

Incompetent Persons Act

CHAPTER 218 OF THE REVISED STATUTES, 1989

as amended by

2007, c. 17, ss. 1-11; 2014, c. 27, ss. 9, 10



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CHAPTER 218 OF THE REVISED STATUTES, 1989
amended 2007, c. 17, ss. 1-11; 2014, c. 27, ss. 9, 10

**An Act Respecting
the Custody and Estates
of Incompetent Persons**

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Short title

1 This Act may be cited as the *Incompetent Persons Act*. R.S., c. 218, s. 1.

Interpretation

2 In this Act,

(a) “court”, in respect of a proceeding in respect of an incompetent person, means the Supreme Court of Nova Scotia and any judge thereof;

(b) “incompetent person” includes a person, not an infant, who is incapable from infirmity of mind of managing the person’s own affairs. R.S., c. 218, s. 2; 1992, c. 16, s. 5; 2007, c. 17, ss. 1, 11.

APPOINTMENT OF GUARDIAN

Application for and powers of guardian

3 (1) The relatives or friends of any incompetent person, or the social services committee of the social services district of which the incompetent person is an inhabitant, may apply to the court to have a guardian appointed for the incompetent person.

(2) Notice of the application shall be given to the incompetent person if at large, or if the incompetent person is under restraint, to those having charge of him, of the time and place appointed for hearing the application, not less than fourteen days before the time so appointed.

(3) If, after a full hearing, it appears to the court that the person in question is incapable of taking care of himself, the court shall appoint a guardian of his person and estate with the powers and duties hereinafter specified.

(4) Every guardian so appointed shall have the care and custody of the incompetent person and the management of the incompetent person’s estate until legally discharged. R.S., c. 218, s. 3; 2007, c. 17, s. 11.

Service on incompetent person temporarily out of Province

4 If any incompetent person, whose domicile is in the Province and whose property, money or estate, or any part thereof, are situated within the Province, is at the time of the application or proceedings mentioned in Section 3 temporarily absent from the Province for the purpose of medical treatment, or otherwise, service of the notice of the application or proceedings may, by leave of the court, be effected upon such person out of the Province, as effectually and validly as if the service were effected within the Province. R.S., c. 218, s. 4; 2007, c. 17, s. 11.

Affidavit of medical practitioner

5 The affidavit of any medical practitioner who has examined the incompetent person shall be receivable in evidence at the hearing, and it shall not be necessary for the medical practitioner to attend in person at the hearings, unless the medical practitioner is required for the purpose of cross-examination and the medical practitioner’s attendance is ordered by the court. R.S., c. 218, s. 5; 2007, c. 17, s. 11.

Deposition and examination of witness

6 In any case where it is necessary to take evidence respecting the incompetent person, or touching the estate or person of any incompetent person, and

it is made to appear by affidavit that it is more convenient to take the evidence of witnesses in the county in which the incompetent person resides, the court may order that such evidence be taken before some suitable person in such manner and under such restrictions as evidence is usually taken *de bene esse* before a commissioner of the Supreme Court, and the depositions and examinations so taken may be read in evidence at the hearing. R.S., c. 218, s. 6; 2007, c. 17, ss. 2, 11.

Commission for evidence outside Province

7 (1) Where it is made to appear to the court that any person who resides out of the Province is able to give material evidence relating to the matters in question upon any application under this Act, the court may by order direct a commission to issue to such person or persons as the court thereby appoints, for the purpose of taking the evidence on oath of such persons out of the Province.

(2) The order may be made *ex parte* and at any time after the filing of the application.

(3) The evidence of a person taken under any such commission may be read and used upon the hearing of the application, in the same manner as if the person had been examined before the court orally upon the hearing of the application.

(4) Except as is otherwise herein provided, the practice and procedure in connection with the appointment of a commissioner or commissioners under this Section, the taking of depositions by such commissioner or commissioners and the certifying and return thereof shall be as nearly as practicable the same as those which prevail in connection with like matters in civil actions. R.S., c. 218, s. 7.

Conditions of bond by guardian

8 Every guardian shall give a bond with sureties to be approved by the court to Her Majesty, with the following conditions:

(a) first, to make a true inventory of all the real property and all the goods, chattels, rights and credits of the incompetent person that come to the knowledge of the guardian, and return the same into the court at such time as the court orders;

(b) second, to dispose of and manage all such property and effects according to law and for the best interests of the incompetent person, and faithfully to discharge his trust in relation thereto;

(c) third, to render an account on oath of the property in his hands, including the proceeds of all real property sold by him, and of the management and disposition of all such property, within one year after his appointment, and at such other times as the court directs; and

(d) fourth, at the expiration of his trust to settle his accounts with the court, or with the incompetent person in case of his restoration to reason or in case of his death with his legal representatives, and to pay over and

deliver all the property and effects remaining in his hands or due from him on such settlement to the person lawfully entitled thereto. R.S., c. 218, s. 8; 2007, c. 17, s. 11.

POWERS AND DUTIES OF GUARDIAN

Expenses of incompetent person in opposing application

9 When a guardian is appointed for an incompetent person, the court shall make an allowance, to be paid by the guardian out of the estate of the incompetent person, for all reasonable expenses incurred by the incompetent person in opposing the application. R.S., c. 218, s. 9; 2007, c. 17, s. 11.

Duties of guardian

10 (1) In this Section, "court" includes a judge of the county court of the district in which the incompetent person has real estate.

(2) Every guardian of an incompetent person shall pay all just debts due from the incompetent person out of his personal property, if sufficient, and, if not, out of his real property, upon obtaining a licence for the sale thereof from the court.

(3) The guardian shall also settle all accounts of the incompetent person, and shall sue for, recover and receive all debts due to the incompetent person, or may compound for the same and give discharges to the debtors, and the guardian shall appear for and represent the incompetent person in all actions and proceedings. R.S., c. 218, s. 10; 2007, c. 17, s. 11.

Management of estate

11 (1) The guardian shall also manage the estate frugally and without waste and shall apply the profits thereof as far as necessary to the comfortable and suitable maintenance of the incompetent person and that of the family of the incompetent person.

(2) If the profits are insufficient, the guardian may sell or mortgage or otherwise charge the personal property upon such terms as the guardian deems proper and may sell or mortgage the real property upon obtaining a licence so to do, and shall apply the proceeds so far as are necessary to the maintenance and support of the incompetent person and his family. R.S., c. 218, s. 11; 2007, c. 17, s. 11.

Sale of real property

12 On a sale taking place under a licence to sell or under the Public Trustee's authority pursuant to Section 14B of the *Public Trustee Act* the real property of an incompetent person, the guardian shall execute in the name of the incompetent person the deed thereof, which shall convey such real property to the purchaser either absolutely or by way of mortgage as therein specified, in the same way as if executed by the incompetent person himself when of sound mind. R.S., c. 218, s. 12; 2007, c. 17, s. 11; 2014, c. 27, s. 9.

Public Trustee Act

12A Subject to Section 14B of the *Public Trustee Act*, where the Public Trustee is appointed by the court as guardian of the incompetent person pursuant to this Act, the Public Trustee is not required to obtain from the court a licence for the sale of the incompetent person's real property pursuant to subsection 11(2) and is deemed to have the authority to sell real property. 2014, c. 27, s. 10.

REMOVAL OF GUARDIAN

Removal or resignation

13 (1) When any guardian appointed under this Act removes from the Province, becomes an incompetent person or otherwise incapable of discharging his trust, is evidently unsuitable therefor or is wasting the property of the incompetent person, the court, after notice to the guardian if resident in the Province, and to all others interested, may remove him.

(2) Every guardian may, upon his own request, be allowed to resign his trust when it appears proper to the court to allow such resignation.

(3) Upon every such resignation or removal, and also upon the death of any guardian, the court may appoint another in his stead. R.S., c. 218, s. 13; 2007, c. 17, s. 3.

Petition of incompetent person who becomes competent

14 Where an incompetent person for whom a guardian has been appointed afterwards becomes competent, the person may present a petition to the court asking that his guardian may be removed and that he may resume full control of his person and estate, and the court, after notice to the guardian, if resident in the Province, and to such other persons as the court directs, shall hear the petition and the evidence to be adduced thereon, either by affidavit or otherwise, and, if satisfied that the person has recovered his reason and become competent, may make an order removing the guardian and restoring to the recovered person the full control of his person and estate, and thereupon the guardian shall proceed to a settlement as required by the conditions of the bond given on his appointment. R.S., c. 218, s. 14; 2007, c. 17, ss. 4, 11.

Evidence procedure in Section 14

15 All the provisions of this Act, as to taking evidence on an application for the appointment of a guardian, shall be applicable to the investigation and examination under Section 14. R.S., c. 218, s. 15.

CUSTODY OF INCOMPETENT PERSONS

Apprehension

16 Any incompetent person being at large may be apprehended under warrant from two justices of the peace and

- (a) if his legal settlement is in any place within the municipality in which he is apprehended, he shall be secured within the same; or

(b) if such settlement is not within the municipality, he shall be sent by the justices, by order under their hands, to the place of his settlement and shall be there secured under a warrant from two justices of the peace for the municipality to which he is so removed. R.S., c. 218, s. 16; 2007, c. 17, s. 6.

Payment of expenses

17 (1) The charges of the removal, maintenance and medical treatment of such person during his restraint, having been first proved on oath before two justices, shall be paid out of the proceeds of the personal property or the rents of the real property of the person, if he has any over and above what will maintain his family.

(2) Such property or rents may for that purpose be seized and sold by the social services committee of the place of the settlement of the person under a warrant from two justices.

(3) If the person has not any property or rents applicable therefor, then the expenses shall be borne by the municipality within which the person has his settlement. R.S., c. 218, s. 17; revision corrected.

Deranged person with criminal purpose

18 (1) If any person is discovered and apprehended under circumstances denoting a derangement of mind and a purpose of committing some crime for which if committed the person would be liable to be indicted, any two justices of the peace before whom the person is brought may call to their assistance any legally qualified medical practitioner.

(2) If upon the examination by the medical practitioner of the person so apprehended or from other evidence the justices are satisfied that the person is an incompetent person, they may by warrant under their hands and seals commit the person to the asylum for the harmless insane for the town or municipality or to the common jail if there is no such asylum, there to be kept in strict custody until he is discharged by the order of two justices of the peace, one of whom shall be one of the justices who signed the warrant, or by the court, or until the person is admitted as a patient in such asylum for the harmless insane, or is removed to the Nova Scotia Hospital, or to the custody of guardians appointed under this Act. R.S., c. 218, s. 18; 2007, c. 17, s. 7.

Determination of settlement and payment of expenses

19 (1) Any two justices may inquire into and ascertain, by the best evidence that can be procured, the place of the settlement of the person, or of any person tried and found not criminally responsible on account of mental disorder or of any person found to be an incompetent person under this Act.

(2) It shall be lawful for the two justices to make an order, under their hands and seals, upon the treasurer of the municipality in which they adjudge him to be legally settled, to pay all reasonable charges of examining the person and

conveying him to the asylum for the harmless insane or to the common jail, and to pay such weekly sum for his maintenance while in such place of custody, as the two justices, or any two justices, by writing under their hands from time to time direct.

(3) Where the place of settlement cannot be ascertained, the order shall be made on the treasurer of the municipality in which the person has been in custody or apprehended. R.S., c. 218, s. 19; 2007, c. 17, s. 8.

Care of incompetent person by guardian or friend

20 Nothing contained in Sections 18 and 19 shall be construed to extend to restrain or prevent any relative, guardian or friend from taking the incompetent person under his own care and protection if he enters into a sufficient recognizance for the peaceful behaviour or safe custody of the incompetent person before two justices of the peace or the court. R.S., c. 218, s. 20; 2007, c. 17, ss. 9, 11.

Expenses of social services committee or municipality

21 (1) All expenses mentioned in this Act that are incurred by any social services committee for any social services district or by any municipality, having been first proved on oath before two justices, shall be repaid to such social services committee or to the treasurer of the municipality, as the case may be, out of the proceeds of the personal property or the rents of the real property, or if necessary the real property itself, of the incompetent person, if he has any property over and above what will maintain his family.

(2) Such property may for that purpose be seized and sold by the social services committee or municipal treasurer under a warrant from two justices and the social services committee or municipal treasurer shall have full power to make, execute and deliver all necessary deeds and transfers whatsoever of such property to the purchaser or purchasers thereof.

(3) For want of said property the expenses shall be paid by the municipality in which the incompetent person has a settlement, and the same shall be a county or district charge, to be assessed, levied and collected in the same manner as county rates. R.S., c. 218, s. 21; 2007, c. 17, ss. 10, 11.