1) Admissibility of certificates, etc. — A certificate purporting to be issued under section 44 or a certified copy of a registration purporting to be issued under section 45 is admissible in any court in Ontario as proof, in the absence of evidence to the contrary, of the facts so certified if,

- (a) it is signed by the Registrar General or Deputy Registrar General; or
- (b) the signature of any person who is or who was, at any time, the Registrar General or Deputy Registrar General is reproduced on it by any method.

(1.1) Same — It is not necessary to prove the signature or official position of the person by whom the certificate or certified copy purports to be signed.

(2) Idem, made from record — Subsections (1) and (1.1) apply to a certificate or certified copy of a registration produced from a record of the registration made under section 4.

(3) Admissibility of paper copy of a record — The paper copy made from the record of a document, other than a registration, that is made under section 4 is admissible in evidence to the same extent as an original document.

2015, c. 27, Sched. 2, s. 1

47. [Repealed 2001, c. 21, s. 8.]

48. (1) Searches — Any person may have a search made for the registration of any birth, death, marriage, still-birth, adoption or change of name in the indexes kept under this Act if that person,

- (a) applies;

(b) pays the required fee; and

(c) satisfies the Registrar General as to the person's reason for requiring the search.

(2) Exception — Clause (1)(c) does not apply in the case of a search of the change of name index with respect to the period after the 15th day of July, 1987.

(3) Information given on search — Subject to subsection (4), the only information given upon a search under subsection (1) shall be,

- (a) whether the registration exists or not;
- (b) the registration number, if any; and
- (c) at the Registrar General's option, the date of the event, if any.

(4) Former name — In the case of a search of the change of name index, where a registration exists, the former name of the person shall be given, but only with respect to the period after the 15th day of July, 1987.

1998, c. 18, Sched. E, s. 301; 2012, c. 8, Sched. 58, s. 11

DISCLOSURE RE ADOPTED PERSONS

[Heading added 2005, c. 25, s. 6.]

48.1 (1) Disclosure to an adopted person — An adopted person may apply to the Registrar General for an uncertified copy of the original registration, if any, of the adopted person's birth and an uncertified copy of any registered adoption order respecting the adopted person.

(2) Age restriction — The adopted person is not entitled to apply for the uncertified copies until he or she is at least 18 years old.

(3) Disclosure — Subject to subsections (5), (6), (7), (9), (10) and (11), the applicant may obtain the uncertified copies from the Registrar General upon payment of any required fee and upon production of any evi-

dence of the applicant's identity and age that may be required by the Registrar General.

(4) Effect of notice of preferred manner of contact — If a notice submitted by a birth parent under subsection 48.3(2) is in effect, the Registrar General shall give the applicant a copy of the notice when the Registrar General gives the applicant the uncertified copies.

(5) Effect of notice of wish not to be contacted — If there is only one birth parent and a notice submitted by the birth parent under subsection 48.4(3) is in effect, the Registrar General shall not give the uncertified copies to the applicant unless the applicant agrees in writing not to contact or attempt to contact the birth parent, either directly or indirectly.

(6) Same — If there are two birth parents and notices submitted by both birth parents under subsection 48.4(3) are in effect, the Registrar General shall not give the uncertified copies to the applicant unless the applicant agrees in writing not to contact or attempt to contact the birth parents, either directly or indirectly.

(7) Same — If there are two birth parents and only one notice submitted by a birth parent under subsection 48.4(3) is in effect, the Registrar General shall,

(a) give the applicant the uncertified copies if the applicant agrees in writing not to contact or attempt to contact that birth parent, either directly or indirectly; or

(b) if the applicant refuses to agree in writing not to contact or attempt to contact that birth parent, either directly or indirectly, delete any identifying information relating to that birth parent from the uncertified copies and give the applicant the redacted uncertified copies.

(8) Copy of notice — Where the Registrar General gives the applicant the uncertified copies under subsection (5) or (6) or clause (7)(a), he or she shall also give the applicant

a copy of the notice that was submitted under subsection 48.4(3) by either or both of the birth parents, as the case may be.

(9) Effect of disclosure veto — If there is only one birth parent and a disclosure veto submitted by the birth parent under subsection 48.5(5) is in effect, the Registrar General shall not give the uncertified copies to the applicant.

(10) Same — If there are two birth parents and disclosure vetoes submitted by both birth parents under subsection 48.5(5) are in effect, the Registrar General shall not give the uncertified copies to the applicant.

(11) Same — If there are two birth parents and only one disclosure veto submitted by a birth parent under subsection 48.5(5) is in effect, the Registrar General shall delete any identifying information relating to that birth parent from the uncertified copies and give the applicant the redacted uncertified copies.

(12) Copy of statement — If a disclosure veto is in effect, the Registrar General shall advise the applicant that a disclosure veto is in effect and give the applicant a copy of any statement that may have been included in the disclosure veto under subsection 48.5(7).

(13) Same — If, at the time of application, a disclosure veto has ceased to be in effect under subsection 48.5(13), the Registrar General shall advise the applicant of this fact and give the applicant a copy of any statement that may have been included in the disclosure veto under subsection 48.5(7).

(14) Definition, identifying information — In subsections (7) and (11),

“**identifying information**” means information whose disclosure, alone or in combination with other information, will in the circumstances reveal the identity of the person to whom it relates.

2008, c. 5, ss. 3, 4

48.2 (1) Disclosure to a birth parent — A birth parent of an adopted person may ap-

ply to the Registrar General for all the information contained in the following documents, with the exception of information about persons other than the applicant, the adopted person and a person whose name appears in the documents because of their involvement, in a professional capacity, in the adoption or birth registration:

1. The original registration, if any, of the adopted person's birth.
2. Any birth registration respecting the adopted person that was substituted in accordance with subsection 28(2).
3. Any registered adoption order respecting the adopted person.

(2) Age restriction — The birth parent is not entitled to apply for the information described in subsection (1) until the adopted person is at least 19 years old.

(3) Disclosure — Subject to subsections (5) and (7), the applicant may obtain the information described in subsection (1) from the Registrar General upon payment of any required fee and upon production of any evidence of the applicant's identity and of the adopted person's age that may be required by the Registrar General.

(4) Effect of notice of preferred manner of contact — If a notice submitted under subsection 48.3(1) is in effect and sets out the manner in which the adopted person wishes to be contacted by the applicant, the Registrar General shall give the applicant a copy of the notice when the Registrar General gives the applicant the information described in subsection (1).

(5) Effect of notice of wish not to be contacted — If a notice submitted under subsection 48.4(1) is in effect and states that the adopted person does not wish to be contacted by the applicant, the Registrar General shall not give the information described in subsection (1) to the applicant unless the applicant agrees in writing not to contact or attempt to contact the adopted person, either directly or indirectly.

(6) Copy of notice of wish not to be contacted — The Registrar General shall give the applicant a copy of a notice described in subsection (5) when the Registrar General gives the applicant the information described in subsection (1).

(7) Effect of disclosure veto — If a disclosure veto submitted by an adopted person under subsection 48.5(2) is in effect, the Registrar General shall not give the information described in subsection (1) to,

- (a) any birth parent who applies for the information under subsection (1), if the disclosure veto does not specify a birth parent against whom it is effective; or
- (b) if the adopted person specifies in the disclosure veto that it is to be effective only against a particular birth parent, the birth parent specified in the disclosure veto.

(8) Copy of statement — If a disclosure veto submitted by an adopted person is in effect and prohibits the disclosure of information to the applicant, the Registrar General shall,

- (a) advise the applicant that a disclosure veto is in effect; and
- (b) give the applicant a copy of any statement intended for the applicant that may have been included in the disclosure veto under subsection 48.5(7).

(9) Same — If, at the time of the application, a disclosure veto prohibiting disclosure to the applicant has ceased to be in effect under subsection 48.5(13), the Registrar General shall,

- (a) advise the applicant of this fact; and
- (b) give the applicant a copy of any statement intended for the applicant that may have been included in the disclosure veto under subsection 48.5(7).

2008, c. 5, ss. 3, 4

48.3 Notice, preferred manner of contact — **(1) Adopted person** — An adopted person who is at least 18 years old

may submit to the Registrar General a notice specifying his or her preferences concerning the manner in which a birth parent may contact him or her.

(1.1) Proof of identity and age — A notice submitted under subsection (1) shall not be registered until the applicant provides the Registrar General with such evidence of his or her identity and age as may be required by the Registrar General.

(2) Birth parent — A birth parent may submit to the Registrar General a notice specifying his or her preferences concerning the manner in which an adopted person may contact him or her.

(2.1) Proof of identity — A notice described in subsection (2) shall not be registered until the applicant provides the Registrar General with such evidence of his or her identity as may be required by the Registrar General.

(3) When notice is in effect — A notice shall be registered by the Registrar General and is in effect when the Registrar General has matched it with the original registration, if any, of the adopted person's birth or, if there is no original registration, when the Registrar General has matched it with the registered adoption order.

(4) Exception — Despite subsection (3), a notice submitted by an adopted person with respect to a birth parent does not come into effect if, before the match is made, the Registrar General has already given that birth parent the information described in subsection 48.2(1).

(5) Same — Despite subsection (3), a notice submitted by a birth parent does not come into effect if, before the match is made, the Registrar General has already given the adopted person the uncertified copies of registered documents described in subsection 48.1(1).

(6) Withdrawal of notice — Upon application, the adopted person or birth parent, as the case may be, may withdraw the notice.

(7) Same — If a notice is withdrawn, it ceases to be in effect when the Registrar General has matched the application for withdrawal with the notice itself.

(8) Administration — Subsections 2(2) to (4) do not apply to notices registered under this section.

2005, c. 25, s. 7; 2008, c. 5, s. 5

48.4 Notice, wish not to be contacted — **(1) Adopted person** — An adopted person who is at least 18 years old may submit to the Registrar General a notice that he or she wishes not to be contacted by a birth parent.

(2) Proof of identity and age — A notice described in subsection (1) shall not be registered until the applicant has provided the Registrar General with such evidence of his or her identity and age as may be required by the Registrar General.

(3) Birth parent — A birth parent may submit to the Registrar General a notice that he or she wishes not to be contacted by the adopted person.

(3.1) Proof of identity — A notice described in subsection (3) shall not be registered until the applicant provides the Registrar General with such evidence of his or her identity as may be required by the Registrar General.

(4) Additional information — The notice may include a brief statement concerning the person's reasons for not wishing to be contacted and a brief statement of any available information about the person's medical and family history.

(5) When notice is in effect — A notice shall be registered by the Registrar General and is in effect when the Registrar General has matched it with the original registration, if any, of the adopted person's birth or, if there is no original registration, when the Registrar General has matched it with the registered adoption order.

(6) Exception — Despite subsection (5), a notice submitted by an adopted person with respect to a birth parent does not come into effect if, before the match is made, the Registrar General has already given that birth parent the information described in subsection 48.2(1).

(7) Same — Despite subsection (5), a notice submitted by a birth parent does not come into effect if, before the match is made, the Registrar General has already given the adopted person the uncertified copies of registered documents described in subsection 48.1(1).

(8) Withdrawal of notice — Upon application, the adopted person or birth parent, as the case may be, may withdraw the notice.

(9) When withdrawal takes effect — If a notice is withdrawn, the notice ceases to be in effect when the Registrar General has matched the application for withdrawal with the notice itself.

(10) Administration — Subsections 2(2) to (4) do not apply to notices registered under this section.

2005, c. 25, s. 8; 2008, c. 5, s. 6

48.5 Disclosure veto — (1) Application — This section applies to an adopted person and to the birth parents of an adopted person only if the registered adoption order relating to the adopted person was made before September 1, 2008.

(2) Adopted person — An adopted person who is at least 18 years old may submit to the Registrar General a disclosure veto to prohibit the disclosure of information under section 48.2 to a birth parent.

(3) Same — If there are two birth parents, the adopted person may specify in the disclosure veto that it is to be effective only against one of the birth parents.

(4) Proof of identity and age — A disclosure veto submitted under subsection (2) shall not be registered until the adopted person provides the Registrar General with such

evidence of his or her identity and age as may be required by the Registrar General.

(5) Birth parent — A birth parent of an adopted person may submit to the Registrar General a disclosure veto to prohibit the disclosure of information under section 48.1 to the adopted person.

(6) Proof of identity — A disclosure veto submitted under subsection (5) shall not be registered until the birth parent provides the Registrar General with such evidence of his or her identity as may be required by the Registrar General.

(7) Additional statement — A disclosure veto submitted under subsection (2) or (5) may include a brief statement concerning the person's reasons for prohibiting the disclosure of information and a brief statement of any information about the person's medical and family history that, despite the disclosure veto, the person wishes to have disclosed to an applicant under section 48.1 or 48.2.

(8) When veto is registered and in effect — A disclosure veto shall be registered by the Registrar General and is in effect when the Registrar General has matched it with the original registration, if any, of the adopted person's birth or, if there is no original registration, when the Registrar General has matched it with the registered adoption order.

(9) Exception — Despite subsection (8), a disclosure veto submitted by an adopted person with respect to one or two birth parents does not come into effect with respect to any birth parent to whom the Registrar General has already given the information described in subsection 48.2(1) before the match is made.

(10) Same — Despite subsection (8), a disclosure veto submitted by a birth parent does not come into effect if, before the match is made, the Registrar General has already given the adopted person the uncertified copies of the documents described in subsection 48.1(1).

(11) Withdrawal of veto — Upon application, the adopted person or birth parent, as the case may be, may withdraw a disclosure veto.

(12) When withdrawal takes effect — If an application to withdraw a disclosure veto is made under subsection (11), the disclosure veto ceases to be in effect when the Registrar General has matched the application with the disclosure veto.

(13) Death of person who submitted veto — If an adopted person or a birth parent who submitted a disclosure veto under this section dies and the disclosure veto is in effect, the disclosure veto ceases to be in effect when the Registrar General has received evidence of the death and the date of the death that is satisfactory to the Registrar General and has matched that information with the disclosure veto.

(14) Administration — Subsections 2(2) to (4) do not apply to disclosure vetoes registered under this section.

2008, c. 5, s. 8

48.6 Unsealing of files — For the purposes of sections 48.1 to 48.5, the Registrar General may unseal any file that was sealed under this Act or a predecessor of this Act.

2008, c. 5, s. 9

48.7 Review re: disclosure of adoption information — The Lieutenant Governor in Council shall ensure that a review of the operation of sections 48.1 to 48.6 and section 56.1 is conducted within five years after section 4 of the *Access to Adoption Records Act (Vital Statistics Statute Law Amendment), 2008* comes into force.

2008, c. 5, s. 10

48.8 [Repealed 2008, c. 5, s. 7.]

48.9 [Repealed 2008, c. 5, s. 7.]

48.10 [Repealed 2008, c. 5, s. 7.]

48.11 [Repealed 2008, c. 5, s. 7.]

48.12 [Repealed 2008, c. 5, s. 7.]

DISCLOSURE OF DEATH INFORMATION

[Heading added 2006, c. 9, Sched. P, s. 1.]

48.13 (1) Disclosure of death information — In this section,

“institution” means,

- (a) an institution under the *Freedom of Information and Protection of Privacy Act*,
- (b) an institution under the *Municipal Freedom of Information and Protection of Privacy Act*,
- (b.1) a government institution under the *Privacy Act* (Canada),
- (c) any agency, board, commission, corporation or other body designated as an institution in the regulations.

(2) Same — Any institution may apply to have the Registrar General disclose to the applicant the particulars that would be set out in a death certificate under subsection 43(2) for every person who died during the period of time specified in the application and whose death is registered under this Act or for every member of a class of persons whose death is registered under this Act where the class is specified in the application and the Registrar General may grant the application if,

- (a) the applicant states in the application the purpose for which the applicant intends to use the information so disclosed and the Registrar General is satisfied as to the purpose;
- (b) the applicant satisfies the Registrar General that it has in place adequate policies and practices for the protection of the information so disclosed;
- (c) the applicant meets the requirements prescribed by the regulations;

(d) the applicant enters into an agreement described in subsection (4) with the Registrar General; and

(e) the applicant pays the required fee for the disclosure of the information, including the fee that the Registrar General requires for entering into the agreement mentioned in clause (d).

(3) Class — For the purposes of subsection (2), a class of deceased persons,

(a) may be defined with respect to any attribute, quality or characteristic of the deceased persons that the Registrar General determines or combination of them;

(b) may be defined to consist of or to include or exclude any specified member whether or not with the same attributes, qualities or characteristics; and

(c) may be different from one application to another.

(4) Agreement — An agreement mentioned in clause (2)(d) shall contain the terms and conditions that the Registrar General considers appropriate with respect to,

(a) the use that the applicant may make of the information disclosed to the applicant, subject to subsection (6) and the regulations;

(b) the protection of the information, including the retention and destruction of the information, subject to the regulations; and

(c) measures to verify that the applicant complies with the agreement.

(5) Additional information — In an application made under subsection (2), the applicant may request that the Registrar General disclose to the applicant other information that is included in the statement or information under subsection 21(2) about the deceased persons affected by the application and that is specified in the application, in addition to the particulars that would be set out in a death certificate under subsec-

tion 43(2) for the deceased persons and the Registrar General may grant the request if,

(a) the applicant complies with clauses (2)(b) to (e), reading those clauses as if they applied with respect to that other information; and

(b) the applicant agrees in the agreement mentioned in clause (2)(d) to use that other information only for the purpose of verifying other information that the applicant has before making the application and only to the extent necessary for that purpose.

(6) Same, agreement — If the Registrar General discloses information to an applicant under subsection (5), the applicant shall agree in the agreement mentioned in clause (2)(d) to use that other information only for the purpose of verifying other information that the applicant has before making the application and only to the extent necessary for that purpose.

(7) Ongoing disclosure — An application made under subsection (2) may be for the disclosure of information on an ongoing or periodic basis.

(8) Disclosure of personal information — Any disclosure of personal information that is authorized under this section shall be deemed to be in compliance with clause 42(1)(e) of the *Freedom of Information and Protection of Privacy Act*.

(9) Further use — An institution to whom the Registrar General discloses information under this section shall not use it for a purpose other than the purpose specified in the agreement that the institution has entered into with the Registrar General under clause (2)(d) with respect to the information or a purpose authorized by the regulations.

(10) No further disclosure — An institution to whom the Registrar General discloses information under this section shall not disclose it to any other person or body, except an agent acting on behalf of the institution who uses it for the purpose specified in the agreement that the institution has entered

into with the Registrar General under clause (2)(d) with respect to the information.

(11) Offence — An institution or an individual acting on behalf of an institution that contravenes subsection (9) or (10) or a regulation made under clause 60(1)(y), (z) or (z.1) is guilty of an offence.

Proposed Amendment —
48.13(11)

(11) Offence — An institution or an individual acting on behalf of an institution that contravenes subsection (9) or (10) or a regulation made under clause 60(1)(m), (n) or (o) is guilty of an offence.

2019, c. 7, Sched. 61, s. 4 [Not in force at date of publication.]

2006, c. 9, Sched. P, s. 1; 2006, c. 34, Sched. C, s. 28; 2012, c. 8, Sched. 58, s. 12

GENERAL PROVISIONS

49. Ontario registrations only — Subject to section 33, no registration shall be made of a birth, still-birth, marriage or death occurring outside Ontario.

50. Application of Act — This Act applies in respect of any birth, marriage, death, still-birth, divorce, adoption or change of name that heretofore occurred or that hereafter occurs.

51. Certificates not to be issued — No person shall issue any document that purports to be a certificate of a birth, marriage, death or still-birth other than a certificate provided for under this Act.

51.1 (1) Duty to report lost documents — A person who has lost or had stolen or destroyed a certificate or certified copy of a birth registration or such other registrations as may be prescribed shall notify the Registrar General of the loss, theft or destruction, as the case may be, immediately upon becoming aware of it.

(2) Duty to return found documents — A person who finds a certificate or certified copy of a birth registration or such other registrations as may be prescribed shall notify the Registrar General of the find within 24 hours of finding it and shall forthwith forward the certificate or certified copy to the Registrar General.

(3) Exception — Subsection (2) does not apply to a person who forthwith delivers the found certificate or certified copy to the police or to a lost and found service.

(4) Duty of police or lost and found — If the police or a lost and found service receives a certificate or certified copy of a registration that is believed to have been lost and that is not claimed within 24 hours of receiving it, the police or the operator of a lost and found service, as the case may be, shall notify the Registrar General of the receipt.

(5) Return of documents — If a certificate or certified copy of a registration that has been lost is claimed from the police or a lost and found service within 24 hours of their having received it, they may return it.

(6) Duty to return document — In returning a document as authorized by subsection (5), the police or lost and found service shall take reasonable precautions to ensure that it is returned only to the person entitled to have it and if it is not claimed by such a person, they shall forward it to the Registrar General not later than 90 days after receiving it.

2001, c. 21, s. 9

51.2 Duty to cancel documents — The Registrar General shall cancel certificates and certified copies of registrations that have been reported lost, stolen, destroyed, found or received and he or she may cancel any other certificate or certified copy where he or she, in his or her discretion, is of the opinion that it is appropriate to do so.

2001, c. 21, s. 9

S. 52(1)

Vital Statistics Act

52. (1) Registration unlawfully obtained — The Registrar General, if satisfied that a registration was improperly made or caused to have been made, may order that the registration be cancelled and may order the return of any certificate or certified copy of a registration that was issued before the registration was cancelled.

(2) New registration — The Registrar General shall cause the order to be affixed to the cancelled registration and, if satisfied as to the correctness and sufficiency of new evidence presented to him or her, may cause a new registration to be made.

(3) Certificates or certified copies to be returned — Any person in possession or control of a certificate or certified copy of a registration that is the subject of an order under subsection (1) shall return it to the Registrar General forthwith.

(4) Requirement re hearing — Before making an order under subsection (1), the Registrar General shall give to such interested parties as the Registrar General considers proper an opportunity to be heard on the matter.

(5) [Repealed 2001, c. 21, s. 10.]

2001, c. 21, s. 10; 2009, c. 33, Sched. 17, s. 13(2)

53. (1) Secrecy — No division registrar, sub-registrar, funeral director, person employed in the service of Her Majesty, person providing services on behalf of the Registrar General or the Deputy Registrar General, or prescribed person, shall,

(a) communicate or allow to be communicated to any person not entitled thereto, any information obtained under this Act, the *Change of Name Act* or the *Marriage Act*; or

(b) allow any person not entitled to do so to inspect or have access to any records containing information obtained under this Act, the *Change of Name Act* or the *Marriage Act*.

(2) Statistics excepted — Nothing in subsection (1) prohibits the furnishing and publication of information of a general statistical nature that does not disclose information about any individual person.

2001, c. 21, s. 11; 2012, c. 8, Sched. 58, s. 13

53.1 (1) Duty to collect information — If the Registrar General considers it necessary to verify information or to determine if any document issued or that may be issued under this Act is being, or may be, improperly used, the Registrar General shall collect, directly or indirectly, such information as he or she considers necessary from such persons and institutions as he or she considers appropriate.

(2) Duty to assist — On the request of the Registrar General, an institution in Ontario shall provide information from its records to the Registrar General that may assist him or her to verify information or to determine if any document issued or that may be issued under this Act is being, or may be, improperly used.

(3) Duty to disclose information — For the purpose of verifying information or determining if any document issued or that may be issued under this Act is being, or may be, improperly used, the Registrar General shall disclose such information as he or she considers appropriate to such persons or institutions as he or she considers appropriate.

(4) No commercial use of information — An institution that receives information under this section shall not sell or otherwise use it for commercial purposes or advantage.

(5) Definition — In this section, “institution” means,

(a) an institution under the *Freedom of Information and Protection of Privacy Act*,

(b) an institution under the *Municipal Freedom of Information and Protection of Privacy Act*,

- (b.1) a government institution under the *Privacy Act* (Canada),
(c) any agency, board, commission, corporation or other body, inside or outside Canada, designated as an institution in the regulations.

2001, c. 21, s. 12; 2012, c. 8, Sched. 58, s. 14

54. Registration by Registrar General — If documentation related to any birth, still-birth or death is received for registration by the Registrar General directly, he or she may, if satisfied as to its correctness and sufficiency, register the birth, still-birth or death by signing the documentation, and the provisions of this Act and the regulations relating to the registration of births, still-births and deaths apply with necessary modifications.

Proposed Amendment — 54

54. Registration by Registrar General — If documentation related to any still-birth or death is received for registration by the Registrar General directly, he or she may, if satisfied as to its correctness and sufficiency, register the still-birth or death by signing the documentation, and the provisions of this Act and the regulations relating to the registration of still-births and deaths apply with necessary modifications.

2012, c. 8, Sched. 58, s. 15 [Not in force at date of publication.]

1994, c. 27, s. 102(26)

OFFENCES

55. (1) Failure to give notice or to furnish particulars — Every person who neglects or fails to give any notice or to register or to furnish any documentation or particulars respecting the birth, marriage, death, still-birth, adoption or change of name of any person, as required by this Act and the regulations, is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for an individual or \$250,000 for a corporation.

(2) Exception — Subsection (1) does not apply to a child's father who neglects or fails to comply with section 9 or the regulations in relation to the registration of the child's birth, if he has reasonable grounds to believe that he is not the child's father.

(3) Failure of division registrar to make returns — If a division registrar neglects or fails to transmit to the Registrar General any documentation or to make any return as required by this Act or the regulations, the division registrar is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for an individual or \$250,000 for a corporation, and each succeeding week's continuance of the neglect or failure to make the transmission or return constitutes a new and distinct offence.

1994, c. 27, s. 102(27); 2001, c. 21, ss. 13, 17

56. (1) False information — Every person who wilfully makes or causes to be made a false statement in any documentation required to be furnished under this Act or the regulations is guilty of an offence and on conviction is liable, in the case of an individual, to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years less a day, or to both, and, in the case of a corporation, to a fine of not more than \$250,000.

(2) Same — Every legally qualified medical practitioner who wilfully makes a false statement as to the cause of the death of any person, or represents himself or herself as having been in attendance during the last illness of any person when in fact he or she was not called in attendance until after the death, is, in addition to any penalty imposed by this Act, subject to discipline by the Council of the College of Physicians and Surgeons of Ontario.

(3) Same — Every person who wilfully makes or causes to be made a registration of a birth, marriage, death or still-birth as having occurred in Ontario in respect of any person whose birth, marriage, death or still-birth did not occur in Ontario is guilty of an offence and on conviction is liable, in the

S. 56(3)

Vital Statistics Act

case of an individual, to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years less a day, or to both, and, in the case of a corporation, to a fine of not more than \$250,000.

2001, c. 21, s. 14; 2002, c. 18, Sched. E, s. 9(4)

56.1 (1) Offences re contacting adopted person or birth parent despite notice — If, under section 48.1, an adopted person receives notice that a birth parent does not wish to be contacted, the adopted person shall not knowingly contact or attempt to contact the birth parent, either directly or indirectly.

(2) Birth parent — If, under section 48.2, a birth parent receives notice that the adopted person does not wish to be contacted by the birth parent, he or she shall not knowingly contact or attempt to contact the adopted person, either directly or indirectly.

(3) Other persons — No person shall contact or attempt to contact a birth parent on behalf of an adopted person if the adopted person is prohibited by subsection (1) from doing so.

(4) Same — No person shall contact or attempt to contact an adopted person on behalf of a birth parent if the birth parent is prohibited by subsection (2) from doing so.

(5) Penalty — A person who contravenes subsection (1), (2), (3) or (4) is guilty of an offence and, on conviction, is liable to a fine of not more than \$50,000 for an individual or \$250,000 for a corporation.

2005, c. 25, s. 12

57. Breach of secrecy provision — Any person contravening any of the provisions of section 53 is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for an individual or \$250,000 for a corporation.

2001, c. 21, s. 14

58. General offence — Every person guilty of any act or omission in contravention of this Act or the regulations for which

no penalty is otherwise provided is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for an individual or \$250,000 for a corporation.

2001, c. 21, s. 14; 2002, c. 18, Sched. E, s. 9(5)

59. (1) Limitation one year — No proceeding shall be commenced in respect of an offence under this Act more than one year after the Deputy Registrar General becomes aware of the facts on which the proceeding is based.

(2) Evidence — A statement as to the time when the Deputy Registrar General became aware of the facts on which the proceeding is based, purporting to be certified by the Deputy Registrar General, is, without proof of that person's office or signature, evidence of the facts stated in it.

59.1 (1) Powers of Registrar General — The Registrar General may by order,

- (a) set and collect fees for services that the Registrar General provides under this Act; and
- (b) provide for the waiver of payment of those fees in favour of any person or class of persons.

(2) Orders are not regulations — An order made under this section is not a regulation for the purposes of Part III (Regulations) of the *Legislation Act, 2006*.

1998, c. 18, Sched. E, s. 302; 2011, c. 1, Sched. 5, s. 7

REGULATIONS

60. (1) Regulations — The Lieutenant Governor in Council may make regulations,

- (a) prescribing forms and providing for their use;

Proposed Amendment — 60(1)(a)

- (a) providing for different systems of registration, other than the uniform system mentioned in subsection 2(1), that shall be used in the part or parts of

the province for the period of time that is specified in the regulations;

2019, c. 7, Sched. 61, s. 5(1) [Not in force at date of publication.]

(b) [Repealed 2012, c. 8, Sched. 58, s. 16(1).]

**Proposed Amendment —
60(1)(b)**

(b) prescribing registrations and records to be transferred under section 5 (transfer to the Archives of Ontario);

2019, c. 7, Sched. 61, s. 5(1) [Not in force at date of publication.]

(c) [Repealed 2012, c. 8, Sched. 58, s. 16(1).]

**Proposed Amendment —
60(1)(c)**

(c) providing for the appointment of division registrars;

2019, c. 7, Sched. 61, s. 5(1) [Not in force at date of publication.]

(d) prescribing the system of filing of registrations;

**Proposed Amendment —
60(1)(d)**

(d) prescribing the fees to be paid for anything done or permitted to be done under this Act, other than for services provided by the Registrar General, and providing for the waiver of payment of those fees in favour of any person or class of persons;

2019, c. 7, Sched. 61, s. 5(1) [Not in force at date of publication.]

(e) prescribing the particulars of registrations to be entered in the indexes;

**Proposed Amendment —
60(1)(e)**

(e) adopting by reference, in whole or in part, and with changes that the Lieutenant Governor in Council considers necessary, any classification of diseases for the purposes of this Act;

2019, c. 7, Sched. 61, s. 5(1) [Not in force at date of publication.]

(e.1) providing for the appointment of division registrars;

**Proposed Repeal —
60(1)(e.1)**

(e.1) [Repealed 2019, c. 7, Sched. 61, s. 5(1). Not in force at date of publication.]

(e.2) [Repealed 2012, c. 8, Sched. 58, s. 16(1).]

(f) prescribing the duties of and records to be kept by the division registrars;

**Proposed Amendment —
60(1)(f)**

(f) prescribing the matters that are described in sections 8 and 9, subsections 21(5) and (6) and sections 22 and 26 as being prescribed or as being described or set out in the regulations in relation to any notice, certification or other documentation mentioned in those provisions, including the persons who are to comply with those provisions and the time limits for and manner of compliance;

2019, c. 7, Sched. 61, s. 5(1) [Not in force at date of publication.]

(g) prescribing the information and returns to be furnished to the Registrar General and fixing the times when information and returns are to be transmitted;

**Proposed Amendment —
60(1)(g)**

(g) prescribing persons for the purposes of the definition of “birth parent” in section 1;

2019, c. 7, Sched. 61, s. 5(1) [Not in force at date of publication.]

(h) fixing the times when division registrars shall forward registrations to the Registrar General;

**Proposed Amendment —
60(1)(h)**

(h) respecting the rules that apply where an adopted person or birth parent has submitted more than one notice under sections 48.3 and 48.4 or one such notice and a disclosure veto under section 48.5, or any other combination of such documents, including providing whether a notice or disclosure veto prevails and terminating the effect of a notice or of a disclosure veto;

2019, c. 7, Sched. 61, s. 5(1) [Not in force at date of publication.]

(i) prescribing the duties of and returns to be made by sub-registrars;

**Proposed Amendment —
60(1)(i)**

(i) governing the disclosure of information in relation to adoption in situations where an individual has been the subject of more than one registered adoption order, including providing that all or part of sections 48.1, 48.2, 48.3, 48.4 and 48.5 do not apply to an adopted person or a birth parent or classes of adopted persons or birth parents;

2019, c. 7, Sched. 61, s. 5(1) [Not in force at date of publication.]

(i.1) prescribing the powers of division registrars;

**Proposed Repeal —
60(1)(i.1)**

(i.1) [Repealed 2019, c. 7, Sched. 61, s. 5(1). Not in force at date of publication.]

(i.2) prescribing such matters as are referred to in sections 8 and 9, subsection 10(4), sections 19, 21 and 22 and subsections 26(1), 31(1), (1.1), (8), (8.1), (9), (12) and (13) and 31.1(1), (2), (6), (7), (8), (9) and (10) as being prescribed or as being described or set out in the regulations in relation to any

notice, certification or other documentation referred to in those sections, including the persons who are to comply with those sections and the time limits for and manner of compliance;

**Proposed Repeal —
60(1)(i.2)**

(i.2) [Repealed 2019, c. 7, Sched. 61, s. 5(1). Not in force at date of publication.]

(i.3) requiring that such information as may be set out in the regulations be given by way of statutory declaration;

**Proposed Repeal —
60(1)(i.3)**

(i.3) [Repealed 2019, c. 7, Sched. 61, s. 5(1). Not in force at date of publication.]

(i.4) requiring medical examinations for deserted new-born children and abandoned children for the purposes of assisting in the registration of their birth;

**Proposed Repeal —
60(1)(i.4)**

(i.4) [Repealed 2019, c. 7, Sched. 61, s. 5(1). Not in force at date of publication.]

(i.5) providing for the correction or amendment of any registration in situations not otherwise provided for in this Act;

**Proposed Repeal —
60(1)(i.5)**

(i.5) [Repealed 2019, c. 7, Sched. 61, s. 5(1). Not in force at date of publication.]

(i.6) governing the registration of stillbirths for the purposes of section 9.1, including providing provisions of this Act that apply, with necessary modification, to the registration of stillbirths;

| Proposed Repeal — 60(1)(i.6) | Proposed Amendment — 60(1)(l) | Proposed Amendment — 60(1)(m) |
|---|--|---|
| (i.6) [Repealed 2019, c. 7, Sched. 61, s. 5(1). Not in force at date of publication.] | (l) prescribing requirements for the purposes of clause 48.13(2)(c); 2019, c. 7, Sched. 61, s. 5(2) [Not in force at date of publication.] | (m) governing the use that institutions that obtain information under section 48.13 may make of the information so obtained, subject to subsection 48.13(6); 2019, c. 7, Sched. 61, s. 5(2) [Not in force at date of publication.] |
| (j) designating the persons who may have access to or may be given information from the records in the Registrar General's office or in a division registrar's office, and prescribing an oath or affirmation of secrecy to be taken by such persons; | (m.0.1) permitting the Registrar General to issue certificates that include the particulars listed in subsection 43(1) and the additional particulars listed in the regulations; | (m.0.1) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.] |
| Proposed Amendment — 60(1)(j) (j) designating persons who may be given access to or information from the records of the Registrar General or the records of a division registrar and prescribing an oath or affirmation of secrecy to be taken by such persons; 2012, c. 8, Sched. 58, s. 16(2) [Not in force at date of publication.] | | Proposed Repeal — 60(1)(m.0.1) (m.0.2) specifying which provisions of this Act and the regulations apply and do not apply to the certificates described in clause (m.0.1) and limiting the number of those certificates that the Registrar General is permitted to issue; |
| (k) for the registration of births, marriages, deaths, still-births, adoptions or changes of name in cases not otherwise provided for in this Act; | | Proposed Repeal — 60(1)(m.0.2) (m.0.2) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.] |
| Proposed Amendment — 60(1)(k) (k) designating any agency, board, commission, corporation or other body, inside or outside Canada, as an institution for the purposes of section 48.13 or 53.1; 2019, c. 7, Sched. 61, s. 5(2) [Not in force at date of publication.] | | (m.1) prescribing persons for the purposes of section 40 and subsection 53(1); |
| (k.1) [Repealed 1997, c. 9, s. 7(4).] | | |
| (l) prescribing the fees to be paid for anything done or permitted to be done under this Act, other than for services provided by the Registrar General, and providing for the waiver of payment of those fees in favour of any person or class of persons; | | |

**Proposed Repeal —
60(1)(m.1)**

(m.1) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(m.1.1) prescribing information and documents for the purposes of paragraph 3 of subsection 45.1(1);

**Proposed Repeal —
60(1)(m.1.1)**

(m.1.1) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(m.2) providing for different systems of registration other than the uniform system referred to in subsection 2(1) that shall be used in such part or parts of the province for such period of time as is specified in the regulations;

**Proposed Repeal —
60(1)(m.2)**

(m.2) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(m.3) prescribing registrations to which subsections 51.1(1) and (2) apply;

**Proposed Repeal —
60(1)(m.3)**

(m.3) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(m.4) designating any agency, board, commission, corporation or other body, inside or outside Canada, as an institution for the purposes of section 48.13 or 53.1;

**Proposed Repeal —
60(1)(m.4)**

(m.4) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(m.5) prescribing who may be a guarantor;

**Proposed Repeal —
60(1)(m.5)**

(m.5) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(n) prescribing the evidence on which the Registrar General may register a birth, still-birth, marriage or death after one year from the date thereof;

**Proposed Amendment —
60(1)(n)**

(n) requiring institutions that obtain information under section 48.13 to retain or destroy the information;

2019, c. 7, Sched. 61, s. 5(2) [Not in force at date of publication.]

(o) requiring the persons in charge of hospitals to make returns of the births of all children born in the hospitals;

**Proposed Amendment —
60(1)(o)**

(o) specifying terms and conditions that shall be included in an agreement mentioned in clause 48.13(2)(d) where the terms and conditions govern the use that an institution may make of information obtained under section 48.13 subject to subsection 48.13(6) or require such an institution to retain or destroy the information.

2019, c. 7, Sched. 61, s. 5(2) [Not in force at date of publication.]

(p) prescribing special forms for registrations in respect of Indians;

Proposed Repeal — 60(1)(p)

(p) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(q) providing that registrations in respect of Indians shall be kept separate from other registrations;

Proposed Repeal — 60(1)(q)

(q) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(r) prescribing persons for the purposes of the definition of “birth parent” in section 1;

Proposed Repeal — 60(1)(r)

(r) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(r.1) respecting the rules that apply where an adopted person or birth parent has submitted more than one notice under sections 48.3 and 48.4 or one such notice and a disclosure veto under section 48.5, or any other combination of such documents, including providing whether a notice or disclosure veto prevails and terminating the effect of a notice or of a disclosure veto;

Proposed Repeal — 60(1)(r.1)

(r.1) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(r.2) governing the disclosure of information in relation to adoption in situations where an individual has been the subject of more than one registered adoption order, including providing that all or part of sections 48.1, 48.2, 48.3, 48.4 and 48.5 do not apply to an adopted person or a birth parent or classes of adopted persons or birth parents;

Proposed Repeal — 60(1)(r.2)

(r.2) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(s) for the purpose of effectively securing the due observance of this Act and generally for the better carrying out of the provisions thereof and obtaining the information required thereby;

Proposed Repeal — 60(1)(s)

(s) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(t) [Repealed 2016, c. 23, s. 33(4).]

(u) [Repealed 2005, c. 25, s. 13(3).]

(v) adopting by reference, in whole or in part, and with changes that the Lieutenant Governor in Council considers necessary, any classification of diseases for the purposes of this Act;

Proposed Repeal — 60(1)(v)

(v) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(w) prescribing registrations and records to be transferred under section 5 (transfer to the Archives of Ontario);

Proposed Repeal — 60(1)(w)

(w) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(x) prescribing requirements for the purposes of clause 48.13(2)(c);

Proposed Repeal — 60(1)(x)

(x) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(y) governing the use that institutions that obtain information under section 48.13 may make of the information so obtained, subject to subsection 48.13(6);

Proposed Repeal — 60(1)(y)

(y) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(z) requiring institutions that obtain information under section 48.13 to retain or destroy the information;

Proposed Repeal — 60(1)(z)

(z) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(z.1) specifying terms and conditions that shall be included in an agreement mentioned in clause 48.13(2)(d) where the terms and conditions govern the use that an institution may make of information obtained under section 48.13 subject to subsection 48.13(6) or require such an institution to retain or destroy the information.

Proposed Repeal — 60(1)(z.1)

(z.1) [Repealed 2019, c. 7, Sched. 61, s. 5(2). Not in force at date of publication.]

(2) Transitional matters — The Lieutenant Governor in Council may make regulations providing for transitional matters which, in the opinion of the Lieutenant Governor in Council, are necessary or desirable in connection with the enactment of sections 48.1, 48.2, 48.5, 48.6 and 48.7 by the *Access to Adoption Records Act (Vital Statistics Statute Law Amendment)*, 2008 and the amendment or repeal of other sections of this Act by that Act.

(3) Rolling incorporation — A regulation made under clause (1)(v) that incorporates another document by reference may provide that the reference to the document includes amendments made to the document from time to time after the regulation is made.

Proposed Amendment — 60(3)

(3) Rolling incorporation — A regulation made under clause (1)(e) that incorporates another document by reference may provide that the reference to the document includes amendments made to the document from time to time after the regulation is made.

2019, c. 7, Sched. 61, s. 5(3) [Not in force at date of publication.]

(4) Classes for use of information — A regulation made under clause (1)(y), (z) or (z.1) may be of general application or specific in its application to any institution or class of institutions or to any information or class of information.

Proposed Repeal — 60(4)

(4) [Repealed 2019, c. 7, Sched. 61, s. 5(4). Not in force at date of publication.]

(5) Same — A class described in a regulation made under clause (1)(y), (z) or (z.1) may be described according to any characteristic or combination of characteristics and may be described to include or exclude any specified member, whether or not with the same characteristics.

Proposed Repeal — 60(5)

(5) [Repealed 2019, c. 7, Sched. 61, s. 5(4). Not in force at date of publication.]

1994, c. 27, s. 102(30); 1997, c. 9, s. 7(3), (4); 1998, c. 18, Sched. E, s. 303(1), (2); 2001, c. 21, s. 15; 2002, c. 18, Sched. E, s. 9(6), (7); 2005, c. 25, s. 13; 2006, c. 9, Sched. P, s. 2; 2008, c. 5, s. 11; 2009, c. 33, Sched. 17, s. 13(3), (4); 2012, c. 8, Sched. 58, s. 16(1), (3); 2016, c. 23, s. 33(1), (4)

61. The Registrar General may make regulations,

(a) specifying what constitutes an error in a registration under this Act that subsection 34(1) authorizes the Registrar General to correct;

(b) specifying the time period during which the Registrar General, for the purpose of subsection 34(1), will accept a statutory declaration as evidence for correcting an error in a registration under this Act, governing requirements for the statutory declaration and specifying conditions that apply to the operation of a regulation made under this clause;

(c) governing the evidence that subsection 34(1) requires to establish that an

error has been made in a registration made under this Act.

Proposed Amendment — 61

61. Regulations of Registrar General—The Registrar General may make regulations,

- (a) prescribing forms and providing for their use;
- (b) prescribing the system of filing of registrations;
- (c) prescribing the particulars of registrations to be entered in the indexes;
- (d) prescribing the powers and duties of division registrars;
- (e) prescribing the records that division registrars are required to keep;
- (f) prescribing the information and returns that division registrars are required to transmit to the Registrar General and fixing the times for so transmitting them;
- (g) fixing the times when division registrars are required to forward registrations to the Registrar General;
- (h) prescribing the duties of sub-registrars and the returns that they are required to make;
- (i) prescribing the matters that are described in subsection 10(4), section 19, subsections 21(1), (2), (3) and (4), 31(1), (1.1), (8), (8.1), (9), (12) and (13) and 31.1(1), (2), (6), (7), (8), (9) and (10) as being prescribed or as being described or set out in the regulations in relation to any notice, certification or other documentation mentioned in those provisions, including the persons who are to comply with those provisions and the time limits for and manner of compliance;
- (j) requiring that the information set out in the regulations be given by way of statutory declaration;
- (k) requiring medical examinations for deserted new-born children and aban-
- doned children for the purposes of assisting in the registration of their birth;
- (l) governing the registration of still-births for the purposes of section 9.1, including providing provisions of this Act that apply, with necessary modification, to the registration of still-births;
- (m) prescribing who may be a guarantor;
- (n) prescribing the evidence on which the Registrar General may register a birth, still-birth, marriage or death after one year from the date of it;
- (o) providing for the registration of births, marriages, deaths, still-births, adoptions or changes of name in cases not otherwise provided for in this Act;
- (p) requiring the persons in charge of hospitals to make returns of the births of all children born in the hospitals;
- (q) specifying what constitutes an error in a registration under this Act that subsection 34(1) authorizes the Registrar General to correct;
- (r) specifying the time period during which the Registrar General, for the purpose of subsection 34(1), will accept a statutory declaration as evidence for correcting an error in a registration under this Act, governing requirements for the statutory declaration and specifying conditions that apply to the operation of a regulation made under this clause;
- (s) governing the evidence that subsection 34(1) requires to establish that an error has been made in a registration made under this Act;
- (t) providing for the correction or amendment of any registration in situations not otherwise provided for in this Act;
- (u) permitting the Registrar General to issue certificates that include the particulars listed in subsection 43(1) and the additional particulars listed in the regulations;

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- (v) specifying which provisions of this Act and the regulations apply and do not apply to the certificates described in clause (u) and limiting the number of those certificates that the Registrar General is permitted to issue;
- (w) prescribing persons for the purposes of section 40 and subsection 53(1);
- (x) prescribing information and documents for the purposes of paragraph 3 of subsection 45.1(1);
- (y) prescribing registrations to which subsections 51.1(1) and (2) apply.

2019, c. 7, Sched. 61, s. 6(2) [Not in force at date of publication.]

2019, c. 7, Sched. 61, s. 6(1)

that clause read immediately before that subsection comes into force, continue until the Registrar General makes an order under section 59.1 of the Act, as enacted by section 302, that is inconsistent with those regulations.

(4) Despite subsection (1), the Lieutenant Governor in Council may by regulation revoke regulations made under clause 60(l) of the Act, as that clause read immediately before that subsection comes into force, if the Registrar General makes an order under section 59.1 of the Act, as enacted by section 302, that is inconsistent with those regulations.

Related Provisions

— 1998, c. 18, Sched. E, s. 303(3), (4) [s. 303(3), (4) repealed 2019, c. 7, Sched. 61, s. 7.]:

- (3) Despite subsection (1), regulations made under clause 60(l) of the Act, as

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made under the *Vital Statistics Act*

R.R.O. 1990, Reg. 1094, as am. O. Reg. 328/91; 484/91; 328/93; 520/94; 673/94; 690/94, ss. 1–5, 6(1), (2) (Fr.); 176/01; 510/01; 11/02; 303/05; 573/05; 401/06; 463/06; 214/07; 467/07; 68/09; CTR 12 AU 11-1; 357/11; 296/13; 348/16; 490/16, ss. 1–13, 14 (Fr.); 144/17, s. 1(1), (2) (Fr.); 107/18; 186/18 [Repealed O. Reg. 307/18, s. 4.]; 307/18, ss. 1–3; 418/19; 122/20; 130/21; 154/21.

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REGISTRATION OF MARRIAGE

30. (1) If, within one year of the date of a marriage, the Registrar General receives a statement of marriage duly completed in accordance with Regulation 738 (*General*) of the Revised Regulations of Ontario, 1990 made under the *Marriage Act* and if the Registrar General is satisfied as to the correctness and sufficiency of the statement, the Registrar General shall forthwith register the marriage and, upon the request of the person who solemnized the marriage, mail an acknowledgement of receipt of the statement of marriage to the person.

(2) The acknowledgment of receipt of the statement of marriage shall be in the form approved by the Registrar General.

O. Reg. 68/09, s. 19; 490/16, s. 10

31. (1) Where a marriage has not been registered within one year of the day of the marriage, application for the registration of the marriage may be made to the Registrar Gen-

eral by either party to the marriage or by any other person.

(2) The application shall,

- (a) be in the form approved by the Registrar General; and
- (b) be accompanied by,
 - (i) particulars of the marriage in the form approved by the Registrar General,
 - (ii) a statutory declaration by the applicant in the form approved by the Registrar General,
 - (iii) the required fee, and
 - (iv) one item of Class A evidence of marriage or at least two items of Class B evidence of marriage.
O. Reg. 328/91, s. 7; 303/05, s. 1; 214/07, s. 10; 68/09, s. 20

32. Class A evidence of marriage consists of,

- (a) a notarial copy of the record of the marriage in the marriage register of the church where solemnized;
- (b) a certified copy of the record of the marriage in the marriage register of the church where the marriage was solemnized;
- (c) an affidavit of the person solemnizing the marriage, setting out the names of the parties and the date and place of their marriage; or
- (d) an acknowledgment of receipt of a statement of marriage in the form authorized under the Act at the time the acknowledgement was given.
O. Reg. 68/09, s. 21

33. Where an applicant for registration of a marriage not registered within one year of the day of marriage is unable to obtain Class A evidence of the marriage, he or she may file with the Registrar General,

- (a) an affidavit setting out the applicant's attempts to obtain Class A evidence of the marriage, together with

the correspondence he or she has had in respect thereto; and

(b) at least two items of Class B evidence of marriage.

34. (1) Class B evidence of marriage consists of,

(a) a telegram dated the day of the marriage and addressed to either or both parties to the marriage;

(b) a wedding invitation or wedding announcement setting out the date and place of marriage and the names of the parties;

(c) a newspaper, a notarial copy thereof or a notarial extract therefrom, containing,

(i) the date of publication of the newspaper, and

(ii) an announcement of the marriage, the date and place thereof and the names of the parties;

(d) affidavits of two persons other than parties to the marriage, each stating,

(i) the date and place of the marriage and the names of the parties, and

(ii) that the deponent was present at the marriage ceremony; or

(e) any other documentary evidence of the marriage.

(2) The affidavits referred to in clause (1)(d) shall together be deemed to be one item of Class B evidence of marriage.

REGISTRATION OF DEATHS

35. (1) Upon the request of the funeral director, the applicable one of the following persons shall complete, certify and deliver to the funeral director a statement in the form approved by the Registrar General that contains personal particulars of the deceased:

1. The nearest relative present at the death or last illness, or any relative who may be available.

2. If no relative is available, the occupier of the premises in which the deceased died or, if the occupier is the deceased, any adult person residing in the premises who was present at the death or has knowledge of the personal particulars.

3. If the death occurred in unoccupied premises and no relative is available, any adult person who was present at the death or has knowledge of the personal particulars.

4. The coroner who has been notified of the death and who has made an investigation into the death, received a report of the results of an investigation into the death or held an inquest regarding the death.

(2) Subject to subsections (3) and (4), any legally qualified medical practitioner who has been in attendance during the last illness of a deceased person or who has sufficient knowledge of the last illness shall immediately after the death complete and sign a medical certificate of death in the form approved by the Registrar General, stating the cause of death according to the classification of diseases adopted by reference in section 70, and shall deliver the medical certificate to the funeral director.

(3) A registered nurse who holds an extended certificate of registration under the *Nursing Act, 1991* shall, immediately after the death of a person, complete and sign a medical certificate of death in the form approved by the Registrar General, stating the cause of death according to the classification of diseases adopted by reference in section 70 and shall deliver the medical certificate to the funeral director if,

(a) the nurse has had primary responsibility for the care of the deceased during the last illness of the deceased;

(b) the death was expected during the last illness of the deceased;

(c) there was a documented medical diagnosis of a terminal disease for the deceased made by a legally qualified

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medical practitioner during the last illness of the deceased;

(d) there was a predictable pattern of decline for the deceased during the last illness of the deceased; and

(e) there were no unexpected events or unexpected complications during the last illness of the deceased.

(4) In the case of a death which a coroner has investigated under the *Coroners Act*, the coroner shall, as soon as the cause of death is known, complete and sign a medical certificate of death in the form approved by the Registrar General, stating the cause of death according to the classification of diseases adopted by reference in section 70, and shall deliver the medical certificate to the funeral director.

(5) Upon receiving the statement containing the personal particulars and upon receiving the medical certificate of death or a warrant to bury, the funeral director shall complete the statement containing personal particulars, setting out the proposed date and place of burial, cremation or other disposition or the removal of the body, and shall deliver the documents so received to the division registrar of,

(a) the registration division within which the death occurs, if the place of death is known; or

(b) the registration division within which the body is found, if the place of death is not known.

O. Reg. 68/09, s. 22; 357/11, s. 7; 144/17, s. 1(1)

36. (1) If, within one year from the day of the death of a person, the division registrar receives the statement containing the personal particulars and receives the medical certificate of death or a warrant to bury and if the division registrar is satisfied as to the correctness and sufficiency of them, the division registrar shall register the death by signing the documents so received; in that case, the documents so received constitute the registration of the death.

(2) A division registrar shall not register any death after one year from the day of the death.

(3) Upon registering a death, the division registrar, without the payment of any fee, shall forthwith prepare and deliver to the funeral director,

(a) an acknowledgment of registration of the death in the form approved by the Registrar General; and

(b) a burial permit, in the form approved by the Registrar General, for the purpose of the burial, cremation or other disposition or the removal of the body of the deceased.

(4) Upon issuing the burial permit, the division registrar shall forward to the Registrar General the statement of death and whichever of the medical certificate of death and the warrant to bury that the division registrar received.

O. Reg. 68/09, s. 22

37. If a death has occurred and it is impracticable to register it, by reason of distance, with the division registrar of the proper registration division, registration of the death may be made with the nearest division registrar who shall,

(a) register the death;

(b) issue an acknowledgment of registration of death and a burial permit; and

(c) transmit to the proper division registrar, within two business days, notice of registration of death in the form approved by the Registrar General and keep a record of the notice so transmitted.

O. Reg. 68/09, s. 22

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38. (1) A coroner who issues a warrant to bury under subsection 21(6) of the Act shall,

(a) forthwith deliver it to the funeral director; and

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(b) complete and mail or deliver the medical certificate of death to the Registrar General as soon as the cause of death is known.

(2) The documentation prescribed for the purpose of clause 21(5)(b) of the Act is the warrant to bury issued under subsection 21(6) of the Act or the medical certificate of death.

(3) If a person appointed under section 16.1 of the *Coroners Act* is investigating the death and delivers a warrant to bury on behalf of the coroner and if, at the time of issuing the warrant to bury, the coroner is not present in the location where the death investigation is being conducted,

(a) the signature of the coroner on the warrant to bury may be the coroner's signature reproduced by any method; and

(b) the person delivering the warrant to bury shall affix his or her signature to it.

O. Reg. 68/09, s. 22; 357/11, s. 8

39. (1) The documentation that subsection 22(1) of the Act describes as being required by the regulations consists of the following documents issued by a division registrar:

1. An acknowledgment of registration of death mentioned in clause 36(3)(a) or 37(b).
2. A burial permit.

(2) A cemetery owner shall not permit the interment or cremation of the body of any person in the cemetery or crematorium unless the burial permit is delivered to the cemetery owner.

(3) For the purpose of subsection 22(2) of the Act, funeral directors shall retain all acknowledgments of registration of death that they receive under subsection 22(1) of the Act.

(4) For the purpose of subsection 22(2) of the Act, cemetery owners shall retain, for a period of at least two years after the burial,

all burial permits that they receive under subsection 22(1) of the Act.

(5) If no person is in charge of the cemetery at the time of the burial or other disposition of the body, the funeral director shall write across the face of the burial permit a statement to that effect, append his or her signature to the statement and return the burial permit to the division registrar of the registration division in which the burial or other disposition took place.

(6) The burial permit is the documentation prescribed for the purpose of subsection 26(1) of the Act.

O. Reg. 68/09, s. 22

40. (1) If the death of a person has not been registered within one year from the day of the death, any person may apply to the Registrar General, in the form approved by the Registrar General, to have the death registered.

(2) The application shall be accompanied by,

- (a) the required fee;
- (b) the completed statement described in subsection 35(1);
- (c) a statutory declaration in the form approved by the Registrar General; and
- (d) subject to section 45, at least one item of Class A evidence of death.

O. Reg. 214/07, s. 11; 68/09, s. 22

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44. (1) Class A evidence of death consists of,

- (a) a medical certificate of death in the form authorized under the Act at the time the certificate was made;
- (b) a notarial copy of the record of the funeral director; or
- (c) an acknowledgment of registration of death in the form authorized under the Act at the time the acknowledgement was given.

(2) The evidence under clause (1)(a) or (b) shall set out the date and place of death and the name of the deceased.

O. Reg. 68/09, s. 24

45. Where an applicant for registration of a death after one year from the day of the death is unable to obtain Class A evidence of the death, he or she may file with the Registrar General,

(a) an affidavit setting out the applicant's attempts to obtain Class A evidence of the death, together with the correspondence he or she has had in respect thereto; and

(b) at least two items of Class B evidence of death.

46. (1) Class B evidence of a death consists of,

(a) a letter or telegram,

- (i) addressed to the applicant or a relative of the deceased;
- (ii) dated not more than one month after the death, and
- (iii) setting out the date of death and the name of the deceased;

(b) a newspaper, a notarial copy thereof or a notarial extract therefrom, containing,

(i) the date of publication of the newspaper, and

(ii) an announcement of the death, the date and place thereof, and the name of the deceased;

(c) a notarial copy of a burial permit or any cemetery record that sets forth the name of the deceased and the date of death;

(d) affidavits of two persons, each stating,

(i) the name of the deceased and the date and place of death,

(ii) the relationship between the deponent and the deceased, and

(iii) that the deponent was present at the funeral and saw the body of the deceased; or

(e) any documentary evidence of death.

(2) The affidavits referred to in clause (1)(d) shall together be deemed to be one item of Class B evidence of death.

47. If the Registrar General is satisfied that the application made under section 40 is made in good faith and that the evidence adduced in support of it is correct and sufficient, the Registrar General may register the death by signing the statement; in that case, the statement constitutes the registration of the death.

O. Reg. 214/07, s. 11; 68/09, s. 25

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CERTIFICATES

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62. (1) A death certificate shall be in the form approved by the Registrar General.

(2) [Repealed O. Reg. 510/01, s. 5.]

O. Reg. 328/91, s. 16; 328/93, s. 5; 510/01, s. 5; 68/09, s. 36

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SUB-REGISTRARS

71. Where, with the approval of the Registrar General, the division registrar in a city having a population of 50,000 or over appoints a sub-registrar to carry out the provisions of the Act with respect to the registration of deaths and for the issuing of burial permits, the sub-registrar shall,

(a) within 24 hours after issuing a burial permit, forward to the division registrar by whom the sub-registrar was appointed the statement of death and whichever of the medical certificate of death and the warrant to bury that the sub-registrar receives; and

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| <p>(b) keep a chronological index containing the following particulars of each death:</p> <ol style="list-style-type: none">1. Name of deceased.2. Date of death.3. Place of death.4. [Repealed O. Reg. 68/09, s. 37(2).]5. Sex.6. [Repealed O. Reg. 68/09, s. 37(2).] | <ol style="list-style-type: none">7. Name of the person who completed the medical certificate of death or warrant to bury.8. Name and address of the funeral home or funeral director. O. Reg. 68/09, s. 37 <p style="text-align: center;">.....</p> |
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PART VI — INSURED PAYMENTS (SS. 43–66)

WORKPLACE SAFETY AND INSURANCE ACT, 1997

S.O. 1997, c. 16, Sched. A, as am. S.O. 1997, c. 26, s. 137; 1998, c. 36; 1999, c. 6, s. 67; 2000, c. 26, Sched. I, s. 1; 2001, c. 9, Sched. I, s. 4; 2002, c. 8, Sched. P, s. 8; 2002, c. 18, Sched. J, s. 5; 2004, c. 8, ss. 46, 47(2), item 3 (Fr.); 2004, c. 17, s. 32, Table; 2005, c. 5, s. 73; 2005, c. 29, s. 7; 2006, c. 13, s. 4(1), (2), (3) (Fr.); 2006, c. 19, Sched. M, s. 7 (Fr.); 2006, c. 21, Sched. F, s. 10.1(1); 2007, c. 3; 2007, c. 7, Sched. 41; 2008, c. 20; 2009, c. 33, Sched. 6, s. 91, Sched. 20, s. 4; 2010, c. 15, s. 248 [s. 248(1) repealed 2006, c. 21, Sched. F, s. 10.1; s. 248(2), (3) not in force at date of publication.]; 2010, c. 16, Sched. 9, s. 2; 2010, c. 26, Sched. 21 [s. 5(1) repealed 2010, c. 26, Sched. 21, s. 5(2).]; 2011, c. 1, Sched. 7, s. 3; 2011, c. 11, ss. 19–28 [s. 21 not in force at date of publication.]; 2014, c. 10, Sched. 5; 2015, c. 34, Sched. 3; 2015, c. 38, Sched. 23; 2016, c. 4, ss. 1, 2; 2017, c. 7, s. 6; 2017, c. 8, Sched. 33; 2017, c. 14, Sched. 4, s. 36; 2017, c. 24, s. 82(1) (Fr.), (2) (Fr.), (3); 2017, c. 34, Sched. 45, Sched. 46, s. 55; 2018, c. 3, Sched. 5, s. 68 [Repealed 2019, c. 1, Sched. 3, s. 5.]; 2018, c. 6, Sched. 3, s. 16 [Not in force at date of publication.]; 2018, c. 8, Sched. 37, ss. 1–3 [ss. 1(3)–(5) not in force at date of publication; s. 3(3), (4) conditions not yet satisfied.]; 2019, c. 1, Sched. 4, s. 66 [Not in force at date of publication.]; 2019, c. 7, Sched. 17, s. 169; 2019, c. 9, Sched. 13.

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Compensation

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48. (1) Death benefits — This section applies when a worker's death results from an injury for which the worker would otherwise have been entitled to benefits under the insurance plan.

(2) Spouse, lump sum payment — A surviving spouse who was cohabiting with the worker at the time of the worker's death is entitled to payment of a lump sum of \$80,673.30,

- (a) plus \$2,016.83 for each year by which the spouse's age on the date of the worker's death is less than 40; or
- (b) minus \$2,016.83 for each year by which the spouse's age at the date of the worker's death is greater than 40.

However, the maximum amount payable under this subsection is \$121,009.87 and the minimum amount is \$40,336.60.

(3) Periodic payment to spouse, no children — If the deceased worker is survived by a spouse who was cohabiting with the worker at the time of the worker's death, but no children, the spouse is entitled to be paid, by periodic payments, 40 per cent of the deceased worker's net average earnings,

- (a) plus one per cent of the net average earnings for each year by which the spouse's age on the date of the worker's death is greater than 40; or
- (b) minus one per cent of the net average earnings for each year by which the spouse's age on the date of the worker's death is less than 40.

However, the maximum percentage payable under this subsection is 60 per cent and the minimum percentage is 20 per cent. If the deceased worker's net average earnings are less than \$22,904.44, they shall be deemed to be \$22,904.44.

(4) Periodic payment to spouse with children — If the deceased worker is survived by a spouse and one or more children, the spouse is entitled to be paid, by periodic payments, 85 per cent of the deceased worker's net average earnings until the youngest child reaches 19 years of age. However, the minimum amount payable under this subsection is \$22,904.44 per year.

(5) Exception — Subsection (4) does not apply if the Board determines that the spouse and the children do not reside together or that the children are not in the custody or in the care and control of the spouse. In those circumstances, the Board shall apportion the amount otherwise payable under subsection (4) in a manner that the Board considers appropriate among the children, the spouse and any other person who has the care, control or custody of the children.

(6) Same — Subject to subsection (19), a spouse who ceases to be entitled to payments under subsection (4) becomes entitled to payments under subsection (3) as if the worker had died immediately after the day on which the youngest child reached 19 years of age.

(7) Separated spouse — If, immediately before his or her death, the deceased worker was required to make support or maintenance payments under a separation agreement or judicial order to a person who had been his or her spouse, the person is entitled to benefits under this section as a spouse. Despite the absence of a separation agreement or judicial order, the Board may pay benefits under this section to a person who had been a spouse of the deceased worker as if he or she were a spouse if the person was dependent on the worker at the time of the worker's death.

(8) Apportionment among spouses — If there is more than one person entitled to payments under this section as a spouse of the deceased worker, the following rules apply:

1. The total lump sum payments to the spouses must not exceed \$121,009.87.

2. The total periodic payments to the spouses must not exceed 85 per cent of the deceased worker's net average earnings.

3. The Board shall apportion the payments among the spouses in accordance with,

- i. the relative degree of financial and emotional dependance of each spouse on the deceased worker at the time of death,
- ii. the period of separation, if any, of each spouse from the deceased worker at the time of death, and
- iii. the size of the relative entitlements of those so entitled without reference to this subsection.

(9) Labour market re-entry plan for spouse — Upon request, the Board shall provide a spouse with a labour market re-entry assessment. The request must be made within one year after the death of the worker.

(10) Same — Subsections 42(2) to (8) apply with necessary modifications with respect to the labour market re-entry plan.

(11) Same — If the spouse fails to comply with subsection 42(7), the Board may discontinue the provision of a labour market re-entry assessment or plan.

(12) Bereavement counselling — Upon request, the Board may pay for bereavement counselling for the spouse or children of the worker. The request must be received within one year after the worker's death.

(13) Lump sum payment to dependent children, no spouse — If there is no spouse when the worker dies and if the deceased worker is survived by one or more dependent children, the dependent children as a class are entitled to payment of a lump sum of \$80,673.30.

(14) Periodic payment to dependent children, no spouse — If there is no spouse or if the spouse dies and the deceased

worker is survived by only one dependent child, the dependent child is entitled to be paid, by periodic payments, 30 per cent of the deceased worker's net average earnings. However, if the deceased worker's net average earnings are less than \$22,904.44, they shall be deemed to be \$22,904.44.

(15) Same — If there is no spouse or if the spouse dies and the deceased worker is survived by more than one dependent child, the dependent children as a class are entitled to be paid, by periodic payments, 30 per cent of the deceased worker's net average earnings plus 10 per cent of the net average earnings for each dependent child, except one child. However, if the deceased worker's net average earnings are less than \$22,904.44 they shall be deemed to be \$22,904.44 and the total amount payable under this subsection shall not exceed 85 per cent of the net average earnings of the worker at the time of the accident.

(16) Cessation of payments for children — Periodic payments in respect of a child cease when the child reaches 19 years of age, except in the circumstances described in subsections (17) and (18).

(17) Periodic payments, education of children — If the Board is satisfied that it is advisable for a child over 19 years of age to continue his or her education, the child is entitled to be paid, by periodic payments, 10 per cent of the deceased worker's net average earnings until such time as the Board considers appropriate.

(18) Periodic payments, incapable children — Periodic payments in respect of a child who is physically or mentally incapable of earning wages continue until the child is able to earn wages or until his or her death.

(19) Maximum payable to spouse and children — The total periodic payments to the spouse and the children of the deceased worker must not exceed 85 per cent of the deceased worker's net average earnings.

(20) Parent (not spouse) — Despite subsections (14) and (15), the following rules apply if one or more children who are entitled to payments under this section are being maintained by a parent who is not the spouse of the deceased worker or by another person who is acting in the role of parent:

1. The parent or other person is entitled to receive the periodic payments to which a spouse of the deceased worker would be entitled under subsection (4).
2. In the circumstances described in paragraph 1, the payments to the parent or other person with respect to the children are in lieu of the periodic payments to which the children would otherwise be entitled under this section.
3. If there is more than one individual who is a parent or other person and if there is more than one child, the Board shall apportion the payments.
4. The total periodic payments under this subsection must not exceed 85 per cent of the deceased worker's net average earnings.

(21) Dependents, no spouse or children — If the deceased worker has no spouse or children but is survived by other dependants, the dependants are entitled to reasonable compensation proportionate to the loss occasioned to each of them. The following rules apply with respect to that compensation:

1. The Board shall determine the amount of the compensation.
2. The total periodic payments to the dependants must not exceed 50 per cent of the deceased worker's net average earnings.
3. The periodic payments to a dependent are payable only as long as the worker could have been reasonably expected to continue to support the dependent if the deceased worker had not suffered injury.

(22) Burial expenses — The Board shall determine and pay the necessary expenses of

burial or cremation of the deceased worker, paying at least \$3,025.25. If, because of the circumstances of the case, the worker's body is transported a considerable distance for burial or cremation, the Board may also pay the necessary transportation costs.

(23) Deductions for CPP and QPP payments — In calculating the compensation payable by way of periodic payments under this section, the Board shall have regard to any payments of survivor benefits for death caused by injury that are received under the Canada Pension Plan or the Quebec Pension Plan in respect of the deceased worker.

(24) Net average earnings — For the purposes of this section, the deceased worker's net average earnings are to be determined as of the date of the injury to the worker.

(25) Transition — The amount of a payment payable to a person under this section for any period before January 1, 2018 shall be calculated using the amounts set out in this section as it read on December 30, 2017, and as adjusted in accordance with the alternate indexing factor described in subsection 50(1), as it read on December 31, 2017, regardless of when the Board determines that the person is entitled to the amount.

1999, c. 6, s. 67(10)–(25); 2000, c. 26, Sched. I, s. 1(9); 2005, c. 5, s. 73(9)–(24); 2017, c. 8, Sched. 33, s. 5

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Administration

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61. (1) Payments owing to deceased workers — If benefits owing under the in-

surance plan are payable to an estate and there is no personal representative of the estate to whom the Board may make the payment, the Board,

- (a) shall make reasonable inquiries to determine to whom the money owing to the estate shall be paid; or
- (b) may apply, without notice, to the court for an order for payment of money into court.

(2) Court order — Upon an application under clause (1)(b), the court may upon such notice, if any, as it considers necessary make such order as it consider appropriate.

(3) Payments to persons entitled — If the Board concludes that a person should be paid the benefits owing to the estate under clause (1)(a), the Board shall pay the benefits to the appropriate person.

(4) Court costs — If the Board makes a payment into court under a court order, the court may,

- (a) fix, without assessment, the costs incurred upon or in conjunction with any application or order; and
- (b) order any costs to be paid out of the benefits.

(5) Discharge from liability — A payment to a person under subsection (3) or a payment made pursuant to a court order discharges the Board from any liability to the extent of the payment.

(6) Application — The application of this section is not limited to amounts held by the Board for workers who die after this Act comes into force.

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ONT. REG. 194 — RULES OF CIVIL PROCEDURE

made under the *Courts of Justice Act*

R.R.O. 1990, Reg. 194, as am.

R.R.O. 1990, Reg. 194, r.

13.1.02(12), 24.01(2), 37.03(3),
78.14; O. Reg. 219/91; 396/91; 73/92;
175/92; 535/92; 770/92; 212/93;
465/93; 466/93; 766/93; 351/94;
484/94; 739/94; 740/94; 69/95; 70/95;
377/95; 533/95; 534/95; 60/96; 61/96;
175/96; 332/96; 333/96; 536/96;
554/96; 555/96; 118/97; 348/97;
427/97; 442/97; 171/98; 214/98;
217/98; 292/98; 452/98; 453/98 [s.
2(2) revoked O. Reg. 244/01, s. 7.];
570/98; 627/98; 288/99; 290/99;
292/99; 484/99; 488/99 [s. 4 repealed
O. Reg. 231/13, s. 12.]; 583/99;
24/00; 25/00; 504/00; 652/00; 653/00;
654/00; 113/01; 243/01; 244/01;
284/01; 427/01 [ss. 1(2), 4(2), 5(2),
6(2), (5) not in force at date of publi-
cation. Revoked O. Reg. 308/02, ss.
1(2), 2(2), 3(2), 4(3), (5).]; 447/01;
457/01; 206/02; 308/02; 336/02;
19/03; 54/03; 263/03; 419/03; 14/04;
131/04; 132/04, ss. 1–10, 11 (Fr.),
12–24; 219/04; 42/05; 168/05;
198/05; 260/05 [Corrected Ont. Gaz.
9/7/05, Vol. 138:28; 4/3/2006, Vol.
139:9.]; 77/06; 8/07; 573/07; 575/07,
ss. 1–4, 5 (Fr.), 6–24, 25(1) (Fr.), (2),
26–38; 55/08; 438/08, ss. 1–12,
13(1)–(3), (4) (Fr.), 14–65, 66 (Fr.),
67; 394/09; 453/09; 186/10, ss. 1–5
(Fr.), 6; 436/10; 55/12, ss. 1, 2, 3
(Fr.), 4–7, 8 (Fr.), 9–15; 399/12;
231/13, ss. 1–9, 10 (Fr.), 11; 43/14;
170/14; CTR 9 OC 14 - 1; 259/14,
ss. 1, 2, 3 (Fr.), 4–8, 9 (Fr.), 10 (Fr.),
11; 193/15, ss. 1 (Fr.), 2 (Fr.), 3, 4, 5

(Fr.), 6–18, 19(1), (2) (Fr.), 20–23;
147/16; 281/16; 487/16; 82/17, ss.
1–3, 4 (Fr.), 5–15, 16–19 (Fr.), 20;
203/17; 584/17; 536/18, ss. 1 (Fr.),
2–7; 537/18; 344/19, ss. 1 (Fr.),
2–13; 455/19; 456/19; CTR 12 FE 20
- 4; 316/20; 441/20; 496/20; 689/20;
690/20; 711/20; 107/21; 111/21 [To
come into force April 1, 2021.]

GENERAL MATTERS

Rule 1 — Citation, Application and Interpretation

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1.02 Application of Rules —

Court of Appeal and Superior Court of Justice

(1) These rules apply to all civil proceedings in the Court of Appeal and in the Superior Court of Justice, subject to the following exceptions:

1. They do not apply to proceedings in the Small Claims Court, which are governed by Ontario Regulation 258/98 (*Rules of the Small Claims Court*).
2. They do not apply to proceedings governed by Ontario Regulation 114/99 (*Family Law Rules*), except as provided in those rules.
3. They do not apply if a statute provides for a different procedure.

SCHEDULE [1] [Revoked O. Reg. 131/04, s. 1(2).]

[Revoked O. Reg. 131/04, s. 1(2).]

Combined Proceeding in Family Court of Superior Court of Justice

(1.1) Where a proceeding combines a matter to which the Family Law Rules apply with a matter to which these rules would ordinarily apply, the parties may agree, or the court on motion may order, that the Family Law

R. 1.02(1.1)

Ont. Reg. 194 — Rules of Civil Procedure

Rules apply to the combined proceeding or part of it.

- (2) [Revoked O. Reg. 504/00, s. 1.]
(3) [Revoked O. Reg. 504/00, s. 1.]
(4) [Revoked O. Reg. 504/00, s. 1.
O. Reg. 484/94, s. 1; 288/99, s. 1; 292/99, s.
1(1), (2); 504/00, s. 1; 131/04, s. 1; 394/09, s. 1
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PARTIES AND JOINDER

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Rule 7 — Parties Under Disability**7.01 Representation By Litigation Guardian —*****Party under Disability***

(1) Unless the court orders or a statute provides otherwise, a proceeding shall be commenced, continued or defended on behalf of a party under disability by a litigation guardian.

Substitute Decisions Act Applications

(2) Despite subrule (1), an application under the *Substitute Decisions Act, 1992* to appoint a guardian of property or a guardian of the person may be commenced, continued and defended without the appointment of a litigation guardian for the respondent in respect of whom the application is made, unless the court orders otherwise.

Previously Appointed Committees

(3) A committee named by order or statute before April 3, 1995 is the litigation guardian of the person in respect of whom the committee was named, and shall be referred to as the litigation guardian for all purposes.

(4) Subrule (3) also applies to the Public Guardian and Trustee acting under an order made under subsection 72(1) or (2) of the *Mental Health Act* as it read before April 3, 1995.

O. Reg. 69/95, s. 2; 281/16, s. 2

7.02 Litigation Guardian for Plaintiff or Applicant —***Court Appointment Unnecessary***

(1) Any person who is not under disability may act, without being appointed by the court, as litigation guardian for a plaintiff or applicant who is under disability, subject to subrule (1.1).

Mentally Incapable Person or Absentee

(1.1) Unless the court orders otherwise, where a plaintiff or applicant,

- (a) is mentally incapable and has a guardian with authority to act as litigation guardian in the proceeding, the guardian shall act as litigation guardian;
(b) is mentally incapable and does not have a guardian with authority to act as litigation guardian in the proceeding, but has an attorney under a power of attorney with that authority, the attorney shall act as litigation guardian;
(c) is an absentee and a committee of his or her estate has been appointed under the *Absentees Act*, the committee shall act as litigation guardian;
(d) is a person in respect of whom an order was made under subsection 72(1) or (2) of the *Mental Health Act* as it read before April 3, 1995, the Public Guardian and Trustee shall act as litigation guardian.

Affidavit to be Filed

(2) No person except the Children's Lawyer or the Public Guardian and Trustee shall act as litigation guardian for a plaintiff or applicant who is under disability until the person has filed an affidavit in which the person,

- (a) consents to act as litigation guardian in the proceeding;
(b) confirms that he or she has given written authority to a named lawyer to act in the proceeding;
(c) provides evidence concerning the nature and extent of the disability;

- (d) in the case of a minor, states the minor's birth date;
- (e) states whether he or she and the person under disability are ordinarily resident in Ontario;
- (f) sets out his or her relationship, if any, to the person under disability;
- (g) states that he or she has no interest in the proceeding adverse to that of the person under disability; and
- (h) acknowledges that he or she has been informed of his or her liability to pay personally any costs awarded against him or her or against the person under disability.

(3) [Repealed O. Reg. 584/17, s. 4.]
O. Reg. 69/95, s. 3; 288/99, s. 7; 14/04, s. 7;
487/16, s. 4; 584/17, s. 4

7.03 Litigation Guardian for Defendant or Respondent —

Generally must be Appointed by Court

(1) No person shall act as a litigation guardian for a defendant or respondent who is under disability until appointed by the court, except as provided in subrule (2), (2.1) or (3).

Where Minor Interested in Estate or Trust

(2) Where a proceeding is against a minor in respect of the minor's interest in an estate or trust, the Children's Lawyer shall act as the litigation guardian of the minor defendant or respondent, unless the court orders otherwise.

Mentally Incapable Person or Absentee

(2.1) Unless the court orders otherwise, where a proceeding is against,

- (a) a mentally incapable person who has a guardian with authority to act as litigation guardian in the proceeding, the guardian shall act as litigation guardian;
- (b) a mentally incapable person who does not have a guardian with authority to act as litigation guardian in the

proceeding but has an attorney under a power of attorney with that authority, the attorney shall act as litigation guardian;

(c) an absentee, and a committee of his or her estate has been appointed under the *Absentees Act*, the committee shall act as litigation guardian;

(d) a person in respect of whom an order has been made under subsection 72(1) or (2) of the *Mental Health Act* as it read before April 3, 1995, the Public Guardian and Trustee shall act as litigation guardian.

Affidavit by Guardian or Attorney

(2.2) A person who has authority under subrule (2.1) to act as litigation guardian shall, before acting in that capacity in a proceeding, file an affidavit containing the information referred to in subrule (10).

(2.3) [Revoked O. Reg. 14/04, s. 8.]

Defending Counterclaim

(3) A litigation guardian for a plaintiff may defend a counterclaim without being appointed by the court.

Motion by Person Seeking to be Litigation Guardian

(4) A person who seeks to be the litigation guardian of a defendant or respondent under disability shall move to be appointed by the court before acting as litigation guardian.

Motion by Plaintiff or Applicant to Appoint Litigation Guardian

(5) Where a defendant or respondent under disability has been served with an originating process and no motion has been made under subrule (4) for the appointment of a litigation guardian, a plaintiff or applicant, before taking any further step in the proceeding, shall move for an order appointing a litigation guardian for the party under disability.

(6) At least ten days before moving for the appointment of a litigation guardian, a plaintiff or applicant shall serve a request for ap-

R. 7.03(6)

Ont. Reg. 194 — Rules of Civil Procedure

pointment of litigation guardian (Form 7A) on the party under disability personally or by an alternative to personal service under rule 16.03.

(7) The request may be served on the party under disability with the originating process.

(8) A motion for the appointment of a litigation guardian may be made without notice to the party under disability.

(9) A plaintiff or applicant who moves to appoint the Children's Lawyer or the Public Guardian and Trustee as the litigation guardian shall serve the notice of motion and the material required by subrule (10) on the Children's Lawyer or the Public Guardian and Trustee.

Evidence on Motion to Appoint

(10) A person who moves for the appointment of a litigation guardian shall provide evidence on the motion concerning,

- (a) the nature of the proceeding;
- (b) the date on which the cause of action arose and the date on which the proceeding was commenced;
- (c) service on the party under disability of the originating process and the request for appointment of litigation guardian;
- (d) the nature and extent of the disability;
- (e) in the case of a minor, the minor's birth date;
- (f) whether the person under disability ordinarily resides in Ontario and,

except where the proposed litigation guardian is the Children's Lawyer or the Public Guardian and Trustee, evidence,

- (g) concerning the relationship, if any, of the proposed litigation guardian to the party under disability;
- (h) whether the proposed litigation guardian ordinarily resides in Ontario;

- (i) that the proposed litigation guardian,
- (ii) consents to act as litigation guardian in the proceeding,
- (iii) is a proper person to be appointed,
- (iv) has no interest in the proceeding adverse to that of the party under disability, and
- (v) acknowledges having been informed that he or she may incur costs that may not be recovered from another party.

O. Reg. 69/95, ss. 4, 19, 20; 288/99, s. 8; 14/04, s. 8

7.04 Representation of Persons Under Disability —***Litigation guardian for party***

(1) Unless there is some other proper person willing and able to act as litigation guardian for a party under disability, the court shall appoint,

- (a) the Children's Lawyer, if the party is a minor;
- (b) the Public Guardian and Trustee, if the party is mentally incapable within the meaning of section 6 or 45 of the *Substitute Decisions Act, 1992* in respect of an issue in the proceeding and there is no guardian or attorney under a power of attorney with authority to act as litigation guardian;
- (c) either of them, if clauses (a) and (b) both apply to the party.

Legal representative for minor who is not a party

(2) Where, in the opinion of the court, the interests of a minor who is not a party require separate representation in a proceeding, the court may request and may by order authorize the Children's Lawyer, or some other proper person who is willing and able to act, to act as the person's legal representative.

Litigation guardian for incapable person who is not a party

(3) Where, in the opinion of the court, the interests of a mentally incapable person who is not a minor and not a party require separate representation in a proceeding, the court may appoint as the mentally incapable person's litigation guardian the Public Guardian and Trustee or some other proper person who is willing and able to act.

O. Reg. 69/95, s. 5

to continue the proceeding without the litigation guardian,

and the order shall be served forthwith on every other party and on the litigation guardian.

(2) Where it appears to the court that a litigation guardian is not acting in the best interests of the party under disability, the court may substitute the Children's Lawyer, the Public Guardian and Trustee or any other person as litigation guardian.

O. Reg. 69/95, ss. 18–20

7.05 Powers and Duties of Litigation Guardian — (1) Where a party is under disability, anything that a party in a proceeding is required or authorized to do may be done by the party's litigation guardian.

(2) A litigation guardian shall diligently attend to the interests of the person under disability and take all steps necessary for the protection of those interests, including the commencement and conduct of a counterclaim, crossclaim or third party claim.

(3) A litigation guardian other than the Children's Lawyer or the Public Guardian and Trustee shall be represented by a lawyer and shall instruct the lawyer in the conduct of the proceeding.

O. Reg. 69/95, ss. 18–20; 575/07, s. 1, item 5

7.07 Noting Party Under Disability in Default — (1) If a party to an action is under a disability, the party may be noted in default under rule 19.01 only with leave of a judge.

(2) Notice of a motion for leave under subrule (1) shall be served on the party's litigation guardian and, if the litigation guardian is not the Children's Lawyer or the Public Guardian and Trustee,

- (a) on the Children's Lawyer, if the party is a minor; or
- (b) on the Public Guardian and Trustee, in any other case.

O. Reg. 69/95, ss. 18–20; 19/03, s. 2; 259/14, s. 1

7.07.1 Discontinuance By or Against Party Under Disability — (1) If a party to an action is under a disability, the action may be discontinued by or against the party under rule 23.01 only with leave of a judge.

(2) Notice of a motion for leave under subrule (1) shall be served on the party's litigation guardian and, if the litigation guardian is not the Children's Lawyer or the Public Guardian and Trustee,

- (a) on the Children's Lawyer, if the party is a minor; or
- (b) on the Public Guardian and Trustee, in any other case.

O. Reg. 19/03, s. 3; 259/14, s. 2

7.08 Approval of Settlement —

Settlement Requires Judge's Approval

(1) No settlement of a claim made by or against a person under disability, whether or not a proceeding has been commenced in respect of the claim, is binding on the person without the approval of a judge.

(2) Judgment may not be obtained on consent in favour of or against a party under disability without the approval of a judge.

Exception

(2.1) This rule does not apply to a settlement or judgment respecting the appointment under the *Substitute Decisions Act, 1992* of a guardian of property or guardian of the person.

Where no Proceeding Commenced

(3) Where an agreement for the settlement of a claim made by or against a person under disability is reached before a proceeding is commenced in respect of the claim, approval of a judge shall be obtained on an application.

Material Required for Approval

(4) On a motion or application for the approval of a judge under this rule, there shall be served and filed with the notice of motion or notice of application,

(a) an affidavit of the litigation guardian setting out the material facts and the reasons supporting the proposed settlement and the position of the litigation guardian in respect of the settlement;

(b) an affidavit of the lawyer acting for the litigation guardian setting out the lawyer's position in respect of the proposed settlement;

(c) where the person under disability is a minor who is over the age of sixteen years, the minor's consent in writing, unless the judge orders otherwise; and

(d) a copy of the proposed minutes of settlement.

(4.1) If there is no litigation guardian and the settlement that is the subject of the mo-

tion or application is in respect of a matter under the *Substitute Decisions Act, 1992* to which this rule applies, the affidavit referred to in clause (4)(a) shall be provided by the moving party or applicant (as the case may be), and the affidavit referred to in clause (4)(b) shall be provided by his or her lawyer.

Children's Lawyer or Public Guardian and Trustee

(5) On a motion or application for the approval of a judge under this rule, the judge may,

(a) direct that material filed on the motion or application be served on the Children's Lawyer or on the Public Guardian and Trustee; and

(b) direct the Children's Lawyer or the Public Guardian and Trustee, as the case may be, to make a written report stating any objections he or she has to the proposed settlement and making recommendations, with reasons, in connection with the proposed settlement.

O. Reg. 69/95, ss. 18–20; 575/07, s. 10; 281/16, s. 3

7.09 Money to Be Paid into Court — (1)

Any money payable to a person under disability under an order or a settlement shall be paid into court, unless a judge orders otherwise.

(2) Any money paid to the Children's Lawyer on behalf of a person under disability shall be paid into court, unless a judge orders otherwise.

O. Reg. 69/95, s. 19

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Rule 9 — Estates and Trusts***9.01 Proceedings By or Against Executor, Administrator or Trustee —******General Rule***

(1) A proceeding may be brought by or against an executor, administrator or trustee as representing an estate or trust and its ben-

eficiaries without joining the beneficiaries as parties.

Exceptions

(2) Subrule (1) does not apply to a proceeding,

- (a) to establish or contest the validity of a will;
- (b) for the interpretation of a will;
- (c) to remove or replace an executor, administrator or trustee;
- (d) against an executor, administrator or trustee for fraud or misconduct; or
- (e) for the administration of an estate or the execution of a trust by the court.

Executor, Administrator or Trustee Refusing to be Joined

(3) Where a proceeding is commenced by executors, administrators or trustees, any executor, administrator or trustee who does not consent to be joined as a plaintiff or applicant shall be made a defendant or respondent.

Beneficiaries and Others Added by Order

(4) The court may order that any beneficiary, creditor or other interested person be made a party to a proceeding by or against an executor, administrator or trustee.

9.02 Proceeding Against Estate that has no Executor or Administrator —

(1) Where it is sought to commence or continue a proceeding against the estate of a deceased person who has no executor or administrator, the court on motion may appoint a litigation administrator to represent the estate for the purposes of the proceeding.

(2) An order in a proceeding to which a litigation administrator is a party binds or benefits the estate of the deceased person, but has no effect on the litigation administrator in a personal capacity, unless a judge orders otherwise.

9.03 Remedial Provisions —

Proceeding Commenced before Probate or Administration

(1) Where a proceeding is commenced by or against a person as executor or administrator before a grant of probate or administration has been made and the person subsequently receives a grant of probate or administration, the proceeding shall be deemed to have been properly constituted from its commencement.

Proceeding Brought by or against Estate

(2) A proceeding commenced by or against the estate of a deceased person,

- (a) by naming “the estate of A.B., deceased”, “the personal representative of A.B., deceased” or any similar designation; or
- (b) in which the wrong person is named as the personal representative,

shall not be treated as a nullity, but the court may order that the proceeding be continued by or against the proper executor or administrator of the deceased or against a litigation administrator appointed for the purpose of the proceeding, and the title of the proceeding shall be amended accordingly.

Proceeding Commenced in the Name of or against a Deceased Person

(3) A proceeding commenced in the name of or against a person who has died before its commencement shall not be treated as a nullity, but the court may order that the proceeding be continued by or against the executor or administrator or a litigation administrator appointed for the purpose of the proceeding and the title of the proceeding shall be amended accordingly.

Where There is an Executor or Administrator and a Litigation Administrator has been Appointed

(4) Where it appears that a deceased person for whom a litigation administrator has been appointed had an executor or administrator at the time of the appointment, the proceeding shall not be treated as a nullity, but the court may order that the proceeding be continued against the executor or administrator

and the title of the proceeding shall be amended accordingly.

General Power

(5) A proceeding by or against a deceased person or an estate shall not be treated as a nullity because it was not properly constituted, but the court may order that the proceeding be reconstituted by analogy to the provisions of this rule.

Stay of Proceeding until Properly Constituted

(6) No further step in a proceeding referred to in subrule (2), (3), (4) or (5) shall be taken until it is properly constituted and, unless it is properly constituted within a reasonable time, the court may dismiss the proceeding or make such other order as is just.

Terms May be Imposed

(7) On making an order under this rule, the court may impose such terms as are just, including a term that an executor or an administrator shall not be personally liable in respect of any part of the estate of a deceased person that the executor or administrator has distributed or otherwise dealt with in good faith while not aware that a proceeding had been commenced against the deceased person or the estate.

Rule 10 — Representation Order

10.01 Representation of an Interested Person who Cannot be Ascertained — Proceedings in which Order May be Made

(1) In a proceeding concerning,

- (a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (b) the determination of a question arising in the administration of an estate or trust;
- (c) the approval of a sale, purchase, settlement or other transaction;

- (d) the approval of an arrangement under the *Variation of Trusts Act*;
- (e) the administration of the estate of a deceased person; or
- (f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served.

Order Binds Represented Persons

(2) Where an appointment is made under subrule (1), an order in the proceeding is binding on a person or class so represented, subject to rule 10.03.

Settlement Affecting Persons who are not Parties

(3) Where in a proceeding referred to in subrule (1) a settlement is proposed and some of the persons interested in the settlement are not parties to the proceeding, but,

- (a) those persons are represented by a person appointed under subrule (1) who assents to the settlement; or
- (b) there are other persons having the same interest who are parties to the proceeding and assent to the settlement,

the judge, if satisfied that the settlement will be for the benefit of the interested persons who are not parties and that to require service on them would cause undue expense or delay, may approve the settlement on behalf of those persons.

(4) A settlement approved under subrule (3) binds the interested persons who are not parties, subject to rule 10.03.

10.02 Representation of a Deceased Person — Where it appears to a judge that the estate of a deceased person has an interest in a matter in question in the proceeding

and there is no executor or administrator of the estate, the judge may order that the proceeding continue in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent the estate for the purposes of the proceeding, and an order in the proceeding binds the estate of the deceased person, subject to rule 10.03, as if the executor or administrator of the estate of that person had been a party to the proceeding.

10.03 Relief from Binding Effect of Order — Where a person or an estate is bound by reason of a representation order made under subrule 10.01(1) or rule 10.02, an approval under subrule 10.01(3) or an order that the proceeding continue made under rule 10.02, a judge may order in the same or a subsequent proceeding that the person or estate not be bound where the judge is satisfied that,

- (a) the order or approval was obtained by fraud or non-disclosure of material facts;
 - (b) the interests of the person or estate were different from those represented at the hearing; or
 - (c) for some other sufficient reason the order or approval should be set aside.
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COMMENCEMENT OF PROCEEDINGS

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Rule 14 — Originating Process

14.01 How Proceedings Commenced —

By Issuing Originating Process

(1) A proceeding shall be commenced by the issuing of an originating process.

Exceptions

(2) A counterclaim that is only against persons who are already parties to the main action, and a crossclaim, shall be commenced by the delivery of the pleading containing the counterclaim or crossclaim, and the pleading need not be issued.

(2.1) An application for a certificate of appointment of estate trustee under Rule 74 need not be issued.

Proposed Amendment — 14.01(2.1)

(2.1) An application for a certificate of appointment of estate trustee under Rule 74 or 74.1 need not be issued.

O. Reg. 111/21, s. 2 [To come into force April 1, 2021.]

Where Leave Required

(3) Where leave to commence a proceeding is required, it shall be obtained by motion.

Relying on Subsequent Fact

(4) A party may rely on a fact that occurs after the commencement of a proceeding, even though the fact gives rise to a new claim or defence, and, if necessary, may move to amend an originating process or pleading to allege the fact.

O. Reg. 484/94, s. 4; 14/04, s. 11; 131/04, s. 4

14.01.1 [Revoked O. Reg. 457/01, s. 2.]

14.02 Proceedings By Action as General Rule — Every proceeding in the court shall be by action, except where a statute or these rules provide otherwise.

14.03 Actions — By Statement of Claim or Notice of Action —

Statement of Claim

(1) The originating process for the commencement of an action is a statement of claim (Form 14A (general) or 14B (mortgage actions)), except as provided by,

(a) subrule (2) (notice of action);

(b) [Revoked O. Reg. 131/04, s. 5(1).]

- (c) rule 27.03 (counterclaim against person not already a party);
 - (d) subrule 29.02(1) (third party claim); and
 - (e) rule 29.11 (fourth and subsequent party claims).

Notice of Action

(2) Where there is insufficient time to prepare a statement of claim, an action may be commenced by the issuing of a notice of action (Form 14C) that contains a short statement of the nature of the claim.

(3) Where a notice of action is used, the plaintiff shall file a statement of claim (Form 14D) within thirty days after the notice of action is issued, and no statement of claim shall be filed thereafter except with the written consent of the defendant or with leave of the court obtained on notice to the defendant.

(4) The notice of action shall not be served separately from the statement of claim.

Information for Court Use

(4.1) Information for Court Use — Form 14F (Information for court use) shall be filed together with Form 14A, 14B, or 14C, as the case may be.

*Statement of Claim may Alter or Extend
Claim*

(5) In an action commenced by the issuing of a notice of action, the statement of claim may alter or extend the claim stated in the notice of action.

O. Reg. 457/01, s. 3; 206/02, s. 2; 263/03, s. 2;
131/04, s. 5; 487/16, s. 5; 584/17, s. 5

14.03.1 Ordinary and Simplified Proce-

dure — The simplified procedure set out in Rule 76 shall be used in actions to which subrule 76.02(1), (2) or (2.1) applies, and may be used in other actions in accordance with subrule 76.02(3); otherwise, the ordinary procedure set out in these Rules shall be used in all proceedings.

O. Reg. 533/95, s. 1; 652/00, s. 1; 284/01, s. 4;
132/04, s. 3

14.04 [Repealed O. Reg. 584/17, s. 6.]

14.05 Applications — By Notice of Application —

Notice of Application

(1) The originating process for the commencement of an application is a notice of application (Form 14E, 14E.1, 68A or 73A) or an application for a certificate of appointment of an estate trustee (Form 74.4, 74.5, 74.14, 74.15, 74.21, 74.24, 74.27 or 74.30).

Information for Court Use

(1.1) Form 14F (Information for court use) shall be filed together with a notice of application in Form 14E, 14E.1, 68A or 73A.

Application under Statute

(2) A proceeding may be commenced by an application to the Superior Court of Justice or to a judge of that court, if a statute so authorizes.

Application under Rules

(3) A proceeding may be brought by application where these rules authorize the commencement of a proceeding by application or where the relief claimed is,

- (a) the opinion, advice or direction of the court on a question affecting the rights of a person in respect of the administration of the estate of a deceased person or the execution of a trust;
 - (b) an order directing executors, administrators or trustees to do or abstain from doing any particular act in respect of an estate or trust for which they are responsible;
 - (c) the removal or replacement of one or more executors, administrators or trustees, or the fixing of their compensation;
 - (d) the determination of rights that depend on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution;

(e) the declaration of an interest in or charge on land, including the nature and extent of the interest or charge or the boundaries of the land, or the settling of the priority of interests or charges;

(f) the approval of an arrangement or compromise or the approval of a purchase, sale, mortgage, lease or variation of trust;

(g) an injunction, mandatory order or declaration or the appointment of a receiver or other consequential relief when ancillary to relief claimed in a proceeding properly commenced by a notice of application;

(g.1) for a remedy under the *Canadian Charter of Rights and Freedoms*; or

(h) in respect of any matter where it is unlikely that there will be any material facts in dispute requiring a trial.

O. Reg. 396/91, s. 3; 484/94, s. 5; 292/99, s. 1(2); 260/05, s. 2; 43/14, s. 5; 537/18, s. 2

14.06 Title of Proceeding — (1) Every originating process shall contain a title of the proceeding setting out the names of all the parties and the capacity in which they are made parties, if other than their personal capacity.

(2) In an action, the title of the proceeding shall name the party commencing the action as the plaintiff and the opposite party as the defendant.

(3) In an application, the title of the proceeding shall name the party commencing the application as the applicant and the opposite party, if any, as the respondent and the notice of application shall state the statutory provision or rule, if any, under which the application is made.

Exception

(4) Subrules (1), (2) and (3) do not apply to proceedings under Rules 74 and 75.

Proposed Amendment — 14.06(4)

(4) Subrules (1), (2) and (3) do not apply to a proceeding under Rule 74, 74.1 or 75.

O. Reg. 111/21, s. 3 [To come into force April 1, 2021.]

O. Reg. 484/94, s. 6; 131/04, s. 7

**14.07 How Originating Process Is-
sued** — (1) An originating process is issued by the registrar's act of dating, signing and sealing it with the seal of the court and assigning to it a court file number.

(2) A copy of the originating process shall be filed in the court file when it is issued.

(3) [Repealed O. Reg. 584/17, s. 7.]

O. Reg. 288/99, s. 10; 427/01, s. 8; 14/04, s. 12; 487/16, s. 7; 584/17, s. 7

14.08

Time for Service in Actions

(1) Where an action is commenced by a statement of claim, the statement of claim shall be served within six months after it is issued.

(2) Where an action is commenced by a notice of action, the notice of action and the statement of claim shall be served together within six months after the notice of action is issued.

(3) [Repealed O. Reg. 170/14, s. 2.]

(4) [Repealed R.R.O. 1990, Reg. 194, r. 14.08(5).]

Revocation

(5) Subrule (4) is revoked on January 1, 2010.

O. Reg. 118/97, s. 2; 627/98, s. 1; 284/01, s. 5; 198/05, s. 1; 55/08, s. 1; 438/08, s. 11; 170/14, s. 2

14.09 Striking Out or Amending — An originating process that is not a pleading may be struck out or amended in the same manner as a pleading.

14.10 Dismissal of Action Where Defendant Pays Claim — (1) Where the plaintiff's claim is for money only, a defendant, on paying within the time prescribed for delivery of a defence or at any time before being noted in default, the amount of the plaintiff's claim and the amount claimed for costs, may on motion have the court dismiss the action.

(2) A defendant who considers the amount claimed for costs to be excessive may pay, within the time prescribed for delivery of a defence or at any time before being noted in default, the amount of the plaintiff's claim and the sum of \$400 for costs, and the court on motion may dismiss the action and may fix and order payment of the plaintiff's costs or may order payment of the plaintiff's costs as assessed under Rule 58.

O. Reg. 653/00, s. 2

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SERVICE

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Rule 17 — Service Outside Ontario

17.01 Definition — In rules 17.02 to 17.06, “**originating process**” includes a counter-claim against only parties to the main action, and a crossclaim.

17.02 Service Outside Ontario Without Leave — A party to a proceeding may, without a court order, be served outside Ontario with an originating process or notice of a reference where the proceeding against the party consists of a claim or claims,

(a) **Property in Ontario** — in respect of real or personal property in Ontario;

(b) **Administration of Estates** — in respect of the administration of the estate of a deceased person,

(i) in respect of real property in Ontario, or

(ii) in respect of personal property, where the deceased person, at the time of death, was resident in Ontario;

(c) **Interpretation of an Instrument** — for the interpretation, rectification, enforcement or setting aside of a deed, will, contract or other instrument in respect of,

(i) real or personal property in Ontario, or

(ii) the personal property of a deceased person who, at the time of death, was resident in Ontario;

(d) **Trustee Where Assets Include Property in Ontario** — against a trustee in respect of the execution of a trust contained in a written instrument where the assets of the trust include real or personal property in Ontario;

(e) **Mortgage on Property in Ontario** — for foreclosure, sale, payment, possession or redemption in respect of a mortgage, charge or lien on real or personal property in Ontario;

(f) **Contracts** — in respect of a contract where,

(i) the contract was made in Ontario,

(ii) the contract provides that it is to be governed by or interpreted in accordance with the law of Ontario,

(iii) the parties to the contract have agreed that the courts of Ontario are to have jurisdiction over legal proceedings in respect of the contract, or

(iv) a breach of the contract has been committed in Ontario, even though the breach was preceded or accompanied by a breach outside Ontario that rendered impossible the performance of the part of the contract that ought to have been performed in Ontario;

- (g) **Tort Committed in Ontario** — in respect of a tort committed in Ontario;
 - (h) [Repealed O. Reg. 231/13, s. 5.]
 - (i) **Injunctions** — for an injunction ordering a party to do, or refrain from doing, anything in Ontario or affecting real or personal property in Ontario;
 - (j) [Repealed O. Reg. 131/04, s. 9.]
 - (k) [Repealed O. Reg. 131/04, s. 9.]
 - (l) [Repealed O. Reg. 131/04, s. 9.]
 - (m) **Judgment of Court Outside Ontario** — on a judgment of a court outside Ontario;
 - (n) **Authorized by Statute** — authorized by statute to be made against a person outside Ontario by a proceeding commenced in Ontario;
 - (o) [Repealed O. Reg. 43/14, s. 6.]
 - (p) **Person Resident or Carrying on Business in Ontario** — against a person ordinarily resident or carrying on business in Ontario;
 - (q) **Counterclaim, Crossclaim or Third Party Claim** — properly the subject matter of a counterclaim, cross-claim or third or subsequent party claim under these rules; or
 - (r) **Taxes** — made by or on behalf of the Crown or a municipal corporation to recover money owing for taxes or other debts due to the Crown or the municipality.
- O. Reg. 171/98, s. 2; 131/04, s. 9; 231/13, s. 5;
43/14, s. 6

17.03 Service Outside Ontario With Leave — (1) In any case to which rule 17.02 does not apply, the court may grant leave to serve an originating process or notice of a reference outside Ontario.

(2) A motion for leave to serve a party outside Ontario may be made without notice, and shall be supported by an affidavit or other evidence showing in which place or country the person is or probably may be

found, and the grounds on which the motion is made.

17.04 Additional Requirements for Service Outside Ontario — (1) An originating process served outside Ontario without leave shall disclose the facts and specifically refer to the provision of rule 17.02 relied on in support of such service.

(2) Where an originating process is served outside Ontario with leave of the court, the originating process shall be served together with the order granting leave and any affidavit or other evidence used to obtain the order.

17.05 Manner of Service Outside Ontario —

Definitions

(1) In this rule,

“**contracting state**” means a contracting state under the Convention;

“**Convention**” means the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters signed at The Hague on November 15, 1965.

General Manner of Service

(2) An originating process or other document to be served outside Ontario in a jurisdiction that is not a contracting state may be served in the manner provided by these rules for service in Ontario, or in the manner provided by the law of the jurisdiction where service is made, if service made in that manner could reasonably be expected to come to the notice of the person to be served.

Manner of Service in Convention States

(3) An originating process or other document to be served outside Ontario in a contracting state shall be served,

- (a) through the central authority in the contracting state; or
- (b) in a manner that is permitted by the Convention and that would be permit-

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ted by these rules if the document were being served in Ontario.

Proof of Service

(4) Service may be proved,

(a) in the manner provided by these rules for proof of service in Ontario;

(b) in the manner provided by the law of the jurisdiction where service is made; or

(c) in accordance with the Convention, if service is made in a contracting state (Forms 17A to 17C).

O. Reg. 535/92, s. 7; 231/13, s. 6

17.06 Motion to Set Aside Service Outside Ontario — (1) A party who has been served with an originating process outside Ontario may move, before delivering a defence, notice of intent to defend or notice of appearance,

(a) for an order setting aside the service and any order that authorized the service; or

(b) for an order staying the proceeding.

(2) The court may make an order under subrule (1) or such other order as is just where it is satisfied that,

(a) service outside Ontario is not authorized by these rules;

(b) an order granting leave to serve outside Ontario should be set aside; or

(c) Ontario is not a convenient forum for the hearing of the proceeding.

(3) Where on a motion under subrule (1) the court concludes that service outside Ontario is not authorized by these rules, but the case is one in which it would have been appropriate to grant leave to serve outside Ontario under rule 17.03, the court may make an order validating the service.

(4) The making of a motion under subrule (1) is not in itself a submission to the jurisdiction of the court over the moving party.

Rule 18 — Time for Delivery of Statement of Defence**18.01 Time for Delivery of Statement of Defence**

— Except as provided in rule 18.02 or subrule 19.01(5) (late delivery of defence) or 27.04(2) (counterclaim against plaintiff and non-party), a statement of defence (Form 18A) shall be delivered,

(a) within twenty days after service of the statement of claim, where the defendant is served in Ontario;

(b) within forty days after service of the statement of claim, where the defendant is served elsewhere in Canada or in the United States of America; or

(c) within sixty days after service of the statement of claim, where the defendant is served anywhere else.

18.02 Notice of Intent to Defend — (1)

A defendant who is served with a statement of claim and intends to defend the action may deliver a notice of intent to defend (Form 18B) within the time prescribed for delivery of a statement of defence.

(2) A defendant who delivers a notice of intent to defend within the prescribed time is entitled to ten days, in addition to the time prescribed by rule 18.01, within which to deliver a statement of defence.

(3) Subrules (1) and (2) apply, with necessary modifications, to

(a) a defendant to a counterclaim who is not already a party to the main action and who has been served with a statement of defence and counterclaim; and

(b) a third party who has been served with a third party claim.

18.03 [Revoked O. Reg. 457/01, s. 4.]

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REFERENCES**Rule 54 — Directing a Reference****54.01 Application of Rules 54 And 55** — Rules 54 and 55 apply to references directed,

- (a) under rule 54.02 or any other rule; and
- (b) under a statute, subject to the provisions of the statute.

54.02 Where Reference May Be Directed —*Reference of Whole Proceeding or Issue*

(1) Subject to any right to have an issue tried by a jury, a judge may at any time in a proceeding direct a reference of the whole proceeding or a reference to determine an issue where,

- (a) all affected parties consent;
- (b) a prolonged examination of documents or an investigation is required that, in the opinion of the judge, cannot conveniently be made at trial; or
- (c) a substantial issue in dispute requires the taking of accounts.

Reference of Issue

(2) Subject to any right to have an issue tried by a jury, a judge may at any time in a proceeding direct a reference to determine an issue relating to,

- (a) the taking of accounts;
- (b) the conduct of a sale;
- (c) the appointment by the court of a guardian or receiver, or the appointment by a person of an attorney under a power of attorney;
- (d) the conduct of a guardianship or receivership or the exercise of the authority of an attorney acting under a power of attorney; or
- (e) the enforcement of an order.

O. Reg. 69/95, s. 7

54.03 To Whom Reference May Be Directed —*Judge or officer*

(1) A reference may be directed to the referring judge, to another judge with that judge's consent, to a registrar or other officer of the court or to a person agreed on by the parties.

Person Agreed on by Parties

(2) Where a reference is directed to a person agreed on by the parties, the person is, for the purposes of the reference, an officer of the court directing the reference.

(3) The judge directing a reference to a person agreed on by the parties may,

- (a) determine his or her remuneration and the liability of the parties for its payment;
- (b) refer that issue to the person to whom the reference is directed; or
- (c) reserve that issue until the report on the reference is confirmed.

O. Reg. 570/98, s. 4

54.04 Order Directing a Reference —

(1) An order directing a reference shall specify the nature and subject matter of the reference and who is to conduct it and may,

- (a) direct in general terms that all necessary inquiries be made, accounts taken and costs assessed;
- (b) contain directions for the conduct of the reference; and
- (c) designate which party is to have carriage of the reference.

(2) An order of a case management master or registrar directing a reference shall not require a report back, and the report or an interim report on the reference shall be confirmed under rule 54.09 (confirmation by passage of time).

(3) A referee has, subject to the order directing the reference, all the powers these rules give to a referee.

O. Reg. 711/20, s. 7, item 12

54.05 Motions on a Reference — (1) A referee shall hear and dispose of any motion made in connection with the reference, but in the absence of or with the consent of the referee, a motion may be heard and disposed of by a judge or case management master.

(2) Rule 37.03 (where motions to be brought) does not apply to a motion made in connection with a reference and heard by the referee.

(3) Where a referee has made an order on a motion in the reference, a person who is affected by the order may make a motion to a judge to set aside or vary the order by a notice of motion served within seven days after the order is made and naming the first available hearing date that is at least three days after service of the notice of motion.

O. Reg. 219/91, s. 7; 689/20, s. 36; 711/20, s. 7, item 13

54.06 Report on Reference — A referee shall make a report that contains his or her findings and conclusions.

54.07 Report Must Be Confirmed — (1) A report has no effect until it has been confirmed.

(2) A report shall be entered immediately after it has been confirmed and rule 59.05 (entry of order) applies, with necessary modifications.

O. Reg. 396/91, s. 9

54.08 Confirmation on Motion Where Report Back Required — (1) Where the order directing a reference requires the referee to report back, the report or an interim report on the reference may be confirmed only on a motion to the judge who directed the reference on notice to every party who appeared on the reference, and the judge may require the referee to give reasons for his or her findings and conclusions and may confirm the report in whole or in part or make such other order as is just.

(2) Where the judge who directed the reference is unable for any reason to hear a mo-

tion for confirmation, the motion may be made to another judge.

O. Reg. 288/99, s. 17

54.09 Confirmation By Passage of Time Where Report Back Not Required —

Fifteen Day Period to Oppose Confirmation

(1) Where the order directing a reference does not require the referee to report back, the report or an interim report on the reference is confirmed,

(a) immediately on the filing of the consent of every party who appeared on the reference; or

(b) on the expiration of fifteen days after a copy, with proof of service on every party who appeared on the reference, has been filed in the office in which the proceeding was commenced, unless a notice of motion to oppose confirmation of a report is served within that time.

To Whom Motion to Oppose Confirmation Made

(2) A motion to oppose confirmation of a report shall be made to a judge other than the one who conducted the reference.

Notice of Motion to Oppose Confirmation

(3) A notice of motion to oppose confirmation of a report shall,

(a) set out the grounds for opposing confirmation;

(b) be served within fifteen days after a copy of the report, with proof of service on every party who appeared on the reference, has been filed in the office in which the proceeding was commenced; and

(c) name the first available hearing date that is at least three days after service of the notice of motion.

Motion for Immediate Confirmation

(4) A party who seeks confirmation before the expiration of the fifteen day period prescribed in subrule (1) may make a motion to a judge for confirmation.

Disposition of Motion

(5) A judge hearing a motion under subrule (2) or (4) may require the referee to give reasons for his or her findings and conclusions and may confirm the report in whole or in part or make such other order as is just.

O. Reg. 396/91, s. 10

54.10 Referee Unable to Continue or Complete Reference — Where a referee is unable for any reason to continue or complete a reference,

- (a) the parties to the reference may by consent appoint a new referee; or
- (b) any party to the reference may make a motion to a judge for directions for continuation or completion of the reference.

O. Reg. 536/96, s. 5

Rule 55 — Procedure on a Reference

55.01 General Provisions for Conduct of Reference —

Simple Procedure to be Adopted

(1) A referee shall, subject to any directions contained in the order directing the reference, devise and adopt the simplest, least expensive and most expeditious manner of conducting the reference and may,

- (a) give such directions as are necessary; and
- (b) dispense with any procedure ordinarily taken that the referee considers to be unnecessary, or adopt a procedure different from that ordinarily taken.

Special Circumstances to be Reported

(2) A referee shall report on any special circumstances relating to the reference and shall generally inquire into, decide and re-

port on all matters relating to the reference as fully as if they had been specifically referred.

General Procedure

(3) Subject to subrule (1), a reference shall be conducted as far as possible in accordance with rules 55.01 to 55.07.

55.02 Procedure on a Reference Generally —

Hearing for Directions

(1) The party having carriage of the reference shall forthwith have the order directing the reference signed and entered and, within ten days after entry, request an appointment with the referee for a hearing to consider directions for the reference and, in default, any other party having an interest in the reference may assume carriage of it.

(2) A notice of hearing for directions (Form 55A) and a copy of the order directing the reference shall be served on every other party to the proceeding at least five days before the hearing unless the referee directs or these rules provide otherwise.

Directions

(3) At the hearing for directions, the referee shall give such directions for the conduct of the reference as are just, including,

- (a) the time and place at which the reference is to proceed;
- (b) any special directions concerning the parties who are to attend; and
- (c) any special directions concerning what evidence is to be received and how documents are to be proved.

(4) The directions may be varied or supplemented during the course of the reference.

Adding Parties

(5) Where it appears to the referee that any person ought to be added as a party to the proceeding, the referee may make an order adding the person as a defendant or respondent and direct that the order, together with the order directing the reference and a notice

to party added on reference (Form 55B), be served on the person, and on being served the person becomes a party to the proceeding.

(6) A person served with a notice under subrule (5) may make a motion to a judge to set aside or vary the order directing the referee or the order adding the person as a party, by a notice of motion served within ten days after service of the notice under subrule (5), or where the person is served outside Ontario, within such further time as the referee directs, and naming the first available hearing date that is at least three days after service of the notice of motion.

Failure to Appear on Reference

(7) A party who is served with notice of a reference under subrule (2) or (5) and does not appear in response to the notice is not entitled to notice of any step in the reference and need not be served with any document in the reference, unless the referee orders otherwise.

Representation of Parties with Similar Interests

(8) Where it appears to the referee that two or more parties have substantially similar interests and can be adequately represented as a class, the referee may require them to be represented by the same lawyer and, where they cannot agree on a lawyer to represent them, the referee may designate a lawyer on such terms as are just.

(9) A party referred to in subrule (8) who insists on being represented by a different lawyer shall not recover the costs of the separate representation and, unless the referee orders otherwise, shall pay all costs incurred by the other parties as a result of the separate representation.

Amendment of Pleadings

(10) The referee may grant leave to make any necessary amendments to the pleadings that are not inconsistent with the order of reference.

Procedure Book

(11) The referee shall keep a procedure book in which he or she shall note all steps taken and all directions given in respect of the reference, and the directions need not be embodied in a formal order or report to bind the parties.

Transferring Carriage of Reference

(12) Where the party having carriage of the reference does not proceed with reasonable diligence, the referee may, on the motion of any other interested party, transfer carriage of the reference to another party.

Evidence of Witnesses

(13) Witnesses on a reference shall be examined orally unless the referee directs otherwise, and evidence taken orally shall be recorded.

(14) The attendance of a person to be examined on a reference may be compelled in the same manner as provided in Rule 53 for a witness at a trial.

Expert Witnesses

(14.1) Rule 53.03 (expert witness) and rule 53.08 (evidence admissible only with leave) apply, with necessary modifications, to the calling of an expert witness on a reference.

Expert Appointed by Referee

(14.2) A referee may appoint an independent expert and rule 52.03 (court appointed expert) applies, with necessary modifications.

Examination of Party and Production of Documents

(15) The referee may require any party to be examined and to produce such documents as the referee thinks fit and may give directions for their inspection by any other party.

Filing of Documents

(16) While a reference is pending, all documents relating to it shall be filed with the referee and, on completion of the reference, the documents shall be returned to the office in which the proceeding was commenced.

Execution or Delivery of Instrument

(17) Where a person refuses or neglects to execute or deliver an instrument that becomes necessary under an order directing the referee may give directions for its execution or delivery.

Rulings

(18) Where the referee has made a ruling on the admissibility of evidence or any other matter relating to the conduct of the reference, the referee shall, on the request of any party, set out the ruling and the reasons for it in the report or, in the discretion of the referee, in an interim report on the reference.

Preparation of Report

(19) When the hearing of the reference is completed, the referee shall fix a date to settle the report and the party having carriage of the reference shall serve notice of the date on all parties who appeared on the reference unless the referee dispenses with notice.

(20) The party having carriage of the reference shall prepare a draft report and present it to the referee on the day fixed for settling the report.

(21) When the referee has settled and signed the report, the party having carriage of the reference shall forthwith serve it on all parties who appeared on the reference and file a copy with proof of service.

(22) In a proceeding for the administration of the estate of a deceased person, the report shall, as far as possible, be in (Form 55C).

O. Reg. 535/92, s. 12; 575/07, s. 1, item 21

55.03 Procedure to Ascertain Interested Persons and Verify Claims —

Publication of Advertisements

(1) The referee may direct the publication of advertisements for creditors or beneficiaries of an estate or trust, other unascertained persons, or their successors.

Filing of Claims

(2) The advertisement shall specify a date by which and a place where interested persons

may file their claims and shall notify them that, unless their claims are so filed, they may be excluded from the benefit of the order, but the referee may nevertheless accept a claim at a later time.

Examination of Claims

(3) Before the day specified by the referee for the consideration of claims filed in response to the advertisement, the executor, administrator or trustee, or such other person as the referee directs, shall examine the claims and prepare an affidavit verifying a list of the claims filed in response to the advertisement and stating which claims he or she believes should be disallowed and the reasons for that belief.

Adjudication of Contested Claims

(4) If a claim is contested, the referee shall order that a notice of contested claim (Form 55D), fixing a date for adjudication of the claim, be served on the claimant.

55.04 Procedure on Taking of Accounts —

Powers of Referee

(1) On the taking of accounts, the referee may,

- (a) take the accounts with rests or otherwise;
- (b) take account of money received or that might have been received but for wilful neglect or default;
- (c) make allowance for occupation rent and determine the amount;
- (d) take into account necessary repairs, lasting improvements, costs and other expenses properly incurred; and
- (e) make all just allowances.

Preparation of Accounts

(2) Where an account is to be taken, the party required to account, unless the referee directs otherwise, shall prepare the account in debit and credit form, verified by affidavit.

(3) The items on each side of the account shall be numbered consecutively, and the account shall be referred to in the affidavit as an exhibit and shall not be attached to the affidavit.

Books of Accounts as Proof

(4) The referee may direct that the books in which the accounts have been kept be taken as proof, in the absence of evidence to the contrary, of the matters contained in them.

Production of Vouchers

(5) Before hearing a reference, the referee may fix a date for the purpose of taking the accounts and may direct the production and inspection of vouchers and, where appropriate, cross-examination on his or her affidavit of the party required to account or of the person who filed the affidavit on the party's behalf or in the party's place, with a view to ascertaining what is admitted and what is contested between the parties.

Questioning Accounts

(6) A party who questions an account shall give particulars of the objection, with specific reference by number to the item in question, to the party required to account, and the referee may require the party to give further particulars of the objection.

55.05 Direction for Payment of Money —

Payment into Financial Institution

(1) Where under an order directing a reference the referee directs money to be paid at a specified time and place, the referee shall direct it to be paid into a financial institution to the credit of the party entitled or to the joint credit of the party entitled and the Accountant of the Superior Court of Justice.

Payment Out

(2) Where money is directed to be paid out of court to the credit of the party entitled, the party may name the financial institution into which the party wishes it to be paid.

(3) Where money has been paid to the joint credit of the party and the Accountant, the Accountant shall sign the cheque or direction for payment out on the production of the consent of the party paying in, verified by affidavit, or of the party's lawyer, or, in the absence of the consent, on the order of the referee.

Money Belonging to Minor

(4) Where it appears that money in court belongs to a minor, the referee shall require evidence of the age of the minor and shall, in the report, state the minor's birth date and full address.

Money to be Paid to Creditors

(5) Where an order of reference or a report directs the payment of money out of court to creditors, the person having carriage of the reference shall deposit with the Accountant a copy of the order or report and shall serve a notice to creditor (Form 55E) on each creditor stating that payment of the creditor's claim, as allowed, may be obtained from the Accountant.

O. Reg. 292/99, s. 5; 575/07, s. 1, item 22;
399/12, s. 1

55.06 Reference for Conduct of Sale —

Method of Sale

(1) Where a sale is ordered, the referee may cause the property to be sold by public auction, private contract or tender, or partly by one method and partly by another.

Advertisement

(2) Where property is directed to be sold by auction or tender, the party having carriage of the sale shall prepare a draft advertisement according to the instructions of the referee showing,

- (a) the short title of the proceeding;
- (b) that the sale is by order of the court;
- (c) the time and place of the sale;
- (d) a short description of the property to be sold;

- (e) whether the property is to be sold in one lot or several and, if in several, in how many, and in what lots;
- (f) the terms of payment;
- (g) that the sale is subject to a reserve bid, if that is the case; and
- (h) any conditions of sale different from those set out in Form 55F.

Conditions of Sale

(3) The conditions of sale by auction or tender shall be those set out in Form 55F, subject to such modifications as the referee directs.

Hearing for Directions

(4) At a hearing for directions under subrule 55.02(3), the referee shall,

- (a) settle the form of the advertisement;
- (b) fix the time and place of sale;
- (c) name an auctioneer, where one is to be employed;
- (d) give directions for publication of the advertisement;
- (e) give directions for obtaining appraisals;
- (f) fix a reserve bid, if any; and
- (g) make all other arrangements necessary for the sale.

Who May Bid

(5) All parties may bid except the party having carriage of the sale and any trustee or agent for the party or other person in a fiduciary relationship to the party.

(6) Where the party having carriage of the sale wishes to bid, the referee may transfer carriage of the sale to another party or to any other person.

Who Conducts Sale

(7) Where no auctioneer is employed, the referee or a person designated by the referee shall conduct the sale.

Purchaser to Sign Agreement

- (8) The purchaser shall enter into an agreement of purchase and sale at the time of sale.

Deposit

(9) The deposit required by the conditions of sale shall be paid to the party having carriage of the sale or the party's lawyer at the time of sale and the party or lawyer shall forthwith pay the money into court in the name of the purchaser.

Interim Report

(10) Where a sale is made through an auctioneer, the auctioneer shall make an affidavit concerning the result of the sale, and where no auctioneer is employed, the referee shall enter the result in the procedure book and, in either case, the referee may make an interim report on the sale (Form 55G).

Objection to Sale

(11) A party may object to a sale by making a motion to the referee to set it aside, and notice of the motion shall be served on all parties to the reference and on the purchaser, who shall be deemed to be a party for the purpose of the motion.

Completion of Sale

(12) The purchaser may pay the purchase money or the balance of it into court without order and, after the confirmation of the report on the sale, on notice to the party having carriage of the sale, the purchaser may obtain a vesting order.

(13) Where possession is wrongfully withheld from the purchaser, either the purchaser or the party having carriage of the sale may move for a writ of possession.

(14) The purchase money may be paid out of court in accordance with the report,

- (a) on consent of the purchaser or the purchaser's lawyer; or
- (b) on proof to the Accountant that the purchaser has received a transfer or vesting order of the property for which the money in question was paid into court.

(15) No transfer shall be approved until the referee is satisfied that the purchase money has been paid into court and, where a mortgage is taken for part of the purchase money, that the mortgage has been registered and deposited with the Accountant.

O. Reg. 575/07, s. 1, item 23; 399/12, s. 2

55.07 Reference to Appoint Guardian or Receiver — (1) Where, by an order directing a reference, a referee is directed to appoint a guardian or receiver, the referee shall not report on the appointment until he or she has settled and approved any security required by the order and until the security has been filed with the Accountant.

(2) Where, by an order directing a reference or a report, the person so appointed is required to pass accounts or to pay money into court and has not done so, the referee may, on the passing of accounts, disallow any compensation and may charge the person with interest.

O. Reg. 69/95, s. 18; 399/12, s. 3

COSTS

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Rule 57 — Costs of Proceedings

[Heading amended O. Reg. 284/01, s. 14.]

57.01 General Principles —

Factors in Discretion

(1) In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,

(0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;

(0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;

(a) the amount claimed and the amount recovered in the proceeding;

(b) the apportionment of liability;

(c) the complexity of the proceeding;

(d) the importance of the issues;

(e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;

(f) whether any step in the proceeding was,

(i) improper, vexatious or unnecessary, or

(ii) taken through negligence, mistake or excessive caution;

(g) a party's denial of or refusal to admit anything that should have been admitted;

(h) whether it is appropriate to award any costs or more than one set of costs where a party,

(i) commenced separate proceedings for claims that should have been made in one proceeding, or

(ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer;

(h.1) whether a party unreasonably objected to proceeding by telephone conference or video conference under rule 1.08; and

(i) any other matter relevant to the question of costs.

Costs Against Successful Party

(2) The fact that a party is successful in a proceeding or a step in a proceeding does not prevent the court from awarding costs against the party in a proper case.

Fixing Costs: Tariffs

(3) When the court awards costs, it shall fix them in accordance with subrule (1) and the Tariffs.

Assessment in Exceptional Cases

(3.1) Despite subrule (3), in an exceptional case the court may refer costs for assessment under Rule 58.

Authority of Court

(4) Nothing in this rule or rules 57.02 to 57.07 affects the authority of the court under section 131 of the *Courts of Justice Act*,

- (a) to award or refuse costs in respect of a particular issue or part of a proceeding;
- (b) to award a percentage of assessed costs or award assessed costs up to or from a particular stage of a proceeding;
- (c) to award all or part of the costs on a substantial indemnity basis;
- (d) to award costs in an amount that represents full indemnity; or
- (e) to award costs to a party acting in person.

Bill of Costs

(5) After a trial, the hearing of a motion that disposes of a proceeding or the hearing of an application, a party who is awarded costs shall serve a bill of costs (Form 57A) on the other parties and shall file it, with proof of service.

Costs Outline

(6) Unless the parties have agreed on the costs that it would be appropriate to award for a step in a proceeding, every party who intends to seek costs for that step shall give to every other party involved in the same step, and bring to the hearing, a costs outline (Form 57B) not exceeding three pages in length.

Process for Fixing Costs

(7) The court shall devise and adopt the simplest, least expensive and most expeditious process for fixing costs and, without limiting the generality of the foregoing, costs may be

fixed after receiving written submissions, without the attendance of the parties.

O. Reg. 627/98, s. 6; 284/01, s. 15; 42/05, s. 4; 8/07, s. 3; 575/07, s. 1, item 25; 689/20, s. 37

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Rule 58 — Assessment of Costs

58.01 General — Where a rule or order provides that a party is entitled to the costs of all or part of a proceeding and the costs have not been fixed by the court, they shall be assessed in accordance with rules 58.02 to 58.12.

O. Reg. 284/01, s. 17

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58.08 Costs of Particular Proceedings —

Passing of Accounts

(1) The costs of passing the accounts of a trustee, attorney under a power of attorney, guardian or other person having similar duties relating to the management of assets shall be determined in accordance with subrules 74.18(10) to (11.4) and (13) (costs of passing of accounts of estate trustees).

Costs out of Fund or Estate

(2) Where costs are to be paid out of a fund or estate, the assessment officer may direct what parties are to attend on the assessment and may disallow the costs of the assessment of any party whose attendance is unnecessary because the interest of the party in the fund or estate is small, remote or sufficiently protected by other interested parties.

O. Reg. 69/95, s. 8; 193/15, s. 6

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PARTICULAR PROCEEDINGS

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Rule 65 — Proceedings for Administration

65.01 Where Available — (1) A proceeding for the administration of the estate of a deceased person or for the execution of a trust may be commenced by notice of application,

- (a) by a person claiming to be a creditor of the estate of the deceased person;
- (b) by a person claiming to be a beneficiary under the will or on the intestacy of the deceased person or under the instrument of trust; or
- (c) by an executor or administrator of the estate of the deceased person or a trustee.

(2) A judgment for administration of an estate (Form 65A) or for execution of a trust shall be granted only if the judge is satisfied that the questions between the parties cannot otherwise be properly determined.

(3) Where no accounts or insufficient accounts have been rendered, the judge may, instead of granting judgment for administration of the estate or for execution of the trust, order that the executors, administrators or trustees render to the applicant a proper statement of their accounts and may stay the application in the meantime.

65.02 Where a Reference is Directed — (1) A judgment for administration of an estate or for execution of a trust shall direct a reference, and the referee has power to deal with the property of the estate or trust, including power to give all necessary directions for its realization, and shall finally wind up all matters connected with the estate or trust without any further directions, except where the special circumstances of the case require interim reports or interlocutory orders.

(2) Interest on accounts taken in administration proceedings shall be computed on the debts of the deceased from the date of the judgment and on legacies from the end of one year after the death of the deceased, unless the will directs another time for payment.

(3) All money realized from the estate or trust shall forthwith be paid into court, and no money shall be distributed or paid out except by order of a judge or, on a reference, by order of the referee.

O. Reg. 465/93, s. 9

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Rule 67 — Proceedings Concerning the Estates of Minors

67.01 How Commenced — A proceeding for approval of the sale, mortgage, lease or other disposition of property of a minor may be commenced by notice of application on notice to the Children's Lawyer.

O. Reg. 69/95, s. 19

67.02 Affidavit in Support — (1) The affidavit in support of the application shall state,

- (a) the nature and amount of all the property to which the minor is entitled;
- (b) the nature and value of the property to be disposed of;
- (c) what annual income the property yields; and
- (d) the facts relied on to establish the necessity for the proposed disposition.

(2) Where an allowance is sought for support of the minor, the affidavit shall state the amount required and the facts relied on to establish the need for the allowance and, where applicable, shall show the necessity for resorting to the property to provide the allowance.

(3) Where the appointment of a guardian is sought, the affidavit shall state the reasons for the appointment and the facts relied on to justify the appointment of the person proposed.

O. Reg. 263/03, s. 7

67.03 Where Consent Required — (1) Approval of the sale, mortgage, lease or other disposition of property of a minor over

the age of sixteen years shall not be given unless the consent of the minor has been filed, together with a lawyer's affidavit stating the lawyer's belief that the minor understood the consent when the lawyer read and explained it.

(2) A judge hearing an application referred to in subrule (1) may dispense with the necessity of filing the minor's consent and lawyer's affidavit.

(3) The judge may examine the minor with respect to his or her consent.

(4) Where the minor is outside Ontario, the judge may direct an inquiry to be made concerning the minor's consent in such manner as is just.

O. Reg. 575/07, s. 29

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Rule 72 — Payment into and Out of Court

72.01 Definitions — In rules 72.02 to 72.05,

“**Accountant**” means the Accountant of the Superior Court of Justice;

“**registrar**” means the registrar in the location where the proceeding was commenced.

O. Reg. 292/99, s. 5; 399/12, s. 4

72.02 Payment Into Court — (1) Filing with the Registrar or Accountant —

Subject to subrule (7), a person who seeks to pay money into court shall do so in accordance with subrules (2) to (6).

(2) **Documents to be Filed** — The person shall file with the Accountant or registrar, or, if the proceeding was commenced in Toronto, with the Accountant,

(a) a written request for payment into court that refers to any statutory provision or rule that authorizes the payment into court; and

(b) a copy of any order, report, offer to settle or acceptance of offer under which the money is payable.

(3) **Direction** — On receiving the documents filed under subrule (2), the Accountant or registrar shall give the person a direction to receive the money, addressed to a bank listed in Schedule I or II to the *Bank Act* (Canada) and specifying the account in the Accountant's name into which the money is to be paid.

(4) **Registrar to Forward Documents** — If the documents were filed with the registrar, the registrar shall forward the documents to the Accountant.

(5) **Payment** — On receiving the direction referred to in subrule (3), the person shall pay the money into the specified bank account in accordance with the direction.

(6) **Bank's Duties** — On receiving the money, the bank shall give a receipt to the person paying the money and immediately send a copy of the receipt to the Accountant.

(7) **Payment to the Accountant by Mail** — A person may pay money into court by mailing to the Accountant the documents referred to in subrule (2), together with the money that is payable.

(8) **Accountant to Provide Receipt** — On receiving money under subrule (7), the Accountant shall give a receipt to the person paying the money.

(9) **Notice of Payment Under Offer to Settle, Acceptance of Offer** — A person paying into court under an offer to settle or an acceptance of offer shall immediately serve a notice of payment into court (Form 72A) on every interested party, but the notice shall not be filed.

(10) **Receipt of Payment Under Other Authority** — A person paying into court other than under an offer to settle or an acceptance of offer shall immediately send a copy of the receipt received from the bank under subrule (6) or the receipt received from the Accountant under subrule (8), as the case may be, to each of the other parties.

(11) **Transfer to Accountant** — Money paid into court in a proceeding under the *Re-*

pair and Storage Liens Act commenced outside Toronto before the day Ontario Regulation 399/12 comes into force that is not paid out one year after the day on which it was paid into court shall be transferred to the Accountant, unless the court orders otherwise.

O. Reg. 399/12, s. 5

72.03 Payment Out of Court —

Authority for Payment Out

(1) Money may be paid out of court only in accordance with an order or report, or on consent under subrule (4).

Payment Out under Order or Report

(2) A person who seeks payment of money out of court in accordance with an order or report shall file with the Accountant,

- (a) a written request for payment out;
- (b) the original order or report or a notarized copy or copy certified by the court, unless any of them has already been filed with the Accountant; and
- (c) an affidavit stating,
 - (i) in the case of a report, that the report has been confirmed and the manner of confirmation, or
 - (ii) in the case of an order, that the time prescribed for an appeal has expired and no appeal is pending,

unless such an affidavit has already been filed with the Accountant,

and the Accountant shall then pay the money to the person to whom the order or report directs that it be paid.

(3) Where the Children's Lawyer or the Public Guardian and Trustee seeks payment out in accordance with an order or report, he or she may file one written request dealing with more than one proceeding and need not file the affidavit referred to in clause (2)(c).

Payment Out on Consent

(4) A party who seeks payment out of court, on consent, of money paid into court shall file with the Accountant,

- (a) a written request for payment out;
- (b) the consent of all parties or their lawyers; and
- (c) an affidavit stating that all parties have consented to the payment and that neither the party who paid the money into court nor the party to whom it is to be paid is under disability,

and the Accountant shall then pay the money out to the party in accordance with the consent.

(4.1) Subrule (4) does not apply if the money was paid into court under an order that provides that a further order is required for the money to be paid out of court.

Payment Out of Interest

(5) Money paid out of court under subrule (2) or (4) shall be paid out with accrued interest, if any, unless the order, report or consent provides otherwise.

Consent by Insurer on Behalf of Party

(6) Where the insurer of a party has paid money into court on behalf of the party and an affidavit setting out the relevant facts is filed with the Accountant, the consent required by clause (4)(b) may be given by the insurer on behalf of the party and, where the party is entitled to payment out, the money may be paid out to the insurer.

Minor Attaining Age of Majority

(7) Money in court to which a party is entitled under an order or report when the party attains the age of majority may be paid out to the party on filing with the Accountant, in the forms provided by the Accountant,

- (a) a written request for payment out; and
- (b) an affidavit proving the identity of the party and that the party has attained the age of majority.

Payment Directly to Lawyer

(8) Where money has been paid into court as security for costs or an order has been made for payment of costs out of money in court and the order does not provide for payment out directly to a lawyer, the money may be paid out to the lawyer for the party entitled, on filing with the Accountant the material required by subrule (2) or (4) and, in addition, the affidavit of the party stating that the party consents to payment of the money directly to the lawyer rather than to the party.

Payment to Personal Representative

(9) Where money or securities in court are to be paid out or transferred to a person named in an order or report who has died, the money or securities may be paid or transferred to the deceased person's personal representative on proof to the satisfaction of the Accountant of the person's death and of the personal representative's authority.

Party under Disability

(10) An order for payment out of court of money in court to the credit of a person under disability may be obtained on motion to a judge by or on notice to the Children's Lawyer, unless the Public Guardian and Trustee is the person's litigation guardian, in which case the motion shall be made by or on notice to the Public Guardian and Trustee.

(11) A motion under subrule (10), other than a motion made by the Children's Lawyer or the Public Guardian and Trustee, shall be supported by an affidavit in Form 72B.

(12) A motion under subrule (10) by the Children's Lawyer or the Public Guardian and Trustee may be made without notice unless the court orders otherwise.

(13) In an order under subrule (10), the judge may fix the costs of the moving party and direct that they be paid out of the money in court directly to the moving party's lawyer.

(14) Where an order is made under subrule (10) for support of a minor, the Children's Lawyer shall, on request of the moving

party, obtain the cheque from the accountant and send it without charge to the moving party.

Transition

(15) This rule, as it read immediately before the day Ontario Regulation 399/12 came into force, continues to apply to the payment out of court of money paid into court that is held by the registrar.

O. Reg. 69/95, ss. 9, 19, 20; 263/03, s. 8; 575/07, ss. 1, item 33, 2, item 3; 399/12, s. 6

72.04 Discharge of a Mortgage — **(1)** A person entitled to the discharge of a mortgage held by the Accountant may send to the Accountant the document required to discharge the mortgage, with a request that the Accountant execute the document.

(2) If the Accountant is satisfied that the money secured by the mortgage has been paid in full, the Accountant shall execute the discharge document.

(3) After executing the discharge document, the Accountant shall hand over all documents that relate to the mortgage in return for a receipt for the documents and shall assign any policy of insurance in respect of the mortgaged property to the person entitled to the discharge or as the person directs in writing.

O. Reg. 399/12, s. 7

72.05 Stop Order — **(1)** On motion without notice in a proceeding or, where there is no proceeding pending, on application without notice by a person who claims to be entitled to money or securities held or to be held in the future by the Accountant for the benefit of another person, the court may make a stop order (Form 72C) directing that the money or securities shall not be dealt with except on notice to the moving party or applicant.

(2) On a motion or application for a stop order, the moving party or applicant shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately appears

that the granting of the order has caused damage to any person for which the moving party or applicant ought to compensate the person.

(3) A person who has obtained an order under subrule (1) may make a motion on notice to all interested parties for an order for payment out.

O. Reg. 399/12, s. 8

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Rule 74 — Estates — Non-Contentious Proceedings

74.01 Definitions — In this Rule and in Rule 75,

Proposed Amendment — 74.01 opening words

74.01 Definitions — In this Rule and in Rules 74.1 and 75,

O. Reg. 111/21, s. 7 [To come into force April 1, 2021.]

“certificate of appointment of estate trustee” means letters probate, letters of administration or letters of administration with the will annexed;

“estate trustee” means an executor, administrator or administrator with the will annexed;

“estate trustee during litigation” means an administrator appointed pending an action;

“estate trustee with a will” means an executor or an administrator with the will annexed;

“estate trustee without a will” means an administrator;

“objection to issuing of certificate of appointment” means a caveat;

“proof of death” means documentary evidence of a person’s death, including a death certificate issued by the Registrar General, a certificate in respect of the death issued by a funeral director, or an order made under the

Declarations of Death Act, 2002 declaring that the person has died;

“will” includes any testamentary instrument of which probate or administration may be granted.

O. Reg. 484/94, s. 12; 193/15, s. 7

74.02 Deposit of Wills and Codicils for Safekeeping — (1) A registrar shall not receive and keep a will or codicil under section 2 of the *Estates Act* unless the deposit is made by,

- (a) the testator;
- (b) a person authorized by the testator in writing;
- (c) a lawyer who held the will or codicil at the time of retirement from practice;
- (d) the estate trustee of a lawyer who held the will or codicil at the time of the lawyer’s death;
- (e) the representative of a trust corporation that held the will or codicil when it ceased to do business in Ontario; or
- (f) a person authorized by the court to deposit the will or codicil.

(2) An affidavit of execution of the will or codicil (Form 74.8) may be deposited at the same time as the will or codicil.

(3) The registrar shall cause every will or codicil that is deposited for safekeeping to be enclosed in an envelope that is securely sealed in the presence of the depositor, and shall cause to be endorsed on the envelope the date of the deposit, the name and address of the depositor and of the testator and estate trustee or trustees named in the will, the date of birth of the testator and the date of the will or codicil.

(4) [Repealed O. Reg. 690/20, s. 1(1).]

Access to Deposited Will or Codicil

(5) No person, except the testator in person or a guardian of the testator’s property, or except by order of the court, shall remove,

copy or inspect a will or codicil on deposit during the testator's lifetime.

(6) After the death of the testator, any person may copy or inspect a will or codicil of the testator on deposit, on filing a written request stating the testator's date of birth and proof of death.

Request for Delivery of Will or Codicil to Estate Trustee, Person Named by Court

(7) After the death of the testator, the registrar may, on the filing of the following documents, deliver the will or codicil of the testator that is on deposit to an estate trustee named in the will or to such other person as the court may direct:

1. A request for the delivery, stating the testator's date of birth.
2. Proof of death.
3. If no order directing delivery of the will or codicil has been made, an authorization signed by every estate trustee named in the will specifying the estate trustee as the person to whom the will or codicil is to be delivered.
4. If an order directing delivery of the will or codicil has been made, a copy of the order.

Request for Delivery of Will or Codicil to Estate Trustee's Lawyer

(7.1) After the death of the testator, the registrar may, on the filing of the following documents, deliver the will or codicil of the testator that is on deposit to the lawyer for an estate trustee named in the will:

1. A request for the delivery, stating the testator's date of birth.
2. Proof of death.
3. Subject to subrule (7.2), an authorization, signed by every estate trustee named in the will, specifying the estate trustee's lawyer as the person to whom the will or codicil is to be delivered.

Same

(7.2) The following documents may be filed instead of the authorization referred to in paragraph 3 of subsection (7.1):

1. An authorization signed by every estate trustee named in the will specifying the estate trustee as the person to whom the will or codicil is to be delivered.
2. An authorization signed by the estate trustee specifying his or her lawyer as the person to whom the will or codicil is to be delivered.

Authorization

(7.3) If an estate trustee is not available to provide his or her signature for the purposes of an authorization under subrule (7) or (7.1) or paragraph 1 of subrule (7.2), the requirement to provide an authorization signed by every estate trustee named in the will may be satisfied by filing an authorization signed by every available estate trustee, together with a written explanation satisfactory to the registrar as to the reason for each missing signature.

Proof of Identification

(7.4) The registrar may, before delivering a will or codicil to a person, require that the person provide such proof of identification as the registrar specifies.

Duties of Registrar on Delivery of Will or Codicil

(7.5) In delivering a will or codicil under subrule (7) or (7.1), the registrar shall retain,

- (a) a copy of the will and any codicil, certified to be a true copy by the registrar;
- (b) the receipt of the person to whom the will or codicil was delivered;
- (c) a copy of any authorizations filed under the subrule; and
- (d) a copy of any order directing the delivery of the will or codicil.

Archivist of Ontario

(8) The registrar shall deposit with the Archivist of Ontario wills and codicils that

have been held for safekeeping for 125 years or more.

O. Reg. 484/94, s. 12; 69/95, s. 10; 575/07, s. 31; 193/15, s. 8; 203/17, s. 1; 690/20, s. 1

74.03 Request for Notice of Commencement of Proceeding — (1)

At any time before a certificate of appointment of an estate trustee has been issued, a person who appears to have a financial interest in the estate and who desires to be informed of the commencement of a proceeding in the estate may file with the registrar a request for notice (Form 74.3), and thereafter is entitled to receive notice of the commencement of any proceeding in the estate until a certificate of appointment of an estate trustee is issued, unless the court orders otherwise.

(2) Notice by the registrar under subrule (1) may be sent by regular lettermail to the address shown in the request for notice.

(3) A request for notice expires three years after it is filed but a further request may be filed at any time before a certificate of appointment of an estate trustee for the estate is issued.

O. Reg. 484/94, s. 12; 24/00, s. 11

74.04 Certificate of Appointment of Estate Trustee With a Will —*Material to Accompany Application*

(1) An application for a certificate of appointment of estate trustee with a will (Form 74.4 or 74.5 or, if the application is for a certificate limited to the assets referred to in the will, Form 74.4.1 or 74.5.1) shall be accompanied by,

- (a) the original of the will and of every codicil;
- (a.1) proof of death;
- (b) an affidavit (Form 74.6) attesting that notice of the application (Form 74.7) has been served in accordance with subrules (2) to (7);

(c) if the will or a codicil is not in holograph form,

(i) an affidavit of execution (Form 74.8) of the will and of every codicil or, if the will or a codicil contains an alteration, erasure, obliteration or interlineation that has not been attested, an affidavit as to the condition of the will or codicil at the time of execution (Form 74.10), or

(ii) if each of the witnesses to the will or the codicil has died or cannot be found, such other evidence of due execution as the court may require;

(d) if the will or a codicil is in holograph form, an affidavit attesting that the handwriting and signature in the will or codicil are those of the deceased (Form 74.9);

(e) [Repealed O. Reg. 584/17, s. 8.]

(f) a renunciation (Form 74.11) from every living person who is named in the will or codicil as estate trustee who has not joined in the application and is entitled to do so;

(g) if the applicant is not named as an estate trustee in the will or codicil, a consent to the applicant's appointment (Form 74.12 or, if the application is for a certificate limited to the assets referred to in the will, Form 74.12.1) by persons who are entitled to share in the distribution of the estate and who together have a majority interest in the value of the assets of the estate at the date of death;

(g.1) in the case of an application for a certificate of appointment of estate trustee with a will limited to the assets referred to in the will, a draft order (Form 74.13.2) granting the certificate of appointment;

(h) the security required by the *Estates Act*; and

(i) such additional or other material as the court directs.

Notice to Interested Persons

(2) Notice of the application shall be served on all persons entitled to share in the distribution of the estate, including charities and contingent beneficiaries; however, notice need not be served on the applicant.

(3) [Repealed O. Reg. 24/00, s. 12.]

Notice — Minor

(4) If a person who is entitled to share in the distribution of the estate is less than 18 years of age, notice of the application shall not be served on the person, despite subrule (2), but shall be served on a parent or guardian and on the Children's Lawyer.

Notice — Unborn or Unascertained Persons

(5) If there may be unborn or unascertained beneficiaries, notice of the application shall be served on the Children's Lawyer.

Notice — Mentally Incapable Person

(6) If a person who is entitled to share in the distribution of the estate is mentally incapable within the meaning of section 6 of the *Substitute Decisions Act, 1992* in respect of an issue in the proceeding, notice of the application shall also be served,

- (a) if there is a guardian with authority to act in the proceeding, on the guardian;
- (b) if there is no guardian with authority to act in the proceeding but there is an attorney under a power of attorney with authority to act in the proceeding, on the attorney;
- (c) if there is neither a guardian nor an attorney with authority to act in the proceeding, on the Public Guardian and Trustee.

Service

(7) Notice under this rule shall be served on all persons, including charities, the Children's Lawyer and the Public Guardian and Trustee, and, unless the court specifies another method of service, may be served by,

- (a) personal service;

(b) e-mail, to the last e-mail address for service provided by the person or, if no such e-mail address has been provided, to the person's last known e-mail address; or

(c) mail or courier, to the person's last known address.

Certificate

(8) The certificate of appointment of estate trustee with a will shall be in Form 74.13.

(9) The certificate of appointment of estate trustee with a will limited to the assets referred to in the will shall be in Form 74.13.1.

O. Reg. 484/94, s. 12; 740/94, s. 1; 69/95, ss. 11, 19, 20; 332/96, s. 1; 24/00, s. 12; 653/00, s. 6; 55/12, s. 9; 193/15, s. 9; 584/17, s. 8; 690/20, s. 2

74.05 Certificate of Appointment of Estate Trustee Without a Will —***Material to Accompany Application***

(1) An application for a certificate of appointment of estate trustee without a will (Form 74.14 or 74.15) shall be accompanied by,

- (0.a) proof of death;
- (a) an affidavit (Form 74.16) attesting that notice of the application (Form 74.17) has been served in accordance with subrules (2) to (5);
- (b) a renunciation (Form 74.18) from every person who is entitled in priority to be named as estate trustee and who has not joined in the application;
- (c) a consent to the applicant's appointment (Form 74.19) by persons who are entitled to share in the distribution of the estate and who together have a majority interest in the value of the assets of the estate at the date of death;
- (d) the security required by the *Estates Act*; and
- (e) such additional or other material as the court directs.

Notice to Interested Persons

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(2) Notice of the application shall be served on all persons entitled to share in the distribution of the estate; however, notice need not be served on the applicant.

Notice — Minor

(3) If a person who is entitled to share in the distribution of the estate is less than 18 years of age, notice of the application shall not be served on the person, despite subrule (2), but shall be served on a parent or guardian and on the Children's Lawyer.

Notice — Mentally Incapable Person

(4) If a person who is entitled to share in the distribution of the estate is mentally incapable within the meaning of section 6 of the *Substitute Decisions Act, 1992* in respect of an issue in the proceeding, notice of the application shall also be served,

(a) if there is a guardian with authority to act in the proceeding, on the guardian;

(b) if there is no guardian with authority to act in the proceeding but there is an attorney under a power of attorney with authority to act in the proceeding, on the attorney;

(c) if there is neither a guardian nor an attorney with authority to act in the proceeding, on the Public Guardian and Trustee.

Service

(5) Notice under this rule shall be served on all persons, including the Children's Lawyer and the Public Guardian and Trustee, and, unless the court specifies another method of service, may be served by,

(a) personal service;

(b) e-mail, to the last e-mail address for service provided by the person or, if no such e-mail address has been provided, to the person's last known e-mail address; or

(c) mail or courier, to the person's last known address.

Certificate

(6) The certificate of appointment of estate trustee without a will shall be in Form 74.20.

O. Reg. 484/94, s. 12; 740/94, s. 1; 69/95, ss. 12, 19, 20; 332/96, s. 2; 193/15, s. 10; 690/20, s. 3

74.05.1 Certificate of Appointment of Foreign Estate Trustee's Nominee as Estate Trustee Without a Will —**Material to Accompany Application**

(1) An application for a certificate of appointment of a foreign estate trustee's nominee as estate trustee without a will (Form 74.20.1) shall be accompanied by,

(a) a nomination (Form 74.20.2) of the applicant by the estate trustee appointed in the jurisdiction where the deceased was domiciled at the date of death;

(b) a copy of the document appointing the foreign estate trustee, certified under the seal of the court that granted it;

(c) a certificate under the seal of the court that granted the foreign document, issued within a reasonable amount of time before the date of the application and stating that the foreign document remains effective as of the date of the certificate;

(d) the security required by the *Estates Act*; and

(e) such additional or other material as the court directs.

Certificate

(2) The certificate of appointment of a foreign estate trustee's nominee as estate trustee without a will shall be in Form 74.20.3.

O. Reg. 332/96, s. 3

74.06 Certificate of Appointment of Succeeding Estate Trustee With a Will —

(1) An application for a certificate of appointment of estate trustee to succeed an estate trustee with a will (Form 74.21 or, if the application is for a certificate limited

to the assets referred to in the will, Form 74.21.1) shall be accompanied by,

- (a) the original certificate of appointment or, if the original certificate has been lost, a copy of it certified by the court;
- (b) a renunciation (Form 74.11) from every living person who is named in the will or codicil as an estate trustee and who has not joined in the application and is entitled to do so;
- (c) if the applicant is not named as an estate trustee in the will or codicil, a consent (Form 74.22 or, if the application is for a certificate limited to the assets referred to in the will, Form 74.22.1) to the application by persons who are entitled to share in the distribution of the remaining estate and who together have a majority interest in the value of the assets remaining in the estate at the date of the application;
- (c.1) in the case of an application for a certificate of appointment of succeeding estate trustee with a will limited to the assets referred to in the will, a draft order (Form 74.13.2) granting the certificate of appointment;
- (d) the security required by the *Estates Act*; and
- (e) such additional or other material as the court directs.

(2) The certificate of appointment of succeeding estate trustee with a will shall be in Form 74.23.

(3) The certificate of appointment of succeeding estate trustee with a will limited to the assets referred to in the will shall be in Form 74.23.1.

O. Reg. 484/94, s. 12; 55/12, s. 10

74.07 Certificate of Appointment of Succeeding Estate Trustee Without a Will—(1) An application for a certificate of appointment of estate trustee to succeed

an estate trustee without a will (Form 74.24) shall be accompanied by,

- (a) the original certificate of appointment or, if the original certificate has been lost, a copy of it certified by the court;
- (b) a consent (Form 74.25) to the application by persons who are entitled to share in the distribution of the remaining estate and who together have a majority interest in the value of the assets remaining in the estate at the date of the application;
- (c) the security required by the *Estates Act*; and
- (d) such additional or other material as the court directs.

(2) The certificate of appointment of succeeding estate trustee without a will shall be in Form 74.26.

O. Reg. 484/94, s. 12; 55/12, s. 11

74.08 Confirmation By Resealing of Appointment of Estate Trustee With or Without a Will—(1) An application for confirmation by resealing of the appointment of an estate trustee with or without a will that was granted by a court of competent jurisdiction in the United Kingdom, in a province or territory of Canada or in any British possession (Form 74.27) shall be accompanied by,

- (a) two certified copies of the document under the seal of the court that granted it, or the original document and one certified copy under the seal of the court that granted it;
- (b) the security required by the *Estates Act*; and
- (c) such additional or other material as the court directs.

(2) A confirmation by resealing of the appointment of an estate trustee with or without a will shall be in Form 74.28.

O. Reg. 484/94, s. 12; 740/94, s. 2; 653/00, s. 7

74.09 Certificate of Ancillary Appointment of Estate Trustee With a Will — (1)

An application for a certificate of ancillary appointment of an estate trustee with a will where the applicant has been appointed by a court having jurisdiction outside Ontario, other than a jurisdiction referred to in rule 74.08, (Form 74.27) shall be accompanied by,

- (a) two certified copies of the document under the seal of the court that granted it;
- (b) the security required by the *Estates Act*; and
- (c) such additional or other material as the court directs.

(2) A certificate of ancillary appointment of an estate trustee with a will shall be in Form 74.29.

O. Reg. 484/94, s. 12; 740/94, s. 3; 653/00, s. 8

74.10 Certificate of Appointment of Estate Trustee During Litigation — (1)

An application for a certificate of appointment of an estate trustee during litigation (Form 74.30) shall be accompanied by,

- (a) a copy of the order appointing the applicant as estate trustee during litigation;
- (b) the security required by the *Estates Act*; and
- (c) such additional or other material as the court directs.

(2) A certificate of appointment of an estate trustee during litigation shall be in Form 74.31.

O. Reg. 484/94, s. 12

74.11 Bonds — (1) Unless the court orders otherwise,

- (a) the bond required by section 35 of the *Estates Act* shall be the bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance in Ontario (Form 74.32) or of one or more personal sureties (Form 74.33);

(b) a registrar of the court or a lawyer shall not be a personal surety;

(c) a personal surety must be a resident of Ontario who is not a minor;

(d) one personal surety is sufficient where the value of the assets of the estate does not exceed \$100,000;

(e) the security required for a succeeding estate trustee shall be based on the value of the assets of the estate remaining to be administered at the time the application for a certificate of appointment as succeeding estate trustee is made; and

(f) the security required for confirmation by resealing of the appointment of an estate trustee, or for an ancillary appointment of an estate trustee, shall be based on the value of the assets of the estate over which the estate trustee seeks jurisdiction in Ontario.

(2) Any person, including a creditor, who has a contingent or vested interest in an estate may at any time, on notice to the estate trustee or applicant for appointment, move for an order to have a bond filed or the amount of an existing bond increased or reduced.

O. Reg. 484/94, s. 12; 24/00, s. 13; 575/07, s. 1, item 34

74.12 Procedure on Applications for Certificates of Appointment of Estate Trustees — (1)

If the registrar determines that a will or codicil has been deposited in the Superior Court of Justice that prevents confirmation under clause 16(c) or (d) of the *Estates Act*, the registrar shall send a copy of the application, together with a notice in Form 74.34, to the estate trustee named in the deposited will or codicil by regular lettermail to the last address on record with the court.

(2) [Repealed O. Reg. 690/20, s. 4.]

(3) [Repealed O. Reg. 690/20, s. 4.]

Establishing Date of Execution

(4) If a will is not dated or is dated imperfectly, the date of execution may be established by the evidence of an attesting witness or, where the evidence as to the date of execution cannot be obtained, evidence that the execution took place between two specific dates or that a search has been made and no will that could be of a later date has been found.

Registrar's Notes

(5) If a beneficiary or spouse of a beneficiary under a will or codicil has attested the will or codicil or has signed the will or codicil for the testator, and the provision for the beneficiary appears to the registrar to be void by reason of section 12 of the *Succession Law Reform Act*, the registrar shall note the fact on the will or codicil and the note shall be reproduced on the copy attached to the certificate of appointment.

(6) Where a devise or bequest of a beneficial interest in property to a former spouse of the testator, or an appointment of a former spouse as estate trustee, or the conferring of a general or special power of appointment on a former spouse, is revoked by reason of section 17 of the Succession Law Reform Act, the registrar shall note the fact on the will or codicil and the note shall be reproduced on the copy of the will that is attached to the certificate of appointment.

O. Reg. 484/94, s. 12; 292/99, s. 1(2); 690/20, s. 4

74.13 Deposit Equal to Tax —

Deposit Payable at Time of Application

(1) The deposit equal to tax referred to in the *Estate Administration Tax Act, 1998* shall be paid at the time an application for a certificate of appointment of an estate trustee is made.

Exception

(2) The court may issue the certificate of appointment where the applicant,

(a) files with the court an affidavit as to the estimated value of the estate at the time of the application and pays the

deposit equal to tax calculated on the estimated value; and

(b) provides an undertaking to the court that the applicant will, within six months after giving the undertaking, file a sworn statement of the total value of the estate and pay the additional tax payable if the actual value is higher than the estimated value.

(3) The court may issue the certificate of appointment without the payment of a deposit equal to tax if the applicant has obtained an order under subsection 4(1) of the *Estate Administration Tax Act, 1998*.

(4) Where an undertaking given under subrule (2) is not fulfilled or the terms of an order under subsection 4(1) of the *Estate Administration Tax Act, 1998* are not complied with, the court may, on the request of the registrar, make an order for compliance.

O. Reg. 484/94, s. 12; 24/00, s. 14

74.14 Issuance of Certificate of Appointment of Estate Trustee — (1)

The registrar may issue a certificate of appointment of estate trustee,

(a) if the registrar is satisfied that,

(i) issuance is not prevented under section 16 of the *Estates Act*,

(ii) the application for the certificate contains the information, evidence and supporting documentation required by these rules or under any Act, and

(iii) the applicant has met the requirements of subrule 74.13(1) or (2), or has obtained an order under subsection 4(1) of the *Estate Administration Tax Act, 1998*; or

(b) if directed to do so by a judge.

Request by Registrar

(2) In making a determination for the purposes of clause (1)(a), the registrar may request that the applicant provide to the regis-

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trar any required information, or file any required evidence or documentation.

Refusal

(3) If the registrar is not satisfied that the conditions set out in clause (1)(a) have been met, the registrar shall, subject to subrule (4), refuse to issue the certificate.

Referral to Judge

(4) The registrar shall refer an application for a certificate of appointment of estate trustee to a judge for determination if, in the registrar's opinion, the application raises an issue that requires determination by a judge.

Notice of Refusal

(5) If the registrar refuses under subrule (3) to issue the certificate, the registrar shall send a notice in Form 74.35 to the applicant or the applicant's lawyer by,

- (a) regular lettermail to the mailing address shown in the application; or
- (b) by e-mail to the e-mail address most recently indicated for the applicant or the applicant's lawyer in the applicable court file, if any, or, in the case of a lawyer whose e-mail address is not indicated in the court file, the e-mail address for the lawyer as published on the Law Society of Ontario's website.

O. Reg. 484/94, s. 12; 740/94, s. 4; 690/20, s. 5

74.14.1 Authentication of Certificate of Appointment — Authentication of a certificate of appointment issued under this Rule may be obtained by making a written request to the registrar of the court that issued the certificate of appointment for,

- (a) a certificate of grant, to be signed by the registrar, if the authentication is intended for use in Canada; or
- (b) an exemplification certificate, to be signed by the registrar and a judge of the court, if the authentication is intended for use outside Canada.

O. Reg. 193/15, s. 11

74.14.2 Confirmation of Estate Trustees — (1) This rule applies if,

- (a) there has been a change of estate trustees as a result of,
 - (i) a devolution of executorship on the death of an estate trustee with a will,
 - (ii) the death of an estate trustee, if one or more surviving estate trustees continue to be authorized to act, or
 - (iii) a court order; or
- (b) there has been no change of estate trustees.

(2) Confirmation of the status of a person as an estate trustee may be obtained by making a written request to the registrar of the court that issued the applicable certificate of appointment for a court status certificate providing the confirmation, to be signed by the registrar.

(3) If the request is for a court status certificate confirming the status of a person as an estate trustee by devolution of executorship on the death of an estate trustee with a will, the request shall be accompanied by,

- (a) a copy, certified by the court, of every certificate of appointment of estate trustee issued in relation to that will and not subsequently revoked;
- (b) a copy, certified by the court, of every certificate of appointment of estate trustee issued in relation to the deceased estate trustee's will and not subsequently revoked; and
- (c) an affidavit setting out the circumstances authorizing the person to act as an estate trustee, with proof of death of the deceased estate trustee attached as an exhibit to the affidavit.

(4) If the request is for a court status certificate confirming the status of a surviving estate trustee under a certificate of appointment of estate trustee with a will after the death of another estate trustee appointed by the same certificate of appointment, the re-

quest shall be accompanied by an affidavit confirming the death of the estate trustee and the circumstances under which the surviving estate trustee continues to be authorized to act, with proof of death of the deceased estate trustee attached as an exhibit to the affidavit.

(5) If the request is for a court status certificate confirming the person or persons acting as an estate trustee under a certificate of appointment after a court has ordered the appointment, removal or replacement of an estate trustee, the request shall be accompanied by a copy of the order.

O. Reg. 193/15, s. 11

74.15 Orders for Assistance —

Kinds of Orders

(1) In addition to a motion under section 9 of the *Estates Act*, any person who appears to have a financial interest in an estate may move,

(a) **Order to Accept or Refuse Appointment** — for an order (Form 74.36) requiring any person to accept or refuse an appointment as an estate trustee with a will;

(b) for an order (Form 74.37) requiring any person to accept or refuse an appointment as an estate trustee without a will;

(c) **Order to Consent or Object to Proposed Appointment** — for an order (Form 74.38) requiring any person to consent or object to a proposed appointment of an estate trustee with or without a will;

(d) **Order to File Statement of Assets of the Estate** — for an order (Form 74.39) requiring an estate trustee to file with the court a statement of the nature and value, at the date of death, of each of the assets of the estate to be administered by the estate trustee;

(e) **Order for Further Particulars** — after receiving the statement

described in clause (d), for an order for further particulars by supplementary affidavit or otherwise as the court directs;

(f) **Order to Beneficiary Witness** — for an order (Form 74.40) requiring a beneficiary or the spouse of a beneficiary who witnessed the will or codicil, or who signed the will or codicil for the testator, to satisfy the court that the beneficiary or spouse did not exercise improper or undue influence on the testator;

(g) **Order to Former Spouse** — for an order (Form 74.41) requiring a former spouse of the deceased to take part in a determination under subsection 17(2) of the *Succession Law Reform Act* of the validity of the appointment of the former spouse as estate trustee, a devise or bequest of a beneficial interest to the former spouse or the conferring of a general or special power of appointment on him or her;

(h) **Order to Pass Accounts** — for an order (Form 74.42) requiring an estate trustee to pass accounts; and

(i) **Order for Other Matters** — for an order providing for any other matter that the court directs.

Notice of Motion

(2) A motion under subrule (1) may be made without notice, except a motion under clause (1)(e), which requires 10 days notice to the estate trustee.

Service

(3) An order referred to in subrule (1) and an order for production under section 9 of the *Estates Act* shall be served by personal service, by an alternative to personal service or as the court directs.

Examination

(4) The court may require any person to be examined under oath for the purpose of deciding a motion under subrule (1).

O. Reg. 484/94, s. 12

74.16 Passing of Estate Accounts —

Rules 74.17 and 74.18 apply to accounts of estate trustees and, with necessary modifications, to accounts of trustees other than estate trustees, persons acting under a power of attorney, guardians of the property of mentally incapable persons, guardians of the property of a minor and persons having similar duties who are directed by the court to prepare accounts relating to their management of assets or money.

O. Reg. 484/94, s. 12; 69/95, s. 13

74.17 Form of Accounts — (1) Estate trustees shall keep accurate records of the assets and transactions in the estate and accounts filed with the court shall include,

- (a) on a first passing of accounts, a statement of the assets at the date of death, cross-referenced to entries in the accounts that show the disposition or partial disposition of the assets;
- (b) on any subsequent passing of accounts, a statement of the assets on the date the accounts for the period were opened, cross-referenced to entries in the accounts that show the disposition or partial disposition of the assets, and a statement of the investments, if any, on the date the accounts for the period were opened;
- (c) an account of all money received, but excluding investment transactions recorded under clause (e);
- (d) an account of all money disbursed, including payments for trustee's compensation and payments made under a court order, but excluding investment transactions recorded under clause (e);
- (e) where the estate trustee has made investments, an account setting out,
 - (i) all money paid out to purchase investments,
 - (ii) all money received by way of repayments or realization on the investments in whole or in part, and

(iii) the balance of all the investments in the estate at the closing date of the accounts;

(f) a statement of all the assets in the estate that are unrealized at the closing date of the accounts;

(g) a statement of all money and investments in the estate at the closing date of the accounts;

(h) a statement of all the liabilities of the estate, contingent or otherwise, at the closing date of the accounts;

(i) a statement of the compensation claimed by the estate trustee and, where the statement of compensation includes a management fee based on the value of the assets of the estate, a statement setting out the method of determining the value of the assets; and

(j) such other statements and information as the court requires.

(2) The accounts required by clauses (1)(c), (d) and (e) shall show the balance forward for each account.

(3) Where a will or trust deals separately with capital and income, the accounts shall be divided to show separately receipts and disbursements in respect of capital and income.

O. Reg. 484/94, s. 12

74.18 Application to Pass Accounts —***Material to be Filed***

(1) On the application of an estate trustee to pass accounts, the estate trustee shall file,

(a) the estate accounts for the relevant period verified by affidavit of the estate trustee (Form 74.43);

(b) a copy of the certificate of appointment of the applicant as estate trustee;

(c) a copy of the latest judgment, if any, of the court relating to the passing of accounts.

Notice of Application

(2) On receiving the material referred to in subrule (1), the court shall issue a notice of the application to pass accounts (Form 74.44).

Service

(3) The applicant shall serve the notice of application and a copy of a draft of the judgment sought on each person who has a contingent or vested interest in the estate by regular lettermail.

(3.1) Where the Public Guardian and Trustee or the Children's Lawyer represents a person who has a contingent or vested interest in the estate, the Public Guardian and Trustee or the Children's Lawyer shall be served with the documents referred to in subrules (1) and (3).

(3.2) Where a person other than the Public Guardian and Trustee acts as an attorney under a continuing power of attorney for property or as a guardian of property for a person under disability who has a contingent or vested interest in the estate, the attorney or guardian shall be served with the documents referred to in subrules (1) and (3).

(4) Where the person is served in Ontario, the documents shall be served at least 60 days before the hearing date specified in the notice of application.

(5) Where the person is served outside Ontario, the documents shall be served at least 75 days before the hearing date specified in the notice of application.

Person under Disability or Unknown

(6) If a person referred to in subrule (3) is under disability or is unknown, the court may appoint someone to represent the person on the passing of the accounts if,

- (a) neither the Public Guardian and Trustee nor the Children's Lawyer is authorized under any Act to represent the person; and
- (b) there is no litigation guardian to act for the person on the passing of the accounts.

Notice of Objection to Accounts

(7) A person who is served with documents under subrule (3) or (3.2) and who wishes to object to the accounts shall, at least 35 days before the hearing date specified in the notice of application, serve on the applicant, and file with proof of service, a notice of objection to accounts (Form 74.45).

Request for Further Notice

(8) A person who is served with documents under subrule (3) or (3.2) and who does not object to the accounts but wishes to receive notice of any further step in the application, including a request for costs or a request for increased costs, shall, at least 35 days before the hearing date specified in the notice of application, serve on the applicant, and file with proof of service, a request for further notice in passing of accounts (Form 74.45.1).

(8.1) Unless the court orders otherwise, a person who serves and files a request for further notice in passing of accounts is entitled to,

- (a) receive notice of any further step in the application;
- (b) receive any further document in the application;
- (c) file material relating to costs under subrule (8.6), (11) or (11.2); and
- (d) in the event of a hearing, be heard at the hearing, examine a witness and cross-examine on an affidavit, but with respect only to a request for increased costs under subrule (11).

No Response

(8.2) Unless the court orders otherwise, a person who is served with documents under subrule (3) or (3.2) but does not serve and file either a notice of objection to accounts or a request for further notice in passing of accounts, is not entitled to,

- (a) receive notice of any further step in the application;
- (b) receive any further document in the application;

- (c) file material on the application; or
- (d) in the event of a hearing, be heard at the hearing, examine a witness or cross-examine on an affidavit.

Response to Application — Public Guardian and Trustee or Children's Lawyer

(8.3) If the Public Guardian and Trustee or the Children's Lawyer is served with documents under subrule (3.1), the Public Guardian and Trustee or the Children's Lawyer, as the case may be, shall, at least 30 days before the hearing date specified in the notice of application, serve on the applicant and file with proof of service,

- (a) a notice of objection to accounts (Form 74.45);
- (b) a request for further notice in passing of accounts (Form 74.45.1);
- (c) a notice of no objection to accounts (Form 74.46); or
- (d) a notice of non-participation in passing of accounts (Form 74.46.1).

Withdrawal of Objection

(8.4) A person who wishes to withdraw a notice of objection to accounts shall, at least 15 days before the hearing date of the application, serve on the applicant, and file with proof of service, a notice of withdrawal of objection (Form 74.48).

When Hearing not Required

(8.5) An applicant may seek judgment on the passing of accounts without a hearing under subrule (9) if,

- (a) no notices of objection to accounts are filed; or
- (b) every notice of objection to accounts that was filed is withdrawn before the deadline set out in that subrule.

Request for Costs

(8.6) Subject to subrule (11), any person served with documents under subrule (3), (3.1) or (3.2) who wishes to seek costs shall, at least 10 days before the hearing date of

the application, serve on the applicant a request for costs (Form 74.49 or 74.49.1) and file the request with proof of service.

Judgment on Passing of Accounts Granted Without Hearing

(9) The court may grant a judgment on passing accounts without a hearing if, at least five days before the hearing date of the application, the applicant files with the court,

- (a) a record containing,
 - (i) an affidavit of service of documents served under subrule (3), (3.1) or (3.2),
 - (ii) the notices of no objection to accounts or notices of non-participation in passing of accounts of the Children's Lawyer and Public Guardian and Trustee, if served,
 - (iii) an affidavit (Form 74.47) of the applicant or applicant's lawyer stating that a copy of the accounts was provided to each person who was served with the notice of application and requested a copy, that the time for filing notices of objection to accounts has expired and that no notice of objection to accounts was received from any person served, or that, if a notice of objection was received, it was withdrawn as evidenced by a notice of withdrawal of objection (Form 74.48) attached to the affidavit,
 - (iv) requests (Form 74.49 or 74.49.1), if any, for costs of the persons served,
 - (iv.1) any requests for increased costs (Form 74.49.2 or 74.49.3), costs outlines (Form 57B) and responses to requests for increased costs received under subrule (11.2), and
 - (v) the certificate of a lawyer stating that all documents required by subclauses (i) to (iv.1) are included in the record;

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- (b) a draft of the judgment sought, in duplicate; and
- (c) if the Children's Lawyer or the Public Guardian and Trustee was served with documents under subrule (3.1) and did not serve a notice of non-participation in passing of accounts, a copy of the draft judgment approved by the Children's Lawyer or the Public Guardian and Trustee, as the case may be.

Costs

(10) Where the court grants judgment on passing accounts without a hearing, the costs awarded shall be assessed in accordance with Tariff C, except as provided under subrules (11) to (11.4).

Request for Increased Costs

(11) Where the applicant or a person served with documents under subrule (3), (3.1) or (3.2) seeks costs greater than the amount allowed in Tariff C, he or she shall, before the deadline referred to in subrule (11.1), serve on the persons referred to in subrule (11.1),

- (a) a request for increased costs (Form 74.49.2 or 74.49.3) specifying the amount of the costs being sought; and
- (b) a costs outline (Form 57B).

(11.1) Unless the court orders otherwise, the documents referred to in subrule (11) shall be served on the applicant and on the following persons, as applicable, at least 15 days before the hearing date of the application:

1. Every person who has served and filed a notice of objection to accounts in accordance with subrule (7), even if he or she has since withdrawn it.
2. Every person who has served and filed a request for further notice in passing of accounts in accordance with subrule (8).
3. The Public Guardian and Trustee or Children's Lawyer, as the case may be, if the Public Guardian and Trustee or the Children's Lawyer was served with

documents under subrule (3.1) and did not serve and file a notice of non-participation in passing of accounts.

(11.2) Any objection or consent to a request for increased costs shall be made by returning the completed Form 74.49.2 or 74.49.3, as the case may be, to the person making the request so that he or she receives it at least 10 days before the hearing date of the application.

(11.3) Where a request for increased costs is served under subrule (11), the person making the request shall, at least five days before the hearing date of the application, file with the court a supplementary record containing,

- (a) the documents served under that subrule, together with an affidavit of service of those documents; and
- (b) an affidavit containing,
 - (i) a summary of the responses to the request for increased costs received under subrule (11.2), and a list of the persons who failed to respond, and
 - (ii) the factors that contributed to the increased costs.

Judgment on Increased Costs Granted Without Hearing

(11.4) The court may, on consideration of the documents referred to in subrule (11.3), grant judgment on a request for increased costs without a hearing, and may, for the purpose, order the person making the request to provide any additional information that the court specifies.

Contested Passing of Accounts (Hearing)

(11.5) If one or more notices of objection to accounts are filed and not withdrawn, the applicant shall, at least 10 days before the hearing date of the application, serve on the persons referred to in subrule (11.6), and file with proof of service,

- (a) a consolidation of all the remaining notices of objection to accounts; and

R. 74.18(11.5)(b) Ont. Reg. 194 — Rules of Civil Procedure

(b) a reply to notice of objection to accounts (Form 74.49.4).

(11.6) The documents referred to in subrule (11.5) shall be served on,

(a) every person who has served and filed a notice of objection to accounts in accordance with subrule (7) and not withdrawn it;

(b) every person who has served and filed a request for further notice in passing of accounts in accordance with subrule (8); and

(c) the Public Guardian and Trustee or Children's Lawyer, as the case may be, if the Public Guardian and Trustee or the Children's Lawyer was served with documents under subrule (3.1) and did not serve and file a notice of non-participation in passing of accounts.

(11.7) If the application to pass accounts proceeds to a hearing, the applicant shall, at least five days before the hearing date, file with the court a record containing,

(a) the application to pass accounts;

(b) the documents referred to in subrule (11.5);

(c) any responses to the applicant's reply to notice of objection to accounts by the persons on whom the reply was served;

(d) in the case of any notice of objection to accounts that is withdrawn after the documents referred to in subrule (11.5) were served and filed, a copy of the notice of withdrawal of objection (Form 74.48);

(e) the notices of non-participation in passing of accounts of the Public Guardian and Trustee and the Children's Lawyer, if served;

(f) any requests for further notice in passing of accounts (Form 74.45.1);

(g) any requests for costs (Form 74.49 or 74.49.1) of persons served under subrule (11.5);

(h) any requests for increased costs (Form 74.49.2 or 74.49.3), costs outlines (Form 57B) and responses to requests for increased costs received under subrule (11.2); and

(i) a draft order for directions or of the judgment sought, as the case may be.

(11.8) If the applicant and every person referred to under subrule (11.6), as applicable, agree to all of the terms of a draft order, the applicant shall indicate that it is a joint draft order.

(11.9) If the applicant and every person referred to under subrule (11.6), as applicable, fail to agree to all of the terms of a draft order,

(a) the applicant shall indicate that it is the applicant's draft order; and

(b) any person referred to in clause (11.6)(a) may file an alternative draft order at least three days before the hearing date of the application or, with leave of the court, at the hearing.

(12) No objection shall be raised at a hearing on a passing of accounts that was not raised in a notice of objection to accounts, unless the court orders otherwise.

(13) At the hearing, the court may assess, or refer to an assessment officer, any bill of costs, account or charge of lawyers employed by the applicant or by a person who filed a notice of objection or a request for further notice in passing of accounts.

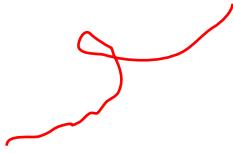
Trial may be Directed

(13.1) On the hearing of the application, the court may order that the application or any issue proceed to trial and give such directions as are just, including directions,

(a) respecting the issues to be tried and each party's position on each issue;

(b) respecting the timing and scope of any applicable disclosure;

(c) respecting the witnesses each party intends to call, the issues to be ad-



Rule 75.1 — Mandatory Mediation ~~— Estates, Trusts and Substitute Decisions~~ ~~75.1.02(1)(b)(vii)~~

dressed by each witness and the length of each witness' testimony; and

(d) respecting the procedure to be followed at the trial, including methods of adducing evidence.

Directions regarding mediation

(13.2) In making an order under subrule (13.1), the court may, in addition to giving any direction under that subrule,

(a) give any direction that may be given under subrule 75.1.05(4), in the case of a proceeding that is subject to Rule 75.1 (mandatory mediation); or

(b) in the case of a proceeding that is not subject to Rule 75.1, order that a mediation session be conducted in accordance with Rule 75.2, and, for the purpose, give any direction that may be given under subrule 75.1.05(4).

Form of Judgment

(14) The judgment on a passing of accounts shall be in Form 74.50 or 74.51.

O. Reg. 484/94, s. 12; 69/95, ss. 18–20; 377/95, s. 6; 332/96, s. 4; 575/07, ss. 1, item 35, 2, item 4; 55/12, s. 12; 193/15, s. 12

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Rule 75.1 — Mandatory Mediation — Estates, Trusts and Substitute Decisions

75.1.01 [Revoked O. Reg. 132/04, s. 13.]

75.1.02 Scope — (1) This Rule applies to proceedings,

(a) that are commenced in,

(i) the City of Toronto on or after September 1, 1999,

(ii) [Repealed O. Reg. 193/15, s. 14(1).]

(iii) the City of Ottawa on or after January 1, 2001, or

(iv) the County of Essex on or after January 1, 2005; and

(b) to which any of the following applies,

(i) rule 74.18 (application to pass accounts), if the application is contested,

Proposed Amendment — 75.1.02(1)(b)(i)

(i) rule 74.18 (application to pass accounts), if the application is contested including in respect of a small estate,

O. Reg. 111/21, s. 10(1) [To come into force April 1, 2021.]

(ii) rule 75.01 (formal proof of testamentary instrument), 75.03 (objection to issuing certificate of appointment), 75.05 (return of certificate) or 75.08 (claims against an estate),

Proposed Amendment — 75.1.02(1)(b)(ii)

(ii) rule 75.01 (formal proof of testamentary instrument), 75.03 (objection to issuing certificate of appointment), 75.05 (return of certificate) or 75.08 (claims against an estate) including in respect of a small estate,

O. Reg. 111/21, s. 10(2) [To come into force April 1, 2021.]

(iii) Part V of the *Succession Law Reform Act*,

(iv) the *Substitute Decisions Act*, 1992,

(v) the *Absentees Act*, the *Charities Accounting Act*, the *Estates Act*, the *Trustee Act* or the *Variation of Trusts Act*,

(vi) subrule 14.05(3), if the matters at issue relate to an estate or trust, or

(vii) subsection 5(2) of the *Family Law Act*.

R. 75.1.02(2)

Ont. Reg. 194 — Rules of Civil Procedure

(2) The fact that an estate or trust is a party to a proceeding, by virtue of an order to continue under Rule 11 or otherwise, is not sufficient to bring the proceeding under this Rule.

O. Reg. 290/99, s. 2; 132/04, s. 14; 193/15, s. 14

75.1.03 Definitions — In this Rule,

“**designated party**” means a party whom an order under clause 74.18(13.2)(a) or 75.06(3.1)(a) or subrule 75.1.05(4) requires to attend a mediation session in person;

“**list**”, when used in reference to a county, means the list maintained for the county under subrule 24.1.08(1);

“**mediation co-ordinator**”, when used in reference to a county, means the person designated as mediation co-ordinator for the county under rule 24.1.06.

O. Reg. 290/99, s. 2; 193/15, s. 15

75.1.04 Exemption from Mediation —

The court may make an order, on a party’s motion or of its own motion, exempting the proceeding from this Rule.

O. Reg. 290/99, s. 2; 193/15, s. 16

75.1.05 Directions for Conduct of Mediation —***Motion for Directions***

(1) The applicant shall make a motion, in the same way as under rule 75.06, seeking directions respecting the conduct of a mediation to which this Rule applies.

(2) The notice of motion shall be served within 30 days after the last day for serving a notice of appearance.

(3) The motion may be combined with a motion under rule 75.06.

Exception

(3.1) Subrule (1) does not apply if the court has already given directions for the conduct of the mediation under clause 74.18(13.2)(a) or 75.06(3.1)(a), unless the court orders otherwise.

Directions

(4) On the hearing of the motion under this rule, the court may direct,

- (a) the issues to be mediated;
- (b) who has carriage of the mediation and who shall respond;
- (c) within what times the mediation session shall take place;
- (d) which parties are required to attend the mediation session in person, and how they are to be served;
- (e) whether notice is to be given to parties submitting their rights to the court under rule 75.07.1;
- (f) how the cost of the mediation is to be apportioned among the designated parties; and
- (g) any other matter that may be desirable to facilitate the mediation.

(5) [Repealed O. Reg. 193/15, s. 17(3).]

(6) [Repealed O. Reg. 193/15, s. 17(3).]

O. Reg. 290/99, s. 2; 132/04, s. 15; 193/15, s. 17

75.1.06 Mediators —(1) A mediation under this rule shall be conducted by,

(a) a person chosen from the list for the county by the agreement of the designated parties;

(b) a person assigned from the list by the mediation co-ordinator for the county, at the request of a designated party; or

(c) a person who is not named on the list, if the designated parties consent.

(2) Every person who conducts a mediation under subrule (1), whether named on the list or not, is required to comply with this Rule.

O. Reg. 290/99, s. 2; 193/15, s. 18

75.1.07 Choice of Mediator —(1) Within 30 days after an order giving directions is made under clause 74.18(13.2)(a) or 75.06(3.1)(a) or subrule 75.1.05(4), the des-

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Rule 75.1 — Mandatory Mediation ~~— Estates, Trusts and Substitutes~~ **R.75.1.10(1)**

ignated parties shall choose a mediator under subrule 75.1.06(1).

(2) When a mediator has been chosen, the party with carriage of the mediation shall give the mediator a copy of the order giving directions.

(3) If the designated parties have not chosen a mediator by the end of the 30-day period, the party with carriage of the mediation shall immediately file with the mediation co-ordinator for the county a request for the assignment of a mediator (Form 75.1A).

(4) A copy of the order giving directions shall be attached to the request.

(5) On receiving the request, the mediation co-ordinator shall immediately assign a mediator from the list and give the mediator a copy of the order giving directions.

(6) If the party with carriage of the mediation fails to file a request, any designated party may file the request.

(7) The mediator shall, immediately on being chosen or assigned, fix a date for the mediation session and shall, at least 20 days before that date, serve on every designated party a notice (Form 75.1B) stating the place, date and time of the session and advising that attendance is obligatory.

O. Reg. 290/99, s. 2; 193/15, s. 19(1)

75.1.08 Procedure Before Mediation Session —

Statement of Issues

(1) At least seven days before the mediation session, every designated party shall prepare a statement in Form 75.1C and provide a copy to every other designated party and to the mediator.

(2) The statement shall identify the factual and legal issues in dispute and briefly set out the position and interests of the party making the statement.

(3) The party making the statement shall attach to it any documents that the party con-

siders of central importance in the proceeding.

Non-Compliance

(4) If it is not practical to conduct a mediation session because a designated party fails to comply with subrule (1), the mediator shall cancel the session and immediately file with the court a certificate of non-compliance (Form 75.1D).

O. Reg. 290/99, s. 2

75.1.09 Attendance at Mediation Session —

Who is Required to Attend

(1) The designated parties, and their lawyers if the designated parties are represented, are required to attend the mediation session.

Authority to Settle

(2) A designated party who requires another person's approval before agreeing to a settlement shall, before the mediation session, arrange to have ready telephone access to the other person throughout the session, whether it takes place during or after regular business hours.

Failure to Attend

(3) If it is not practical to conduct a scheduled mediation session because a designated party fails to attend within the first 30 minutes of the time appointed for the commencement of the session, the mediator shall cancel the session and immediately file with the court a certificate of non-compliance (Form 75.1D).

O. Reg. 290/99, s. 2

75.1.10 Remedy for Non-Compliance — (1) If a certificate of non-compliance is filed, the party with carriage of the mediation shall, within 15 days after the date fixed for the mediation session that was cancelled, bring a motion for further directions before a judge, except in the City of Ottawa where the motion shall be brought before a case management master.

R. 75.1.10(1.1) Ont. Reg. 194 — Rules of Civil Procedure

- (1.1) If the party fails to bring the motion within that time, any other designated party may, within 30 days after the date fixed for the mediation session that was cancelled, bring the motion.
- (2) The judge or case management master may require the designated parties to appear before him or her and may,
- (a) establish a timetable for the proceeding;
 - (b) strike out any document filed by a designated party;
 - (c) order a designated party to pay costs; or
 - (d) make any other order that is just.
- O. Reg. 290/99, s. 2; 132/04, s. 16; 193/15, s. 20

(b) in the case of a conditional agreement, within 10 days after the condition is satisfied.

(5) Despite subrule (4), if rule 7.08 (person under disability, approval of settlement) also applies to the agreement, the notice shall be filed within 10 days after the event mentioned in clause (4)(a) or (b), or within 10 days after the agreement is approved, whichever is later.

Failure to Comply with Signed Agreement

(6) If a party to a signed agreement fails to comply with its terms, any other party to the agreement may,

- (a) make a motion to a judge for judgment in the terms of the agreement, and the judge may grant judgment accordingly; or
- (b) continue the proceeding as if there had been no agreement.

No Agreement

(7) If no agreement is reached that resolves all the issues in dispute, the matter shall proceed in accordance with any directions given under subrule 74.18 (13.1) or rule 75.06.

(8) Except in a contested passing of accounts under rule 74.18, if no directions have been given, a motion for directions under rule 75.06 shall be made as soon as possible by any of the designated parties.

O. Reg. 290/99, s. 2; 193/15, s. 21

75.1.12 Outcome of Mediation —

Mediator's Report

(1) Within 10 days after the mediation is concluded, the mediator shall give the mediation co-ordinator for the county and the designated parties a report on the mediation.

(2) The mediation co-ordinator may remove from the list the name of a mediator who does not comply with subrule (1).

Agreement

(3) If there is an agreement resolving some or all of the issues in dispute, it shall be signed by the designated parties or their lawyers.

(4) If the agreement resolves all the issues in dispute, the party with carriage of the mediation shall file a notice to that effect with the court,

- (a) in the case of an unconditional agreement, within 10 days after the agreement is signed;

75.1.13 Consent Order for Additional Mediation Session — (1) With the consent of the designated parties, the court may, at any stage in the proceeding, make an order requiring them to participate in an additional mediation session.

(2) The court may include any necessary directions in the order.

(3) Rules 75.1.07 to 75.1.12 apply in respect of the additional session, with necessary modifications.

O. Reg. 290/99, s. 2

75.1.14 [Revoked O. Reg. 132/04, s. 17.]

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Rule 76 — Simplified Procedure

76.01*Application of Rule*

(1) The simplified procedure set out in this Rule does not apply to,

- (a) actions under the *Class Proceedings Act, 1992*;
- (b) actions under the *Construction Act*, except trust claims;
- (c) actions commenced or continued under the simplified procedure set out in this Rule that are subsequently assigned for case management under rule 77.05;
- (d) actions in respect of which a jury notice is delivered in accordance with subrule 76.02.1(2).

Application of Other Rules

(2) The rules that apply to an action apply to an action that is proceeding under this Rule, unless this Rule provides otherwise.

O. Reg. 533/95, s. 6; 60/96, s. 1; 284/01, s. 25; 19/03, s. 20; 131/04, s. 18; 537/18, s. 11; 344/19, s. 2

76.02 Availability of Simplified Procedure —*When Mandatory*

(1) The procedure set out in this Rule shall be used in an action if the following conditions are satisfied:

1. The plaintiff's claim is exclusively for one or more of the following:
 - i. Money.
 - ii. Real property.
 - iii. Personal property.
2. The total of the following amounts is \$200,000 or less exclusive of interest and costs:
 - i. The amount of money claimed, if any.

ii. The fair market value of any real property and of any personal property, as at the date the action is commenced.

(2) If there are two or more plaintiffs, the procedure set out in this Rule shall be used if each plaintiff's claim, considered separately, meets the requirements of subrule (1).

(2.1) If there are two or more defendants, the procedure set out in this Rule shall be used if the plaintiff's claim against each defendant, considered separately, meets the requirements of subrule (1).

When Optional

(3) The procedure set out in this Rule may be used in any other action at the option of the plaintiff, subject to subrules (4) to (9).

Originating Process

(4) The statement of claim (Form 14A, 14B or 14D) or notice of action (Form 14C) shall indicate that the action is being brought under this Rule.

Action Continues to Proceed Under Rule

(5) An action commenced under this Rule continues to proceed under this Rule unless,

(a) the defendant objects in the statement of defence to the action proceeding under this Rule because the plaintiff's claim does not comply with subrule (1), and the plaintiff does not abandon in the reply the claims or parts of claims that do not comply;

(b) a defendant by counterclaim, cross-claim or third party claim objects in the statement of defence to the counterclaim, crossclaim or third party claim proceeding under this Rule because the counterclaim, crossclaim or third party claim does not comply with subrule (1), and the defendant does not abandon in the reply to the counterclaim, crossclaim or third party claim the claims or parts of claims that do not comply;

(c) the defendant makes a counterclaim, crossclaim or third party claim

that does not comply with subrule (1) and states in the defendant's pleading that the counterclaim, crossclaim or third party claim is to proceed under the ordinary procedure.

(d) the action is assigned for case management under rule 77.05; or

(e) any party to the action delivers a jury notice in accordance with subrule 76.02.1(2).

Continuance Under Ordinary Procedure — Where Notice Required

(6) If an action commenced under this Rule may no longer proceed under this Rule because of an amendment to the pleadings under Rule 26 or as a result of the operation of subrule (5),

(a) the action is continued under the ordinary procedure; and

(b) the plaintiff shall deliver, after all the pleadings have been delivered or at the time of amending the pleadings, as the case may be, a notice (Form 76A) stating that the action and any related proceedings are continued as an ordinary action.

Continuance Under Simplified Procedure — Where Notice Required [Heading amended O. Reg. 263/03, s. 9.]

(7) An action that was not commenced under this Rule, or that was commenced under this Rule but continued under the ordinary procedure, is continued under this Rule if,

(a) the consent of all the parties is filed;

(b) no consent is filed but,

(i) the plaintiff's pleading is amended under Rule 26 to comply with subrule (1), and

(ii) all other claims, counter-claims, crossclaims and third party claims comply with this Rule, or

(c) a jury notice delivered in accordance with subrule 76.02.1(2) is struck out.

(8) The plaintiff shall deliver a notice (Form 76A) stating that the action and any related proceedings are continued under this Rule.

Effect of Abandonment

(9) A party who abandons a claim or part of a claim or amends a pleading so that the claim, counterclaim, crossclaim or third party claim complies with subrule (1) may not bring the claim or part in any other proceeding.

O. Reg. 533/95, s. 6; 118/97, s. 4; 284/01, s. 25; 263/03, s. 9; 14/04, s. 39; 132/04, s. 18; 438/08, s. 51; 344/19, s. 3

76.02.1 Jury Trial Not Available — (1)

An action that is proceeding under this Rule shall not be tried with a jury and, subject to subrule (2), no party to the action may deliver a jury notice under rule 47.01.

(2) A party to an action that is proceeding under this Rule may deliver a jury notice under rule 47.01 if the action involves a claim for relief arising from one of the following:

1. Slander.
2. Libel.
3. Malicious arrest.
4. Malicious prosecution.
5. False imprisonment.

(3) If a jury notice is delivered in accordance with subrule (2), the action may no longer proceed under this Rule and the party delivering the jury notice shall deliver a notice (Form 76A) stating that the action and any related proceedings are continued as an ordinary action.

O. Reg. 344/19, s. 4

76.03 Affidavit of Documents —

Copies of Documents

(1) A party to an action under this Rule shall, within 10 days after the close of plead-

ings and at the party's own expense, serve on every other party,

- (a) an affidavit of documents (Form 30A or 30B) disclosing to the full extent of the party's knowledge, information and belief all documents relevant to any matter in issue in the action that are or have been in the party's possession, control or power; and
- (b) copies of the documents referred to in Schedule A of the affidavit of documents.

List of Potential Witnesses

(2) The affidavit of documents shall include a list of the names and addresses of persons who might reasonably be expected to have knowledge of matters in issue in the action, unless the court orders otherwise.

Effect of Failure to Disclose

(3) At the trial of the action, a party may not call as a witness a person whose name has not been disclosed in the party's affidavit of documents or any supplementary affidavit of documents, unless the court orders otherwise.

Lawyer's Certificate

(4) The lawyer's certificate under subrule 30.03(4) (full disclosure in affidavit) shall include a statement that the lawyer has explained to the deponent the necessity for complying with subrules (1) and (2).

O. Reg. 533/95, s. 6; 284/01, s. 25; 206/02, s. 19; 438/08, s. 52

76.04 No Written Discovery, Cross-Examination on an Affidavit or Examination of a Witness — (1) The following are not permitted in an action under this Rule:

1. Examination for discovery by written questions and answers under Rule 35.
2. Cross-examination of a deponent on an affidavit under rule 39.02.
3. Examination of a witness on a motion under rule 39.03.

Limitation on Oral Discovery

(2) Despite rule 31.05.1 (time limit on discovery), no party shall, in conducting oral examinations for discovery in relation to an action proceeding under this Rule, exceed a total of three hours of examination, regardless of the number of parties or other persons to be examined.

O. Reg. 533/95, s. 6; 284/01, s. 25; 438/08, s. 53; 344/19, s. 5

76.05 Motions —

Motion Form

(1) The moving party shall serve a motion form (Form 76B) in accordance with rule 37.07 and shall submit it to the court before the motion is brought and heard.

Place of In-Person Hearings

(2) If the motion is to be heard in person, it shall be heard in the county where the proceeding was commenced or to which it has been transferred under rule 13.1.02, unless the parties agree otherwise or the court orders otherwise.

Materials

(3) Depending on the practical requirements of the situation, the motion may be made with or without supporting material or a motion record.

Motions Dealt With by Registrar

(4) When a motion described in subrule (5) meets one of the following conditions, the registrar shall make an order granting the relief sought:

1. The motion is for an order on consent, the consent of all parties is filed and the consent states that no party affected by the order is under disability.
2. No responding material is filed and the notice of motion or the motion form states that no party affected by the order is under disability.

(5) Subrule (4) applies to a motion for,

- (a) amendment of a pleading or notice of motion;

- (b) addition, deletion or substitution of a party whose consent is filed;
- (c) removal of a lawyer as lawyer of record;
- (d) setting aside the noting of a party in default;
- (e) setting aside a default judgment;
- (f) discharge of a certificate of pending litigation;
- (g) security for costs in a specified amount; or
- (h) dismissal of a proceeding with or without costs.

Disposition

(6) The court or registrar shall record the disposition of the motion on the motion form.

(7) No formal order is required unless,

- (a) the court or registrar orders otherwise;
- (b) an appeal is made to a judge; or
- (c) an appeal or motion for leave to appeal is made to an appellate court.

O. Reg. 533/95, s. 6; 284/01, s. 25; 14/04, s. 40; 575/07, s. 34; 438/08, s. 54; 689/20, s. 48

76.05.1 [Revoked O. Reg. 284/01, s. 25.]

76.06 [Repealed O. Reg. 438/08, s. 55.]

76.07 [Repealed O. Reg. 438/08, s. 55.]

76.08 Settlement Discussion and Documentary Disclosure — Within 60 days after the filing of the first statement of defence or notice of intent to defend, the parties shall, in a meeting or telephone call, consider whether,

- (a) all documents relevant to any matter in issue have been disclosed; and
- (b) settlement of any or all issues is possible.

O. Reg. 533/95, s. 6; 284/01, s. 25; 438/08, s. 56

76.09 How Defended Action is Set Down for Trial or Summary Trial —***Notice of Readiness for Pre-Trial Conference***

(1) Despite rule 48.02 (how action set down for trial), the plaintiff shall, within 180 days after the first statement of defence or notice of intent to defend is filed, set the action down for trial by serving a notice of readiness for pre-trial conference (Form 76C) on every party to the action and any counter-claim, crossclaim or third party claim and forthwith filing the notice with proof of service.

(2) If the plaintiff does not act under subrule (1), any other party may do so.

Certificate

(3) The party who sets the action down for trial shall certify in the notice of readiness for pre-trial conference that there was a settlement discussion.

O. Reg. 533/95, s. 6; 284/01, s. 25; 438/08, s. 57

76.09.1 Expert Affidavits — (1) A party who intends to call expert evidence at the trial of the action shall comply with rule 53.03.

(2) An expert report served under rule 53.03 shall be appended to an affidavit of the expert in which the expert adopts the report for the purpose of giving it as evidence in the action.

O. Reg. 344/19, s. 6

76.10 Pre-Trial Conference —***Notice***

(1) A pre-trial conference shall be scheduled in accordance with rule 50.02.

Parties' Proposed Trial Management Plan [Heading added O. Reg. 344/19, s. 7(2).]

(2) At least 30 days before the pre-trial conference, the parties shall agree to a proposed

trial management plan that contains the following:

1. A list of every witness, including every expert witness, whose evidence a party intends to adduce at trial.
2. A division of time between the parties, the total of which shall not exceed five days, that sets out the allotted times for each party for,
 - i. opening statement,
 - ii. the presentation of evidence in chief by affidavit and under rule 31.11,
 - iii. cross-examination of deponents,
 - iv. re-examination of any deponents who are cross-examined, and
 - v. oral argument.

(3) [Repealed O. Reg. 438/08, s. 58(1).]

Documents

(4) Despite rule 50.04 (materials to be filed before pre-trial conference), at least five days before the pre-trial conference, each party shall,

- (a) file,
 - (i) a copy of the parties' proposed trial management plan,
 - (ii) a copy of the party's affidavit of documents and copies of the documents relied on for the party's claim or defence,
 - (iii) a copy of any expert affidavit, other than a supplementary expert affidavit, and
 - (iv) any other material necessary for the conference; and
- (b) deliver,
 - (i) a statement, not exceeding three pages, setting out the issues and the party's position with respect to them, and

- (ii) a trial management checklist (Form 76D).

Trial Planning [Heading amended O. Reg. 344/19, s. 7(6).]

(5) The pre-trial conference judge or case management master shall,

- (a) fix the number of witnesses, other than expert witnesses, whose evidence each party may adduce at trial;
- (b) fix dates for the delivery of any witness affidavits, including any outstanding expert affidavits;
- (c) fix a date for trial, subject to the direction of the regional senior judge; and
- (d) approve the parties' proposed trial management plan, with any changes to the order or time of presentation, or any other changes, that the pre-trial conference judge or case management master may specify, subject to the requirement that the duration of the trial not exceed five days.

(6) [Repealed O. Reg. 344/19, s. 7(7).]

(7) [Repealed O. Reg. 344/19, s. 7(7).]

O. Reg. 533/95, s. 6; 284/01, s. 25; 457/01, s. 9; 438/08, s. 58; 344/19, s. 7

76.11 Placing Defended Action on Trial List —

Registrar

(1) The registrar shall place a defended action on the appropriate trial list immediately after the pre-trial conference.

Trial Record

(2) At least 10 days before the date fixed for trial, the party who set the action down for trial shall serve a trial record on every party to the action and any counterclaim, cross-claim or third party claim, and file the record with proof of service.

(3) [Repealed O. Reg. 344/19, s. 8(1).]

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(4) The trial record shall contain, in consecutively numbered pages arranged in the following order,

- (a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter;
- (b) a copy of the pleadings, including those relating to any counterclaim, crossclaim or third party claim;
- (c) a copy of any demand or order for particulars of a pleading and the particulars delivered in response;
- (d) a copy of any order respecting the trial, including a copy of the trial management plan approved by the pre-trial conference judge or case management master;
- (e) a copy of all the affidavits, including any expert affidavits, served by all the parties for use at trial; and
- (f) a certificate stating that the trial record contains the documents described in clauses (a) to (e) signed by,
 - (i) the lawyer of the party filing the trial record, or
 - (ii) if the party filing the trial record is acting in person, the party.

O. Reg. 284/01, s. 25; 575/07, s. 1, item 37; 344/19, s. 8

3. A party who is adverse in interest may cross-examine the deponent of any affidavit served by the plaintiff.

4. The plaintiff may conduct a re-examination of any deponent who is cross-examined under this subrule.

5. When any cross-examinations and re-examinations of the plaintiff's deponents are concluded, the defendant may adduce evidence, including any expert evidence, by affidavit and under rule 31.11.

6. A party who is adverse in interest may cross-examine the deponent of any affidavit served by a defendant.

7. A defendant may conduct a re-examination of any deponent who is cross-examined under this subrule.

8. When any cross-examinations and re-examinations of the defendant's deponents are concluded, the plaintiff may, with leave of the trial judge, adduce any proper reply evidence.

9. After the presentation of evidence, each party may make oral argument.

(2) The trial judge may vary a time set out in the approved trial management plan, subject to the requirement that the duration of the trial not exceed five days.

(3) A party who intends to examine or cross-examine the deponent of an affidavit at the trial shall, at least 10 days before the date fixed for trial, give notice of that intention to the party who filed the affidavit, who shall arrange for the deponent's attendance at the trial.

Judgment after Trial [Heading O. Reg. 344/19, s. 9(3).]

(4) The judge shall grant judgment after the conclusion of the trial.

O. Reg. 284/01, s. 25; 438/08, s. 59; 344/19, s.

76.12.1 Limits on Costs and Disbursements Awards —

Limits [Heading added O. Reg. 344/19, s. 10.]

(1) Except as provided for under rule 76.13 or an Act, no party to an action under this Rule may recover costs exceeding \$50,000 or disbursements exceeding \$25,000, exclusive of harmonized sales tax (HST).

Transition [Heading added O. Reg. 344/19, s. 10.]

(2) Subrule (1) does not apply in the case of an action that was commenced before January 1, 2020.

O. Reg. 344/19, s. 10

76.13 Costs Consequences —*Opting in*

(1) Regardless of the outcome of the action, if this Rule applies as the result of amendment of the pleadings under subrule 76.02(7), the party whose pleadings are amended shall pay, on a substantial indemnity basis, the costs incurred by the opposing party up to the date of the amendment that would not have been incurred had the claim originally complied with subrule 76.02(1), (2) or (2.1), unless the court orders otherwise.

Plaintiff Denied Costs

(2) Subrules (3) to (10) apply to a plaintiff who obtains a judgment that satisfies the following conditions:

1. The judgment awards exclusively one or more of the following:
 - i. Money.
 - ii. Real property.
 - iii. Personal property.
2. The total of the following amounts is \$200,000 or less, exclusive of interest and costs:
 - i. The amount of money awarded, if any.
 - ii. The fair market value of any real property and of any personal

property awarded, as at the date the action is commenced.

(3) The plaintiff shall not recover any costs unless,

- (a) the action was proceeding under this Rule at the commencement of the trial; or
- (b) the court is satisfied that it was reasonable for the plaintiff,
 - (i) to have commenced and continued the action under the ordinary procedure, or
 - (ii) to have allowed the action to be continued under the ordinary procedure, by not abandoning claims or parts of claims that do not comply with subrule 76.02(1), (2) or (2.1).

(4) Subrule (3) applies despite subrule 49.10(1) (plaintiff's offer to settle).

(5) Subrule (3) does not apply if this Rule was unavailable because of the counter-claim, crossclaim or third party claim of another party.

Plaintiff may be Ordered to Pay Defendant's Costs

(6) The plaintiff may, in the trial judge's discretion, be ordered to pay all or part of the defendant's costs, including substantial indemnity costs, in addition to any costs the plaintiff is required to pay under subrule 49.10(2) (defendant's offer to settle).

Defendant Objecting to Simplified Procedure

(7) In an action that includes a claim for real or personal property, if the defendant objected to proceeding under this Rule on the ground that the property's fair market value exceeded \$200,000 at the date the action was commenced and the court finds the value did not exceed that amount at that date, the defendant shall pay, on a substantial indemnity basis, the costs incurred by the plaintiff that would not have been incurred had the claim originally complied

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with subrule 76.02(1), (2) or (2.1), unless the court orders otherwise.

Burden of Proof

(8) The burden of proving that the fair market value of the real or personal property at the date of commencement of the action was \$200,000 or less is on the plaintiff.

Counterclaims, Crossclaims and Third Party Claims

(9) Subrules (1) to (8) apply, with necessary modifications, to counterclaims, crossclaims and third party claims.

Transition

(10) In the case of an action that was commenced on or after January 1, 2002 and before January 1, 2010, subrules (2), (7) and (8) apply as if “\$200,000” read “\$50,000”.

(11) In the case of an action that was commenced on or after January 1, 2010 and before January 1, 2020, subrules (2), (7) and (8) apply as if “\$200,000” read “\$100,000”.

O. Reg. 284/01, s. 25; 206/02, s. 20; 132/04, s. 19; 438/08, s. 60; 344/19, s. 11

76.14 Transition — Jury Trials —

Clauses 76.01(1)(d), 76.02(5)(e) and 76.02(7)(c) and rule 76.02.1 do not apply to an action in respect of which a jury notice has been delivered before January 1, 2020.

O. Reg. 344/19, s. 12

Rule 77 — Civil Case Management**77.01 Purpose and General Principles —*****Purpose***

(1) The purpose of this Rule is to establish a case management system that provides case management only of those proceedings for which a need for the court’s intervention is demonstrated and only to the degree that is appropriate, as determined in reliance on the criteria set out in this Rule.

(1.1) [Repealed O. Reg. 438/08, s. 64.]

(1.2) [Repealed O. Reg. 438/08, s. 64.]

(1.3) [Repealed O. Reg. 438/08, s. 64.]

General Principles

(2) This Rule shall be construed in accordance with the following principles:

1. Despite the application of case management under this Rule to a proceeding, the greater share of the responsibility for managing the proceeding and moving it expeditiously to a trial, hearing or other resolution remains with the parties.

2. The nature and extent of the case management provided by a judge or case management master under this Rule in respect of a proceeding shall be informed by any relevant practices, traditions, customs or judicial resource issues that apply locally in the region in which the proceeding is commenced or to which it is transferred.

(2.1) [Repealed O. Reg. 438/08, s. 64.]

(3) [Repealed O. Reg. 438/08, s. 64.]

(4) [Repealed O. Reg. 438/08, s. 64.]

(5) [Repealed O. Reg. 438/08, s. 64.]

O. Reg. 555/96, s. 2; 118/97, s. 5; 442/97, s. 4; 570/98, s. 16; 113/01, s. 5; 457/01, s. 10; 206/02, s. 21; 14/04, s. 41; 198/05, s. 6; 55/08, s. 6; 438/08, ss. 61, 64

77.02 Application —***Scope***

(1) This Rule applies to actions and applications commenced in or transferred to one of the following counties on or after January 1, 2010 and assigned to case management by an order under these rules:

1. The City of Ottawa.
2. The City of Toronto.
3. The County of Essex.

Exceptions

(2) Despite subrule (1), this Rule does not apply to,

- (a) actions or applications placed on the Commercial List established by practice direction in the Toronto Region;
- (b) actions or applications under Rules 74 and 75 (Estates);

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(b) actions or applications under Rule 74, 74.1 or 75 (Estates);

O. Reg. 111/21, s. 12 [To come into force April 1, 2021.]

(c) applications for the removal or replacement of personal representatives under the *Trustee Act*;

(d) applications under Part V of the *Succession Law Reform Act*;

(e) applications for guardianship of property or persons under the *Substitute Decisions Act, 1992*;

(f) actions under Rule 64 (Mortgage Actions);

(g) actions under Rule 76 (Simplified Procedure);

(h) actions or applications under the *Construction Act*, except trust claims; and

(i) actions or applications under the *Bankruptcy and Insolvency Act* (Canada).

Exceptions, Class Proceedings Act, 1992

(3) Despite subrule (1), this Rule,

(a) applies to an action or application commenced under the *Class Proceedings Act, 1992* only if certification as a class proceeding has been denied; and

(b) does not apply to actions or applications certified as class proceedings under the *Class Proceedings Act, 1992*.

Conflict with Other Rules

(4) In the event of a conflict between a provision in this Rule and a provision in any other Rule, the provision in this Rule prevails.

O. Reg. 555/96, s. 2; 438/08, s. 64; 537/18, s. 12

77.03 Definitions — In this Rule,

“defence” includes a notice of intent to defend, a statement of defence, a notice of appearance and a notice of motion in response to a proceeding;

“defendant” includes a respondent;

“plaintiff” includes an applicant.

O. Reg. 555/96, s. 2; 118/97, s. 6; 113/01, s. 6; 457/01, s. 11; 438/08, s. 64

77.04 Case Management Powers — (1)

A judge or case management master may,

- (a) extend or abridge a time prescribed by an order or the rules;
- (b) adjourn a case conference;
- (c) set aside an order made by the registrar;
- (d) establish or amend a timetable; and
- (e) make orders, impose terms, give directions and award costs as necessary to carry out the purpose of this Rule.

(2) A judge or case management master may, on his or her own initiative, require the parties to appear before him or her or to participate in a conference call to deal with any matter arising in connection with the case management of the proceeding, including a failure to comply with an order or the rules.

(3) For greater certainty, the powers set out in subrules (1) and (2) are in addition to any other powers set out in this Rule.

O. Reg. 555/96, s. 2; 438/08, s. 64

77.05 Assignment for Case Management —

On Consent of Parties

(1) A regional senior judge or, subject to the direction of a regional senior judge, any

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judge or case management master may, with the consent of all parties, assign a proceeding to which this Rule may apply for case management under this Rule.

No Consent

(2) At any time on or after the filing of the first defence in a proceeding to which this Rule may apply, a regional senior judge or, subject to the direction of a regional senior judge, any judge or case management master may assign the proceeding for case management under this Rule,

- (a) on his or her own initiative; or
- (b) on the request of a party or on motion if the court requires it.

Multiple Proceedings

(3) Two or more proceedings may be assigned under subrule (1) or (2) for case management together.

Criteria

(4) In considering whether to assign a proceeding for case management, the regional senior judge, other judge or case management master shall have regard to all the relevant circumstances, including any or all of the following:

1. The purpose set out in subrule 77.01(1).
2. The complexity of the issues of fact or law.
3. The importance to the public of the issues of fact or law.
4. The number and type of parties or prospective parties, and whether they are represented.
5. The number of proceedings involving the same or similar parties or causes of action.
6. The amount of intervention by the court that the proceeding is likely to require.
7. The time required for discovery, if applicable, and for preparation for trial or hearing.

8. In the case of an action, the number of expert witnesses and other witnesses.

9. The time required for the trial or hearing.

10. Whether there has been substantial delay in the conduct of the proceeding.
O. Reg. 555/96, s. 2; 118/97, s. 7; 438/08, s. 64

77.06 Assignment to Individual Management By a Judge —**Assignment to Particular Judge**

(1) The Chief Justice or Associate Chief Justice of the Superior Court of Justice, a regional senior judge, or a judge designated by any of them may direct that all steps in a proceeding that is assigned for case management under this Rule be heard and conducted by a particular judge.

Limitation

(2) A judge who is directed under subrule (1) to hear all steps in a proceeding shall not preside at the trial of the action or the hearing of the application, except with the written consent of all parties.

(3) [Revoked O. Reg. 284/01, s. 26.]

(4) [Revoked O. Reg. 284/01, s. 26.]

(4.1) [Revoked O. Reg. 284/01, s. 26.]

(5) [Repealed O. Reg. 438/08, s. 64.]

(6) [Repealed O. Reg. 438/08, s. 64.]

(7) [Repealed O. Reg. 438/08, s. 64.]

(8) [Revoked O. Reg. 284/01, s. 26.]

(9) [Revoked O. Reg. 284/01, s. 26.]

(10) [Revoked O. Reg. 284/01, s. 26.]

O. Reg. 555/96, s. 2; 118/97, s. 8; 627/98, s. 8;
288/99, s. 27; 284/01, s. 26; 457/01, s. 12;
206/02, s. 22; 438/08, s. 64

77.07 Motions —**To Whom Made**

(1) A motion may be made only to a judge or case management master.

Same, Particular Judge

(2) If a direction is made under subrule 77.06(1) for all steps in a proceeding to be heard by a particular judge, then any motions in the proceeding shall be made to that judge.

Referral by Particular Judge

(3) A judge who is directed under subrule 77.06(1) to hear all steps in a proceeding may refer to a case management master any motion within the jurisdiction of a case management master under subrule 37.02(2), unless the judge who made the direction directs otherwise.

Materials

(4) Depending on the practical requirements of the situation, the motion may be made with or without supporting material or a motion record.

Costs on Motion

(5) The judge or case management master shall address the issue of costs at the conclusion of each motion in accordance with rule 57.03, regardless of whether the motion is contested.

Formal Order Not Required

(6) The judge or case management master may provide that no formal order need be prepared, signed or entered if the order has been recorded in writing, unless an appeal of the disposition of the motion or a motion for leave to appeal is made to a judge or an appellate court.

O. Reg. 555/96, s. 2; 438/08, s. 64; 689/20, s. 49; 711/20, s. 5

77.08 Case Conference — A judge or case management master may at any time, on his or her own initiative or at a party's request, convene a case conference under rule 50.13.

O. Reg. 555/96, s. 2; 118/97, s. 9; 653/00, s. 10; 438/08, s. 64; 170/14, s. 23

77.09 Transition —***Definition***

(1) In this rule,

"former case management rules" means one or both of Rule 77 and Rule 78, as they read immediately before January 1, 2010.

Proceedings Under Former Case Management Rules

(2) Despite anything to the contrary in this Rule, every proceeding to which the former case management rules applied immediately before January 1, 2010 shall, on and after that day, continue under this Rule.

Power to Make Orders, Give Directions

(3) A judge or case management master may make orders or give directions that are necessary to address any procedural issues that arise in a proceeding as a result of the transition from the application of the former case management rules to the proceeding to the application of this Rule.

Existing Orders, Directions, Timetables

(4) All orders, directions and timetables in a proceeding described in subrule (2) that are in force immediately before January 1, 2010 shall remain in force on and after that day, unless a judge or case management master orders otherwise.

O. Reg. 555/96, s. 2; 118/97, s. 10; 627/98, s. 9; 288/99, s. 28; 24/00, s. 20; 284/01, s. 27; 457/01, s. 13; 438/08, s. 64

77.09.1 [Repealed O. Reg. 438/08, s. 64.]

77.10 [Repealed O. Reg. 438/08, s. 64.]

77.11 [Repealed O. Reg. 438/08, s. 64.]

77.12 [Repealed O. Reg. 438/08, s. 64.]

77.13 [Repealed O. Reg. 438/08, s. 64.]

77.14 [Repealed O. Reg. 438/08, s. 64.]

77.15 [Repealed O. Reg. 438/08, s. 64.]

77.16 [Repealed O. Reg. 438/08, s. 64.]

R. 77.17

Ont. Reg. 194 — Rules of Civil Procedure

77.17 [Repealed O. Reg. 438/08, s. 64.]

.....
.....
.....

Form 7B — Order to Continue (Minor Reaching Age of Majority)*Courts of Justice Act*

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(General heading)

(Court seal)

Order to Continue

On the requisition of (*identify party*) and on reading the affidavit of (*name*), filed, which states that the minor (*name of party*) reached the age of majority on (*date*),

IT IS ORDERED that this proceeding continue by (*or against*) (*name of party*) without a litigation guardian and that the title of the proceeding be amended accordingly in all documents issued, served or filed after the date of this order.

Date Signed
.....by....

Local registrar

Ad-
dress
of
court
office

.....

November 1, 2005

.....

Form 14A — Statement of Claim (General)*Courts of Justice Act*

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(General heading)

(Court seal)

Statement of Claim**TO THE DEFENDANT**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the

Form 14B — Statement of Claim (Mortgage Action — Foreclosure) **Form 14B**

United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

(Where the claim made is for money only, include the following:)

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$ for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

| | | |
|---------------------------------------|-----------------|-------|
| Date | Issued by | |
| Local registrar | | |
| Ad- dress of court office | | |

TO (Name and address of each defendant) (Court seal)

(In an action under the simplified procedure provided in Rule 76, add:)

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE *RULES OF CIVIL PROCEDURE*.

Claim

1. The plaintiff claims: (*State here the precise relief claimed.*)

(Then set out in separate, consecutively numbered paragraphs each allegation of material fact relied on to substantiate the claim.)

(Where the statement of claim is to be served outside Ontario without a court order, set out the facts and the specific provisions of Rule 17 relied on in support of such service.)

(Date of issue) (Name, address and telephone number of lawyer or plaintiff)

June 9, 2014

Form 14B — Statement of Claim (Mortgage Action — Foreclosure)

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the *Rules of Civil Procedure* have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(General heading)

Statement of Claim (Mortgage Action — Foreclosure)**TO THE DEFENDANT**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN 20 DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is 40 days. If you are served outside Canada and the United States of America, the period is 60 days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to 10 more days within which to serve and file your statement of defence.

(*Where payment of the mortgage debt is claimed, add:*)

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$ for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

REQUEST TO REDEEM

Whether or not you serve and file a statement of defence, you may request the right to redeem the mortgaged property by serving a request to redeem (Form 64A) on the plaintiff and filing it in this court office within the time for serving and filing your

statement of defence or at any time before being noted in default. If you do so, you will be entitled to seven days notice of the taking of the account of the amount due to the plaintiff, and to 60 days from the taking of the account within which to redeem the mortgaged property.

If you hold a lien, charge or encumbrance on the mortgaged property subsequent to the mortgage in question, you may file a request to redeem, which must contain particulars of your claim verified by an affidavit, and you will be entitled to redeem only if your claim is not disputed or, if disputed, is proved on a reference.

REQUEST FOR SALE

If you do not serve and file a statement of defence, you may request a sale of the mortgaged property by serving a request for sale (Form 64F) on the plaintiff and filing it in this court office within the time for serving and filing your statement of defence, or at any time before being noted in default. If you do so, the plaintiff will be entitled to obtain a judgment for a sale with a reference and you will be entitled to notice of the reference.

If you hold a lien, charge or encumbrance on the mortgaged property subsequent to the mortgage in question and you do not serve and file a request to redeem, you may file a request for sale which must contain particulars of your claim verified by an affidavit, and must be accompanied by a receipt showing that \$250 has been paid into court as security for the costs of the plaintiff(s) and of any other party having carriage of the sale.

DEFAULT JUDGMENT

IF YOU FAIL TO SERVE AND FILE A STATEMENT OF DEFENCE, JUDGMENT MAY BE GIVEN AGAINST YOU WITHOUT FURTHER NOTICE. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Form 14B — Statement of Claim (Mortgage Action — Foreclosure) Form 14B

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date Issued
..... by.

Local registrar

Ad-
dress
of
court
office
.....
.....

TO: *(Name and address of each defendant)*
REQUEST TO REDEEM (sale
action)

Whether or not you serve and file a statement of defence, you may request the right to redeem the mortgaged property by serving a request to redeem (Form 64A) on the plaintiff and filing it in this court office within the time for serving and filing your statement of defence, or at any time before being noted in default. If you do so, you will be entitled to seven days notice of the taking of the account of the amount due to the plaintiff, and to 60 days from the taking of the account within which to redeem the mortgaged property.

DEFAULT JUDGMENT

IF YOU FAIL TO SERVE AND FILE A STATEMENT OF DEFENCE, JUDGMENT MAY BE GIVEN AGAINST YOU WITHOUT FURTHER NOTICE. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the ac-

tion was commenced unless otherwise ordered by the court.

Date Issued
..... by.

Local registrar

Ad-
dress
of
court
office
.....
.....

TO: *(Name and address of each defendant)*
(Subsequent encumbrancers are not to be named as defendants in this statement of claim in a sale action.)

(In an action under the simplified procedure provided in Rule 76, add:)

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE.

Claim

1. The plaintiff claims:

(foreclosure)

(a) that the equity of redemption in the property secured by the mortgage mentioned below be foreclosed;

(or)

(sale)

(a) that the property secured by the mortgage mentioned below be sold and proceeds of sale applied towards the amount due under the mortgage, and payment to the plaintiff by the defendant *(name of defendant against whom payment of any deficiency is claimed)* personally of any deficiency if the sale proceeds are not sufficient to pay the amount found due to the plaintiff;

(possession)

(b) possession of the mortgaged property;

(payment of mortgage debt)

Form 14B

Ont. Reg. 194 — Rules of Civil Procedure

(c) payment by the defendant (*name of defendant against whom payment of mortgage debt is claimed*) of the sum of \$ (*from paragraph 6 below*) now due under the mortgage together with interest at the rate of (*mortgage rate*) per cent per year until judgment;

(*interest*)

(d) post-judgment interest in accordance with the *Courts of Justice Act* (*or where the mortgage provides for interest after judgment at the mortgage rate, substitute:* post-judgment interest at the rate of (*mortgage rate*) per cent per year in accordance with the mortgage); and

(*costs*)

(e) the costs of this action (on a substantial indemnity basis *if the mortgage so provides, or if it provides for costs on a solicitor and client basis*).

2. The plaintiff's claim is on a mortgage dated (*date*), made between (*name of mortgagor*) and (*name of mortgagee*), and registered (*give particulars of registration and of any assignment of the mortgage*), under which the defendant (*or as may be*) mortgaged the property described below for a term of years securing the sum of \$ and interest on that sum at the rate of per cent per year. The mortgage provides for the payment of principal and interest as follows: (*Set out terms of payment. Add a reference to provisions in the mortgage for solicitor and client costs and post-judgment interest if applicable.*)

3. The mortgage provides that on default of payment of any sum required to be paid under the mortgage, the principal becomes due and payable and the plaintiff is entitled to possession of the mortgaged property and to foreclosure of the equity of redemption in the mortgaged property (or sale of the mortgaged property *or as may be*).

4. (*Where a claim for payment is made under section 20 of the Mortgages Act against a person other than the original*

mortgagor, add:) The defendant (*name*) became liable under section 20 of the *Mortgages Act* to pay the amount of the mortgage debt to the plaintiff by reason of (*set out particulars of the transfer of the mortgaged property from the original mortgagor to this defendant*).

5. Default in payment of principal and interest (*or as may be*) occurred on (*date*), and still continues.

6. There is now due under the terms of the mortgage:

| | |
|--|---------|
| (a) for principal | \$..... |
| (b) for taxes paid | \$..... |
| (c) for premiums of insurance paid | \$..... |
| (d) for maintenance costs paid | \$..... |
| (e) for heating costs paid | \$..... |
| (f) for utility costs paid | \$..... |
| (add any other costs in similar fashion) | |
| (g) for interest (<i>set out particulars</i>) | \$..... |
| Total | \$..... |

now due:

The defendant (*name*) is liable to pay these sums and subsequent interest at the rate of per cent per year.

7. The following is a description of the mortgaged property: (*Set out a description sufficient for registration. For Land Titles land, include the parcel number.*)

(*In a foreclosure action where one or more subsequent encumbrancers are named as defendants, add:*)

8. The defendant (*name*) has been made a party to this action as a subsequent encumbrancer.

(*Where the statement of claim is to be served outside Ontario without a court order, set*

Form 14C — Notice of Action

out the facts and the specific provisions of Rule 17 relied on in support of the service.)

(Date) (Name, address and telephone number of plaintiff's lawyer or plaintiff)

June 9, 2014

Form 14C — Notice of Action

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(General heading)

(Court seal)

Notice of Action

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of

Form 14C

America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

(Where the claim made is for money only, include the following:)

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$ for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date Issued
..... by.

Local registrar

Ad-
dress
of
court
office
.....

Form 14C

Ont. Reg. 194 — Rules of Civil Procedure

TO: (*Name and address of each defendant*)
(In an action under the simplified procedure provided in Rule 76, add:)

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE.

Claim

The plaintiff's claim is for (*set out a short statement of the nature of the plaintiff's claim*).

(*Date of issue*) (*Name, address and telephone number of lawyer or plaintiff*)

June 9, 2014

1. The plaintiff claims: (*State here the precise relief claimed*).

(Then set out in separate, consecutively numbered paragraphs each allegation of material fact relied on to substantiate the claim.)

(Where the statement of claim is to be served outside Ontario without a court order, set out the facts and the specific provisions of Rule 17 relied on in support of such service.)

(*Date*) (*Name, address and telephone number of lawyer or plaintiff*)

July 1, 2007

Form 14D — Statement of Claim (Action Commenced By Notice of Action)

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(General heading)

Statement of Claim

Notice of action issued on (*date*)

(In an action under the simplified procedure provided in Rule 76, add:)

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE.

Form 14E — Notice of Application

Courts of Justice Act

(General heading)

(Court seal)

Notice of Application

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on (*day*), (*date*), at (*time*), at (*address of court house*).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**Replace Form 14E with:
Form14E.pdf**

Form 14E.1 — Notice of Application Under Subsection 140(3) of the **Form 14E.1**

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date Issued by

Local registrar

Address of court office
.....

TO (Name and address of each respondent)

Application

1. The applicant makes application for:
(State here the precise relief claimed.)
2. The grounds for the application are:
(Specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on.)
3. The following documentary evidence will be used at the hearing of the application:
(List the affidavits or other documentary evidence to be relied on.)

(Where the notice of application is to be served outside Ontario without a court order, state the facts and the specific provisions of Rule 17 relied on in support of such service.)

(Date of issue)

(Name, address and telephone number of lawyer or applicant)

September 1, 2020

Form 14E.1 — Notice of Application Under Subsection 140(3) of the Courts of Justice Act

Courts of Justice Act

(General heading)

(Court seal)

Notice of Application Under Subsection 140(3) of the Courts of Justice Act

TO THE ATTORNEY GENERAL OF ONTARIO AND THE RESPONDENT(S)

AN APPLICATION UNDER SUBSECTION 140(3) OF THE *COURTS OF JUSTICE ACT* HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION shall be heard in writing without the attendance of the parties, unless the court orders otherwise. An order under subsection 140(4) of the *Courts of Justice Act* granting leave to institute or continue a proceeding, or rescinding an order made under subsection 140(1) of that Act, shall not be made without an opportunity being provided to the Attorney General of Ontario and the respondents to serve and file a respondent's application record and factum.

Date Issued by

Local registrar

Form 14E.1

Ont. Reg. 194 — Rules of Civil Procedure

| | | |
|--|-------|---|
| Ad- dress of court of- fice | | <p><i>when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]</i></p> <p style="text-align: center;"><i>Courts of Justice Act</i> <i>ONTARIO</i> <i>SUPERIOR COURT OF JUSTICE</i> <i>(General heading)</i></p> |
| TO | | |
| Crown Law Office (Civil Law) Ministry of the Attorney General 720 Bay Street, 8 th Floor Toronto, Ontario M5G 2K1 <i>(Names and addresses of lawyers for all other parties and of all other parties acting in person)</i> | | |

**Application Under Subsection
140(3) of the *Courts of Justice
Act***

1. The applicant makes application for:
(State here the precise relief claimed.)
2. The grounds for the application are:
(Specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on.)

(Where the notice of application is to be served outside Ontario without a court order, state the facts and the specific provisions of Rule 17 relied on in support of such service.)

(Date of issue) *(Name, address and telephone number of lawyer or applicant)*
January 23, 2014

**Form 14F — Information
for Court Use**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06,

Information for Court Use

| | | | | | |
|--|--------------------------|-----|--------------------------|-----|-------|
| 1. This proceeding is an: | <input type="checkbox"/> | ac- | <input type="checkbox"/> | ap- | lica- |
| 2. Has it been commenced under the <i>Class Proceedings Act, 1992?</i> | <input type="checkbox"/> | yes | <input type="checkbox"/> | no | |
| 3. If the proceeding is an action, does Rule 76 (Simplified Procedure) apply? | <input type="checkbox"/> | yes | <input type="checkbox"/> | no | |
| Note: Subject to the exceptions found in subrule 76.01(1), it is MANDATORY to proceed under Rule 76 for all cases in which the money amount claimed or the value of real or personal property claimed is \$200,000 or less. | | | | | |

4. The claim in this proceeding (action or application) is in respect of:

(Select the one item that best describes the nature of the main claim in the proceeding.)

| | | | |
|------------------------------|--------------------------|------------------------|--------------------------|
| Bankruptcy or insolvency law | <input type="checkbox"/> | Motor vehicle accident | <input type="checkbox"/> |
|------------------------------|--------------------------|------------------------|--------------------------|

Form 17A — Request for Service Abroad of Judicial or Extrajudicial **Form 17A**

| | | | |
|---|-----|---|-----|
| Collection of liquidated debt | [] | Municipal law | [] |
| Constitutional law | [] | Partnership law | [] |
| Construction law (other than construction lien) | [] | Personal property security | [] |
| Construction lien | [] | Product liability | [] |
| Contract law | [] | Professional malpractice (other than medical) | [] |
| Corporate law | [] | Real property (including leases; excluding mortgage or charge) | [] |
| Defamation | [] | Tort: economic injury (other than from medical or | [] |
| Employment or labour law | [] | professional malpractice) | [] |
| Intellectual property law | [] | Tort: human trafficking (<i>Prevention of and Remedies for Human Trafficking Act, 2017</i>) | [] |
| Judicial review | [] | Tort: personal injury (other than from motor vehicle accident) | [] |
| Medical malpractice | [] | Trusts, fiduciary duty | [] |
| Mortgage or charge | [] | Wills, estates | [] |

Certification

I certify that the above information is correct, to the best of my knowledge.

Date:

Signature of lawyer

(if no lawyer, party must sign)

May 1, 2019

.....

Form 17A — Request for Service Abroad of Judicial or Extrajudicial Documents

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.

Identity and address of the applicant

Address of receiving Authority

The undersigned applicant has the honour to transmit — in duplicate — the documents listed below and, in conformity with article

Form 17A

Ont. Reg. 194 — Rules of Civil Procedure

5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e.

(identity and address)

.....

(a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention*;

(b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of article 5)*:

.....

.....

(c) by delivery to the addressee, if the addressee accepts it voluntarily (second paragraph of article 5)*.

The authority is requested to return or to have returned to the applicant a copy of the documents — and of the annexes* — with a certificate as provided on the reverse side.

(List of Documents)

.....

.....

.....

.....

.....

Done at,
the

.....

Signature or
stamp.

* Delete if inappropriate

Certificate

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,

(1) that the document has been served*

— the (date)

— at (place, street, number)

.....

— in one of the following methods authorized by article 5 —

(a) in accordance with the provisions of sub-paragraph (a)

of the first paragraph of article 5 of the Convention*;

(b) in accordance with the following particular method*:

.....

..... ;

(c) by delivery to the addressee, who accepted it voluntarily.

The documents referred to in the request have been delivered to:

— (identity and description of person)

.....

— relationship to the addressee (family, business or other)

.....

(2) that the document has not been served, by reason of the following facts*:

.....

.....

.....

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement*.

Annexes

Documents returned:

.....

.....

.....

In appropriate cases, documents

establishing the service:

.....

.....

.....

Done at

....., the

.....

Signature or stamp.

* Delete if inappropriate

November 1, 2005

**Form 17B — Summary of
the Document to Be
Served**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.
(article 5, fourth paragraph)

Name and address of the requesting authority:

Particulars of the parties*:

Judicial Document**

Nature and purpose of the document:

Nature and purpose of the proceedings and, where appropriate, the amount in dispute:

Date and place for entering appearance**:

Court which has given judgment**:

Date of judgment**:

Time limits stated in the document**:

Extrajudicial Document**

Nature and purpose of the document:

Time limits stated in the document**

* If appropriate, identity and address of the person interested in the transmission of the document.

** Delete if inappropriate

November 1, 2005

**Form 17C — Notice and
Summary of Document**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

identity and address of
the addressee

Important

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE SUMMARY OF THE DOCUMENT TO BE SERVED WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

IF YOUR FINANCIAL RESOURCES ARE INSUFFICIENT YOU SHOULD SEEK IN-

Form 17C

Ont. Reg. 194 — Rules of Civil Procedure

FORMATION ON THE POSSIBILITY OF OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.

ENQUIRIES ABOUT THE AVAILABILITY OF LEGAL AID OR ADVICE IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED MAY BE DIRECTED TO:

.....
(It is recommended that the standard terms in the notice be written in English and French and where appropriate also in the official language, or in one of the official languages of the State in which the document originated. The blanks could be completed either in the language of the State to which the document is to be sent, or in English or French.)

SUMMARY OF THE DOCUMENT TO BE SERVED:

Name and address of the requesting authority:

*Particulars of the parties:

**JUDICIAL DOCUMENT:
Nature and purpose of the document:

Nature and purpose of the proceedings and where appropriate, the amount in dispute:

**Date and place for entering appearance:
.....
.....

**Court which has given judgment:

**Date of judgment:

**Time limits stated in the document:

**EXTRAJUDICIAL DOCUMENT

Nature and purpose of the document:

Time limits stated in the document:

.....

* If appropriate, identity and address of the person interested in the transmission of the document

** Delete if inappropriate

November 1, 2005

Form 18A — Statement of Defence*Courts of Justice Act**[Repealed O. Reg. 77/06, s. 3.]*

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(General heading)

Statement of Defence

1. The defendant admits the allegations contained in paragraphs of the statement of claim.

2. The defendant denies the allegations contained in paragraphs of the statement of claim.

3. The defendant has no knowledge in respect of the allegations contained in paragraphs of the statement of claim.

4. *(Set out in separate, consecutively numbered paragraphs each allegation of material fact relied on by way of defence.)*

(Date) (Name, address and telephone number of defendant's lawyer or defendant)

TO *(Name and address of plaintiff's*

lawyer or plaintiff)

July 1, 2007

Form 18B — Notice of Intent to Defend*Courts of Justice Act*

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(General heading)

Notice of Intent to Defend

The defendant (or defendant added by counterclaim or third party) intends to defend this action.

(Date)

(Name, address and telephone number of lawyer or party serving notice)

TO (Name and address of lawyer or party on whom notice is served)

July 1, 2007

.....

Form 57A — Bill of Costs*Courts of Justice Act*

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the

reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(General heading)

Bill of Costs

Amounts Claimed for Fees and Disbursements

(Following the items set out in Tariff A, itemize the claim for fees and disbursements. Indicate the names of the lawyers, students-at-law and law clerks who provided services in connection with each item.)

In support of the claim for fees, attach copies of the dockets or other evidence.)

In support of the claim for disbursements, attach copies of invoices or other evidence.)

STATEMENT OF EXPERIENCE

A claim for fees is being made with respect to the following lawyers:

Name of lawyer Years of experience

TO: (name and address of lawyer or party)

November 1, 2005

Form 57B — Costs Outline*Courts of Justice Act*

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your

convenience, the government form as published on this website is reproduced below.]

**ONTARIO
SUPERIOR COURT OF JUSTICE
COSTS OUTLINE**

The (*identify party*) provides the following outline of the submissions to be made at the hearing in support of the costs the party will seek if successful:

Fees (as detailed below) \$

Estimated lawyer's fee \$ for appearance

Disbursements (as detailed in the attached appendix) \$

Total

The following points are made in support of the costs sought with reference to the factors set out in subrule 57.01(1):

- the amount claimed and the amount recovered in the proceeding
- the complexity of the proceeding
- the importance of the issues
- the conduct of any party that tended to shorten or lengthen unnecessarily the duration of the proceeding
- whether any step in the proceeding was improper, vexatious or unnecessary or taken through negligence, mistake or excessive caution
- a party's denial of or refusal to admit anything that should have been admitted
- the experience of the party's lawyer

**ONTARIO
SUPERIOR COURT OF JUSTICE
COSTS OUTLINE**

- the hours spent, the rates sought for costs and the rate actually charged by the party's lawyer

| FEE ITEMS | PER-SONS | HOURS | PARTIAL IN-DEM-NITY RATE | AC-TUAL RATE* |
|--|---|--|--|---------------|
| (e.g. pleadings, affidavits, cross-examinations, preparation, hearing, etc.) | (identify the lawyers, students, and law clerks who provided services in connection with each item together with their year of call, if applicable) | (specify the hours claimed for each person identified in column 2) | (specify the rate being sought for each person identified in column 2) | |
| | | | | |
| | | | | |
| | | | | |

* Specify the rate being charged to the client for each person identified in column 2. If there is a contingency fee arrangement, state the rate that would have been charged absent such arrangement.

- any other matter relevant to the question of costs

**ONTARIO
SUPERIOR COURT OF JUSTICE
COSTS OUTLINE**

LAWYER'S CERTIFICATE

I CERTIFY that the hours claimed have been spent, that the rates shown are correct and that each disbursement has been incurred as claimed.

Date:
.....

Signature of law-
yer
July 1, 2007
.....

**Form 72A — Notice of
Payment into Court**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(General heading)

Notice of Payment into Court

The (*identify party*) paid into court on (*date*) the sum of \$ under the offer to settle (*or acceptance of offer*) dated (*date*).

(*Date*)

*(Name, address and
telephone number of
lawyer or party giving
notice)*

TO *(Name and address of lawyer
or party receiving notice)*

July 1, 2007

**Form 72B — Affidavit
(Motion for Payment Out
of Court)**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(General heading)

Affidavit

I, (*full name of deponent*) of the (City, Town, etc.) of, in the (County, Regional Municipality, etc.) of, (*where the deponent is a party or the lawyer, officer, director, member or employee of a party, set out the deponent's capacity*), MAKE OATH AND SAY (or AFFIRM):

1. This affidavit is filed in support of a motion for payment out of court of money belonging to (*name of person under disability*), of (*address*), who is (*state the nature of the disability*) and who was born on (*date*).
2. I am (*state the deponent's connection with the person under disability*).
3. The Accountant (or local registrar at (*place*)) has informed me that the sum of \$....., including interest accrued to (*date*), is in court. There has been previously paid out the sum of \$..... on (*date*) (or as may be).

Form 72B

Ont. Reg. 194 — Rules of Civil Procedure

| | | |
|--|------------------------------|--|
| 4. It is proposed that the sum of \$..... be paid out of court to (<i>name</i>) for the following purpose: (<i>Give particulars.</i>) | | Commissioner for Taking Affidavits (<i>or as may be</i>) |
| 5. I believe that this expenditure is justified for the following reasons: (<i>Give particulars.</i>) | | <i>Signature of Commissioner (or as may be)</i> <i>Signature of Deponent</i> |
| <i>Sworn or Affirmed before me: (select one):</i> <input type="checkbox"/> in person OR <input type="checkbox"/> by video conference | | September 1, 2020 |
| <i>Complete if affidavit is being sworn or affirmed in person:</i> | | Form 72C — Stop Order |
| at the (City, Town, etc.) of in the (County, County, Regional Municipality, etc.) of on (<i>date</i>). | | <i>Courts of Justice Act</i> |
| <i>Signature of Commissioner (or as may be)</i> | <i>Signature of Deponent</i> | [Repealed O. Reg. 77/06, s. 3.] |
| <i>Use one of the following if affidavit is being sworn or affirmed by video conference:</i> | | <i>[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]</i> |
| <i>Complete if deponent and commissioner are in same city or town:</i> | | (Court file no.) |
| by (<i>deponent's name</i>) at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of before me on (<i>date</i>) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. | | (Court) |
| Commissioner for Taking Affidavits (<i>or as may be</i>) | | (Name of judge or officer) (Day and date order made) |
| <i>Signature of Commissioner (or as may be)</i> | <i>Signature of Deponent</i> | (Court seal) (Title of Proceeding) |
| <i>Complete if deponent and commissioner are not in same city or town:</i> | | Order |
| by (<i>deponent's name</i>) of (City, Town, etc.) of in the (County, Regional Municipality, etc.) of before me at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of on (<i>date</i>) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. | | <i>(Recitals in accordance with Form 59A or 59B, followed by:) the (identify applicant or moving party) having undertaken through their lawyer to be bound by any order this court makes in respect of costs or damages caused by this order,</i> |
| | | 1. THIS COURT ORDERS that all money and securities held by the Accountant (<i>or local registrar at (place)</i>) in this proceeding now or in the future, together with any interest, to which (<i>identify party</i>) is or becomes |

Form 74.4 — Application for Certificate of Appointment of Estate Trustee

Form 74.4

entitled shall not be dealt with except on notice to (*identify applicant or moving party*).

(*Signature of judge or officer*)

July 1, 2007

.....

Form 74.1 [Repealed O. Reg. 690/20, s. 7(1).]

[Repealed O. Reg. 690/20, s. 7(1).]

.....

Form 74.2 [Repealed O. Reg. 690/20, s. 7(1).]

[Repealed O. Reg. 690/20, s. 7(1).]

Form 74.3 — Request for Notice of Commencement of Proceeding

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario

Superior Court of Justice

In the Estate of the deceased person described below:

Details About the Deceased Person

Complete in full as applicable

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |

And if the deceased was known by any other name(s), state below the full name(s) used including surname.

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |
| | | | |

Request for Notice of Commencement of Proceeding

I have or appear to have a financial interest in the estate and desire to be informed of the commencement of any proceeding in the estate.

Notice of the commencement of any proceeding may be mailed to me at the address shown below.

DATE _____

day month year

NAME OF INTERESTED PARTY: ADDRESS:

November 1, 2005

Form 74.4 — Application for Certificate of Appointment of Estate Trustee with a Will (Individual Applicant)

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

Form 74.4

Ont. Reg. 194 — Rules of Civil Procedure

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

ONTARIO

APPLICATION FOR CERTIFICATE OF
APPOINTMENT OF ESTATE TRUSTEE WITH A
WILL
(INDIVIDUAL APPLICANT)

SUPERIOR
COURT OF JUSTICE

(Form 74.4 Under the
Rules)

at _____

This application is filed by (insert name and address)

Details About the Deceased Person

Complete in full as applicable

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
|------------------|-------------------|------------------|---------|

And if the deceased was known by any other name(s), state below the full name(s) used including surname.

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |
| | | | |

Date of birth of the deceased person, if known: (day, month, year)

| | |
|---|----------------------|
| Address of fixed place of abode (street or postal address) (city or town) | (county or district) |
|---|----------------------|

| | |
|--|------------------------------------|
| If the deceased person had no fixed place of abode in Ontario, did he or she have property in Ontario? | Last occupation of deceased person |
|--|------------------------------------|

No . . . Yes

| | | |
|---|-------------------------------------|--|
| Place of death (city or town; county or district) | Date of death (day, month, year) | Date of last will (marked as Exhibit "A") (day, month, year) |
|---|-------------------------------------|--|

| | |
|---|--|
| Was the deceased person 18 years of age or older at the date of the will (or 21 years of age or older if the will is dated earlier than September 1, 1971)? | <input type="checkbox"/> No . . . <input type="checkbox"/> Yes |
|---|--|

If not, explain why certificate is being sought. Give details in an attached schedule.

| | |
|--|--|
| Date of codicil (marked as Exhibit "B") (day, month, year) | Date of codicil (marked as Exhibit "C") (day, month, year) |
|--|--|

| | |
|----------------------|---|
| Marital Status . . . | <input type="checkbox"/> Unmarried <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced |
|----------------------|---|

| | |
|---|--|
| Did the deceased person marry after the date of the will? | <input type="checkbox"/> No . . . <input type="checkbox"/> Yes |
|---|--|

If yes, explain why certificate is being sought. Give details in an attached schedule.

Form 74.4 — Application for Certificate of Appointment of Estate Trustee
Form 74.4

| | | | | |
|---|--|---|---|--------------|
| Was a marriage of the deceased person terminated by a judgment absolute of divorce, or declared a nullity, after the date of the will? | <input type="checkbox"/> No ... <input type="checkbox"/> Yes | Personal Property | Real estate, net of encumbrances | Total |
| \$ \$ \$ | | | | |
| Is there any person entitled to an interest in the estate who is not an applicant? | | | | |
| If yes, give details in an attached schedule. | | | | |
| Is any person who signed the will or a codicil as witness or for the testator, or the spouse of such person, a beneficiary under the will? | <input type="checkbox"/> No ... <input type="checkbox"/> Yes | If a person not named in the will or a codicil as estate trustee is an applicant, explain why that person is entitled to apply. | | |
| If yes, give details in an attached schedule. | | | | |
| Value of Assets of Estate | | | | |
| Note: | | | | |
| <ul style="list-style-type: none"> • Under “Real estate, net of encumbrances”, do not include any real estate in Ontario that is held jointly and passes by survivorship or any real estate outside Ontario. • Under “Personal Property”, do not include money or property held jointly and passing by survivorship (such as a bank account), or money or property to which a person is entitled by virtue of a beneficiary designation under, for example, a life insurance contract, a registered pension plan, a registered retirement savings plans, a registered retirement income fund, a life income fund, a locked-in retirement account or a tax free savings account. | | | | |
| Personal Property | Real estate, net of encumbrances | Total | | |
| \$ | \$ | \$ | | |
| Is there any person entitled to an interest in the estate who is not an applicant? | | | | |
| <input type="checkbox"/> <input type="checkbox"/> No Yes | | | | |

Affidavit(s) of Applicant(s)
(Attach a separate sheet for additional affidavits, if necessary)

I, an applicant named in this application, make oath and say/affirm:

1. I am 18 years of age or older. when lawfully required.
2. The exhibit(s) referred to in this application are the last will and each codicil (where applicable) of the deceased person and I do not know of any later will or codicil.
4. If I am not named as estate trustee in the will or codicil, consents of persons who together have a majority interest in the value of the assets of the estate at the date of death are attached.

Form 74.4.1 — Application for Certificate of Appointment of Estate**Form 74.4.1**

Notice to applicant:
Information provided on this form related to the payment of estate administration tax may be forwarded to the Ministry of Finance pursuant to clause 39(1)(b) and 42(1)(c) of the *Freedom of Information and Protection of Privacy Act*.

This includes the name of the deceased, name and address of estate trustee(s), value of the estate and any undertakings and tax payments made or refunded. This information will be used by the Ministry of Finance to determine the value of estates and the amount of estate administration tax payable. Questions about the collection of this information should be directed to the Senior Manager — Audit, Advisory and Compliance Branch, 33 King Street West, PO Box 625, Oshawa ON L1H 8H9, 1-866-668-8297.

September 1, 2018

**Form 74.4.1 — Application
for Certificate of
Appointment of Estate
Trustee with a Will
(Individual Applicant)
Limited to the Assets
Referred to in the Will**

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

APPLICATION FOR
CERTIFICATE OF
ONTARIO APPOINTMENT OF
ESTATE TRUSTEE
WITH A
WILL (INDIVIDUAL
APPLICANT) LIMIT-
ED TO
SUPERIOR THE ASSETS RE-
COURT OF FERRED TO IN THE
JUSTICE WILL
(Form 74.4.1 Under
the Rules)

at _____

This application is filed by (insert name and address)

Details About the Deceased Person

Complete in full as applicable

| | | | |
|------------------|-------------------|------------------|---------|
| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|

And if the deceased was known by any other name(s), state below the full name(s) used including surname.

| | | | |
|------------------|-------------------|------------------|---------|
| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|

| | | | |
|--|--|--|--|
| | | | |
|--|--|--|--|

| | | | |
|--|--|--|--|
| | | | |
|--|--|--|--|

Form 74.4.1

Ont. Reg. 194 — Rules of Civil Procedure

Date of birth of the deceased person, if known: (day, month, year)

| | |
|--|-----------------------------|
| <i>Address of fixed place of abode (street or postal address) (city or town)</i> | <i>(county or district)</i> |
|--|-----------------------------|

| | |
|--|---|
| If the deceased person had no fixed place of abode in Ontario, did he or she have property in Ontario? | <i>Last occupation of deceased person</i> |
| <input type="checkbox"/> No <input type="checkbox"/> Yes | |

| | | |
|--|---|---|
| <i>Place of death (city or town; county or district)</i> | <i>Date of death (day, month, year)</i> | <i>Date of last will (marked as Exhibit "A") (day, month, year)</i> |
|--|---|---|

Was the deceased person 18 years of age or older at the date of the will (or 21 No Yes years of age or older if the will is dated earlier than September 1, 1971)?

If not, explain why certificate is being sought. Give details in an attached schedule.

| | |
|---|---|
| <i>Date of codicil (marked as Exhibit "B") (day, month, year)</i> | <i>Date of codicil (marked as Exhibit "C") (day, month, year)</i> |
|---|---|

| | |
|-----------------------|---|
| <i>Marital Status</i> | <input type="checkbox"/> Un-married <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced |
|-----------------------|---|

Did the deceased person marry after the date of the will? No Yes

If yes, explain why certificate is being sought. Give details in an attached schedule.

Was a marriage of the deceased person terminated by a judgment absolute of divorce, or declared a nullity, after the date of the will?

If yes, give details in an attached schedule.

Is any person who signed the will or a codicil as witness or for the testator, or No Yes the spouse of such person, a beneficiary under the will?

If yes, give details in an attached schedule.

**Value of Assets Referred to in Attached Will
(Marked as Exhibit "A" to this application)**

Note:

- Under “Real estate, net of encumbrances”, do not include any real estate in Ontario that is held jointly and passes by survivorship or any real estate outside Ontario.
- Under “Personal Property”, do not include money or property held jointly and passing by survivorship (such as a bank account), or money or property to which a person is entitled by virtue of a beneficiary designation under, for example, a life insurance contract, a registered pension plan, a registered retirement savings plans, a registered retirement income fund, a life income fund, a locked-in retirement account or a tax free savings account.

| Personal Property | Real estate, net of encumbrances | Total |
|--------------------------|---|--------------|
| \$ | \$ | \$ |

Is there any person entitled to an interest in the estate who is not an applicant?
No Yes

If a person named in the will or a codicil as estate trustee is not an applicant, explain.

If a person not named in the will or a codicil as estate trustee is an applicant, explain why that person is entitled to apply.

Form 74.4.1 — Application for Certificate of Appointment of Estate**Form 74.4.1**

| Personal Property | Real estate, net of encumbrances | Total | Name (surname and forename(s)) | Occupation |
|--|--|-------|--|------------|
| \$ | \$ | \$ | | |
| If the spouse of the deceased is an applicant, has the spouse elected to receive the entitlement under section 5 of the <i>Family Law Act</i> ? If yes, explain why the spouse is entitled to apply. | | | <input type="checkbox"/> No <input type="checkbox"/> Yes | |
| Affidavit(s) of Applicant(s) (Attach a separate sheet for additional affidavits, if necessary) | | | | |
| <i>I, an applicant named in this application, make oath and say/affirm:</i> | | | | |
| 1. I am 18 years of age or older. | when lawfully required. | | A Commissioner for taking Affidavits (or as may be) | |
| 2. The exhibit(s) referred to in this application are the last will and each codicil (where applicable) of the deceased person relating to the assets referred to in the will and I do not know of any later will or codicil affecting those assets. | 4. If I am not named as estate trustee in the will or codicil, consents of persons who together have a majority interest in the value of the assets of the estate at the date of death are attached. | | Name (surname and forename(s)) | |
| 3. I will faithfully administer the deceased person's property according to law and render a complete and true account of my administration | 5. The information contained in this application and in any attached schedules is true, to the best of my knowledge and belief. | | Occupation | |
| Address (city or town) postal address | | | | |
| (province)(postal code) | | | | |
| Sworn/Affirmed before me at the of in the of this day of , 20..... A Commissioner for taking Affidavits (or as may be) | | | | |
| Signature of applicant | | | | |

Form 74.4.1

Ont. Reg. 194 — Rules of Civil Procedure

Notice to applicant: Information provided on this form related to the payment of estate administration tax may be forwarded to the Ministry of Finance pursuant to clause 39(1)(b) and 42(1)(c) of the *Freedom of Information and Protection of Privacy Act*. This includes the name of the deceased, name and address of estate trustee(s), value of the estate and any undertakings and tax payments made or refunded. This information will be used by the Ministry of Finance to determine the value of estates and the amount of estate administration tax payable. Questions about the collection of this information should be directed to the Senior Manager — Audit, Advisory and Compliance Branch, 33 King Street West, PO Box 625, Oshawa ON L1H 8H9, 1-866-668-8297.

September 1, 2018

*SUPERIOR
COURT OF
JUSTICE*

(Form 74.5 Under the
Rules)

at _____

This application is filed by (insert name
and address)

**Details About the Deceased
Person**

Complete in full as applicable

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |
| | | | |
| | | | |
| | | | |

And if the deceased was known by any other name(s), state below the full name(s) used including surname.

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |
| | | | |
| | | | |
| | | | |

Date of birth of the deceased person, if known: (day, month, year)

| | |
|--|-----------------------------|
| <i>Address of fixed place of abode (street or postal address) (city or town)</i> | <i>(county or district)</i> |
| | |

| | |
|---|---|
| <i>If the deceased person had no fixed place of abode in Ontario, did he or she have property in Ontario?</i> | <i>Last occupation of deceased person</i> |
| <input type="checkbox"/> No . . . <input type="checkbox"/> Yes | |

| | | |
|--|----------------------|--------------------------|
| <i>Place of death (city or town; county or district)</i> | <i>Date of death</i> | <i>Date of last will</i> |
| | | |

**Form 74.5 — Application
for Certificate of
Appointment of Estate
Trustee with a Will
(Corporate Applicant)**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**ONTARIO APPLICATION FOR
CERTIFICATE OF
APPOINTMENT OF
ESTATE TRUSTEE
WITH A
WILL (CORPORATE
APPLICANT)**

Form 74.5 — Application for Certificate of Appointment of Estate Trustee

Form 74.5

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|--|--|--|--|---|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|---|--|--|--|--|--|--|--|--|--|--|--|---|--|--|--|--|--|--|--|---|--|--|--|
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;"></td><td style="width: 15%; text-align: center;">(day, month, year)</td><td style="width: 15%; text-align: center;">(marked as Ex- hibit “A”) (day, month, year)</td><td style="width: 55%;"></td></tr> <tr> <td>Was the deceased person 18 years of age or older at the date of the will (or 21 years of age or older if the will is dated earlier than September 1, 1971)?</td><td style="text-align: center;"><input type="checkbox"/> No ... <input type="checkbox"/> Yes</td><td></td><td></td></tr> <tr> <td>If not, explain why certificate is being sought. Give details in an attached schedule.</td><td></td><td></td><td></td></tr> <tr> <td style="text-align: center;"> <i>Date of codicil</i> (marked as Exhibit “B”) (day, month, year) </td><td style="text-align: center;"> <i>Date of codicil</i> (marked as Exhibit “C”) (day, month, year) </td><td></td><td></td></tr> <tr> <td>Marital Status Married <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced</td><td></td><td></td><td></td></tr> <tr> <td>Did the deceased person marry after the date of the will?</td><td style="text-align: center;"><input type="checkbox"/> No ... <input type="checkbox"/> Yes</td><td></td><td></td></tr> <tr> <td>If yes, explain why certificate is being sought. Give details in an attached schedule.</td><td></td><td></td><td></td></tr> <tr> <td>Was a marriage of the deceased person terminated by a judgment absolute of divorce, or declared a nullity, after the date of the will?</td><td style="text-align: center;"><input type="checkbox"/> No ... <input type="checkbox"/> Yes</td><td></td><td></td></tr> <tr> <td>If yes, give details in an attached schedule.</td><td></td><td></td><td></td></tr> <tr> <td>Is any person who signed the will or a codicil as witness or for the testator, or the spouse of such person, a beneficiary under the will?</td><td style="text-align: center;"><input type="checkbox"/> No ... <input type="checkbox"/> Yes</td><td></td><td></td></tr> <tr> <td>If yes, give details in an attached schedule.</td><td></td><td></td><td></td></tr> </table> | | (day, month, year) | (marked as Ex- hibit “A”) (day, month, year) | | Was the deceased person 18 years of age or older at the date of the will (or 21 years of age or older if the will is dated earlier than September 1, 1971)? | <input type="checkbox"/> No ... <input type="checkbox"/> Yes | | | If not, explain why certificate is being sought. Give details in an attached schedule. | | | | <i>Date of codicil</i> (marked as Exhibit “B”) (day, month, year) | <i>Date of codicil</i> (marked as Exhibit “C”) (day, month, year) | | | Marital Status Married <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced | | | | Did the deceased person marry after the date of the will? | <input type="checkbox"/> No ... <input type="checkbox"/> Yes | | | If yes, explain why certificate is being sought. Give details in an attached schedule. | | | | Was a marriage of the deceased person terminated by a judgment absolute of divorce, or declared a nullity, after the date of the will? | <input type="checkbox"/> No ... <input type="checkbox"/> Yes | | | If yes, give details in an attached schedule. | | | | Is any person who signed the will or a codicil as witness or for the testator, or the spouse of such person, a beneficiary under the will? | <input type="checkbox"/> No ... <input type="checkbox"/> Yes | | | If yes, give details in an attached schedule. | | | |
| | (day, month, year) | (marked as Ex- hibit “A”) (day, month, year) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Was the deceased person 18 years of age or older at the date of the will (or 21 years of age or older if the will is dated earlier than September 1, 1971)? | <input type="checkbox"/> No ... <input type="checkbox"/> Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| If not, explain why certificate is being sought. Give details in an attached schedule. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <i>Date of codicil</i> (marked as Exhibit “B”) (day, month, year) | <i>Date of codicil</i> (marked as Exhibit “C”) (day, month, year) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Marital Status Married <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Did the deceased person marry after the date of the will? | <input type="checkbox"/> No ... <input type="checkbox"/> Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| If yes, explain why certificate is being sought. Give details in an attached schedule. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Was a marriage of the deceased person terminated by a judgment absolute of divorce, or declared a nullity, after the date of the will? | <input type="checkbox"/> No ... <input type="checkbox"/> Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| If yes, give details in an attached schedule. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Is any person who signed the will or a codicil as witness or for the testator, or the spouse of such person, a beneficiary under the will? | <input type="checkbox"/> No ... <input type="checkbox"/> Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| If yes, give details in an attached schedule. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Value of Assets of Estate

Note:

- Under “Real estate, net of encumbrances”, do not include any real estate in Ontario that is held jointly and passes by survivorship or any real estate outside Ontario.
- Under “Personal Property”, do not include money or property held jointly and passing by survivorship (such as a bank account), or money or property to which a person is entitled by virtue of a beneficiary designation under, for example, a life insurance contract, a registered pension plan, a registered retirement savings plans, a registered retirement income fund, a life income fund, a locked-in retirement account or a tax free savings account.

| Personal Property | Real estate, net of encumbrances | Total |
|----------------------|--|-------|
| \$ | \$ | \$ |

Is there any person interested in the estate who is not an applicant? No Yes

Is there any person entitled to an interest in the estate who is not an applicant?

If a person named in the will or a codicil as estate trustee is not an applicant, explain.

If a person not named in the will or a codicil as estate trustee is an applicant, explain why that person is entitled to apply.

If the spouse of the deceased is an applicant, No Yes has the spouse elected to receive the entitlement under section 5 of the *Family Law Act*?

If yes, explain why the spouse is entitled to apply.

Affidavit(s) of Applicant(s)
(Attach a separate sheet for additional affidavits, if necessary)

I, a trust officer named in this application, make oath and say/affirm:

I am a trust officer of the corporate applicant. account of its administration when lawfully required.

- | | <i>Name of corporate applicant</i>
<i>Name of trust officer</i> |
|--|---|
| <p>1.</p> <p>2. I am 18 years of age or older.</p> <p>3. The exhibit(s) referred to in this application are the last will and each codicil (where applicable) of the deceased person and I do not know of any later will or codicil.</p> <p>4. The corporate applicant will faithfully administer the deceased person's property according to law and render a complete and true</p> | <p><i>Address of corporate applicant (street or postal address) (city or town)</i></p> <p>Sworn/Affirmed before me at the of in the of this day Signature of trust officer of 20.....</p> <p>A Commissioner for taking Affidavits (<i>or as may be</i>)</p> <p><i>I, an applicant named in this application, make oath and say/affirm:</i></p> <p>1. I am 18 years of age or older. when lawfully required.</p> <p>2. The exhibit(s) referred to in this application are the last will and each codicil (where applicable) of the deceased person and I do not know of any later will or codicil.</p> <p>4. If I am not named as estate trustee in the will or codicil, consents of persons who together have a majority interest in the value of the assets of the estate at the date of death are attached.</p> |

Form 74.5.1 — Application for Certificate of Appointment of Estate**Form 74.5.1**

- | | |
|---|---|
| 3. I will faithfully administer the deceased person's property according to law and render a complete and true account of my administration | 5. The information contained in this application and in any attached schedules is true, to the best of my knowledge and belief. |
|---|---|

| <i>Name (surname and forename(s))</i> | <i>Occupation</i> |
|---------------------------------------|-------------------|
| | |

| | | |
|---|-------------------------------|--|
| <i>Address (street or postal ad- dress)</i> | <i>(city or town)</i> | <i>(provin<p>pos-</p>tal code)</i> |
|---|-------------------------------|--|

Sworn/Affirmed
before me at the
.....
of
.....
in the
.....
of
.....
this day of Signature of applicant
.....,
20.....
.....

A Commissioner
for taking Affida-
vits (*or as may be*)

Notice to applicant:
Information provided
on this form related to
the payment of estate
administration tax may
be forwarded to the
Ministry of Finance
pursuant to clause
39(1)(b) and 42(1)(c)
of the *Freedom of In-
formation and Protec-
tion of Privacy Act*.

This includes the
name of the deceased,
name and address of
estate trustee(s), value
of the estate and any
undertakings and tax
payments made or re-
funded. This informa-
tion will be used by
the Ministry of Fi-
nance to determine the
value of estates and
the amount of estate
administration tax
payable. Questions
about the collection of
this information
should be directed to
the Senior Manager —
Audit, Advisory and
Compliance Branch,
33 King Street West,
PO Box 625, Oshawa
ON L1H 8H9, 1-866-
668-8297.

September 1, 2018

**Form 74.5.1 — Application
for Certificate of
Appointment of Estate
Trustee with a Will
(Corporate Applicant)
Limited to the Assets
Referred to in the Will**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

Form 74.5.1

Ont. Reg. 194 — Rules of Civil Procedure

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**APPLICATION FOR
CERTIFICATE OF
APPOINTMENT OF
ESTATE TRUSTEE
WITH A
WILL (CORPORATE
APPLICANT) LIMIT-
ED TO
SUPERIOR
COURT OF
JUSTICE**

**THE ASSETS RE-
FERRED TO IN THE
WILL**

(Form 74.5.1 Under
the Rules)

at _____

This application is filed by (insert name and address)

Details About the Deceased Person

Complete in full as applicable

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
|------------------|-------------------|------------------|---------|

And if the deceased was known by any other name(s), state below the full name(s) used including surname.

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
|------------------|-------------------|------------------|---------|

| | | | | |
|---|--|--|--|--|
| | | | | Date of birth of the deceased person, if known: (day, month, year) |
| | | | | Address of fixed place of abode (street or postal address) (city or town) (county or district) |
| If the deceased person had no fixed place of abode in Ontario, did he or she have property in Ontario? | | <input type="checkbox"/> No . . . <input type="checkbox"/> Yes | | Last occupation of deceased person |
| | | Place of death (city or town; county or district) | Date of death (day, month, year) | Date of last will (marked as Exhibit "A") (day, month, year) |
| | | | | <input type="checkbox"/> No . . . <input type="checkbox"/> Yes |
| Was the deceased person 18 years of age or older at the date of the will (or 21 years of age or older if the will is dated earlier than September 1, 1971)? | | <input type="checkbox"/> No . . . <input type="checkbox"/> Yes | | |
| If not, explain why certificate is being sought. Give details in an attached schedule. | | | | |
| | | Date of codicil (marked as Exhibit "B") (day, month, year) | Date of codicil (marked as Exhibit "C") (day, month, year) | |
| | | <i>Marital Status</i> <input type="checkbox"/> Unmarried <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced | | |
| Did the deceased person marry after the date of the will? | | <input type="checkbox"/> No . . . <input type="checkbox"/> Yes | | |

Form 74.5.1 — Application for Certificate of Appointment of Estate**Form 74.5.1**

| If yes, explain why certificate is being sought. Give details in an attached schedule. | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|----------------------------------|--|--|--|-------------------|----------------------------------|-------|----|----|----|---|--|--|---|--|--|--|--|--|---|--|--|---|--|--|
| <p>Was a marriage of the deceased person terminated by a judgment absolute of divorce, or declared a nullity, after the date of the will?</p> <p>If yes, give details in an attached schedule.</p> | | <table border="1"> <thead> <tr> <th>Personal Property</th> <th>Real estate, net of encumbrances</th> <th>Total</th> </tr> <tr> <th>\$</th> <th>\$</th> <th>\$</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/> No ... <input checked="" type="checkbox"/> Yes</td> <td></td> <td></td> </tr> <tr> <td colspan="3">Is there any person interested in the estate who is not an applicant?</td> </tr> <tr> <td colspan="3">If a person named in the will or a codicil as estate trustee is not an applicant, explain.</td> </tr> <tr> <td colspan="3">If a person not named in the will or a codicil as estate trustee is an applicant, explain why that person is entitled to apply.</td> </tr> <tr> <td colspan="3"> <p>If the spouse of the deceased is an applicant, has the spouse elected to receive the entitlement under section 5 of the <i>Family Law Act</i>?</p> <p>If yes, explain why the spouse is entitled to apply.</p> </td> </tr> </tbody> </table> | | | Personal Property | Real estate, net of encumbrances | Total | \$ | \$ | \$ | <input type="checkbox"/> No ... <input checked="" type="checkbox"/> Yes | | | Is there any person interested in the estate who is not an applicant? | | | If a person named in the will or a codicil as estate trustee is not an applicant, explain. | | | If a person not named in the will or a codicil as estate trustee is an applicant, explain why that person is entitled to apply. | | | <p>If the spouse of the deceased is an applicant, has the spouse elected to receive the entitlement under section 5 of the <i>Family Law Act</i>?</p> <p>If yes, explain why the spouse is entitled to apply.</p> | | |
| Personal Property | Real estate, net of encumbrances | Total | | | | | | | | | | | | | | | | | | | | | | | |
| \$ | \$ | \$ | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> No ... <input checked="" type="checkbox"/> Yes | | | | | | | | | | | | | | | | | | | | | | | | | |
| Is there any person interested in the estate who is not an applicant? | | | | | | | | | | | | | | | | | | | | | | | | | |
| If a person named in the will or a codicil as estate trustee is not an applicant, explain. | | | | | | | | | | | | | | | | | | | | | | | | | |
| If a person not named in the will or a codicil as estate trustee is an applicant, explain why that person is entitled to apply. | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>If the spouse of the deceased is an applicant, has the spouse elected to receive the entitlement under section 5 of the <i>Family Law Act</i>?</p> <p>If yes, explain why the spouse is entitled to apply.</p> | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>Value of Assets Referred to in Attached Will (Marked as Exhibit "A" to this application)</p> <p>Note:</p> <ul style="list-style-type: none"> • Under "Real estate, net of encumbrances", do not include any real estate in Ontario that is held jointly and passes by survivorship or any real estate outside Ontario. • Under "Personal Property", do not include money or property held jointly and passing by survivorship (such as a bank account), or money or property to which a person is entitled by virtue of a beneficiary designation under, for example, a life insurance contract, a registered pension plan, a registered retirement savings plans, a registered retirement income fund, a life income fund, a locked-in retirement account or a tax free savings account. | | <p>Affidavit(s) of Applicant(s) <i>(Attach a separate sheet for additional affidavits, if necessary)</i></p> <p>I, a trust officer named in this application, make oath and say/affirm:</p> <ol style="list-style-type: none"> 1. I am a trust officer of the corporate applicant. account of its administration when lawfully required. 2. I am 18 years of age or older. 5. If the corporate applicant is not named as estate trustee in the will or codicil, consents of persons who together have a majority interest in the value of the assets of the estate at the date of death are attached. | | | | | | | | | | | | | | | | | | | | | | | |

Form 74.5.1

Ont. Reg. 194 — Rules of Civil Procedure

| | | |
|---|------------------------------|---|
| <p>3. The exhibit(s) referred to in this application are the last will and each codicil (where applicable) of the deceased person relating to the assets referred to in the will and I do not know of any later will or codicil affecting those assets.</p> <p>4. The corporate applicant will faithfully administer the deceased person's property according to law and render a complete and true</p> | | <p>..... A Commissioner for taking Affidavits (<i>or as may be</i>)</p> <p><i>I, an applicant named in this application, make oath and say/affirm:</i></p> <p>1. I am 18 years of age or older.</p> <p>2. The exhibit(s) referred to in this application are the last will and each codicil (where applicable) of the deceased person relating to the assets referred to in the will and I do not know of any later will or codicil affecting those assets.</p> <p>3. I will faithfully administer the deceased person's property according to law and render a complete and true account of my administration when lawfully required.</p> <p>4. If I am not named as estate trustee in the will or codicil, consents of persons who together have a majority interest in the value of the assets of the estate at the date of death are attached.</p> <p>5. The information contained in this application and in any attached schedules is true, to the best of my knowledge and belief.</p> |
| <i>Name of corporate applicant</i> | <i>Name of trust officer</i> | |
| <i>Address of corporate applicant (street or postal address)</i> (city or town) | <i>(province)</i> | <i>(postal code)</i> |
| <p>Sworn/Affirmed before me at the</p> <p>..... of in the of this day Signature of trust officer of 20.....</p> | | |

Form 74.6 — Affidavit of Service of Notice

Form 74.6

| | |
|--|---|
| <i>Name (surname and forename(s))</i> | <i>Occupation</i> |
| <i>Address (street or postal ad- dress)</i> | <i>(city or town) (provin<p>pos-</p>tal code)</i> |
| <p>Sworn/Affirmed before me at the</p> <p>of</p> <p>in the</p> <p>of</p> <p>this day of Signature of applicant, 20.....</p> <p>.....</p> <p>A Commissioner for taking Affida- vits (<i>or as may be</i>)</p> | |

Notice to applicant:
 Information provided
 on this form related to
 the payment of estate
 administration tax may
 be forwarded to the
 Ministry of Finance
 pursuant to clause
 39(1)(b) and 42(1)(c)
 of the *Freedom of In-
formation and Protec-
tion of Privacy Act*.
 This includes the
 name of the deceased,
 name and address of
 estate trustee(s), value
 of the estate and any
 undertakings and tax
 payments made or re-
 funded. This informa-
 tion will be used by
 the Ministry of Fi-
 nance to determine the
 value of estates and
 the amount of estate
 administration tax
 payable. Questions
 about the collection of
 this information
 should be directed to
 the Senior Manager —
 Audit, Advisory and
 Compliance Branch,
 33 King Street West,
 PO Box 625, Oshawa
 ON L1H 8H9, 1-866-
 668-8297.

September 1, 2018

Form 74.6 — Affidavit of Service of Notice*Courts of Justice Act**[Repealed O. Reg. 77/06, s. 3.]*

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the

reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario**Superior Court of Justice**

IN THE ESTATE OF
(insert name)
deceased.

Affidavit of Service of Notice

I, (insert name), of (insert city or town and county or district of residence), make oath and say/affirm:

1. I am an applicant for a certificate of appointment of estate trustee with a will in the estate.
2. I have sent or caused to be sent a notice in Form 74.7, a copy of which is marked as Exhibit "A" to this affidavit, to all adult persons and charities named in the notice (except to an applicant who is entitled to share in the distribution of the estate); to the Public Guardian and Trustee if paragraph 6 of the notice applies; to a parent or guardian of any person less than 18 years of age and to the Children's Lawyer if paragraph 4 of the notice applies; to the guardian or attorney of any person referred to in paragraph 5 of the notice, and to the Children's Lawyer if paragraph 7 of the notice applies, in each case by personal service by email or by mail or courier to the person's last known address.
3. I have attached or caused to be attached to each notice the following:

(A) In the case of a notice sent to or in respect of a person entitled only to a specified item of property or stated or determinable amount of money, an extract of the part or parts of the will or codicil relating to the gift, or a copy of the will (and codicil(s), if any).

(B) In the case of a notice sent to or in respect of any other beneficiary, a copy of the will (and codicil(s), if any).

(C) In the case of a notice sent to the Children's Lawyer or the Public Guardian and Trustee, a copy of the will (and codicil(s), if any) and a statement of the estimated value of the interest of the person represented.

4. The following persons and charities specifically named in the Will are not entitled to be served for the reasons shown:

| Name of person (as it appears in will, if applicable) | Reason not served |
|---|-------------------|
|---|-------------------|

If paragraph 4 does not apply insert "Not Applicable."

5. The following persons named in the Will or being a member of a class of beneficiaries under the Will may be entitled to be served but have not been served for the reasons shown below:

| Name of person (as it appears in will, if applicable) | Reason not served |
|---|-------------------|
|---|-------------------|

If paragraph 5 does not apply insert "Not Applicable."

6. To the best of my knowledge and belief, subject to paragraph 5 (if applicable), the persons named in the notice are all the persons who are entitled to share in the distribution of the estate.

Sworn or Affirmed before me: (select one):
 in person OR by video conference

Complete if affidavit is being sworn or affirmed in person:

at the (City, Town, etc.) of in the (County, County, Regional Municipality, etc.) of on (date).

Form 74.7 — Notice of an Application for a Certificate of Appointment **Form 74.7**

Commissioner for Taking Affidavits (*or as may be*)

.....
Signature of Commissioner (or as may be) *Signature of Deponent*

Use one of the following if affidavit is being sworn or affirmed by video conference:

Complete if deponent and commissioner are in same city or town:

by (*deponent's name*) at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of, before me on (*date*) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)

.....
Signature of Commissioner (or as may be) *Signature of Deponent*

Complete if deponent and commissioner are not in same city or town:

by (*deponent's name*) of (City, Town, etc.) of in the (County, Regional Municipality, etc.) of, before me at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of, on (*date*) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)

.....
Signature of Commissioner (or as may be) *Signature of Deponent*

October 1, 2020

Form 74.7 — Notice of an Application for a Certificate of Appointment of Estate Trustee with a Will

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[*Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.*]

Ontario

Superior Court of Justice

IN THE ESTATE OF
(insert name), deceased.

Notice of an Application for a Certificate of Appointment of Estate Trustee with a Will

1. The deceased died on *(insert date)*.
2. Attached to this notice are:

(A) If the notice is sent to or in respect of a person entitled only to a specified item of property or stated or determinable amount of money, an extract of the part or parts of the will or codicil relating to the gift, or a copy of the will (and codicil(s), if any).

(B) If the notice is sent to or in respect of any other beneficiary, a copy of the will (and codicil(s), if any).

(C) If the notice is sent to the Children's Lawyer or the Public Guardian and Trustee, a copy of the will (and codicil(s), if any), and if it is not included in the notice, a statement of the

Form 74.7

Ont. Reg. 194 — Rules of Civil Procedure

| <p>estimated value of the interest of the person represented.</p> <p>3. The applicant named in this notice is applying for a certificate of appointment of estate trustee with a will.</p> <p>APPLICANT</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Address</th> </tr> </thead> </table> <p>4. The following persons who are less than 18 years of age are entitled, whether their interest is contingent or vested, to share in the distribution of the estate:</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Date of Birth (day, month, year)</th> <th>Name and Address of Parent or Guardian</th> <th>Estimated Value of Interest in Estate *</th> </tr> </thead> </table> <p>Notes:</p> <p>* Note: <i>The Estimated Value of Interest in Estate may be omitted in the form if it is included in a separate schedule attached to the notice sent to the Children's Lawyer.</i></p> <p>5. The following persons who are mentally incapable within the meaning of section 6 of the <i>Substitute Decisions Act, 1992</i> in respect of an issue in the proceeding, and who have guardians or attorneys acting under powers of attorney with authority to act in the proceeding, are entitled, whether their interest is contingent or vested, to share in the distribution of the estate:</p> <table border="1"> <thead> <tr> <th>Name and Address of Person</th> <th>Name and Address of Guardian or Attorney *</th> </tr> </thead></table> <p>Notes:</p> <p>* Specify whether guardian or attorney</p> | Name | Address | Name | Date of Birth (day, month, year) | Name and Address of Parent or Guardian | Estimated Value of Interest in Estate * | Name and Address of Person | Name and Address of Guardian or Attorney * | <p>6. The following persons who are mentally incapable within the meaning of section 6 of the <i>Substitute Decisions Act, 1992</i> in respect of an issue in the proceeding, and who do not have guardians or attorneys acting under powers of attorney with authority to act in the proceeding, are entitled, whether their interest is contingent or vested, to share in the distribution of the estate:</p> <table border="1"> <thead> <tr> <th>Name and Address of Person</th> <th>Estimated Value of Interest in Estate *</th> </tr> </thead></table> <p>Notes:</p> <p>* Note: <i>The Estimated Value of Interest in Estate may be omitted in the form if it is included in a separate schedule attached to the notice sent to the Public Guardian and Trustee.</i></p> <p>7. Unborn or unascertained persons may be entitled to share in the distribution of the estate. (<i>Delete if not applicable</i>)</p> <p>8. All other persons and charities entitled, whether their interest is contingent or vested, to share in the distribution of the estate are as follows:</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Address</th> </tr> </thead></table> <p>9. This notice is being sent to all adult persons and charities named above in this notice (except to an applicant who is entitled to share in the distribution of the estate); to the Public Guardian and Trustee, if paragraph 6 applies; to a parent or guardian of any person less than 18 years of age and to the Children's Lawyer, if paragraph 4 applies; to the guardian or attorney of any mentally incapable person referred to in paragraph 5, and to the Children's Lawyer if paragraph 7 applies.</p> <p>10. The following persons named in the Will or being a member of a class of beneficiaries under the Will may be entitled to be served</p> | Name and Address of Person | Estimated Value of Interest in Estate * | Name | Address |
|--|--|--|---|----------------------------------|--|---|----------------------------|--|---|----------------------------|---|------|---------|
| Name | Address | | | | | | | | | | | | |
| Name | Date of Birth (day, month, year) | Name and Address of Parent or Guardian | Estimated Value of Interest in Estate * | | | | | | | | | | |
| Name and Address of Person | Name and Address of Guardian or Attorney * | | | | | | | | | | | | |
| Name and Address of Person | Estimated Value of Interest in Estate * | | | | | | | | | | | | |
| Name | Address | | | | | | | | | | | | |

but have not been served for the reasons shown below:

| Name of person (as it appears in will, if applicable) | Reason not served |
|---|-------------------|
|---|-------------------|

If paragraph 10 does not apply insert "Not Applicable."

DATE:
October 1, 2020

Form 74.8 — Affidavit of Execution of Will or Codicil

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario

Superior Court of Justice

In the matter of the execution of a will or codicil of (*insert name*)

Affidavit

I, (*insert name*), of (*insert city or town and county or district, metropolitan or regional municipality of residence*), make oath and say/affirm:

1. On (*date*), I was present (*insert in person or by video conference*) and saw the document marked as Exhibit "A" to this affidavit executed by (*insert name*).

2. (*Insert name*) executed the document in the presence of myself and (*insert name of other witness and city or town, county or district, metropolitan or regional municipality of residence*).

3. On (*date*), I signed the document in the testator's presence (*insert by video conference, if applicable*) as an attesting witness.

Insert either paragraph 4 or 5 below if both witnesses were present when each signed (in addition to the testator whose presence is required).

4. (*insert name of other witness*) and I were both physically present at the same time and signed the document in the testator's presence by video conference as attesting witnesses.

OR

5. (*insert name of other witness*) was in the presence of myself by video conference and the testator by video conference when I signed the document as an attesting witness.

Sworn or Affirmed before me: (select one):
 in person OR by video conference

Complete if affidavit is being sworn or affirmed in person:

at the (City, Town, etc.) of in the (County, County, Regional Municipality, etc.) of on (*date*).
.....

Signature of Commissioner (or as may be) *Signature of Deponent*

Use one of the following if affidavit is being sworn or affirmed by video conference:

Complete if deponent and commissioner are in same city or town:

by (*deponent's name*) at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of, before me on (*date*) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Form 74.8

Ont. Reg. 194 — Rules of Civil Procedure

Commissioner for Taking Affidavits (*or as may be*)

.....

Signature of Commissioner (or as may be)

Signature of Deponent

Complete if deponent and commissioner are not in same city or town:

by (*deponent's name*) of (City, Town, etc.) of in the (County, Regional Municipality, etc.) of, before me at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of....., on (*date*) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)

.....

Signature of Commissioner (or as may be)

Signature of Deponent

NOTE: If the testator was blind or signed by making his or her mark, add the following paragraph:

3. Before its execution, the document was read over to the testator, who (was blind) (signed by making his or her mark). The testator appeared to understand the contents.

WARNING: A beneficiary or the spouse of a beneficiary should not be a witness.

September 1, 2020

Form 74.9 — Affidavit Attesting to the Handwriting and Signature of a Holograph Will or Codicil

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario

Superior Court of Justice

IN THE ESTATE OF (*insert name*), deceased.

Affidavit Attesting to the Handwriting and Signature of a Holograph Will or Codicil

I, (*insert name*), of (*insert city or town and county or district, metropolitan or regional municipality of residence*), make oath and say/affirm:

1. I was well acquainted with the deceased and have frequently seen the deceased's signature and handwriting.
2. I believe the whole of the document dated (*insert date*), now shown to me and marked as Exhibit "A" to this affidavit, including the signature, is in the handwriting of the deceased.

Sworn or Affirmed before me: (select one):
 in person OR by video conference

Complete if affidavit is being sworn or affirmed in person:

at the (City, Town, etc.) of in the (County, County, Regional Municipality, etc.) of on (date).

.....

Signature of Commissioner (or as may be) *Signature of Deponent*

Use one of the following if affidavit is being sworn or affirmed by video conference:

Complete if deponent and commissioner are in same city or town:

by (*deponent's name*) at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of before me on (*date*) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)

.....

Signature of Commissioner (or as may be) *Signature of Deponent*

Complete if deponent and commissioner are not in same city or town:

by (*deponent's name*) of (City, Town, etc.) of in the (County, Regional Municipality, etc.) of before me at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of on (*date*) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)

.....

Signature of Commissioner (or as may be) *Signature of Deponent*

September 1, 2020

Form 74.10 — Affidavit of Condition of Will or Codicil

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[*Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]*

Ontario

Superior Court of Justice

IN THE ESTATE OF (*insert name*), deceased.

Affidavit of Condition of Will or Codicil

I, (*insert name*), of (*insert city or town and county or district, metropolitan or regional municipality of residence*), make oath and say/affirm:

1. On (*date*), I was present and saw the document marked as Exhibit "A" to this affidavit executed by the deceased.

2. (*Insert name*) executed the document in the presence of myself and (*insert name of other witness and city or town, county or district, metropolitan or regional municipality of residence*).

3. On (*date*), I signed the document in the testator's presence (*insert by video conference, if applicable*) as an attesting witness.

Insert either paragraph 4 or 5 below if both witnesses were present when each signed (in addition to the testator whose presence is required).

Form 74.10

Ont. Reg. 194 — Rules of Civil Procedure

4. (*insert name of other witness*) and I were both physically present at the same time and signed the document in the testator's presence by video conference as attesting witnesses.

OR

5. (*insert name of other witness*) was in the presence of myself by video conference and the testator by video conference when I signed the document as an attesting witness.

6. The following alterations, erasures, obliterations or interlineations that have not been attested appear in the document:

7. The document is now in the same condition as when it was executed.

Sworn or Affirmed before me: (select one):
 in person OR by video conference

Complete if affidavit is being sworn or affirmed in person:

at the (City, Town, etc.) of in the (County, County, Regional Municipality, etc.) of on (*date*).
.....

*Signature of Com-
missioner (or as
may be)* *Signature of De-
ponent*

Use one of the following if affidavit is being sworn or affirmed by video conference:

Complete if deponent and commissioner are in same city or town:

by (*deponent's name*) at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of before me on (*date*) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)
.....

*Signature of Com-
missioner (or as
may be)* *Signature of De-
ponent*

Complete if deponent and commissioner are not in same city or town:

by (*deponent's name*) of (City, Town, etc.) of in the (County, Regional Municipality, etc.) of before me at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of on (*date*) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)
.....

*Signature of Com-
missioner (or as
may be)* *Signature of De-
ponent*

NOTE: If paragraph 3 is not correct, add the words "except that" and give details of the exceptions.

September 1, 2020

**Form 74.11 —
Renunciation of Right to a
Certificate of Appointment
of Estate Trustee (or
Succeeding Estate
Trustee) With a Will**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

IN THE ESTATE OF (*insert name*), deceased.

Form 74.12.1 — Consent to Applicant's Appointment as Estate Trustee With a Will

Renunciation of Right to a Certificate of Appointment of Estate Trustee (or Succeeding Estate Trustee) With A Will

The deceased died on (*date*).

In that person's testamentary document dated (*date*), I, (*insert name*), was named an estate trustee.

I renounce my right to a certificate of appointment of estate trustee (or succeeding estate trustee) with a will.

| | |
|------|---|
| DATE |) |
| |) |
| |) |
| |) |
| |) |
| |) |
| |) |
| |) |

| | |
|----------------------|--------------------------------|
| Signature of witness | Signature of person renouncing |
| | November 1, 2005 |

Form 74.12 — Consent to Applicant's Appointment as Estate Trustee With a Will

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Form 74.12.1

Ontario Superior Court of Justice

IN THE ESTATE OF (*insert name*), deceased.

Consent to Applicant's Appointment as Estate Trustee With a Will

The deceased died on (*date*).

No estate trustee named in a testamentary document of that person is applying for a certificate of appointment of estate trustee with a will.

I, (*insert name*), am entitled to share in the distribution of the estate.

I consent to the application by (*insert name*) for a certificate of appointment of estate trustee with a will.

I consent to an order dispensing with the filing of a bond by the applicant (*delete if inapplicable*).

| | |
|------|---|
| DATE |) |
| |) |
| |) |
| |) |
| |) |
| |) |
| |) |

| | |
|----------------------|--------------------------------|
| Signature of witness | Signature of person consenting |
| | November 1, 2005 |

Form 74.12.1 — Consent to Applicant's Appointment as Estate Trustee with a Will Limited to the Assets Referred to in the Will

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

Ontario
Superior Court of Justice

IN THE ESTATE OF (*insert name*),
deceased.

**Consent to Applicant's
Appointment as Estate Trustee
with a Will Limited to the Assets
Referred to in the Will**

The deceased died on (date).

No estate trustee named in a testamentary document of that person is applying for a certificate of appointment of estate trustee with a will limited to the assets referred to in the will.

I, (*insert name*), am entitled to share in the distribution of the estate.

I consent to the application by (*insert name*) for a certificate of appointment of estate trustee with a will limited to the assets referred to in the will.

I consent to an order dispensing with the filing of a bond by the applicant (*delete if inapplicable*).

DATE)
)
)
)
)
),

.....
Signature of witness) Signature of person consenting
)
)

February 1, 2015

Form 74.13 — Certificate of Appointment of Estate Trustee with a Will

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006.]

Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario
Superior Court of Justice

IN THE ES- , deceased,
TATE OF

late of

occupation

who died on

Certificate of Appointment of Estate Trustee with a Will

Applicant Address Occupa-

This CERTIFICATE OF APPOINTMENT
OF ESTATE TRUSTEE WITH A WILL is
hereby issued under the seal of the court to
the applicant named above. Attached to this
certificate is a copy of the deceased's last
will dated (and codi-
cils) dated

DATE

Registrar
Address of court
office

February 1, 2015

**Form 74.13.1 — Certificate
of Appointment of Estate
Trustee with a Will Limited
to the Assets Referred to
in the Will**

Courts of Justice Act

[Reneged O Reg 77/06 s 31]

Form 74.14 — Application for Certificate of Appointment of Estate **Form 74.14**

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

whence did you

**Certificate of Appointment of
Estate Trustee with a Will
Limited to the Assets Referred
to in the Will**

Applicant: Address: Occupation:

By order of a judge of the Superior Court of Justice this grant of a certificate of appointment of estate trustee with a will is limited to the assets referred to in the will dated (and codicils dated). A copy of the will (and codicils) is attached.

This will is the last will of the deceased dealing with those assets. This CERTIFICATE OF APPOINTMENT OF ESTATE TRUSTEE WITH A WILL LIMITED TO THE ASSETS REFERRED TO IN THE WILL is hereby issued under the seal of the court to the applicant named above.

DATE
.....

Registrar

Registrar

Address of court office

February 1, 2015

• • • • •

**Form 74.14 — Application
for Certificate of
Appointment of Estate
Trustee Without a Will
(Individual Applicant)**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourts.ca/courtforms. For your convenience, the government form as published on this website is reproduced below.]

*APPLICATION FOR
CERTIFICATE*

ONTARIO *OF APPOINTMENT
OF ESTATE TRUS-
TEE*
*WITHOUT A WILL
(INDIVIDUAL AP-
PLICANT)*

*SUPERIOR
COURT OF
JUSTICE*

*(Form 74.14 Under
the Rules)*

at

This application is filed by *(insert name and address)*

Details About the Deceased Person

Complete in full as applicable

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |

And if the deceased was known by any other name(s), state below the full name(s) used including surname.

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |
| | | | |

Date of birth of the deceased person, if known: (day, month, year)

| | |
|--|-----------------------------|
| <i>Address of fixed place of abode (street or postal address) (city or town)</i> | <i>(county or district)</i> |
|--|-----------------------------|

| | |
|--|---|
| If the deceased person had no fixed place of abode in Ontario, did he or she have property in Ontario? | <i>Last occupation of deceased person</i> |
| <input type="checkbox"/> No . . . <input type="checkbox"/> Yes | |

| | |
|--|---|
| <i>Place of death (city or town; county or district)</i> | <i>Date of death (day, month, year)</i> |
|--|---|

| | | |
|-----------------------------|------------------------------------|--------------------------|
| <i>Marital Status</i> . . . | <input type="checkbox"/> Unmarried | <input type="checkbox"/> |
|-----------------------------|------------------------------------|--------------------------|

| | | |
|----------------------------------|----------------------------------|-----------------------------------|
| <input type="checkbox"/> Married | <input type="checkbox"/> Widowed | <input type="checkbox"/> Divorced |
|----------------------------------|----------------------------------|-----------------------------------|

Was the deceased person ever legally married? Yes . . . No

If yes, attach a schedule and provide the following information:

- Name and current address of the deceased's spouse and of each former spouse.
- Whether any of the marriages was terminated and, if so, the method of termination of each marriage (that is, by divorce, by death or by declaration of nullity).
- Name and address of each child of each of the marriages.
- Name of each child who died before the deceased and the name and address of any issue of that deceased child.

Was the deceased person living with a person in a conjugal relationship outside marriage immediately before his or her death? Yes . . . No

Form 74.14 — Application for Certificate of Appointment of Estate **Form 74.14**

| <p>If yes, attach a schedule and provide the name and address of the person who was living with the deceased.</p> <hr/> <p>Persons Entitled to Share in the Estate</p> <p><i>(Attach a schedule if more space is needed. If a person entitled to share in the estate is not a spouse, child, parent, brother or sister of the deceased person, show how the relationship is traced.)</i></p> <hr/> <table border="1" style="width: 100%;"> <thead> <tr> <th>Name</th> <th>Address</th> <th>Relationship (if to under deceased 18 person)</th> <th>Age (if under 18)</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> <hr/> <p>Value of Assets of Estate</p> <p>Note:</p> <ul style="list-style-type: none"> • Under “Real estate, net of encumbrances”, do not include any real estate in Ontario that is held jointly and passes by survivorship or any real estate outside Ontario. • Under “Personal Property”, do not include money or property held jointly and passing by survivorship (such as a bank account), or money or property to which a person is entitled by virtue of a beneficiary designation under, for example, a life insurance contract, a registered pension plan, a registered retirement savings plans, a registered retirement income fund, a life income fund, a locked-in retirement account or a tax free savings account. | Name | Address | Relationship (if to under deceased 18 person) | Age (if under 18) | | | | | <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Personal property</th> <th style="text-align: center;">Real estate, net of encumbrances</th> <th style="text-align: center;">Total</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> </tbody> </table> <p>Explain why the applicant is entitled to apply.</p> <hr/> <p>Affidavit(s) of Applicant(s) <i>(Attach a separate sheet for additional affidavits, if necessary)</i></p> <p>I, an applicant named in this application, make oath and say/affirm:</p> <ol style="list-style-type: none"> 1. I am 18 years of age or older and a resident of Ontario. value of the assets of the estate at the date of death are attached. 2. I have made a careful search and inquiry for a will or other testamentary document of the deceased person, but none has been found. I believe that the person did not leave a will or other testamentary document. 3. I will faithfully administer the deceased person's property according to law and render a complete and true account of my administration when lawfully required. 5. The information contained in this application and in any attached schedules is true, to the best of my knowledge and belief. | Personal property | Real estate, net of encumbrances | Total | \$ | \$ | \$ |
|--|----------------------------------|---|---|-------------------|--|--|--|--|---|-------------------|----------------------------------|-------|----|----|----|
| Name | Address | Relationship (if to under deceased 18 person) | Age (if under 18) | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | |
| Personal property | Real estate, net of encumbrances | Total | | | | | | | | | | | | | |
| \$ | \$ | \$ | | | | | | | | | | | | | |

Form 74.14

Ont. Reg. 194 — Rules of Civil Procedure

4. Consents of persons who together have a majority interest in the

| | |
|---|---|
| <i>Name (surname and forename(s))</i> | <i>Occupation</i> |
| <i>Address (street or postal ad- dress)</i> | <i>(city or town) (provincial tal code)</i> |
| <p>Sworn/Affirmed) before me at the of) in the) of) this day) Signature of applicant of, 20.....</p> <p>..... A Commissioner for taking Affidavits (or as may be)</p> | |
| <i>Name (surname and forename(s))</i> | <i>Occupation</i> |
| <i>Address (street or postal ad- dress)</i> | <i>(provincial or town) (provincial tal code)</i> |
| <p>Sworn/Affirmed) before me at the of) in the)</p> | |

of)
this day of) Signature of applicant
....., 20.....

.....
A Commissioner for taking Affidavits (or as may be)

Notice to applicant: Information provided on this form related to the payment of estate administration tax may be forwarded to the Ministry of Finance pursuant to clause 39(1)(b) and 42(1)(c) of the *Freedom of Information and Protection of Privacy Act*. This includes the name of the deceased, name and address of estate trustee(s), value of the estate and any undertakings and tax payments made or refunded. This information will be used by the Ministry of Finance to determine the value of estates and the amount of estate administration tax payable. Questions about the collection of this information should be directed to the Senior Manager — Audit, Advisory and Compliance Branch, 33 King Street West, PO Box 625, Oshawa ON L1H 8H9, 1-866-668-8297.

September 1, 2018

**Form 74.15 — Application
for Certificate of
Appointment of Estate
Trustee Without a Will
(Corporate Applicant)**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

Form 74.15 — Application for Certificate of Appointment of Estate **Form 74.15**

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

ONTARIO

APPLICATION FOR
CERTIFICATE OF
APPOINTMENT OF
ESTATE TRUSTEE

SUPERIOR
COURT OF
JUSTICE

(Form 74.15 Under
the Rules)

at _____

This application is filed by (insert name
and address)

**Details About the Deceased
Person**

Complete in full as applicable

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |
| | | | |
| | | | |

And if the deceased was known by any other name(s), state below the full name(s) used including surname.

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |
| | | | |
| | | | |

Date of birth of the deceased person, if known: (day, month, year)

| | |
|--|------------------------------------|
| Address of fixed place of abode (street or postal address) (city or town) | (county or district) |
| If the deceased person had no fixed place of abode in Ontario, did he or she have property in Ontario? | Last occupation of deceased person |
| <input type="checkbox"/> No . . . <input type="checkbox"/> Yes | |
| Place of death (city or town; county or district) | Date of death (day, month, year) |
| Marital Status <input type="checkbox"/> Unmarried <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced | |

Was the deceased person ever legally married? Yes No

If yes, attach a schedule and provide the following information:

- Name and current address of the deceased's spouse and of each former spouse.
- Whether any of the marriages was terminated and, if so, the method of termination of each marriage (that is, by divorce, by death or by declaration of nullity).

Form 74.15

Ont. Reg. 194 — Rules of Civil Procedure

- Name and address of each child of each of the marriages.
- Name of each child who died before the deceased and the name and address of any issue of that deceased child.

Was the deceased person living with a person in a conjugal relationship outside marriage immediately before his or her death? Yes No

If yes, attach a schedule and provide the name and address of the person who was living with the deceased.

Persons Entitled to Share in the Estate

(Attach a schedule if more space is needed. If a person entitled to share in the estate is not a spouse, child, parent, brother or sister of the deceased person, show how the relationship is traced.)

| Name | Address | Relationship to deceased | Age (if under 18) person |
|------|---------|--------------------------------|-----------------------------------|
|------|---------|--------------------------------|-----------------------------------|

Value of Assets of Estate

Note:

- Under “Real estate, net of encumbrances”, do not include any real estate in Ontario that is held jointly and passes by survivorship or any real estate outside Ontario.
- Under “Personal Property”, do not include money or property held jointly and passing by survivorship (such as a bank account), or money or property to which a person is entitled by virtue of a beneficiary designation under, for example, a life insurance contract, a registered pension plan, a registered retirement savings plans, a registered retirement income fund, a life income fund, a locked-in retirement account or a tax free savings account.

| Personal property | Real estate, net of encumbrances | Total |
|-------------------|--|-------|
| \$ | \$ | \$ |

Explain why the applicant is entitled to apply.

Form 74.15 — Application for Certificate of Appointment of Estate **Form 74.15**

Affidavit(s) of Applicant(s)
(Attach a separate sheet for additional affidavits, if necessary)

I, a trust officer named in this application, make oath and say/affirm:

1. I am a trust officer of the corporate applicant. account of my administration when lawfully required.
2. I am 18 years of age or older.
3. I have made a careful search and inquiry for a will or other testamentary document of the deceased person, but none has been found. I believe that the person did not leave a will or other testamentary document.
4. The corporate applicant will faithfully administer the deceased person's property according to law and render a complete and true
5. Consents of persons who together have a majority interest in the value of the assets of the estate at the date of death are attached.
6. The information contained in this application and in any attached schedules is true, to the best of my knowledge and belief.

| | | | |
|--|------------------------------|-------------------|----------------------|
| <i>Name of corporate applicant</i> | <i>Name of trust officer</i> | | |
| | | | |
| <i>Address of corporate applicant</i> <small>(street or postal address)</small> | <i>(city or town)</i> | <i>(province)</i> | <i>(postal code)</i> |
| Sworn/Affirmed before me at the of in the of this day of Signature of trust officer 20..... A Commissioner for taking Affidavits (<i>or as may be</i>) | | | |

Form 74.15

Ont. Reg. 194 — Rules of Civil Procedure

Notice to applicant: Information provided on this form related to the payment of estate administration tax may be forwarded to the Ministry of Finance pursuant to clause 39(1)(b) and 42(1)(c) of the *Freedom of Information and Protection of Privacy Act*. This includes the name of the deceased, name and address of estate trustee(s), value of the estate and any undertakings and tax payments made or refunded. This information will be used by the Ministry of Finance to determine the value of estates and the amount of estate administration tax payable. Questions about the collection of this information should be directed to the Senior Manager — Audit, Advisory and Compliance Branch, 33 King Street West, PO Box 625, Oshawa ON L1H 8H9, 1-866-668-8297.

September 1, 2018

Ontario**Superior Court of Justice**IN THE ESTATE OF
(insert name), deceased.**Affidavit of Service of Notice**

I, (insert name), of (insert city or town and county or district of residence), make oath and say/affirm:

1. I am an applicant for a certificate of appointment of estate trustee without a will in the estate.
2. I have sent or caused to be sent a notice in Form 74.17, a copy of which is marked as Exhibit "A" to this affidavit, to all adult persons named in the notice (except to an applicant who is entitled to share in the distribution of the estate), to a parent or guardian of the minor and to the Children's Lawyer if paragraph 3 of the notice applies; to a parent or guardian of any person less than 18 years of age and to the Children's Lawyer, if paragraph 3 of the notice applies; to the guardian or attorney of any person referred to in paragraph 5 of the notice, and to the Children's Lawyer if paragraph 4 of the notice applies, in each case by personal service, by email or by mail or courier to the person's last known address.
3. The following persons may be entitled to be served but have not been served for the reasons shown below:

| Name of person (if applicable) | Reason not served |
|--------------------------------|-------------------|
|--------------------------------|-------------------|

If paragraph 3 does not apply insert "Not Applicable."

4. To the best of my knowledge and belief, subject to paragraph 3 (if applicable), the persons named in the notice are all the persons who are entitled to share in the distribution of the estate.

Sworn or Affirmed before me: (select one):
 in person OR by video conference

Form 74.17 — Notice of an Application for a Certificate of Appointment

Complete if affidavit is being sworn or affirmed in person:
 at the (City, Town, etc.) of in the (County, County, Regional Municipality, etc.) of on (date).

.....
Signature of Commissioner (or as may be) *Signature of Deponent*

Use one of the following if affidavit is being sworn or affirmed by video conference:

Complete if deponent and commissioner are in same city or town:

by (*deponent's name*) at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of before me on (*date*) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)

.....
Signature of Commissioner (or as may be) *Signature of Deponent*

Complete if deponent and commissioner are not in same city or town:

by (*deponent's name*) of (City, Town, etc.) of in the (County, Regional Municipality, etc.) of before me at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of on (*date*) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)

.....
Signature of Commissioner (or as may be) *Signature of Deponent*

Form 74.17 — Notice of an Application for a Certificate of Appointment of Estate Trustee Without a Will

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario

Superior Court of Justice

IN THE ESTATE OF
(insert name), deceased.

Notice of an Application for a Certificate of Appointment of Estate Trustee without a Will

1. The deceased died on (*insert date*), without a will.
2. The applicant named in this notice is applying for a certificate of appointment of estate trustee without a will.

APPLICANT

| | |
|-------------|----------------|
| Name | Address |
|-------------|----------------|

Form 74.17

Ont. Reg. 194 — Rules of Civil Procedure

3. The following persons who are less than 18 years of age are entitled to share in the distribution of the estate:

| Name | Date of Birth (day, month, year) | Name and Address of Parent or Guardian | Estimated Value of Interest in Estate |
|------|---|--|---|
|------|---|--|---|

Notes:

- * Note: *The Estimated Value of Interest in Estate may be omitted in the form if it is included in a separate schedule attached to the notice sent to the Children's Lawyer.*

4. The following persons who are mentally incapable within the meaning of section 6 of the *Substitute Decisions Act, 1992* in respect of an issue in the proceeding, and who have guardians or attorneys acting under powers of attorney with authority to act in the proceeding, are entitled to share in the distribution of the estate:

| Name and Address of Person | Name and Address of Guardian or Attorney* |
|-------------------------------|--|
|-------------------------------|--|

Notes:

- * Specify whether guardian or attorney.

5. The following persons who are mentally incapable within the meaning of section 6 of the *Substitute Decisions Act, 1992* in respect of an issue in the proceeding, and who do not have guardians or attorneys acting under powers of attorney with authority to act in

the proceeding, are entitled to share in the distribution of the estate:

| Name and Address of Person | Estimated Value of Interest in Estate |
|-------------------------------|--|
|-------------------------------|--|

Notes:

- * Note: *The Estimated Value of Interest in Estate may be omitted in the form if it is included in a separate schedule attached to the notice sent to the Public Guardian and Trustee.*

6. All other persons entitled to share in the distribution of the estate are as follows:

| Name | Address |
|------|---------|
|------|---------|

7. This notice is being sent to all adult persons named above in this notice (except to an applicant who is entitled to share in the distribution of the estate), to a parent or guardian of any person less than 18 years of age and to the Children's Lawyer if paragraph 3 applies, to the guardian or attorney of any mentally incapable person referred to in paragraph 4, and to the Public Guardian and Trustee if paragraph 5 applies.

8. The following persons may be entitled to be served but have not been served for the reasons shown below:

| Name of person | Reason not served |
|----------------|-------------------|
|----------------|-------------------|

If paragraph 8 does not apply insert "Not Applicable."

DATE

October 1, 2020

Form 74.19 — Consent to Applicant's Appointment as Estate Trustee **Form 74.19**

**Form 74.18 —
Renunciation of Prior
Right to a Certificate of
Appointment of Estate
Trustee Without a Will**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

IN THE ESTATE OF (insert name), deceased.

**Renunciation of Prior Right to a
Certificate of Appointment of
Estate Trustee Without a Will**

The deceased died on (date), without a will. I, (insert name), am entitled to apply for a certificate of appointment of estate trustee without a will in priority to (insert name). I renounce my right to a certificate of appointment of estate trustee without a will in priority to (insert name).

DATE)
)
)
)
)
)
)
.....)

Signature of witness) Signature of person renouncing

November 1, 2005

**Form 74.19 — Consent to
Applicant's Appointment
as Estate Trustee Without
a Will**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

IN THE ESTATE OF (insert name), deceased.

**Consent to Applicant's
Appointment as Estate Trustee
Without a Will**

The deceased died on (date), without a will. I, (insert name), am entitled to share in the distribution of the estate.

I consent to the application by (insert name) for a certificate of appointment of estate trustee without a will.

I consent to an order dispensing with the filing of a bond by the applicant (delete if inapplicable).

DATE)
)
)
)
)
)

Form 74.19

Ont. Reg. 194 — Rules of Civil Procedure

| | | |
|------------------------|--------------------------------|---|
|). |). | WILL is hereby issued under the seal of the court to the applicant named above. |
| Signature of witness) | Signature of person consenting | DATE |
| | | Registrar |
| | | Address of court office |
| | | November 1, 2005 |

**Form 74.20 — Certificate
of Appointment of Estate
Trustee Without a Will**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Court file no.

**Ontario
Superior Court of Justice**

IN THE ESTATE OF , deceased,

late of

occupation

who died on

**Certificate of Appointment
of Estate Trustee Without a Will**

| | | |
|-----------|---------|------------|
| Applicant | Address | Occupation |
|-----------|---------|------------|

This CERTIFICATE OF APPOINTMENT
OF ESTATE TRUSTEE WITHOUT A

**Form 74.20.1 —
Application for Certificate
of Appointment of a
Foreign Estate Trustee's
Nominee as Estate
Trustee without a Will**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

| | |
|-----------------------------------|--|
| ONTARIO | APPLICATION FOR CERTIFICATE OF APPOINTMENT |
| | OF A FOREIGN ES- TATE TRUSTEE'S NOMINEE AS |
| | ESTATE TRUSTEE WITHOUT A WILL |
| SUPERIOR COURT OF JUSTICE | |
| (Form 74.20.1 Under the Rules) | |

at

This application is filed by (insert name)

Form 74.20.1 — Application for Certificate of Appointment of a Foreign Estate Trustee

| Details About the Deceased Person | | | | Value of Assets Located in Ontario | | |
|---|--|---------------------------------------|---------|---|---|--------------|
| <i>Complete in full as applicable</i> | | | | Personal property | Real estate, net of encumbrances | Total |
| First given name | Second given name | Third given name | Surname | \$ | \$ | \$ |
| <i>And if the deceased was known by any other name(s), state below the full name(s) used including surname.</i> | | | | | | |
| First given name | Second given name | Third given name | Surname | | | |
| | | | | | | |
| | | | | | | |
| <i>Date of birth of the deceased person, if known: (day, month, year)</i> | | | | | | |
| <i>Address (street or postal address) (city or town) (province or state) (country)</i> | | | | | | |
| <i>Place of death</i> (city or town; country) | <i>Date of death</i> (day, month, year) | | | | | |
| <i>Country of domicile</i> | | | | | | |
| Particulars of Foreign Certificate | | | | | | |
| <i>Country (and province or state if applicable) where issued</i> | <i>Issuing court</i> | <i>Date issued (day, month, year)</i> | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| <i>TOTAL VALUE OF ASSETS OF ESTATE</i> | <i>Total</i> | | | | | |
| | \$ | | | | | |

Affidavit(s) of Applicant(s)
(Attach a separate sheet for additional affidavits, if necessary.)

I, an applicant named in this application, make oath and say/affirm:

1. I am the nominee of the foreign estate trustee appointed in the jurisdiction where the deceased was domiciled at the date of death.
2. A copy of the document appointing the foreign estate trustee, certified by the court that issued it, is marked as Exhibit "A" to this affidavit.
3. I am 18 years of age or older.
4. I will faithfully administer the deceased person's property according to law and render a complete and true account of my administration when lawfully required.
5. The information contained in this application and in any attached schedules is true, to the best of my knowledge and belief.

Name (surname and forename(s)) *Occupation*

Address (street or postal address) (city or town) (province/postal code)

*Sworn/Affirmed before me at the _____
of _____ in the _____*

Form 74.20.1

Ont. Reg. 194 — Rules of Civil Procedure

of
 this day of
 20.....

Signature of
 applicant

625, Oshawa ON L1H 8H9, 1-866-668-
 8297.

February 1, 2015

| | |
|---|---|
| A Commissioner for taking Affidavits (<i>or as may be</i>) | |
| Name (surname and forename(s)) | Occupation |
| Address (street or postal ad- dress) | (city or town) (province/postal code) |
| Sworn/Affirmed before me at the of in the of this day of, 20..... | |
| Signature of applicant | |

.....

A Commissioner for
taking Affidavits (*or as
may be*)

Notice to applicant: Information provided on this form related to the payment of estate administration tax may be forwarded to the Ministry of Finance pursuant to clause 39(1)(b) and 42(1)(c) of the *Freedom of Information and Protection of Privacy Act*. This includes the name of the deceased, name and address of estate trustee(s), value of the estate and any undertakings and tax payments made or refunded. This information will be used by the Ministry of Finance to determine the value of estates and the amount of estate administration tax payable. Questions about the collection of this information should be directed to the Senior Manager — Audit, Advisory and Compliance Branch, 33 King Street West, PO Box

Form 74.20.2 — Nomination of Applicant by Foreign Estate Trustee

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario Superior Court of Justice

IN THE ESTATE OF..... (insert name), deceased.

Nomination of Applicant by Foreign Estate Trustee

1. The deceased died on (*insert date*), without a will.
2. I, was appointed estate trustee by the, in the jurisdiction where the deceased was domiciled at the date of death, on the day of 20
3. I nominate to apply in Ontario for a certificate of estate trustee without a will.

DATE:

.....

Form 74.21 — Application for Certificate of Appointment as Succeeding Trustee With a Will

Signature of witness Signature of person nominating
November 1, 2005

Form 74.20.3 — Certificate of Appointment of Foreign Estate Trustee's Nominee as Estate Trustee Without a Will

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Court file no.

Ontario Superior Court of Justice

IN THE ESTATE OF , deceased,

late of

occupation

who died on

Certificate of Appointment of Foreign Estate Trustee's Nominee as Estate Trustee Without a Will

Applicant Address Occupation

This CERTIFICATE OF APPOINTMENT OF FOREIGN ESTATE TRUSTEE'S NOMINEE AS ESTATE TRUSTEE WITHOUT A WILL is hereby issued under the seal of the court to the applicant named above.

DATE
Registrar

Address of court office

November 1, 2005

Form 74.21 — Application for Certificate of Appointment as Succeeding Estate Trustee With a Will

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

ONTARIO APPLICATION FOR CERTIFICATE OF APPOINTMENT AS SUCCEEDING ESTATE TRUSTEE WITH A WILL

SUPERIOR COURT OF JUSTICE

at _____

This application is filed by (insert name and address)

Details About the Deceased Person

Complete in full as applicable

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |

And if the deceased was known by any other name(s), state below the full name(s) used including surname.

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |
| | | | |

Particulars of First Certificate

| Name(s) of estate trustee(s) | Date issued (day, month, year) |
|------------------------------|-----------------------------------|
| | |

Value of Undistributed Assets of Estate

| Personal property | Real estate, net of encumbrances | Total |
|-------------------|----------------------------------|-------|
| \$ | \$ | \$ |

Explain why the applicant is entitled to apply.

Affidavit(s) of Applicant(s)
(Attach a separate sheet for additional affidavits, if necessary.)

I, a trust officer named in this application, make oath and say/affirm:

1. I am a trust officer of the corporate applicant.
2. I am 18 years of age or older.
3. The corporate applicant will faithfully administer the deceased person's property according to law and render a complete and true account of its administration when lawfully required.
4. If the corporate applicant is not named as estate trustee in the will or codicil, consents of persons who together have a majority interest in the value of the undistributed assets of the estate at the date of this application are attached.
5. The information contained in this application and in any attached schedules is true, to the best of my knowledge and belief.

| Name of corporate applicant | Name of trust officer |
|--|---------------------------------|
| Address of corporate applicant (street or postal address) (city or town) | (provincial code) (postal code) |

Sworn/Affirmed before me at the of in the of

Signature of trust officer

this day of 20

A Commissioner for taking Affidavits (or as may be)

Form 74.21.1 — Application for Certificate of Appointment as Successor

I, an applicant named in this application, make oath and say/affirm:

1. I am 18 years of age or older.
2. I will faithfully administer the deceased person's property according to law and render a complete and true account of my administration when lawfully required.
3. If I am not named as estate trustee in the will or codicil, consents of persons who together have a majority interest in the value of the undistributed assets of the estate at the date of this application are attached.
4. The information contained in this application and in any attached schedules is true, to the best of my knowledge and belief.

| | |
|--|------------|
| Name (surname and forename(s)) | Occupation |
| Address (street or postal address) (city or town) | |
| Sworn/Affirmed before me at the . . . of in the of | |
| Signature of applicant this day of , 20 . . . | |
| A Commissioner for taking Affidavits (or as may be) | |

**Form 74.21.1 —
Application for Certificate
of Appointment as
Succeeding Estate
Trustee with a Will Limited
to the Assets Referred to
in the Will**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

| | |
|----------------|--|
| <p>ONTARIO</p> | <p>APPLICATION FOR CERTIFI- CATE OF</p> <p>APPOINTMENT AS SUCCEEDING ES- TATE</p> <p>TRUSTEE WITH A WILL LIMITED TO</p> <p>SUPERIOR COURT OF JUSTICE</p> <p>THE ASSETS RE- FERRED TO IN THE WILL</p> <p>(Form 74.21.1 Under the Rules)</p> <p>at</p> <p>This application is filed by (insert name and address)</p> |
|----------------|--|

November 1, 2005

Details About the Deceased Person

Complete in full as applicable

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |

And if the deceased was known by any other name(s), state below the full name(s) used including surname.

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |

| | | | |
|--|--|--|--|
| | | | |
|--|--|--|--|

Date of birth of the deceased person, if known: (day, month, year)

| Particulars of First Certificate | | |
|--|-----------------------------------|--|
| Name(s) of estate trustee(s) | Date issued (day, month, year) | Name of corporate applicant |
| | | Name of trust officer |
| Address of corporate applicant (street or postal address) | | (city or town) (province or postal code) |
| <p>Sworn/Affirmed before me at the of in the of this day of, 20.....</p> | | |
| | | Signature of trust officer |

Explain why the applicant is entitled to apply.

Form 74.22 — Consent to Applicant's Appointment as Succeeding Estate Trustee With a Will

.....

A Commissioner for taking Affidavits (*or as may be*)

I, an applicant named in this application, make oath and say/affirm:

1. I am 18 years of age or older.
2. I will faithfully administer the deceased person's property according to law and render a complete and true account of my administration when lawfully required.
3. If I am not named as estate trustee in the will or codicil, consents of persons who together have a majority interest in the value of the undistributed assets of the estate at the date of this application are attached.
4. The information contained in this application and in any attached schedules is true, to the best of my knowledge and belief.

| | |
|--|---|
| Name (surname and forename(s)) | Occupation |
| Address (street or postal address) | (city or town) (province/postal code) |
| Sworn/Affirmed before me at the of in the of | |
| this day of, 20..... | Signature of applicant |
| A Commissioner for taking Affidavits (<i>or as may be</i>) | |

April 11, 2012

Form 74.22 — Consent to Applicant's Appointment as Succeeding Estate Trustee With a Will

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario Superior Court of Justice

IN THE ESTATE OF (*insert name*), deceased.

Consent to Applicant's Appointment as Succeeding Estate Trustee With a Will

The deceased died on (*date*).

I, (*insert name*), am entitled to share in the distribution of the remaining estate.

I consent to the application by (*insert name*) for a certificate of appointment of succeeding estate trustee with a will.

I consent to an order dispensing with the filing of a bond by the applicant (*delete if inapplicable*).

| | |
|-------|-------|
| DATE: |) |
| |) |
| |) |
| |) |
| |) |
| | |
| | |

Form 74.22

Ont. Reg. 194 — Rules of Civil Procedure

| | |
|-------------------------|---|
| Signature of witness |) Signature of person con- senting |
| | November 1, 2005 |

This CERTIFICATE OF APPOINTMENT OF SUCCEEDING ESTATE TRUSTEE WITH A WILL is hereby issued under the seal of the court to the applicant named above. Attached to this certificate is a copy of the deceased's last will dated (and codicil(s) dated).

DATE

Registrar
Address of court
office

February 1, 2015

**Form 74.23 — Certificate
of Appointment of
Succeeding Estate
Trustee with a Will**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Court file no.

**Ontario
Superior Court of Justice**

IN THE ESTATE OF , deceased,

late of

occupation

who died on

**Certificate of Appointment of
Succeeding Estate Trustee with
a Will**

| | | |
|-----------|---------|------------|
| Applicant | Address | Occupation |
|-----------|---------|------------|

**Form 74.23.1 — Certificate
of Appointment of
Succeeding Estate
Trustee with a Will Limited
to the Assets Referred to
in the Will**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

ONTARIO

SUPERIOR
COURT OF
JUSTICE

IN THE , deceased,
ESTATE
OF

late of

Form 74.24 — Application for Certificate of Appointment as Succeeding Estate Trustee Without a Will

occupation

who died
on

**Certificate of Appointment of
Succeeding Estate Trustee with
a Will Limited to the Assets
Referred to in the Will**

Applicant: Address: Occupation:

By order of a judge of the Superior Court of Justice this grant of a certificate of appointment of estate trustee with a will is limited to the assets referred to in the will dated (and codicils dated). A copy of the will (and codicils) is attached. This will is the last will of the deceased dealing with those assets.

This CERTIFICATE OF APPOINTMENT OF SUCCEEDING ESTATE TRUSTEE WITH A WILL LIMITED TO THE ASSETS REFERRED TO IN THE WILL is hereby issued under the seal of the court to the applicant named above.

DATE:
Registrar

Address of court
office

February 1, 2015

**Form 74.24 — Application
for Certificate of
Appointment as
Succeeding Estate
Trustee Without a Will**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the

reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**ONTARIO APPLICATION FOR
CERTIFICATE OF
APPOINTMENT AS
SUCCEEDING ESTATE
TRUSTEE
WITHOUT A WILL
SUPERIOR COURT OF JUSTICE**

at _____

This application is filed by (insert
name and address)

**Details About the Deceased
Person**

Complete in full as applicable

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |

And if the deceased was known by any other name(s), state below the full name(s) used including surname.

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |
| | | | |

Particulars of First Certificate

| | |
|--|-----------------------------------|
| Name(s) of estate trustee(s) or ad- ministrator(s) | Date issued (day, month, year) |
|--|-----------------------------------|

Persons Entitled to Share in the Estate (at date of this application)

(Attach a schedule if more space is needed. If a person entitled to share in the estate is not a spouse, child, parent, brother or sister of the deceased person, show how the relationship is traced.)

| Name | Address | Relationship to deceased person | Age under 18) |
|------|---------|---------------------------------|---------------|
|------|---------|---------------------------------|---------------|

Value of Undistributed Assets of Estate

| Personal property | Real estate, net of encumbrances | Total |
|-------------------|----------------------------------|-------|
| \$ | \$ | \$ |

Explain why the applicant is entitled to apply.

Affidavit(s) of Applicant(s)

(Attach a separate sheet for additional affidavits, if necessary.)

I, a trust officer named in this application, make oath and say/affirm:

1. I am a trust officer of the corporate applicant.
2. I am 18 years of age or older.
3. The corporate applicant will faithfully administer the deceased person's property according to law and render a complete and true account of its administration when lawfully required.

4. Consents of persons who together have a majority interest in the value of the undistributed assets of the estate at the date of this application are attached.

5. The information contained in this application and in any attached schedules is true, to the best of my knowledge and belief.

| Name of corporate applicant | Name of trust officer |
|-----------------------------|-----------------------|
|-----------------------------|-----------------------|

| | | |
|--|-------------------|---------------|
| Address of corporate applicant (street or postal address) (city or town) | (provincial code) | (postal code) |
|--|-------------------|---------------|

Sworn/Affirmed
before me at the
of
in the
of

Signature of trust officer

this day of ..
., 20 ...

A Commissioner for taking Affidavits
(or as may be)

I, an applicant named in this application, make oath and say/affirm:

1. I am 18 years of age or older and a resident of Ontario.
2. I will faithfully administer the deceased person's property according to law and render a complete and true account of my administration when lawfully required.
3. Consents of persons who together have a majority interest in the value of the undistributed assets of the estate at the date of this application are attached.

Form 74.26 — Certificate of Appointment of Succeeding Estate Trustee **Form 74.26**

4. The information contained in this application and in any attached schedules is true, to the best of my knowledge and belief.

| | |
|--|------------------------------------|
| Name (surname and fore-name(s)) | Occupation |
| Address (street or postal address) (city or town) | (provin (qu) stal code) |
| Sworn/Affirmed before me at the of in the of | |
| | Signature of applicant |
| this day of, 20 ... | |
| A Commissioner for taking Affidavits (or as may be) | |
| | November 1, 2005 |

Form 74.25 — Consent to Applicant's Appointment as Succeeding Estate Trustee Without a Will

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourts.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

*Consent to Applicant's
Appointment as Succeeding
Estate Trustee Without a Will*

The deceased died on (date), without a will.

I, (*insert name*), am entitled to share in the distribution of the estate.

I consent to the application by (*insert name*) for a certificate of appointment of succeeding estate trustee without a will.

I consent to an order dispensing with the filing of a bond by the applicant (delete if inapplicable).

**Form 74.26 — Certificate
of Appointment of
Succeeding Estate
Trustee Without a Will**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your

Form 74.26

Ont. Reg. 194 — Rules of Civil Procedure

convenience, the government form as published on this website is reproduced below.]

Court file no.

**Ontario
Superior Court of Justice**

IN THE ESTATE OF _____, deceased,

late of _____

occupation _____

who died on _____

**Certificate of Appointment
of Succeeding Estate Trustee
Without a Will**

Applicant _____ Address _____ Occupation _____

This CERTIFICATE OF APPOINTMENT OF SUCCEEDING ESTATE TRUSTEE WITHOUT A WILL is hereby issued under the seal of the court to the applicant named above.

DATE _____

.....
Registrar _____

Address of court office _____

November 1, 2005

**Form 74.27 — Application
for Confirmation by
Resealing of Appointment
or Certificate of Ancillary
Appointment of Estate
Trustee**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

ON- APPLICATION FOR CONFIRMATION BY
TARIO RESEALING OF APPOINTMENT OR
CERTIFICATE OF ANCILLARY
APPOINTMENT OF ESTATE
TRUSTEE

SUPERIOR COURT OF JUSTICE(Form 74.27 Under the
Rules)

at _____

This is an application for (check one)

confirmation by resealing of the appointment of an estate trustee with (*or without*) a will.

a certificate of ancillary appointment of an estate trustee with a will.

This application is filed by (insert name) _____

Details About the Deceased Person

Complete in full as applicable

| | | | |
|------------------|-------------------|------------------|---------|
| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|

And if the deceased was known by any other name(s), state below the full name(s) used including surname.

| | | | |
|------------------|-------------------|------------------|---------|
| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|

Form 74.27 — Application for Confirmation by Resealing of Appointment **Form 74.27**

| | | | |
|--|--|--|--|
| | | | |
| | | | |

Address (street or postal address) (city or town) (province or state) (country)
.....

| Place of death (city or town; country) | Date of death (day, month, year) |
|---|-------------------------------------|
| | |

Particulars of Primary Certificate or Grant

| Country (and province or state if applicable) where issued | Issuing court | Date issued (day, month, year) |
|--|---------------|-----------------------------------|
| | | |

Value of Assets Located in Ontario

| Personal property | Real estate, net of encumbrances | Total |
|-------------------|--|-------|
| \$ | \$ | \$ |

Affidavit(s) of Applicant(s)
(Attach a separate sheet for additional affidavits, if necessary.)

I, an applicant named in this application, make oath and say/affirm:

1. I am an estate trustee named in the primary certificate (or primary grant of letters probate or letters of administration), a copy of which, certified by the court that issued it, is Exhibit "A" to this affidavit.
2. I am 18 years of age or older.
3. I will faithfully administer the deceased person's property according to law and render a complete and true ac-

count of my administration when lawfully required.

4. The primary certificate (or primary grant of letters probate or letters of administration) is still effective.

5. The information contained in this application and in any attached schedules is true, to the best of my knowledge and belief.

| Name (surname and forename(s)) | Occupation |
|---------------------------------------|---------------------------------------|
| Address (street or postal address) | (city or town) (province/postal code) |

Sworn/Affirmed before me at the
of
in the
of
this day of
....., 20.....

Signature of applicant

.....
A Commissioner for taking Affidavits (or as may be)

Notice to applicant: Information provided on this form related to the payment of estate administration tax may be forwarded to the Ministry of Finance pursuant to clause 39(1)(b) and 42(1)(c) of the *Freedom of Information and Protection of Privacy Act*. This includes the name of the deceased, name and address of estate trustee(s), value of the estate and any undertakings and tax payments made or refunded. This information will be used by the Ministry of Finance to determine the value of estates and the amount of estate administration tax payable. Questions about the collection of this information should be directed to the Senior Manager — Audit, Advisory and Compli-

Form 74.27

Ont. Reg. 194 — Rules of Civil Procedure

ance Branch, 33 King Street West, PO Box 625, Oshawa ON L1H 8H9, 1-866-668-8297.

February 1, 2015

**Form 74.28 —
Confirmation by Resealing
of Appointment of Estate
Trustee**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

IN THE ESTATE OF (*insert name*), deceased.

**Confirmation by Resealing of
Appointment of Estate Trustee**

Sealed with the seal of the Superior Court of Justice by order of that court dated (*insert date*), under subsection 52(1) of the *Estates Act*.

DATE

Registrar

Address of court office

February 1, 2015

**Form 74.29 — Certificate
of Ancillary Appointment
of Estate Trustee With a
Will**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Court file no.

**Ontario
Superior Court of Justice**

IN THE ESTATE OF _____, deceased,

late of

occupation

who died on

**Certificate of Ancillary
Appointment
of Estate Trustee With a Will**

| | | |
|-----------|---------|------------|
| Applicant | Address | Occupation |
|-----------|---------|------------|

Court of foreign grant

Date of foreign grant

Form 74.30 — Application for Certificate of Appointment of Estate **Form 74.30**

This CERTIFICATE OF ANCILLARY APPOINTMENT OF ESTATE TRUSTEE WITH A WILL is hereby issued under the seal of the court to the applicant named above. A certified copy of the foreign grant, to which this certificate is ancillary, is attached.

| | |
|------|-------------------------|
| DATE | |
| | Registrar |
| | Address of court office |
| | November 1, 2005 |

**Form 74.30 — Application
for Certificate of
Appointment of Estate
Trustee During Litigation**

Courts of Justice Act
[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

| | |
|---------|--|
| ONTARIO | APPLICATION FOR CERTIFICATE OF APPOINTMENT OF ESTATE TRUSTEE DURING LITIGA- TION SUPERIOR COURT OF JUSTICE <i>(Form 74.30 Under the Rules)</i> |
|---------|--|

at _____

This application is filed by *(insert name)*

Details About the Deceased Person

Complete in full as applicable

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |

And if the deceased was known by any other name(s), state below the full name(s) used including surname.

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |

| | | | |
|--|--|--|--|
| | | | |
| | | | |

Date of birth of the deceased person, if known: (day, month, year)

| | |
|---|----------------------|
| Address of fixed place of abode (street or postal address) (city or town) | (county or district) |
|---|----------------------|

| | |
|--|------------------------------------|
| If the deceased person had no fixed place of abode in Ontario, did he or she have property in Ontario? | Last occupation of deceased person |
| <input type="checkbox"/> No <input type="checkbox"/> Yes | |

| | |
|---|-------------------------------------|
| Place of death (city or town; county or district) | Date of death (day, month, year) |
|---|-------------------------------------|

Value of Assets of Estate

Note:

- Under "Real estate, net of encumbrances", do not include any real estate in Ontario that is held jointly and passes by survivorship or any real estate outside Ontario.

Form 74.30

Ont. Reg. 194 — Rules of Civil Procedure

- Under “Personal Property”, do not include money or property held jointly and passing by survivorship (such as a bank account), or money or property to which a person is entitled by virtue of a beneficiary designation under, for example, a life insurance contract, a registered pension plan, a registered retirement savings plans, a registered retirement income fund, a life income fund, a locked-in retirement account or a tax free savings account.

| <i>Personal Property</i> | <i>Real estate, net of encum- brances</i> | <i>Total</i> |
|------------------------------|---|--------------|
| \$ | \$ | \$ |

This application is made pursuant to an order for the appointment of an estate trustee during litigation, made by

| | |
|------------------------|---------------------------|
| <i>(name of judge)</i> | <i>(day, month, year)</i> |
| | on |

**Affidavit(s) of Applicant(s)
(Attach a separate sheet for
additional affidavits, if
necessary)**

*I, a trust officer named in this application,
make oath and say/affirm:*

- I am a trust officer of the corporate applicant. account of my administration when lawfully required.
- I am 18 years of age or older. a court order, and render a complete and true account of its administration when lawfully required.

- The corporate applicant will faithfully administer the deceased person's property according to law, make no distribution without
- The information contained in this application and in any attached schedules is true, to the best of my knowledge and belief.

| | |
|--|------------------------------|
| <i>Name of corpo- rate applicant</i> | <i>Name of trust officer</i> |
| | |

*Address of cor-
porate applicant* (city or town) (prov-
(street or postal ince) (pos-
address) tal
code)

Sworn/Affirmed
before me at the
.....
of
.....
in the
.....
of
.....
this day of
....., Signature of trust
20.....
officer
.....
A Commissioner for taking Affidavits (*or
as may be*)

Form 74.31 — Certificate of Appointment of Estate Trustee During Litigation

I, an applicant named in this application, make oath and say/affirm:

1. I am 18 years of age or older. and true account of my administration when lawfully required.
2. I will faithfully administer the deceased person's property according to law, make no distribution without a court order and render a complete
3. The information contained in this application and in any attached schedules is true, to the best of my knowledge and belief.

| Name (surname and forename(s)) | Occupation |
|--------------------------------|------------|
| | |

| Address (street or postal ad- dress) | (city or town) | (provin- cial tal code) |
|---|----------------------|----------------------------------|
| | | |

Sworn/Affirmed
before me at the
.....
of
.....
in the
.....
of
.....
this day of Signature of applic-
....., ant
20.....

.....
A Commissioner
for taking Affida-
vits (*or as may be*)

September 1, 2018

**Form 74.31 — Certificate
of Appointment of Estate
Trustee During Litigation**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Court file no.

**Ontario
Superior Court of Justice**

IN THE ESTATE OF , deceased,

late of

occupation

who died on

**Certificate of Appointment
of Estate Trustee During
Litigation**

| Applicant | Address | Occupation |
|-----------|---------|------------|
|-----------|---------|------------|

By order of the Superior Court of Justice,
this CERTIFICATE OF APPOINTMENT
OF ESTATE TRUSTEE DURING LITIGA-
TION to determine the validity of a testa-
mentary document of the deceased is hereby

Form 74.31

Ont. Reg. 194 — Rules of Civil Procedure

issued under the seal of the court to the applicant named above.

DATE
 Registrar
 Address of court office
 November 1, 2005

assigns jointly and severally to the Accountant of the Superior Court of Justice in the amount of Dollars (\$).

The principal as an estate trustee is required to prepare a complete and true inventory of all the property of the deceased, collect the assets of the estate, pay the debts of the estate, distribute the property of the deceased according to law, and render a complete and true accounting of these activities when lawfully required.

The primary obligation under this bond belongs to the principal. The principal is liable under this bond for any amount found by the court to be owing to any creditors of the estate and persons entitled to share in the estate to whom proper payment has not been made.

The surety, provided it has been given reasonable notice of any proceeding in which judgment may be given against the principal for failure to perform the obligations of this bond shall, on order of the court, and on default of the principal to pay any final judgment made against the principal in the proceeding, pay to the obligee the amount of any deficiency in the payment by the principal, but the surety shall not be liable to pay more than the amount of the bond.

The amount of this bond shall be reduced by and to the extent of any payment made under the bond pursuant to an order of the court.

The surety is entitled to an assignment of the rights of any person who receives payment or benefit from the proceeds of this bond, to the extent of such payment or benefit received.

DATE

SIGNED, SEALED AND DELIVERED

in the presence of:
 Principal

 Surety
 November 1, 2005

Form 74.32 — Bond — Insurance or Guarantee Company

Courts of Justice Act
[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario Superior Court of Justice

| BOND NO. | AMOUNT: |
|----------|---------|
| | \$ |

IN THE ESTATE OF (*insert name*), deceased.

The principal in this bond is (*insert name*)

The surety in this bond is (*insert name*), an insurer licensed under the *Insurance Act* to write surety and fidelity insurance in Ontario.

The obligee in this bond is the Accountant of the Superior Court of Justice acting for the benefit of creditors and persons entitled to share in the estate of the deceased.

The principal and the surety bind themselves, their heirs, executors, successors and

**Form 74.33 — Bond —
Personal Sureties**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

| | |
|----------|--------|
| BOND NO. | AMOUNT |
| | \$ |

IN THE ESTATE OF (*insert name*), deceased.

The principal in this bond is (*insert name*)

The sureties in this bond are (*insert names*)

The obligee in this bond is the Accountant of the Superior Court of Justice acting for the benefit of creditors and persons entitled to share in the estate of the deceased.

The principal and the sureties bind themselves, their heirs, executors, successors and assigns jointly and severally to the Accountant of the Superior Court of Justice in the amount of Dollars (\$).

The principal as an estate trustee is required to prepare a complete and true inventory of all the property of the deceased, collect the assets of the estate, pay the debts of the estate, distribute the property of the deceased according to law, and render a complete and true accounting of these activities when lawfully required.

The primary obligation under this bond belongs to the principal. The principal is liable under this bond for any amount found by the court to be owing to any creditors of the estate and persons entitled to share in the estate to whom proper payment has not been made.

The sureties, provided they have been given reasonable notice of any proceeding in which judgment may be given against the principal for failure to perform the obligations of this bond shall, on order of the court, and on default of the principal to pay any final judgment made against the principal in the proceeding, pay to the obligee the amount of any deficiency in the payment by the principal, but the sureties shall not be liable to pay more than the amount of the bond.

The amount of this bond shall be reduced by and to the extent of any payment made under the bond pursuant to an order of the court.

The sureties are entitled to an assignment of the rights of any person who receives payment or benefit from the proceeds of this bond, to the extent of such payment or benefit received.

DATE

SIGNED, SEALED AND DELIVERED

in the presence of:

Principal

.....

Surety

Affidavit of Surety

I, (*insert name*), of (*insert city or town and county or district, metropolitan or regional municipality of residence*), make oath and say/affirm:

I am a proposed surety on behalf of the intended estate trustees of the property of (*insert name*), deceased, named in the attached bond.

I am eighteen years of age or over and own property worth \$ over and above all

Form 74.33

Ont. Reg. 194 — Rules of Civil Procedure

encumbrances, and over and above what will pay my just debts and every sum for which I am now bail or for which I am liable as surety or endorser or otherwise.

SWORN/AFFIRMED)

BEFORE

me at the of)
 in the of)
 this day of ,)
 20 .
)
)
)
)

A Commissioner for
 Taking Affidavits
 (or as may be)

Affidavit of Surety

I, (insert name), of (insert city or town and county or district, metropolitan or regional municipality of residence), make oath and say/affirm:

I am a proposed surety on behalf of the intended estate trustees of the property of (insert name), deceased, named in the attached bond.

I am eighteen years of age or over and own property worth \$ over and above all encumbrances, and over and above what will pay my just debts and every sum for which I am now bail or for which I am liable as surety or endorser or otherwise.

SWORN/AFFIRMED)

BEFORE

the at the of)
 in the of)
 this day of ,)
 20 .
)
)
)
)

A Commissioner for
 Taking Affidavits
 (or as may be)

November 1, 2005

**Form 74.34 — Registrar's
 Notice to Estate Trustee
 Named in a Will or Codicil
 Deposited with the Court**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario**Superior Court of Justice****Notice**

(INSERT name), deceased, deposited a will or codicil with the Superior Court of Justice: In the will or codicil you are named as an estate trustee of the deceased's estate.

Another individual has applied to the court for an appointment as an estate trustee of the estate

INSERT.....

"with a will executed on an earlier date"

OR

"without a will"

A copy of the application is attached.

If you do not have legal representation, you may wish to consider consulting with a law-

Form 74.35 — Registrar's Notice to Applicant in an Application for **Form 74.35**

yer to obtain legal advice regarding this matter.

General information about probate application requirements is available on the Ontario Ministry of the Attorney General's website.

October 1, 2020

**Form 74.35 — Registrar's
Notice to Applicant in an
Application for a
Certificate of Appointment
of Estate Trustee**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(Court file no.)

Ontario

Superior Court of Justice

Notice

You have applied for a Certificate of Appointment of Estate Trustee for the Estate of (insert name), deceased.

A. Insert, if applicable:

Pursuant to s. 16 of the *Estate Act* a Certificate cannot be issued because:

Insert the applicable reason:

- (a) another application has been filed in respect of the estate
- (b) there is a notice of objection in effect under rule 75.03

(c) a will or codicil of a later date than that contained in your application was deposited in the Superior Court of Justice

(d) a will or codicil was deposited in the Superior Court of Justice and your application indicates that the deceased died without a will.

B. Insert, if applicable:

Pursuant to rule 74.14(1) of the *Rules of Civil Procedure*, a Certificate cannot be issued because:

i. Insert the applicable reason:

- (e) the required information was not provided
- (f) the required evidence or documentation was not filed
- (g) a motion is required
- (h) the deposit required by the *Estate Administration Tax Act* was not paid or was not paid in full or an undertaking was not filed under s. 4(3) of that Act and there is no court order dispensing with the requirement to pay such deposit
- (i) other.

ii. Insert details

Details regarding the issue are set out below (e.g., identify the missing information/evidence/documentation):

.....
.....
.....
.....

You can submit a revised application and any missing information/evidence/documentation to the Superior Court of Justice at the below address.

Please include a copy of this form with your material.

If you do not have legal representation, you may wish to consider consulting with a lawyer to obtain legal advice regarding your ap-

Form 74.35

Ont. Reg. 194 — Rules of Civil Procedure

plication, estate administration tax issues and the legal duties of an estate trustee.

General information about probate applications is available on the Ontario Ministry of the Attorney General's website.

Date Address

.....
of court
office

.....
October 1, 2020

Form 74.36 — Order to Accept or Refuse Appointment as Estate Trustee With a Will

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(Heading in accordance with Form 59A)

IN THE ESTATE OF (insert name), deceased.

Order to Accept or Refuse Appointment as Estate Trustee With a Will

A motion for this order has been made by (insert name of moving party). From an affidavit made by (insert name of maker of affidavit) that has been filed it appears that you are named as estate trustee in a will or codicil of the deceased dated (insert date).

1. THIS COURT ORDERS THAT you file an application for a certificate of appoint-

ment of estate trustee with a will in the court office within days after this order is served on you.

2. THIS COURT ORDERS THAT if you do not do so within that time, you shall be deemed to have renounced your right to be appointed.

.....
Registrar

Address of court
office

TO:

Proposed Amendment — Form 74.36

Form 74.36 — Order to Accept or Refuse Appointment as Estate Trustee With a Will

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(Heading in accordance with Form 59A)

IN THE ESTATE OF (insert name), deceased.

Order to Accept or Refuse Appointment as Estate Trustee With a Will

A motion for this order has been made by (insert name of moving party). From an affidavit made by (insert name of maker of affi-

Form 74.37 — Order to Accept or Refuse Appointment as Estate Trustee

Form 74.37

davit) that has been filed it appears that you are named as estate trustee in a will or codicil of the deceased dated (*insert date*).

1. THIS COURT ORDERS THAT you file an application for a small estate certificate or a certificate of appointment of estate trustee with a will in the court office within days after this order is served on you.
2. THIS COURT ORDERS THAT if you do not do so within that time, you shall be deemed to have renounced your right to be appointed.

.....

Registrar

Address of court
office

TO:

November 1, 2020 [To come into force April 1,
2021.]

November 1, 2005

**Form 74.37 — Order to
Accept or Refuse
Appointment as Estate
Trustee Without a Will**

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(Heading in accordance with Form 59A)

IN THE ESTATE OF (*insert name*),
deceased.

**Order to Accept or Refuse
Appointment as Estate Trustee
Without a Will**

A motion for this order has been made by (*insert name of moving party*). From an affidavit made by (*insert name of maker of affidavit*) that has been filed it appears that you may have a prior right to be appointed estate trustee without a will in the deceased's estate.

1. THIS COURT ORDERS THAT you file an application for a certificate of appointment of estate trustee without a will in the court office within days after this order is served on you.

2. THIS COURT ORDERS THAT if you do not do so within that time, you shall be deemed to have renounced your right to be appointed.

.....

Registrar

Address of court
office

TO:

**Proposed Amendment — Form
74.37**

**Form 74.37 — Order to
Accept or Refuse
Appointment as Estate
Trustee Without a Will**

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your

Form 74.37 Ont. Reg. 194 — Rules of Civil Procedure, Form 74.37

convenience, the government form as published on this website is reproduced below.]

(Heading in accordance with Form 59A)

IN THE ESTATE OF *(insert name)*, deceased.

**Order to Accept or Refuse
Appointment as Estate Trustee
Without a Will**

A motion for this order has been made by *(insert name of moving party)*. From an affidavit made by *(insert name of maker of affidavit)* that has been filed it appears that you may have a prior right to be appointed estate trustee without a will in the deceased's estate.

1. THIS COURT ORDERS THAT you file an application for a small estate certificate or a certificate of appointment of estate trustee without a will in the court office within days after this order is served on you.

2. THIS COURT ORDERS THAT if you do not do so within that time, you shall be deemed to have renounced your right to be appointed.

Registrar

Address of court
office

TO:

November 1, 2020 [To come into force April 1, 2021.]

November 1, 2005

**Form 74.38 — Order to
Consent or Object to a
Proposed Appointment of
an Estate Trustee With or
Without a Will**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

*[Editor's Note: Forms 4A to 78A of the
Rules of Civil Procedure have been repealed]*

by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(Heading in accordance with Form 59A)

IN THE ESTATE OF *(insert name)*, deceased.

**Order to Consent or Object to a
Proposed Appointment of an
Estate Trustee With or Without
a Will**

A motion for this order has been made by *(insert name of moving party)*. From an affidavit made by *(insert name of maker of affidavit)* that has been filed it appears that *(insert name)* is applying for a certificate of appointment as estate trustee with (or without) a will, that you are a person with a financial interest in the estate and that your consent to the appointment is being sought.

1. THIS COURT ORDERS THAT if you oppose that person's appointment as estate trustee, you must file a notice of objection to appointment of estate trustee, in the form attached as Schedule "A", in the court office within days after this order is served on you.

2. THIS COURT ORDERS THAT if you do not do so within that time, you shall be deemed to have consented to that person's appointment.

.....

Registrar

Address of court
office

TO:

**Proposed Amendment — Form
74.38**

**Form 74.38 — Order to
Consent or Object to a
Proposed Appointment of
an Estate Trustee With or
Without a Will**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(Heading in accordance with Form 59A)

IN THE ESTATE OF (insert name), deceased.

**Order to Consent or Object to a
Proposed Appointment of an
Estate Trustee With or Without
a Will**

A motion for this order has been made by (insert name of moving party). From an affidavit made by (insert name of maker of affidavit) that has been filed it appears that (insert name) is applying for a small estate certificate or a certificate of appointment as estate trustee with (or without) a will, that you are a person with a financial interest in the estate and that your consent to the appointment is being sought.

1. THIS COURT ORDERS THAT if you oppose that person's small estate certificate or appointment as estate trustee, you must file a notice of objection to the small estate

certificate or appointment of estate trustee, in the form attached as Schedule "A", in the court office within days after this order is served on you.

2. THIS COURT ORDERS THAT if you do not do so within that time, you shall be deemed to have consented to that person's appointment.

Registrar

Address of court
office

TO:

**Schedule "A" — Superior Court
of Justice**

ONTARIO

IN THE ESTATE OF (insert name), deceased.

**Notice of Objection to
Appointment of Estate Trustee**

I, (insert name), object to the appointment of (insert name) as estate trustee because (indicate reason).

DATE

.....

(Name, address and
telephone number of
objecting person or
lawyer for objecting
person)

November 1, 2020 [To come into force April 1, 2021.]

Schedule "A"

**Ontario
Superior Court of Justice**

IN THE ESTATE OF (insert name), deceased.

**Notice of Objection to
Appointment of Estate Trustee**

I, (*insert name*), object to the appointment of (*insert name*) as estate trustee because (*indicate reason*).

DATE

.....

(*Name, address and
telephone number of
objecting person or
lawyer for objecting
person*)

July 1, 2007

**Form 74.39 — Order to
File a Statement of Assets
of the Estate**

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[*Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.*]

(*Heading in accordance with Form 59A*)

IN THE ESTATE OF (*insert name*), deceased.

**Order to File a Statement of
Assets of the Estate**

A motion for this order has been made by (*insert name of moving party*). From an affidavit made by (*insert name of maker of affidavit*) that has been filed it appears that you are an estate trustee of the estate and that you should provide further information about the assets of the estate.

THIS COURT ORDERS THAT you file a statement of the nature of each asset of the estate and its value at the date of death in the court office within days after this order is served on you.

.....

Registrar

Address of court
office

TO:

November 1, 2005

**Form 74.40 — Order to
Beneficiary Witness**

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[*Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.*]

(*Heading in accordance with Form 59A*)

IN THE ESTATE OF (*insert name*), deceased.

Order to Beneficiary Witness

A motion for this order has been made by (*insert name of moving party*). From an affidavit made by (*insert name of maker of affidavit*), it appears that (*insert name of moving party*) has made an application for a certificate of appointment of estate trustee with a will, that you are a beneficiary under the will or codicil dated (*insert date*) and that you or your spouse witnessed the will or codicil or signed for the testator.

1. THIS COURT ORDERS THAT if you wish the court to find that neither you nor your spouse exercised any improper or undue influence on the testator, you must make a motion, within days after this order is served on you, asking the court to make that finding.

2. THIS COURT ORDERS THAT if you do not make such a motion within that time, the applicant may proceed to obtain a certificate of appointment of estate trustee with a will, bearing a note stating that your benefits under the will are void under section 12 of the *Succession Law Reform Act*.

.....

Registrar

Address of court
office

TO:

**Proposed Amendment — Form
74.40**

**Form 74.40 — Order to
Beneficiary Witness**

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(Heading in accordance with Form 59A)

IN THE ESTATE OF (*insert name*), deceased.

Order to Beneficiary Witness

A motion for this order has been made by (*insert name of moving party*). From an affidavit made by (*insert name of maker of affidavit*), it appears that (*insert name of moving party*) has made an application for a small estate certificate or a certificate of appointment of estate trustee with a will, that you are a beneficiary under the will or codicil dated (*insert date*) and that you or your spouse witnessed the will or codicil or signed for the testator.

1. THIS COURT ORDERS THAT if you wish the court to find that neither you nor your spouse exercised any improper or undue influence on the testator, you must make a motion, within days after this order is served on you, asking the court to make that finding.

2. THIS COURT ORDERS THAT if you do not make such a motion within that time, the applicant may proceed to obtain a small estate certificate or a certificate of appointment of estate trustee with a will, bearing a note stating that your benefits under the will are void under section 12 of the *Succession Law Reform Act*.

Registrar

Address of court
office

TO:

November 1, 2020 [To come into force April 1, 2021.]

November 1, 2005

**Form 74.41 — Order to
Former Spouse**

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the

Form 74.41

Ont. Reg. 194 — Rules of Civil Procedure

reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(Heading in accordance with Form 59A)

IN THE ESTATE OF (insert name), deceased.

Order to Former Spouse

Subsection 17(2) of the *Succession Law Reform Act* provides as follows:

“Except when a contrary intention appears by the will, where, after the testator makes a will, his or her marriage is terminated by a judgment absolute of divorce or is declared a nullity,

- (a) a devise or bequest of a beneficial interest in property to his or her former spouse;
- (b) an appointment of his or her former spouse as executor or trustee; and
- (c) the conferring of a general or special power of appointment on his or her former spouse,

are revoked and the will shall be construed as if the former spouse had predeceased the testator.”

A motion for this order has been made by (insert name of moving party), who has also made an application for a certificate of appointment of estate trustee with a will. From the application it appears that the will is dated (insert date) (and that the codicil(s) is (are) dated), that you are a former spouse of the testator and that your marriage was terminated by a judgment absolute of divorce or declared a nullity after the date of the will (or codicil).

1. THIS COURT ORDERS THAT if you wish to take part in the determination of the question whether the provisions in the will that affect you are revoked under subsection 17(2) of the *Succession Law Reform Act*,

you must enter an appearance in the office of the registrar of the court within days after this order is served on you.

2. THIS COURT ORDERS THAT if you do not do so within that time, the question will be determined in your absence and you will be bound by the result.

.....

Registrar

Address of court
office

TO:

**Proposed Amendment — Form
74.41****Form 74.41 — Order to
Former Spouse**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor’s Note: Forms 4A to 78A of the *Rules of Civil Procedure* have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(Heading in accordance with Form 59A)

IN THE ESTATE OF (insert name), deceased.

Order to Former Spouse

Subsection 17(2) of the *Succession Law Reform Act* provides as follows:

Except when a contrary intention appears by the will, where, after the testator makes a will, his or her marriage is

terminated by a judgment absolute of divorce or is declared a nullity,

- (a) a devise or bequest of a beneficial interest in property to his or her former spouse;
- (b) an appointment of his or her former spouse as executor or trustee; and
- (c) the conferring of a general or special power of appointment on his or her former spouse, are revoked and the will shall be construed as if the former spouse had predeceased the testator.

A motion for this order has been made by (*insert name of moving party*), who has also made an application for a small estate certificate or a certificate of appointment of estate trustee with a will. From the application it appears that the will is dated (*insert date*) (*and that the codicil(s) is (are) dated)*, that you are a former spouse of the testator and that your marriage was terminated by a judgment absolute of divorce or declared a nullity after the date of the will (*or codicil*).

1. THIS COURT ORDERS THAT if you wish to take part in the determination of the question whether the provisions in the will that affect you are revoked under subsection 17(2) of the *Succession Law Reform Act*, you must enter an appearance in the office of the registrar of the court within days after this order is served on you.
2. THIS COURT ORDERS THAT if you do not do so within that time, the question will be determined in your absence and you will be bound by the result.

Registrar

Address of court
office

TO:

November 1, 2020 [To come into force April 1,
2021.]

November 1, 2005

Form 74.42 — Order to Pass Accounts

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[*Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.*]

(Heading in accordance with Form 59A)

IN THE ESTATE OF (*insert name*), deceased.

Order to Pass Accounts

A motion for this order has been made by (*insert name of moving party*). From an affidavit made by (*insert name of maker of affidavit*) that has been filed it appears that you are an estate trustee of the estate and that you have made no accounting to the court of your dealings with the estate during the period from (*date*) to (*date*).

THIS COURT ORDERS THAT you file accounts of the estate and an application to pass accounts, in accordance with rules 74.17 and 74.18 of the Rules of Civil Procedure, in the court office within days after this order is served on you.

.....

Registrar

Address of court
office

TO:

November 1, 2005

**Form 74.43 — Affidavit
Verifying Estate Accounts**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario

Superior Court of Justice

IN THE ESTATE OF (insert name), deceased.

**Affidavit Verifying Estate
Accounts**

I, (insert name), of (insert city or town and county or district, metropolitan or regional municipality of residence), make oath and say/affirm:

1. I am an estate trustee for this estate.
2. The accounts marked as Exhibit "A" to this affidavit are complete and correct.
3. The information contained in the notice of application to pass accounts with respect to this estate is true.
4. All persons having a financial interest in the estate are named as respondents in the notice of application to pass accounts.
5. For any party with a disability, a representative has been identified in the notice of application.

Sworn or Affirmed before me: (select one):
 in person OR by video conference

Complete if affidavit is being sworn or affirmed in person:

at the (City, Town, etc.) of in the (County, County, Regional Municipality, etc.) of on (date).

.....
*Signature of Commissioner (or as
may be)* *Signature of De-
ponent*

Use one of the following if affidavit is being sworn or affirmed by video conference:

Complete if deponent and commissioner are in same city or town:

by (deponent's name) at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of before me on (date) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely

Commissioner for Taking Affidavits (or as may be)

.....
*Signature of Com-
missioner (or as
may be)* *Signature of De-
ponent*

Complete if deponent and commissioner are not in same city or town:

by (deponent's name) of (City, Town, etc.) of in the (County, Regional Municipality, etc.) of before me at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of on (date) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

.....
*Signature of Com-
missioner (or as
may be)* *Signature of De-
ponent*

September 1, 2020

**Form 74.44 — Notice of
Application to Pass
Accounts**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario

Superior Court of Justice

IN THE ESTATE OF (*insert name*), deceased.

**Notice of Application to Pass
Accounts**

This application to pass accounts will be heard on (*date*), at (*time*), at the court house at (*full address of court house*), if any person with a financial interest in the estate objects to the accounts or to the compensation claimed and doesn't withdraw the objection, or if a request for increased costs is served and filed.

The deceased died on (*date*).

A certificate of appointment of estate trustee was issued to (*insert name*) by this court on (*date*).

The accounts are for the period from (*date*) to (*date*).

The compensation claimed by the estate trustee, payable out of the estate, is (*insert amount*).

The costs of the application claimed by the estate trustee under Tariff C are (*amount*).

A person with a financial interest in the estate who retains a lawyer to review the accounts and makes no objection to them (or makes an objection and later withdraws it) but serves on the estate trustee and files with the court, with proof of service, a request for costs (Form 74.49 under the Rules of Civil Procedure) at least 10 days before the hearing date of the application, will be allowed one-half of the costs allowed to the estate trustee. However, where two or more persons are represented by the same lawyer, they are entitled to receive only one person's costs. If the Children's Lawyer or the Public Guardian and Trustee makes no objection to the accounts (or makes an objection and later withdraws it) but serves on the estate trustee and files with the court, with proof of service, a request for costs (Form 74.49.1) at least 10 days before the hearing date of the application, he or she will be allowed three-quarters of the costs allowed to the estate trustee.

Any person with a financial interest in the estate who wishes to object to the accounts shall do so by serving upon the estate trustee, or the lawyer for the estate trustee, a notice of objection to accounts (Form 74.45 under the *Rules of Civil Procedure*, a copy of which is attached to this notice of application), and by filing a copy of the notice in the court office at least 35 days before the hearing date specified in the notice of application [R.74.18(7)].

Any person who wishes to withdraw a notice of objection to accounts shall, at least 15 days before the hearing date of the application, serve on the estate trustee, and file with proof of service, a notice of withdrawal of objection (Form 74.48) [R.74.18(8.4)].

If the estate trustee or any person with a financial interest in the estate seeks costs of the application greater than the amount allowed in Tariff C, the estate trustee or other person shall serve on every other party a request for increased costs (Form 74.49.2 or 74.49.3 under the *Rules of Civil Procedure*) together with a Costs Outline in Form 57B,

Form 74.44

Ont. Reg. 194 — Rules of Civil Procedure

at least 15 days before the hearing date of the application [R.74.18(11)].

Any person with a financial interest in the estate who wishes to object or consent to a request for increased costs shall do so by returning the completed form 74.49.2 or 74.49.3, as the case may be, to the person making the request so that he or she receives it at least 10 days before the hearing date of the application. The person making the request for increased costs shall, at least 5 days before the hearing date of the application, file with the court a supplementary record described in subrule 74.18(11.3) containing (i) the documents served under subrule 74.18(11), together with an affidavit of service of those documents, (ii) an affidavit containing a summary of the responses to the request for increased costs and a list of persons who failed to respond, and (iii) the factors that contributed to the increased costs [R.74.18(11.3)].

Any person with a financial interest in the estate who does not wish to object to the accounts but wishes to receive notice of any further step in the application, including a request for costs or a request for increased costs, shall, at least 35 days before the hearing date specified in the notice of application, serve upon the estate trustee, and file with proof of service, a request for further notice in passing of accounts (Form 74.45.1), a copy of which is attached to this notice of application [R.74.18(8)].

If one or more notices of objection to accounts are filed and not withdrawn, the estate trustee shall, at least 10 days before the hearing date of the application, serve on the persons referred to in subrule 74.18(11.6), and file with proof of service, (i) a consolidation of all the remaining notices of objection to accounts and (ii) a reply to notice of objection to accounts (Form 74.49.4) [R.74.18(11.5)].

If the application to pass accounts proceeds to a hearing, the estate trustee shall, at least 5 days before the hearing date, file with the court a record containing the documents referred to in subrule 74.18(11.7). If the appli-

cant and every other person referred to under subrule 74.18(11.6), agree to all of the terms of a draft order, the applicant shall indicate that it is a joint draft order.

If the applicant and other persons fail to agree to all of the terms of a draft order, the applicant shall indicate that it is the applicant's draft order. Any person referred to under clause 74.18(11.6)(a) may file an alternative draft order at least 3 days before the hearing date of the application or, with leave of the court, at the hearing [R.74.18(11.8)(11.9)].

At the hearing, the only issues upon which the court adjudicates are those raised in the notices of objection to accounts and requests for increased costs that have been filed, unless the court grants leave to a party to raise other issues [R.74.18(12)].

If no notice of objection to accounts is served and filed, or all objections have been withdrawn, the estate trustee may, without a hearing, obtain a judgment passing the accounts and allowing the compensation and costs claimed [R.74.18(8.5)].

On a request for increased costs, the court may, in consideration of the documents in the supplementary record, grant judgment without a hearing. If the court declines to grant a request for increased costs without a hearing, the hearing shall proceed on the date fixed [R.74.18(11.4)].

Any person may contact the estate trustee or the estate trustee's lawyer to find out whether there will be a hearing. A copy of the accounts may be obtained from the estate trustee or the estate trustee's lawyer, or may be inspected in the court office during regular business hours.

DATE
.....

Registrar

*(Name, address
and telephone
number of estate
trustee or lawyer
for the estate trus-
tee)*

Form 74.45.1 — Request for Further Notice in Passing of Accounts

TO: (Name and address of each person with a financial interest in the estate)

(For a person under disability, also indicate name and address of personal representative)

(Attach blank copy of Form 74.45 (notice of objection to accounts).)

(Attach blank copy of Form 74.45.1 (request for further notice in passing of accounts).)

January 1, 2016

(If applicable, set out each objection in separate consecutively numbered paragraphs. Attach separate sheet if necessary.)

DATE

(Name, address and telephone number of objecting person or lawyer for objecting person)

TO: (Name and address of estate trustee or lawyer for estate trustee)

July 1, 2007

Form 74.45.1 — Request for Further Notice in Passing of Accounts

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario Superior Court of Justice

IN THE ESTATE OF (insert name), deceased.

Notice of Objection to Accounts

1. I, (insert name), object to the amount of compensation claimed by the estate trustee on the following grounds:

(If applicable, set out each objection in separate consecutively numbered paragraphs. Attach separate sheet if necessary.)

2. I, (insert name), object to the accounts of the estate trustee on the following grounds:

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario Superior Court of Justice

IN THE ESTATE OF (insert name), deceased.

Request for Further Notice in Passing of Accounts

I (insert name) have been served with a notice of application to pass accounts. By serv-

Form 74.45.1

Ont. Reg. 194 — Rules of Civil Procedure

ing this request for further notice, I acknowledge that:

I do not object to the accounts but wish to receive notice of any further step in the application, including a request for costs or a request for increased costs, and

I shall, at least 35 days before the hearing date specified in the notice of application, serve on the applicant, and file with proof of service, this request for further notice.

I further acknowledge that, unless the court orders otherwise, I am entitled to,

- (a) receive notice of any further step in the application to pass accounts;
- (b) receive any further document in the application;
- (c) file material relating to a request for increased costs on the application at least 10 days before the hearing date of the application; and
- (d) in the event of a hearing, be heard at the hearing, examine a witness and cross-examine on an affidavit, but with respect only to a request for increased costs.

DATE

(Name, address and telephone number of person requesting further notice or the lawyer for the person requesting further notice)

May 1, 2017

Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

IN THE ESTATE OF (insert name), deceased.

**Notice of No Objection to
Accounts**

The (Public Guardian and Trustee) (Children's Lawyer) has no objection to the estate accounts and the claim for compensation by the estate trustee.

DATE

(Name, address and telephone number of Children's Lawyer or Public Guardian and Trustee, or lawyer for Children's Lawyer or Public Guardian and Trustee)

TO: (Name and address of estate trustee or lawyer for estate trustee)

July 1, 2007

**Form 74.46 — Notice of No
Objection to Accounts**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006.]

**Form 74.46.1 — Notice of
Non-Participation in
Passing of Accounts**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed

Form 74.47 — Affidavit in Support of Unopposed Judgment on Passing

Form 74.47

by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

IN THE ESTATE OF (insert name), deceased.

**Notice of Non-Participation in
Passing of Accounts**

The (Public Guardian and Trustee) (Children's Lawyer) does not intend to participate in the passing of accounts.

DATE

(Name, address and
telephone number of

Children's Lawyer
or Public Guardian
and

Trustee, or lawyer
for Children's Lawyer

or Public Guardian
and Trustee)

TO: (Name and address of estate trustee
or lawyer for the estate trustee)

July 1, 2007

**Form 74.47 — Affidavit in
Support of Unopposed
Judgment on Passing of
Accounts**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario

Superior Court of Justice

IN THE ESTATE OF (insert name), deceased.

**Affidavit Support of Unopposed
Judgment on Passing of
Accounts**

I, (insert name), of (insert city or town and county or district, metropolitan or regional municipality of residence), make oath and say/affirm:

1. I am the applicant for an unopposed judgment on the passing of accounts in this estate with respect to estate accounts from (date) to (date).
2. A copy of the estate accounts has been provided to each person who was served with the notice of application and who requested a copy of the accounts.
3. The time for filing notices of objection to the estate accounts has expired.
4. No notice of objection has been received from any person served with the notice of application.

OR

4. Any notice of objection that was received has been withdrawn by the filing of a notice of withdrawal of objection.

Sworn or Affirmed before me: (select one):

in person OR by video conference

Complete if affidavit is being sworn or affirmed in person:

Form 74.47

Ont. Reg. 194 — Rules of Civil Procedure

at the (City, Town, etc.) of in the (County, County, Regional Municipality, etc.) of on (date).

.....

Signature of Commissioner (or as may be) *Signature of Deponent*

Use one of the following if affidavit is being sworn or affirmed by video conference:

Complete if deponent and commissioner are in same city or town:

by (*deponent's name*) at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of before me on (*date*) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)

.....

Signature of Commissioner (or as may be) *Signature of Deponent*

Complete if deponent and commissioner are not in same city or town:

by (*deponent's name*) of (City, Town, etc.) of in the (County, Regional Municipality, etc.) of before me at the (City, Town, etc.) of in the (County, Regional Municipality, etc.) of on (*date*) in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)

.....

Signature of Commissioner (or as may be) *Signature of Deponent*

NOTE: The two versions of paragraph 4 are in the alternative. Delete the one that does not apply.

September 1, 2020

Form 74.48 — Notice of Withdrawal of Objection
Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario Superior Court of Justice

IN THE ESTATE OF (*insert name*), deceased.

Notice of Withdrawal of Objection

I, (*insert name*), filed a notice of objection to accounts and hereby withdraw that notice of objection.

DATE

(*Name, address and telephone number of party or party's lawyer*)

TO: (*Name and address of estate trustee or lawyer for estate trustee*)

July 1, 2007

Form 74.49 — Request for Costs (Person Other Than Children's Lawyer or Public Guardian and Trustee)

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario Superior Court of Justice

IN THE ESTATE OF (*insert name*), deceased.

Request for Costs (Person Other Than Children's Lawyer or Public Guardian and Trustee)

I, (*insert name*), have retained (*insert name*) as my lawyer to review the estate accounts. I have no objection to the estate accounts and the claim for compensation by the estate trustee.

I request that I be awarded costs payable out of the estate in the amount of \$, representing one-half of the amount payable to the estate solicitor under Tariff C.

DATE

(*Name, address and telephone number of party or party's lawyer*)

TO: (*Name and address of estate trustee*)

or lawyer for estate trustee)

July 1, 2007

Form 74.49.1 — Request for Costs (Children's Lawyer or Public Guardian and Trustee)

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario Superior Court of Justice

IN THE ESTATE OF (*insert name*), deceased.

Request for Costs (Children's Lawyer or Public Guardian and Trustee)

The (Public Guardian and Trustee) (Children's Lawyer) has no objection to the estate accounts and the claim for compensation by the estate trustee.

The (Public Guardian and Trustee) (Children's Lawyer) requests that he or she be awarded costs payable out of the estate in the amount of \$, representing three-quarters of the amount payable to the estate solicitor under Tariff C.

DATE

(*Name, address and telephone number of*

Form 74.49.1

Ont. Reg. 194 — Rules of Civil Procedure

| | |
|--|---|
| <i>Children's Lawyer or Public Guardian and</i> | on the date specified in the notice of application, in the discretion of the presiding Judge. |
| <i>Trustee, or lawyer for Children's Law- yer</i> | DATE |
| <i>or Public Guardian and Trustee)</i> | <i>(Name, address and telephone number of estate trustee or lawyer for estate trustee)</i> |
| TO: <i>(Name and address of estate trustee or lawyer for the estate trustee)</i> | TO: <i>(Name and address of each person with a financial interest in the estate)</i> |
| | <i>(For a person under disability, also in- dicate name and address of personal representative)</i> |

July 1, 2007

**Form 74.49.2 — Request
for Increased Costs
(Estate Trustee)**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario**Superior Court of Justice**IN THE ESTATE OF *(insert name)*, deceased.

I request that I be awarded costs payable out of the estate in the amount of \$....., in addition to the cost of attendance at a hearing, if required, which is greater than the amount of \$..... allowed under Tariff C. I understand that this request may require a hearing

on the date specified in the notice of application, in the discretion of the presiding Judge.

DATE*(Name, address
and telephone
number of estate
trustee or lawyer
for estate trustee)*TO: *(Name and address of each person with
a financial interest in the estate)**(For a person under disability, also in-
dicate name and address of personal
representative)**Response by person with a financial interest
in the estate:*

(A) I oppose this request for increased costs, for the following reasons:

-

-

OR

(B) I consent to this request for increased costs.

Date:

.....

Signature of per-
son listed above

Any person with a financial interest in the estate who wishes to object or consent to a request for increased costs shall do so by returning the completed form 74.49.2 to the person making the request so that such person receives it at least 12 days before the date fixed for the hearing in the Notice of Application to Pass Accounts.

The person making the request for increased costs shall, at least 10 days before the date fixed for the hearing, file with the court a supplementary record described in subrule 74.18(11.3) containing (i) the documents served under subrule 74.18(11.1), together with an affidavit of service of those documents, (ii) an affidavit containing a summary of the responses to the request for increased costs and a list of persons who failed

Form 74.49.3 — Request for Increased Costs (Person other than Estate Trustee) **Form 74.49.3**

to respond, and (iii) the factors that contributed to the increased costs.

April 11, 2012

**Form 74.49.3 — Request
for Increased Costs
(Person other than Estate
Trustee)**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario

Superior Court of Justice

IN THE ESTATE OF *(insert name)*, deceased.

1. I, *(insert name)*, have retained *(insert name)* as my lawyer to review the estate accounts. I have no objection to the estate accounts or to the claim for compensation by the estate trustee.

2. I request that I be awarded costs payable out of the estate in the amount of \$....., in addition to the cost of attendance at a hearing, if required, which is greater than \$....., being one-half the amount payable to the estate trustee under Tariff C. I understand that this request may require a hearing on the date specified in the notice of application, in the discretion of the presiding Judge.

DATE

(Name, address and telephone number of person or person's lawyer)

TO: *(Name and address of every other person with a financial interest in the estate)*

(For a person under disability, also indicate name and address of personal representative)

(Name and address of estate trustee or lawyer for estate trustee)

Response by Estate Trustee or person with a financial interest in the estate:

(A) I object to this request for increased costs, for the following reasons:

-

-

OR:

(B) I consent to this request for increased costs.

Date:

.....

Signature of person listed above

Any person with a financial interest in the estate who wishes to object or consent to a request for increased costs shall do so by returning the completed form 74.49.3 to the person making the request so that such person receives it at least 12 days before the date fixed for the hearing in the Notice of Application to Pass Accounts.

The person making the request for increased costs shall, at least 10 days before the date fixed for the hearing, file with the court a supplementary record described in subrule 74.18(11.3) containing (i) the documents served under subrule 74.18(11.1), together with an affidavit of service of those documents, (ii) an affidavit containing a summary of the responses to the request for increased costs and a list of persons who failed to respond, and (iii) the factors that contributed to the increased costs.

April 11, 2012

.....

**Form 74.50 — Judgment
on Unopposed Passing of
Accounts**

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**(Heading in accordance with
Form 59B)**

IN THE ESTATE OF (insert name), deceased.

**Judgment on Passing of
Accounts**

THIS APPLICATION was read on (date), at (place).

ON READING THE NOTICE OF APPLICATION TO PASS ACCOUNTS, the affidavit of service and the affidavit in support of an unopposed judgment on passing of accounts, as filed, and as there are no objections to the accounts or the claim for compensation by the estate trustee,

1. THIS COURT DECLARES that the estate accounts, as filed by the applicant for the period from (date) to (date), are hereby passed.

2. THIS COURT DECLARES that the capital receipts and capital disbursements of the applicant for the period are as follows:

**CAPITAL
ACCOUNT**

| | | |
|--|---------|--------------------|
| Credit balance forward <i>(if applicable)</i> | \$ | |
| Receipts | \$..... | \$..... (total) |
| Debit balance forward <i>(if applicable)</i> | \$ | |
| Disbursements | \$..... | \$..... (total) |
| Credit (or debit) bal- ance | | \$..... |

3. THIS COURT DECLARES that the revenue receipts and revenue disbursements of the applicant for the period are as follows:

**REVENUE
ACCOUNT**

| | | |
|--|---------|--------------------|
| Credit balance forward <i>(if applicable)</i> | \$ | |
| Receipts | \$..... | \$..... (total) |
| Debit balance forward <i>(if applicable)</i> | \$ | |
| Disbursements | \$..... | \$..... (total) |
| Credit (or debit) bal- ance | | \$..... |

4. THIS COURT ORDERS that the estate trustee shall be paid as fair and reasonable compensation for services as estate trustee of the estate and for disbursements expended in administering the affairs of the estate during the period the total amount of \$..... (including H.S.T.), of which \$..... shall be paid out of the capital of the estate and \$..... shall be paid out of the revenue of the estate.

5. THIS COURT ORDERS that the costs of the passing of the accounts allowed in accordance with Tariff C, and payable out of the capital of the estate, are as follows:

To the estate trustee \$....., and
H.S.T. of \$..... for a total of \$.....

To (*insert names and amounts, showing each person awarded costs on a separate line*)

6. THIS COURT DECLARES that the accounts show that there remain in the estate trustee's hands the original assets as set out in Schedule "A", attached.

April 11, 2012

**Form 74.51 — Judgment
on Contested Passing of
Accounts**

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.]*

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(Court file no.)

**(Heading in accordance with
Form 59B)**

IN THE ESTATE OF (*insert name*), deceased.

**Judgment on Passing of
Accounts**

THIS APPLICATION was heard on (*date*), at (*address*) (or by telephone conference or by video conference) with the lawyer(s) for (*insert name*) (*where applicable add and (insert name)*) in attendance (*where applicable add and no one in attendance for (insert name)*), although properly served as appears from the affidavit of service filed).

ON READING THE NOTICE OF APPLICATION TO PASS ACCOUNTS and on hearing the submissions made,

1. THIS COURT DECLARES that the estate accounts, as filed by the applicant for the period from (*date*) to (*date*), are hereby passed.

2. THIS COURT DECLARES that the capital receipts and capital disbursements of the applicant for the period are as follows:

**CAPITAL
ACCOUNT**

| | | |
|---|---------|---------|
| Credit balance forward (<i>if applicable</i>) | \$..... | \$..... |
| | (total) | |

Receipts

| | | |
|--|---------|---------|
| Debit balance forward (<i>if applicable</i>) | \$..... | \$..... |
| | (total) | |

Disbursements

| | |
|---------------------------|---------|
| Credit (or debit) balance | \$..... |
|---------------------------|---------|

3. THIS COURT DECLARES that the revenue receipts and revenue disbursements of the applicant for the period are as follows:

**REVENUE
ACCOUNT**

| | | |
|---|---------|---------|
| Credit balance forward (<i>if applicable</i>) | \$..... | \$..... |
| | (total) | |

Receipts

| | | |
|--|---------|---------|
| Debit balance forward (<i>if applicable</i>) | \$..... | \$..... |
| | (total) | |

Disbursements

| | |
|---------------------------|---------|
| Credit (or debit) balance | \$..... |
|---------------------------|---------|

4. THIS COURT ORDERS that the estate trustee shall be paid as fair and reasonable compensation for services as estate trustee of the estate and for disbursements expended in administering the affairs of the estate during the period the total amount of \$..... (including H.S.T.), of which \$..... shall be paid out of the capital of the estate and

Form 74.51

Ont. Reg. 194 — Rules of Civil Procedure

\$..... shall be paid out of the revenue of the estate.

5. THIS COURT ORDERS that the costs of the passing of the accounts allowed and payable out of the capital of the estate are as follows:

To the estate trustee \$, and H.S.T. of \$..... for a total of \$.....

To (*insert names and amounts, showing each person awarded costs on a separate line*)

6. THIS COURT DECLARES that the accounts show that there remain in the estate trustee's hands the original assets as set out in Schedule "A", attached.

September 1, 2020

| | | | |
|--|--|--|--|
| | | | |
|--|--|--|--|

And if the deceased was known by any other name(s), state below the full name(s) used including surname.

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |
| | | | |

IN THE MATTER OF an application for a certificate of appointment of estate trustee

Form 75.1 — Notice of Objection

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario

Superior Court of Justice

In the Estate of the deceased person described below:

Details About the Deceased Person

Complete in full as applicable

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |

Notice of Objection

I, (*insert name*), object to the issuing of a certificate of appointment of estate trustee to (*insert name of applicant*) without notice to me because (*indicate reason, such as lack of testamentary capacity, undue influence or unfitness to act as estate trustee*).

The nature of my interest in the estate is: (*state relationship to the deceased and whether a named beneficiary under the will, or other basis for financial interest*).

DATE

(Name, address and telephone number of objector or lawyer for objector)

.....
Signature of objector or lawyer for objector

Proposed Amendment — Form 75.1

Form 75.1 — Notice of Objection

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

Ontario**Superior Court of Justice**

In the Estate of the deceased person described below:

Details About the Deceased Person

Complete in full as applicable

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |

And if the deceased was known by any other name(s), state below the full name(s) used including surname.

| First given name | Second given name | Third given name | Surname |
|------------------|-------------------|------------------|---------|
| | | | |
| | | | |

IN THE MATTER OF an application for a small estate certificate or a certificate of appointment of estate trustee

Notice of Objection

I, (insert name), object to the issuing of a small estate certificate or a certificate of appointment of estate trustee to (insert name of applicant) without notice to me because

..... (indicate reason, such as lack of testamentary capacity, undue influence or unfitness to act as estate trustee).

The nature of my interest in the estate is: (state relationship to the deceased and whether a named beneficiary under the will, or other basis for financial interest).

DATE

..... (Name, address and telephone number of objector or lawyer for objector)

.....
Signature of objector or lawyer
for objector

November 1, 2020 [To come into force April 1, 2021.]

October 1, 2020

Form 75.1A — Request for Assignment of Mediator

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

ONTARIO (Court file no.)

Superior Court of Justice

IN THE deceased,
ESTATE
OF
late of ,

Form 75.1A

Ont. Reg. 194 — Rules of Civil Procedure

| | | |
|------------|---|--------------------------------------|
| occupation | , | cupation, who died on |
| who died | , | |
| on | | |

**Request for Assignment of
Mediator**

TO: Mediation co-ordinator for (*county*)

An order giving directions was made under rule 75.1.05 on (*date of order*). A copy of the order is attached to this request.

The designated parties have not chosen a mediator under subrule 75.1.06(1). The 30-day period mentioned in subrule 75.1.07(1) has expired.

This is a request that you assign a mediator from the list for the country.

(*Date*) (*Name, address, telephone number and fax number, if any, of lawyer of party filing request, or of party*)
November 1, 2005

**Form 75.1B — Notice By
Mediator**

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[*Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]*

ONTARIO (*Court file no.*)

Superior Court of Justice

IN THE ESTATE OF
deceased, late of, oc-

Notice By Mediator

TO:

AND TO:

I am the mediator whom the mediation co-ordinator has appointed to conduct the mediation session under Rule 75.1. (*Delete this paragraph if mediator was chosen by designated parties under clause 75.1.06(1)(a) or (c).*

The mediation session will take place (*choose one of the following*)

- In person
- By telephone conference
- By video conference

at the following location

(*Address or telephone conference or video conference details, such as a dial-in number, access code, video link, etc., if applicable*)

on (*day*), (*date*), from (*time*) to (*time*).

You are required to attend this mediation session. If you have a lawyer representing you in this proceeding, he or she is also required to attend.

You are required to file a statement of issues (Form 75.1C) by (*date*) (seven days before the mediation session). A blank copy of the form is attached.

When you attend the mediation session, you should produce any documents that you consider of central importance in the proceeding. You should plan to remain throughout the scheduled time. If you need another person's approval before agreeing to a settlement, you should make arrangements before the mediation session to ensure that you have ready telephone access to that person throughout the session, even outside regular business hours.

YOU MAY BE PENALIZED UNDER RULE 75.1.10 IF YOU FAIL TO FILE A

STATEMENT OF ISSUES OR FAIL TO ATTEND THE MEDIATION SESSION.

(Date)

(Name, address, email address (if any), telephone number and fax number, if any, of mediator)

September 1, 2020

Statement of Issues

(To be provided to mediator and designated parties at least seven days before the mediation session)

1. *Factual and legal issues in dispute*

The undersigned designated party states that the following factual and legal issues are in dispute and remain to be resolved.

(Issues should be stated briefly and numbered consecutively.)

2. *Party's position and interests (what the party hopes to achieve)*

(Brief summary.)

3. *Attached documents*

Attached to this form are the following documents that the designated party considers of central importance in the proceeding: (list)

(Date) (party's signature)

(Name, address, telephone number and fax number, if any, of lawyer of party filing statement of issues, or of party)

NOTE: Rule 75.1.11 provides as follows:

All communications at a mediation session and the mediator's notes and records shall be deemed to be without prejudice settlement discussions.

November 1, 2005

Form 75.1C — Statement of Issues

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

ONTARIO

(Court file no.)

Superior Court of Justice

IN THE
ESTATE
OF

deceased,

late of

,

occupation

,

who died
on

,

Form 75.1D — Certificate of Non-Compliance

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your

www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

IN THE ESTATE OF (*insert name*), deceased.

IN THE MATTER OF an application for a certificate of appointment of estate trustee

Notice that Objection Has Been Filed

A notice of objection, a copy of which is attached, has been filed with the court.

No further action regarding issuing a small estate certificate or a certificate of appointment to you will be taken until you have complied with subrule 75.03(4) of the *Rules of Civil Procedure*.

DATE
 Registrar
 Address of court office

TO: (*Name, address and telephone number of applicant or lawyer for the applicant*)

November 1, 2020 [To come into force April 1, 2021.]

July 1, 2007

Form 75.3 — Notice to Objector

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through

www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

IN THE ESTATE OF (*insert name*), deceased.

IN THE MATTER OF an application for a certificate of appointment of estate trustee

Notice to Objector

AN APPLICATION for a certificate of appointment of estate trustee in the estate has been made by (*name of applicant*).

IF YOU WISH TO OPPOSE this application, you or an Ontario lawyer acting for you must within 20 days of service on you of this notice to objector prepare a notice of appearance in Form 75.4 of the Rules of Civil Procedure, serve it on the applicant's lawyer, or where the applicant does not have a lawyer serve it on the applicant, and file it with proof of service in the court office at (*full court address where application for certificate of appointment was filed*).

IF YOU FAIL to serve and file a notice of appearance, the application for certificate of appointment of estate trustee shall proceed as if your notice of objection had not been filed.

DATE

(*Name, address and telephone number of applicant or lawyer for the applicant*)

TO: (*Name and address of the objector or lawyer for the objector*)

**Proposed Amendment — Form
75.3**

Form 75.3 — Notice to Objector

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

Form 75.3 Ont. Reg. 194 — Rules of Civil Procedure, Form 75.3

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

IN THE ESTATE OF (insert name), deceased.

IN THE MATTER OF an application for a small estate certificate or a certificate of appointment of estate trustee

Notice to Objector

AN APPLICATION for a small estate certificate or a certificate of appointment of estate trustee in the estate has been made by (name of applicant).

IF YOU WISH TO OPPOSE this application, you or an Ontario lawyer acting for you must within 20 days of service on you of this notice to objector prepare a notice of appearance in Form 75.4 of the Rules of Civil Procedure, serve it on the applicant's lawyer, or where the applicant does not have a lawyer serve it on the applicant, and file it with proof of service in the court office at (full court address where application for certificate of appointment was filed).

IF YOU FAIL to serve and file a notice of appearance, the application for a small estate certificate or a certificate of appointment of estate trustee shall proceed as if your notice of objection had not been filed.

DATE

..... (Name, address and telephone number of applicant or lawyer for the applicant)

TO: (Name and address of the objector or lawyer for the objector)

November 1, 2020 [To come into force April 1, 2021.]

July 1, 2007

Form 75.4 — Notice of Appearance

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

IN THE ESTATE OF (insert name), deceased.

IN THE MATTER OF an application for a certificate of appointment of estate trustee

Notice of Appearance

I desire to oppose the issuing of a certificate of appointment of estate trustee for the reasons set out in the notice of objection filed.

DATE

(Name, address and telephone number of objector or lawyer for the objector)

TO: (Name, address and telephone number of applicant or lawyer for the applicant)

Proposed Amendment — Form 75.4**Form 75.4 — Notice of Appearance***Courts of Justice Act**[Repealed O. Reg. 77/06, s. 3.]*

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

IN THE ESTATE OF (*insert name*), deceased.

IN THE MATTER OF an application for a small estate certificate or a certificate of appointment of estate trustee

Notice of Appearance

I desire to oppose the issuing of a small estate certificate or a certificate of appointment of estate trustee for the reasons set out in the notice of objection filed.

DATE

..... (*Name, address and telephone number of objector or lawyer for the objector*)

TO: (*Name and address of the objector or lawyer for the applicant*)

November 1, 2020 [To come into force April 1, 2021.]

July 1, 2007

Form 75.5 — Notice of Application for Directions

*Courts of Justice Act**[Repealed O. Reg. 77/06, s. 3.]*

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(Court file no.)

Ontario

Superior Court of Justice

IN THE ESTATE OF (*insert name*), deceased.

BETWEEN:

(*Name*)

Applicant

— and —

(*Name*)

Respondent

Notice of Application for Directions

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge (*choose one of the following*)

In person

By telephone conference

Form 75.5

Ont. Reg. 194 — Rules of Civil Procedure

By video conference
 at the following location
(Courthouse address for in person hearing or telephone conference or video conference details, such as a dial-in number, access code, video link, etc., if applicable)
 on (day), (date), at (time) (or on a day to be set by the registrar).

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it with proof of service, in the court office where the application is to be heard, as soon as possible, but not later than two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to oppose this application but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

| | |
|-----------------|-----------------|
| Date | Issued by |
| Local registrar | |

Address of court office

TO: (*Name, address and email address (if any), of respondent, or lawyer for respondent*)

1. The applicant makes application or directions from the court with respect to: (*state nature of proceeding*)
2. The grounds for the application are rule 75.06 and (*include a reference to any statutory provision or Rule to be relied on*).
3. The following documentary evidence will be used at the hearing of the application for directions: (*list the affidavits or other documentary evidence to be relied upon*).

September 1, 2020

Form 75.6 — Notice of Motion for Directions

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(Court file no.)

Ontario**Superior Court of Justice**IN THE ESTATE OF (*insert name*), deceased.

BETWEEN:

(Name)

Moving Party

— and —

Form 75.7 — Statement of Claim Pursuant to Order Giving Direction **Form 75.7**

| | |
|--|--|
| <p>(Name) Respondent</p> <p>Notice of Motion for Directions</p> <p>The moving party will make a motion to the court on <i>(date)</i>, at <i>(time)</i>, or so soon after that time as the motion can be heard <i>(choose one of the following)</i></p> <p class="list-item-l1">□ In person</p> <p class="list-item-l1">□ By telephone conference</p> <p class="list-item-l1">□ By video conference</p> <p>at the following location</p> <p><i>(Courthouse address for in person hearing or telephone conference or video conference details, such as a dial-in number, access code, video link, etc., if applicable)</i></p> <p>The motion is for directions with respect to:</p> <p><i>(state nature of proceeding)</i></p> <p>The grounds for the motion are rule 75.06 and <i>(specify the further grounds to be argued, including a reference to any statutory provision or Rule)</i>.</p> <p>The following documentary evidence will be used at the hearing of the motion: <i>(list the affidavits or other documentary evidence to be relied on)</i>.</p> <p>DATE</p> <p><i>Name, address, email address (if any), and telephone number of applicant or lawyer for the applicant</i></p> <p>TO: <i>(Name, address, email address (if any), and telephone number of respondent or lawyer for the respondent)</i></p> | <p>Form 75.7 — Statement of Claim Pursuant to Order Giving Directions</p> <p><i>Courts of Justice Act</i></p> <p><i>[Repealed O. Reg. 77/06, s. 3.]</i></p> <p><i>[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]</i></p> <p>Ontario Superior Court of Justice</p> <p>IN THE ESTATE OF <i>(insert name)</i>, deceased.</p> <p>BETWEEN:</p> <p style="text-align: right;">(Name) Plaintiff - and -</p> <p style="text-align: right;">(Name) Defendant - and -</p> <p style="text-align: right;">(Name) Persons Submitting Rights to the Court</p> <p>Statement of Claim Pursuant to Order Giving Directions</p> <p>TO THE DEFENDANT</p> <p>A LEGAL PROCEEDING HAS BEEN COMMENCED by the Plaintiff. The claim made is set out in the following pages.</p> |
|--|--|

Form 75.7

Ont. Reg. 194 — Rules of Civil Procedure

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer, or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in the court office, WITHIN 20 DAYS after this statement of claim is served upon you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period of serving and filing your statement of defence is 40 days. If you are served outside of Canada and the United States of America, the period is 60 days.

Instead of serving and filing a statement of defence, you may serve and file a Statement of Submission or Rights to the Court in Form 75.9 prescribed by the *Rules of Civil Procedure*.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

1. The Plaintiff claims:

November 1, 2005

Form 75.8 — Order Giving Directions Where Pleadings Directed

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at

the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(Court file no.)

(Heading in accordance with Form 59A)

IN THE ESTATE OF (insert name), deceased.

BETWEEN:

(Name)

Applicant
(Moving
Party)

— and —

(Name)

Respondent
(Responding
Party)

— and —

(Name)

Persons Sub-
mitting
Rights to the
Court

Order Giving Directions

THIS APPLICATION (or MOTION) made by (identify applicant or moving party) for directions, was heard on (date), at (place) (or by telephone conference or by video conference), with the lawyer(s) for (insert name), and (insert name) in attendance, and no one in attendance for (insert name), although properly served as appears from the affidavit of service, filed.

ON READING the notice of application (or notice of motion) and on hearing the submissions made,

1. THIS COURT ORDERS that (insert name) shall be plaintiff and (insert name) shall be defendant, and that (insert names) are submitting their rights to the court.

Form 75.9 — Order Giving Directions Where Trial of Issues Directed **Form 75.9**

2. THIS COURT ORDERS that the plaintiff(s) shall serve upon the defendant(s) and file with the court a statement of claim in Form 75.7 within days after this order is entered, after which pleadings shall be served and filed under rule 75.07 of the *Rules of Civil Procedure*.

2.1 THIS COURT ORDERS that (*insert directions relating to mandatory mediation under Rule 75.1*).

3. THIS COURT ORDERS that the applicant and respondent shall serve and file affidavits of documents and attend and submit to examinations for discovery in accordance with the *Rules of Civil Procedure*.

4. THIS COURT ORDERS that on filing the appropriate documents with the court, (*insert name*) shall be appointed as estate trustee during litigation.

5. THIS COURT ORDERS that this order giving directions shall be served by an alternative to personal service pursuant to rule 16.03 of the *Rules of Civil Procedure*, on the following persons: (*insert names*)

6. THIS COURT ORDERS that the issues be tried by a judge with (*or without*) a jury at (*place*) on a date to be fixed by the registrar.

7. THIS COURT ORDERS that the costs of this application (*or motion*) shall be (*insert amount*)

September 1, 2020

that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(Court file no.)

(Heading in accordance with Form 59A)

IN THE ESTATE OF (*insert name*),
deceased.

BETWEEN:

(Name)

Applicant
(Moving
Party)

— and —

(Name)

Respondent
(Responding
Party)

— and —

(Name)

Persons Sub-
mitting
Rights to the
Court

Order Giving Directions

THIS APPLICATION (*or MOTION*) made by (*identify applicant or moving party*) for directions, was heard on (*date*), at (*place*) (*or by telephone conference or by video conference*), with the lawyer(s) for (*insert name*), and (*insert name*) in attendance, and no one in attendance for (*insert name*), although properly served as appears from the affidavit of service, filed.

ON READING the notice of application (*or notice of motion*) and on hearing the submissions made,

Form 75.9 — Order Giving Directions Where Trial of Issues Directed

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number]

Form 75.9

Ont. Reg. 194 — Rules of Civil Procedure

1. THIS COURT ORDERS that the parties to the proceeding and the issues to be tried be as follows:
 - (a) (insert name) affirms and (insert name) denies that (*state nature of allegation*);
 - (b) (*list each issue in a separate paragraph, specifying which parties affirm and which deny*).
2. THIS COURT ORDERS that (*insert names*) are submitting their rights to the court.
- 2.1 THIS COURT ORDERS that (*insert directions relating to mandatory mediation under Rule 75.1*).
3. THIS COURT ORDERS that the applicant and respondent shall serve and file affidavits of documents and attend and submit to examinations for discovery in accordance with the Rules of Civil Procedure.
4. THIS COURT ORDERS that on filing the appropriate documents with the court, (*insert name*) shall be appointed as estate trustee during litigation.
5. THIS COURT ORDERS that this order giving directions shall be served by an alternative to personal service pursuant to rule 16.03 of the *Rules of Civil Procedure*, on the following persons: (*insert names*)
6. THIS COURT ORDERS that the issues be tried by a judge with (*or without*) a jury at (*place*) on a date to be fixed by the registrar.
7. THIS COURT ORDERS that the costs of this application (*or motion*) shall be (*insert amount*)

September 1, 2020

by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**IN THE ESTATE OF (*insert name*), deceased.

BETWEEN:

(Name)

Applicant

- and -

(Name)

Respondent

**Statement of Submission of
Rights to the Court**

I, (*insert name*), submit my rights to the court and understand that pursuant to rule 75.07.1 of the Rules of Civil Procedure, the following consequences apply to me:

- (a) I shall not be entitled to receive any costs in the proceeding and shall not be liable to pay the costs of any party to the proceeding, except indirectly to the extent that costs are ordered by the court to be paid out of the estate;
- (b) I shall not receive notice of any step taken in the proceeding except the notice of trial and a copy of the judgment disposing of the matter;
- (c) If the proceeding is settled by agreement, a judgment on consent will not be given without notice to me.

DATE

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed]

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

Form 75.12 — Rejection of Settlement

Form 75.12

(Name, address and telephone number of the person or lawyer acting for person)

July 1, 2007

Form 75.11 — Notice of Settlement

Courts of Justice Act

[Repealed O. Reg. 77/06, s. 3.]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

IN THE ESTATE OF *(insert name)*,
deceased.

BETWEEN·

(Name) _____
- and -
Respondent

(Name) Persons Sub-
mitting
Rights to the
Court

Notice of Settlement

Pursuant to rule 75.07 of the *Rules of Civil Procedure*, attached as Schedule "A" is a copy of the settlement agreement that has been reached among the parties.

A judgment consistent with the settlement agreement will be sought. If you oppose that judgment, you or an Ontario lawyer acting for you must, within 10 days of service on you of this notice of settlement, serve a rejection of settlement in the form attached as Schedule "B" on the lawyer for the party serving this notice, or where the party serving this notice does not have a lawyer, serve it on the party serving this notice, and file it with proof of service in the court office at (place).

If you fail to serve and file a rejection of settlement, the court will consider the request for judgment without further notice to you.

DATE

(Name, address and telephone number of party)
or lawyer for the party)

TO: *(Names and addresses of all persons who have submitted their rights to the court)*

July 1, 2007

Form 75.12 — Rejection of Settlement

Courts of Justice Act

[*Repealed O. Reg. 77/06, s. 3.*]

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourts.ca. For your

Form 75.12

Ont. Reg. 194 — Rules of Civil Procedure

convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

IN THE ESTATE OF (*insert name*), deceased.

BETWEEN:

| | |
|-----------------|-------------|
| (<i>Name</i>) | Applicant |
| - and - | (Plaintiff) |

| | |
|-----------------|-------------|
| (<i>Name</i>) | Respondent |
| - and - | (Defendant) |

| | |
|-----------------|---|
| (<i>Name</i>) | Persons Sub- mitting Rights to the Court |
|-----------------|---|

Rejection of Settlement

I, (*insert name*), reject the settlement agreement attached to the notice of settlement dated (*insert date*), for the following reasons: (*state reasons*).

DATE

(*Name, address and telephone number of person or lawyer for person*)

TO: (*Name and address of party who served the notice of settlement or the lawyer for the party*)

July 1, 2007

Form 75.13 — Notice of Contestation*Courts of Justice Act**[Repealed O. Reg. 77/06, s. 3.]*

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

**Ontario
Superior Court of Justice**

IN THE ESTATE OF (*insert name*), deceased.

BETWEEN:

| | |
|-----------------|---------------------|
| (<i>Name</i>) | Estate Trus- tee |
| - and - | |

| | |
|-----------------|----------|
| (<i>Name</i>) | Claimant |
|-----------------|----------|

Notice of Contestation

Pursuant to section 44 or 45 of the *Estates Act*, the estate trustee of the estate contests the claim made by you against the estate, on the following grounds:

(*state grounds*)

You may apply to this court at (*insert address of court office*) for an order allowing your claim and determining its amount. If you do not apply within 30 days after receiving this notice, or within 3 months after that date if the judge on application so allows, you shall be deemed to have abandoned your claim and your claim shall be forever barred.

DATE

(*Name, address and telephone number of estate*)

Form 76A

Ont. Reg. 194 — Rules of Civil Procedure

| Simplified Procedure Motion Form | |
|--|--|
| <p><i>(General heading)</i></p> <p>Notice Whether Action Under Rule 76</p> <p>The plaintiff states that this action and any related proceedings are:</p> <p><i>(select one of the following:)</i></p> <p><input type="checkbox"/> continuing under Rule 76</p> <p><input type="checkbox"/> continuing as an ordinary procedure.</p> <p style="text-align: right;"><i>(Name, address and telephone and fax numbers of lawyer or plaintiff)</i></p> <p>November 1, 2008</p> | <p>JURISDICTION</p> <p><input type="checkbox"/> Judge</p> <p><input type="checkbox"/> Case Management Master</p> <p><input type="checkbox"/> Registrar</p> <p>THIS FORM IS FILED BY (Check appropriate boxes to identify the party filing this form as a moving/responding party on this motion AND to identify this party as plaintiff, defendant, etc. in the action)</p> <p>[] moving party</p> <p>[] plaintiff</p> <p>.....</p> <p>[] responding party</p> <p>[] defendant</p> <p>.....</p> <p>[] Other — specify kind of party and name</p> <p>.....</p> <p>MOTION MADE</p> <p>[] on consent of all parties</p> <p>[] without notice</p> <p>[] on notice to all parties and unopposed</p> <p>[] on notice to all parties and expected to be opposed</p> <p>Notice of this motion was served on (date):</p> <p>by means of:</p> <p>METHOD OF HEARING REQUESTED</p> <p>[] in person</p> <p>[] in writing only, no attendance</p> <p>[] by fax</p> <p>[] by telephone conference</p> <p>[] by video conference</p> <p>Date, time and address or telephone conference or video conference details (date) (time) (place)</p> |

Court File No.

(General heading)

| | |
|--|---|
| <p>.....</p> <p>ORDER SOUGHT BY THIS PARTY (Responding party is presumed to request dismissal of motion and costs)</p> <p>[] extension of time — until (give specific date):</p> <p>[] serve claim</p> <p>[] file or deliver statement of defence</p> <p>[] other relief — be specific</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>MATERIAL RELIED ON BY THIS PARTY</p> <p>[] this form</p> <p>[] pleadings</p> <p>[] affidavits — specify</p> <p>[] other — specify</p> <p>.....</p> <p>.....</p> <p>GROUNDS IN SUPPORT OF/IN OPPOSITION TO MOTION (INCLUDING RULE AND STATUTORY PROVISIONS RELIED ON)</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>CERTIFICATION BY LAWYER</p> <p>I certify that the above information is correct, to the best of my knowledge.</p> <p>Signature of lawyer (<i>If no lawyer, party must sign</i>)</p> <p>.....</p> <p>Date</p> <p>.....</p> | <p>.....</p> <p>THIS PARTY'S LAWYER (<i>If no lawyer, give party's name, address for service, telephone and fax number.</i>)</p> <p>Name and firm: _____</p> <p>Address: _____</p> <p>Telephone: _____ Fax: _____</p> <p>OTHER LAWYER (<i>If no lawyer, give other party's name, address for service, telephone and fax number.</i>)</p> <p>Name and firm: _____</p> <p>Address: _____</p> <p>Telephone: _____ Fax: _____</p> <p>DISPOSITION</p> <p>[] order to go as asked</p> <p>[] adjourned to</p> <p>[] order refused</p> <p>[] order to go as follows:</p> <p>.....</p> <p>.....</p> <p>Hearing method Hearing duration min.</p> <p>.....</p> <p>Heard in: [] courtroom [] office [] by telephone conference [] by video conference</p> |
|--|---|

Form 76B

Ont. Reg. 194 — Rules of Civil Procedure

| | |
|--|--|
| [] Successful party MUST prepare formal order for signature | 1. Issues Outstanding (a) liability: |
| [] No copy of disposition to be sent to parties | (b) damages: |
| [] Other directions — specify | (c) other |

Date Name Signature

Judge/Case
Management
Master/Registrar

November 1, 2020

.....

Form 76D — Trial Management Checklist*Courts of Justice Act**[Repealed O. Reg. 77/06, s. 3.]*

[Editor's Note: Forms 4A to 78A of the Rules of Civil Procedure have been repealed by O. Reg. 77/06, effective July 1, 2006. Pursuant to Rule of Civil Procedure 1.06, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of these rules and which is available on the Internet through www.ontariocourtforms.on.ca. For your convenience, the government form as published on this website is reproduced below.]

(General heading)

(Insert name of party filing this form)

Trial Management Checklist

Trial Lawyer — Plaintiff(s):

Trial Lawyer — Defendant(s):

Filed by Plaintiff

Filed by Defendant

Filed by Subsequent Party

1. Issues Outstanding
 - (a) liability:
.....
 - (b) damages:
.....
 - (c) other
.....
 2. Names of Plaintiff's Witnesses
.....
 3. Names of Defendant's Witnesses
.....
 4. Admissions
.....
- Are the parties prepared to admit any facts for the purposes of the trial or summary trial?
- yes no
5. Document Brief

Will there be a document brief? yes
no
 6. Request to Admit

Will there be a request to admit? yes
no

If so, have the parties agreed to a timetable? yes no
 7. Expert's Reports

Are any expert's reports anticipated?
yes no
 8. Amendments to Pleadings

Are any amendments likely to be sought? yes no
 9. Factum of Law

Will the parties be submitting factums of law? yes no
- May 1, 2019
.....

Tariff A — Lawyers' Fees and Disbursements Allowable Under Rules ...**Tariff A**

**Tariff A — Lawyers' Fees
and Disbursements
Allowable Under Rules
57.01 and 58.05** [Heading
amended O. Reg. 42/05, s. 7(1).]

Part I — Fees [Heading amended O. Reg. 42/05, s. 7(2).]

The fee for any step in a proceeding authorized by the *Rules of Civil Procedure* and the counsel fee for motions, applications, trials, references and appeals shall be determined in accordance with section 131 of the *Courts of Justice Act* and the factors set out in sub-rule 57.01(1).

Where students-at-law or law clerks have provided services of a nature that the Law Society of Ontario authorizes them to provide, fees for those services may be allowed.

Part II — Disbursements

- | | |
|--|--|
| Tariff A — Lawyers' Fees and Disbursements Allowable Under Rules | (c) more than 300 kilometres from where the witness resides, the minimum return air fare plus 24¢ a kilometre each way from his or her residence to the airport and from the airport to the place of hearing or examination. |
| 57.01 and 58.05 [Heading amended O. Reg. 42/05, s. 7(1).] | |
| Part I — Fees [Heading amended O. Reg. 42/05, s. 7(2).] | |
| The fee for any step in a proceeding authorized by the <i>Rules of Civil Procedure</i> and the counsel fee for motions, applications, trials, references and appeals shall be determined in accordance with section 131 of the <i>Courts of Justice Act</i> and the factors set out in subrule 57.01(1). | |
| Where students-at-law or law clerks have provided services of a nature that the Law Society of Ontario authorizes them to provide, fees for those services may be allowed. | |
| Part II — Disbursements | |
| 21. Attendance money actually paid to a witness who is entitled to attendance money, to be calculated as follows: | |
| 1. Attendance allowance \$50 for each day of necessary attendance | |
| 2. Travel allowance, where the hearing or examination is held, | |
| (a) in a city or town in which the witness resides, \$3.00 for each day of necessary attendance; | |
| (b) within 300 kilometres of where the witness resides, 24¢ a kilometre each way between his or her residence and the place of hearing or examination; | |
| 22. Fees or expenses actually paid to a court, authorized court transcriptionist, official examiner or sheriff under the regulations under the <i>Administration of Justice Act</i> . | \$75 |
| 23. For service or attempted service of a document, | |
| (a) in Ontario, the amount actually paid, not exceeding the fee payable to a sheriff under the regulations under the <i>Administration of Justice Act</i> ; | |
| (b) outside Ontario, a reasonable amount; | |
| (c) that was ordered to be served by publication, a reasonable amount. | |
| 23.1 Fees actually paid to a mediator in accordance with Ontario Regulation 451/98 made under the <i>Administration of Justice Act</i> . | |
| 23.2 Fees actually paid to a mediator in accordance with Ontario Regulation 291/99 made under the <i>Administration of Justice Act</i> | |

Tariff A**Ont. Reg. 194 — Rules of Civil Procedure**

- | | | | |
|------|--|-----|--|
| 24. | For an examination and transcript of evidence taken on the examination, the amount actually paid, not exceeding the fee payable to an official examiner under the regulations under the <i>Administration of Justice Act</i> . | 30. | Where ordered by the presiding judge or officer, such travelling and accommodation expenses incurred by a party as, in the discretion of the assessment officer, appear reasonable. |
| 25. | For the preparation of a plan, model, videotape, film or photograph reasonably necessary for the conduct of the proceeding, a reasonable amount. | 31. | For copies of any documents or authorities prepared for or by a party for the use of the court and supplied to the opposite party, a reasonable amount. |
| 26. | For experts' reports that were supplied to the other parties as required by the <i>Evidence Act</i> or these rules and that were reasonably necessary for the conduct of the proceeding, a reasonable amount. | 32. | For copies of records, appeal books and compendiums, and factums, a reasonable amount. |
| 27. | The cost of the investigation and report of the Official Guardian. | 33. | The cost of certified copies of documents such as orders, birth, marriage, and death certificates, abstracts of title, deeds, mortgages and other registered documents where reasonably necessary for the conduct of the proceeding. |
| 28. | For an expert who gives opinion evidence at the hearing or whose attendance was reasonably necessary at the hearing, a reasonable amount not exceeding \$350 a day, subject to increase in the discretion of the assessment officer. | 34. | The cost of transcripts of proceedings of courts or tribunals, (a) where required by the court or the rules; or (b) where reasonably necessary for the conduct of the proceeding. |
| 29. | For an interpreter for services at the hearing or on an examination, a reasonable amount not exceeding \$100 a day, subject to increase in the discretion of the assessment officer. | 35. | Where ordered by the presiding judge or officer, for any other disbursement reasonably necessary for the conduct of the proceeding, a reasonable amount in the discretion of the assessment officer. |
| 29.1 | Where ordered by the presiding judge or officer, for translation into English or French of a document that has been filed, a reasonable amount. | 36. | Harmonized sales tax (HST) actually paid or payable on the lawyer's fees and disbursements allowable under rule 58.05. O. Reg. 219/91, s. 16; 351/94, s. 19; 533/95, s. 12; 453/98, s. 3; 290/99, s. 6; 24/00, s. 32; |

Tariff C — Lawyers' Costs Allowed on Passing of Accounts Without a ..Tariff C****

652/00, s. 8; 113/01, s. 15; 243/01, s. 1; 244/01, ss. 5, 6; 284/01, s. 38; 457/01, s. 18; 19/03, s. 26; 131/04, s. 27; 42/05, s. 7; 575/07, s. 37; 55/12, s. 14; 170/14, s. 25; CTR 12 FE 20 - 4
.....

Tariff C — Lawyers' Costs Allowed on Passing of Accounts Without a Hearing [Heading amended O. Reg. 575/07, s. 38(1).]

(1) — Estate Trustee

| <i>Amount of receipts</i> | <i>Amount of costs</i> |
|--|------------------------|
| Less than \$300,000 | \$2,500 |
| \$300,000 or more, but less than \$500,000 | 3,000 |
| \$500,000 or more, but less than \$1,000,000 | 3,500 |
| \$1,000,000 or more, but less than \$3,000,000 | 5,000 |
| \$3,000,000 or more | 7,500 |

(2) — Person With Financial Interest in Estate

If a person with a financial interest in an estate retains a lawyer to review the accounts,

makes no objection to the accounts (or makes an objection and later withdraws it), and serves and files a request for costs, the person is entitled to one-half of the amount payable to the estate trustee.

(3) — Children's Lawyer or Public Guardian and Trustee

If the Children's Lawyer or the Public Guardian and Trustee makes no objection to the accounts (or makes an objection and later withdraws it) and serves and files a request for costs, he or she is entitled to three-quarters of the amount payable to the estate trustee.

Note: If two or more persons are represented by the same lawyer, they are entitled to receive only one person's costs.

Note: A person entitled to costs under this tariff is also entitled to the amount of harmonized sales tax (HST) on those costs.

O. Reg. 484/94, s. 14; 332/96, s. 10; 575/07, s. 38; 55/12, s. 15

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