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CONSULTATION DRAFT

ADULT GUARDIANSHIP AND TRUSTEESHIP ACT

ADULT GUARDIANSHIP AND TRUSTEESHIP REGULATIONS

Pursuant to section 68 of the *Adult Guardianship and Trusteeship Act* R.S.P.E.I. 1988, Cap. A-4.2, Council made the following regulations:

INTERPRETATION

1. Act defined

In these regulations, “**Act**” means the *Adult Guardianship and Trusteeship Act* R.S.P.E.I. 1988, Cap. A-4.2.

REGISTER

2. Contents of record – guardianship order

- (1) For the purposes of clause 12(2)(c) of the Act, the Prothonotary shall maintain a record in respect of each guardianship order in the Register that includes
- (a) the documents filed in support of the application for the guardianship order or review of the guardianship order, including any capacity assessment reports;
 - (b) the date, if any, that the guardianship order shall be reviewed in accordance with the direction of the court; and
 - (c) contact information for the represented person and each guardian appointed under the guardianship order.

Contents of record – trusteeship order

- (2) For the purposes of clause 12(2)(c) of the Act, the Prothonotary shall maintain a record in respect of each trusteeship order in the Register that includes
- (a) the documents filed in support of the application for the trusteeship order or review of the trusteeship order, including any capacity assessment reports;
 - (b) the date, if any, that the trusteeship order shall be reviewed in accordance with the direction of the court; and
 - (c) contact information for the represented person and each trustee appointed under the trusteeship order.

Application to foreign order

- (3) For greater certainty, subsections (1) and (2) apply with such modifications as may be required with respect to a foreign order that has been confirmed by the court under section 55 of the Act.

3. Access to information in Register

- (1) A person described in subsection 12(4) or (5) of the Act shall, subject to this section, have access to information from the Register.

Requirements respecting access – clauses 12(2)(a) and (b) of Act

- (2) A person described in subsection 12(4) of the Act may have access to information from the Register specified in clauses 12(2)(a) and (b) of the Act if
- (a) the person has
 - (i) identified the individual that the person believes is or may be the subject of a guardianship or trusteeship order,
 - (ii) identified the information that the person is requesting, and
 - (iii) identified that the requested information from the Register is for the purposes of making an application under the Act; and
 - (b) the Prothonotary is satisfied that the person or body has a legitimate interest
 - (i) in determining whether an individual is the subject of a guardianship or trusteeship order,
 - (ii) in being advised of the terms of an order referred to in subclause (i) or an order made on review of an order referred to in subclause (i), or
 - (iii) in being provided with contact information for a guardian or trustee of a represented person.

Requirements respecting access – subsection 12(5) of Act

- (3) A person described in subsection 12(5) of the Act may have access to specified information from the Register if
- (a) the person has
 - (i) provided evidence satisfactory to the Prothonotary that the person is a person described in subsection 12(5) of the Act, and
 - (ii) identified the information that the person is requesting; and
 - (b) the Prothonotary is satisfied that the person requesting information from the Register is a person described in subsection 12(5) of the Act.

Request for access to information by others

- (4) Subject to subsection (5) and any express provisions to the contrary in a guardianship or trusteeship order, a person or body who is not entitled to access to information in the Register under subsection (2) or (3) may request access to information in the Register specified in clauses 12(2)(a) and (b) of the Act or contact information for a guardian or trustee of a represented person.

Disclosure of information by Prothonotary

- (5) The Prothonotary may disclose information to a person or body referred to in subsection (4) only where
- (a) the person or body has
 - (i) identified the individual that the person or body believes is or may be the subject of a guardianship or trusteeship order,

- (ii) identified the information that the person or body is requesting, and
- (iii) set out the person's or body's reasons for requesting the information; and
- (b) the Prothonotary is satisfied that the person or body has a legitimate interest
 - (i) in determining whether an individual is the subject of a guardianship or trusteeship order,
 - (ii) in being advised of the terms of an order referred to in clause (i) or an order made on review of an order referred to in clause (i), or
 - (iii) in being provided with contact information for a guardian or trustee of a represented person.

4. Disclosure by Public Guardian and Trustee

The Public Guardian and Trustee may disclose information from the Register to any person or body, including personal information, where the disclosure relates to the exercise of powers or carrying out of duties of the of the Public Guardian and Trustee under the Act or another enactment.

GENERAL PROVISIONS

5. Notice of application in respect of minor

Where an application for a guardianship order or trusteeship order is made in respect of a person who is not an adult in accordance with subsection 3(2) of the Act, notice of the application shall be personally served on

- (a) the persons referred to in subsection 14(4) or subsection 30(4) of the Act, as the case may be; and
- (b) each parent or other person having decision-making responsibility in respect of the person under the *Children's Law Act* R.S.P.E.I. 1988, Cap. C-6.1.

6. Criminal Code offences

For the purposes of clauses 14(3)(b), 23(7)(b), 30(3)(c) and 39(8)(c) of the Act, the following criminal offences are prescribed:

- (a) an offence described in Part VIII of the *Criminal Code* (Canada) relating to an assault [sections 265 – 270], sexual assault [sections 271 – 273] or other acts of violence [sections 279 – 283], intimidation [section 423], criminal harassment [section 264] or uttering threats [section 264.1];
- (b) an offence described in section 322 or sections 330 to 332 of the *Criminal Code* (Canada) relating to theft;
- (c) an offence described in Part X of the *Criminal Code* (Canada) relating to fraud;
- (d) an offence described in section 336 of the *Criminal Code* (Canada) relating to criminal breach of trust.

7. Evidence to be provided to Registrar

The evidence to be provided to the Registrar under subsection 20(5) or 36(5) of the Act is

- (a) in the case of the death of the previous guardian or previous trustee, a copy of the death certificate or funeral director's certificate respecting the previous guardian or previous trustee;

- (b) in the case of the appointment of a guardian or trustee for the previous guardian or previous trustee, a copy of the guardianship or trusteeship order; or
- (c) in the case of the coming into effect, because of the previous guardian's or previous trustee's incapacity, of
 - (i) a personal directive made by the previous guardian or previous trustee, a copy of the notice of acting given in accordance with section 33 of the *Powers of Attorney and Personal Directives Act* R.S.P.E.I. 1988, Cap. P-16.1, respecting the previous guardian or previous trustee, or
 - (ii) an enduring power of attorney made by the previous guardian or previous trustee, a copy of the notice of acting given in accordance with section 33 of the *Powers of Attorney and Personal Directives Act* respecting the previous guardian or previous trustee.

8. Records to be kept by trustee

For the purposes of section 45 of the Act, a trustee shall maintain at least the following accounting information:

- (a) a list of the represented person's property and liabilities, including, from the date of the trustee's appointment forward,
 - (i) the value or an estimate of the value of each item of property and the name of any co-owner, and
 - (ii) the amount or an estimate of the amount of each liability;
- (b) a list of the represented person's sources of income from the date of the trustee's appointment forward and, for each source of income,
 - (i) the amount of any payments received, and
 - (ii) the dates on which any payments were received;
- (c) where a trustee has invested a represented person's funds in accordance with a trusteeship order, a statement of
 - (i) all money invested,
 - (ii) all money received by way of repayment of or realization upon the investments, in whole or in part, and
 - (iii) the balance of the remaining investments;
- (d) a list of any gifts given by the trustee on behalf of the represented person since the trustee's appointment and, for each gift,
 - (i) the date the gift was given,
 - (ii) the reason for the gift,
 - (iii) the amount or value of the gift, and
 - (iv) the name of the gift's recipient;
- (e) a statement of any money paid to a trustee by a trustee since the trustee's appointment, including
 - (i) the date the money was paid,
 - (ii) the amount,
 - (iii) the recipient,
 - (iv) a description of the reason for payment, and
 - (v) where the money was paid as reimbursement for an expense, a description of the expense being reimbursed;

- (f) a list of decisions made, actions taken, and consents given by the trustee in respect of the represented person;
- (g) all bank statements, invoices, bills, correspondence and other records necessary to provide a complete account of the actions taken by the trustee in relation to the represented person's property and financial affairs during the accounting period, including acquiring or disposing of property, discharging or incurring liabilities and receiving, paying, giving or transferring money.

9. Requirements respecting accounting

For the purposes of section 45 of the Act, an accounting shall be in writing and, subject to the extent of the trustee's authority under the trusteeship order, include the information referred to in section 8 for the period referred to in subsection 45(8) of the Act.

10. Fee schedule

- (1) The fee schedule prescribed for the purposes of subsection 47(2) of the Act is set out in the Schedule to these regulations.

Election respecting compensation

- (2) A trustee may elect to be compensated in accordance with the fee schedule under subsection 47(2) of the Act by making the election in the form and manner required by the Prothonotary.

11. Application under section 62 of Act

- (1) Subject to subsection (2), an applicant for an order under the Act may apply to have the court consider and determine the application in the absence of the applicant and any other person in accordance with section 62 of the Act.

Conditions

- (2) The court may consider and determine the application in the absence of the applicant and any other person in accordance with section 62 of the Act where
 - (a) the application for the order has been served in accordance with the Act and the Rules of Civil Procedure, and the court finds that no person who is required to be served with notice of the application has, within 30 days after receipt of the notice, requested a hearing by filing a notice to that effect with the court; or
 - (b) the court has dispensed with service under the Act.

12. Service of notice of appeal

- (1) A person appealing an order under the Act to the Court of Appeal shall serve the notice of appeal on
 - (a) the person who is the subject of the order;
 - (b) any guardian or trustee for the person who is the subject of the order;
 - (c) any attorney acting under an enduring power of attorney for the person who is subject of the order;
 - (d) where the person who is the subject of the order has made a personal directive, the agent designated in the personal directive; and
 - (e) any other persons a judge of the Court of Appeal may direct.

Time for service

- (2) The notice of appeal shall be served within the time prescribed by the Rules of Civil Procedure for service of a notice of appeal in an appeal to the Court of Appeal.

13. Payment of costs by Government

- (1) For the purposes of subclause 66(a)(i) of the Act, the court or the Court of Appeal may order the costs of an application made under the Act to be paid by the Government only if
 - (a) the application specifically indicates that costs against the Government will be sought; and
 - (b) the court or Court of Appeal, as the case may be, is satisfied that it would be a hardship to order the costs to be paid by the person making the application, the person in respect of whom the application is made or the estate of the person in respect of whom the application is made.

Limit respecting order for costs

- (2) An order for costs of an application under the Act to be paid by the Government shall not exceed
 - (a) \$425 plus reasonable disbursements for
 - (i) an application for a guardianship order or trusteeship order in respect of which a hearing is not held, or
 - (ii) an application for review of an order referred to in subclause (i), in respect of which a hearing is not held; and
 - (b) for an application other than an application referred to in clause (a), \$500 plus reasonable disbursements.

14. Application of Rules of Civil Procedure, etc.

In any matter not provided for in the Act or the regulations made under the Act, the court may follow the Rules of Civil Procedure and the procedures of the court.

COMMENCEMENT

15. Commencement

These regulations come into force on

SCHEDULE

FEE SCHEDULE

1. The compensation that is payable to a trustee or trustees under subsection 47(2) of the Act for a period is determined by the following formula:

$$A+B=C$$

where

A is 2.5% of the money received by the trustee or trustees on behalf of the represented person during the period;

B is 2.5% of the payments made by the trustee or trustees on behalf of the represented person during the period;

C is the compensation payable to the trustee or trustees.

2. (1) The amount determined in accordance with section 1 is the total compensation payable to the trustee or trustees.

(2) Where there is more than one trustee, the amount determined under section 1 shall be divided among the trustees

- (a) equally;
- (b) as agreed by the trustees; or
- (c) as determined by the Prothonotary.