



## **PLEASE NOTE**

This document, prepared by the [Legislative Counsel Office](#), is an office consolidation of this Act, current to December 9, 2010. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the [Table of Public Acts](#).

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## CHAPTER P-32.2

### PUBLIC TRUSTEE ACT

#### PART I DEFINITIONS

1. In this Act	Definitions
(a) “business organization” means a corporation, partnership or sole proprietorship and includes a financial organization, an insurer and a public utility;	business organization
(b) “committee” means a person appointed or authorized under this Act to be the committee of the estate of an incompetent person;	committee
(c) “Committee Register” means the Register compiled pursuant to section 33;	Committee Register
(d) “communication” means any form of contact, and includes oral, written or electronic communication;	communication
(e) “community care facility” has the same meaning as set out in clause 1(d) of the <i>Community Care Facilities and Nursing Homes Act</i> R.S.P.E.I. 1988, Cap. C-13;	community care facility
(f) repealed by 2008,c.20,s.72;	court
(g) “date of issue” means the date on which the intangible property was drawn;	date of issue
(h) “guardian” means a person authorized or appointed to exercise powers for a person who is mentally incompetent or is incapable of managing his or her personal affairs;	guardian
(i) “financial organization” means a trust company, a bank to which the <i>Bank Act</i> (Canada) R.S.C. 1985, Chap. B-1 applies, a loan company or a credit union;	financial organization
(j) “governmental organization” means (I) a Department of government, a Crown corporation, and a Crown board, commission or agency, (ii) a municipality;	governmental organization
(k) “holder” in respect of intangible property, includes any person, business organization, financial organization, government, governmental organization or any other entity, (i) that is in possession of intangible property belonging to another,	holder

	(ii) that is a trustee or other fiduciary, or (iii) that is indebted to another on an obligation.
incompetent person	(l) “incompetent person” means a person who, in the opinion of two physicians, is incapable of managing and understanding that person’s financial affairs;
insurer	(m) “insurer” means an insurer licensed under the <i>Insurance Act</i> R.S.P.E.I. 1988, Cap. I-4;
intangible property	(n) “intangible property” means a right of ownership over any personal property that is not a chattel or a mortgage, and includes, (i) money, a cheque, bank draft, deposit, interest, dividend and income, (ii) a credit balance, customer overpayment, gift certificate, security deposit, refund, credit memo, unpaid wage and an unused airline ticket, (iii) a share or any other intangible ownership property in a business organization, (iv) money deposited to redeem a share, bond, coupon or other security or to make a distribution, (v) an amount due and payable by the insurer under the terms of an insurance policy, and (vi) an amount distributable from a trust or custodial fund established to provide education, health, welfare, vacation, severance, retirement, death, share purchase, profit sharing, employee savings, supplemental unemployment insurance, disability insurance or a similar benefit;
Minister	(o) “Minister” means the Minister of Justice and Public Safety and Attorney General;
nursing home	(p) “nursing home” has the same meaning as set out in clause 1(i) of the <i>Community Care Facilities and Nursing Homes Act</i> ;
owner	(q) “owner” in respect of intangible property, means the legal owner or the equitable owner of the intangible property, and includes an executor or administrator of the owner;
personal representative	(r) “personal representative” has the same meaning as set out in clause 1(m) of the <i>Probate Act</i> R.S.P.E.I. 1988, Cap. P-21;
Public Trustee	(s) “Public Trustee means the person appointed as Public Trustee under section 2;
public utility	(t) “public utility” means a utility that is under any Act subject to the supervision of the Island Regulatory and Appeals Commission. 1994,c.52,s.1; 1997,c.20,s.3; 2000,c.5,s.3; 2008,c.20,s.72(78); 2010,c.14,s.3.

PART II  
OFFICE OF THE PUBLIC TRUSTEE

Functions

- 2.** (1) There shall be appointed pursuant to the *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8, an officer to be known as the Public Trustee. Appointment
- (2) The Public Trustee is a corporation sole. Corporation sole
- (3) The Public Trustee has the rights, powers, duties and obligations imposed on the Public Trustee by an enactment, by the Lieutenant Governor in Council or by direction of the court. Rights, etc.
- (4) The Public Trustee may share information respecting any incompetent person, whether or not the Public Trustee is committee for that person. Disclosure of information
- (5) Repealed by 2002,c.38,s.1. Guardianship
- (6) Before entering upon his or her official duties as Public Trustee the person appointed to that office shall furnish security upon the terms and conditions prescribed in the regulations for the due and faithful performance of the functions of the office. Security by Public Trustee
- (7) Notwithstanding any rule or practice or any enactment requiring security, it is not necessary for the Public Trustee to give any security for the due performance of the duties of an administrator, trustee, committee or other capacity in which the Public Trustee may be appointed by order of any court or under any enactment. 1994,c.52,s.2. Security required by other provision of law
- 3.** (1) The Public Trustee may apply for letters of administration and, with the Public Trustee's written consent, the Public Trustee may be appointed trustee of any settlement or other instrument creating a trust or duty in the same manner as if the Public Trustee were a private trustee. Administration, appointment as trustee
- (2) The Public 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 Trustee may retire from the trust upon the passing of that trustee's accounts and the paying over of the balance of the trust. Sole trustee
- (3) The Public Trustee may accept and administer any charitable or public trust. 1994,c.52,s.3. Public trust
- 4.** (1) The Public Trustee is the administrator of unclaimed intangible property under this Act. Administrator of unclaimed intangible property

Authority of Public Trustee (2) Subject to this Act, the Public Trustee has, and may exercise all the rights and powers related to ownership in respect of unclaimed intangible property transferred, or required to be transferred, under this Act to the Public Trustee. 1994,c.52,s.4.

Staff 5. There shall be appointed, pursuant to the *Civil Service Act*, such officers, clerks and employees as may be required for the proper conduct of the business of the Public Trustee. 1994,c.52,s.5.

Transfer of property 6. (1) Where the Public Trustee acting in any capacity holds property not exceeding \$5,000 in value of a person who has died and to which the personal representative of the person is entitled, the production to the Public Trustee of

(a) where the deceased died in Canada, a copy of the will of the deceased, proved by affidavit of a witness to the will or other proof satisfactory to the Public Trustee showing the entitlement of the heirs of the deceased to the proceeds of administration of the estate;

(b) if the deceased died elsewhere than in Canada, any authenticated copy of the probate of the will, or of the letters of administration or other document of like import, granted by a court or authority having the requisite powers in such matters,

is sufficient justification and authority for the delivering of the property in pursuance of and in conformity with the probate, letters of administration or other document.

True copy filed (2) Where the authenticated copy or other document of like import is produced to the Public Trustee under subsection (1) there shall be deposited with the Public Trustee a true copy thereof. 1994,c.52,s.6.

#### Fees, Charges and Expenses

Charges for services 7. (1) Subject to subsection (2), the Public Trustee shall make the charges prescribed by the regulations for services rendered in respect of any estate.

Waiver (2) The Public Trustee may waive all or part of any fees, charges or expenses which would otherwise be chargeable against an estate or trust under this section. 1994,c.52,s.7.

Fees, etc. to be paid to separate account 8. (1) Subject to subsection (5), all fees, charges, remuneration and refunds of all expenses and income of the office of every description shall be paid by the Public Trustee into a separate account as prescribed by the regulations.

Assurance fund (2) From any surplus in the account, there may be established an assurance fund as provided by the regulations.

(3) Notwithstanding the *Provincial Administrator of Estates Act* R.S.P.E.I. 1988, Cap. P-23, the Lieutenant Governor in Council may direct that moneys coming into the possession of the Public Trustee under that Act shall be placed to the credit of the account. Other moneys in hands of Public Trustee

(4) The Lieutenant Governor in Council may direct the payment into the Operating Fund of any amount to the credit of the account in such manner and upon such conditions as may be directed by order in council. Payment into Operating Fund

(5) Nothing in this section applies to the unclaimed intangible property account administered by the Public Trustee under Part IV. 1994,c.52,s.8; 1997,c.20,s.3. Application

#### Administrative Matters

**9.** All sums required to discharge any liability for a loss that the Public Trustee, if a private trustee, would be personally liable to discharge, shall be made good out of the assurance fund or out of the Operating Fund, but neither the Public Trustee nor the officers or employees of the Public Trustee's office are liable for any loss that would not have imposed a liability upon a private trustee. 1994,c.52,s.9; 1997,c.20,s.3. Payment of liabilities

**10.** Any money held by the Public Trustee that is available for investment may be invested by the Public Trustee in securities in which trustees are authorized to invest under the *Trustee Act* R.S.P.E.I. 1988, Cap. T-8. 1994,c.52,s.10. Investment of funds

**11.** (1) There shall be an advisory committee to the Office of the Public Trustee appointed by the Lieutenant Governor in Council. Advisory Committee

(2) The members of the advisory committee are visitors of the Office of the Public Trustee. Status

(3) The advisory committee may make such recommendations with regard to the general policy respecting the management and conduct of the Office of the Public Trustee as it considers advisable. Recommendations

(4) The Public Trustee may consult with the advisory committee respecting methods of administration, staff and other matters relating to the Office of the Public Trustee. Consultation

(5) The advisory committee shall make an annual report to the Lieutenant Governor in Council respecting the performance of its duties and the exercise of its powers under this section. 1994,c.52,s.11. Report

**12.** The Auditor General shall examine and report upon the accounts and financial transactions of the Public Trustee. 1994,c.52,s.12. Audit

Regulations

- 13.** The Lieutenant Governor in Council may make regulations
- (a) respecting the office of Public Trustee, imposing duties on the Public Trustee in addition to those imposed by this Act, and prescribing the trusts or duties he is authorized to accept or undertake under this Act, and the security to be given by the Public Trustee and officers working in the office of the Public Trustee;
  - (b) for fixing the fees and charges in the office of the Public Trustee and the application, collection and disposal of the same;
  - (c) respecting the transfer to and from the Public 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 Trustee may be liable;
  - (f) fixing the rate of interest to be allowed upon money in the hands of the Public Trustee and fixing the amount of interest to be charged upon advances made on behalf of any estate and the custody and control of securities held by the Public Trustee for investments;
  - (g) for constituting an advisory committee for the supervision of the investments or other dealings with the property by the Public Trustee, and for providing for the remuneration by fees, or otherwise of the members of the committee;
  - (h) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1994,c.52,s.14.

**PART III  
COMMITTEES FOR THE INCOMPETENT**

Certificates Issued to Public Trustee

Certificate of  
incompetence

- 14.** (1) Certificates declaring a person incompetent may be issued by two physicians, one of whom is the person's attending physician.

Form of certificate

- (2) A certificate of incompetence issued under this section shall be in the form approved by the Minister and signed by a physician licensed to practise in the province who has personally examined the person and determined
- (a) that the person is incapable of handling the person's financial affairs; and
  - (b) that it would be for the benefit of the person that a committee be appointed to manage the person's financial affairs.

Delivery to Public  
Trustee

- (3) Certificates of incompetence issued under this section shall forthwith be transmitted to the Public Trustee by the attending physician

or by the administrator of the residential facility in which the incompetent person resides.

(4) Subject to subsection (4.1), the Public Trustee becomes the committee of the estate of a person under this section

Assumption of functions by Public Trustee

- (a) upon receipt of the certificates; or
- (b) upon notification by the administrator that certificates have been issued, whichever is sooner.

(4.1) Subsection (4) does not apply where

Exception

- (a) a committee has already been appointed under this Act; or
- (b) an attorney has been appointed under a power of attorney which states that the power of attorney may be exercised during any subsequent legal incapacity of the donor.

(5) The attending physician of an incompetent person may, after examining the person for that purpose, cancel the person's certificates of incompetence, and notice of such cancellation shall be forwarded to the Public Trustee in the form approved by the Minister.

Cancellation of certificate

(6) The Public Trustee ceases to be the committee of the estate of the incompetent person and shall relinquish management thereof upon receipt of the notice of cancellation of the certificates of incompetence under subsection (5). 1994,c.52,s.14; 2002,c.38,s.2.

Termination of functions as committee

#### Notice to Relatives of the Incompetent Person

**15.** The Public Trustee shall within twenty days of assuming the function of committee, give notice to the nearest known adult relative who has full legal capacity, that the Public Trustee acts as committee of the estate of that person and is responsible for the management of that person's financial affairs. 1994,c.52,s.15.

Notice

#### Powers of the Public Trustee as Committee

**16.** (1) The Public Trustee may become the committee of an incompetent person pursuant to section 14, 25 or 29.

Applicable provisions

(2) The Public Trustee as committee of the estate of a person has and may exercise all the rights and powers with regard to the person's estate that the person would have if of full age and competent and it shall not be necessary for the Public Trustee to apply to the court with respect to the exercise of any such power. 1994,c.52,s.16.

Powers of Public Trustee as committee

**17.** (1) Repealed by 2002,c.38,s.3.

Effect on power of attorney

Payment out of  
moneys in court

(2) Where the incompetent person is entitled to money in any court in Prince Edward Island, it shall be paid to the Public Trustee upon the Public Trustee's written notice to the court, and it shall not be necessary to obtain a court order for the purpose of such payment out of court. 1994,c.52,s.17.

Certain gifts  
deemed to be  
fraudulent

**18.** (1) Every gift, conveyance or transfer of property made by a person who is or becomes incompetent shall be deemed to be void and fraudulent as against the Public Trustee if the same was not made for full and valuable consideration actually paid or sufficiently secured to such person or if the purchaser or transferee had notice of the mental condition of the person.

Recitals in  
documents

(2) A recital in a lease, mortgage, conveyance or other document that the Public Trustee acts as committee for a person's estate, is admissible in evidence as proof of the facts recited. 1994,c.52,s.18.

Actions

**19.** (1) Where the Public Trustee is committee of a person under this Act, no person shall bring or defend an action on behalf of that person without the consent of the Public Trustee.

Proceedings by  
Public Trustee

(2) The Public Trustee, as committee, may determine whether or not to institute or defend any proceedings respecting the incompetent person or to intervene in respect of the estate of that person or to take charge of any property, provided that at all times the property and estate of the person shall be preserved.

Death

(3) Subject to subsection 6(1), upon the death of an incompetent person and until an executor or administrator is appointed, the Public Trustee shall continue to conserve the estate of the person. 1994,c.52,s.19.

#### Public Trustee Accounts

Accounts

**20.** The Public Trustee, as committee, is liable to render an account of the administration of an estate in the same manner and subject to the same responsibility as any trustee, guardian or committee duly appointed for a similar purpose may be called upon to account, and is entitled to bring in and pass the accounts of the estate and assess costs in like manner as a trustee, but is personally liable only for wilful misconduct or negligence in the carrying out of his or her duties. 1994,c.52,s.20.

### Public Trustee's Continued Management

**21.** (1) Where the Public Trustee ceases to be committee of an estate, and the person has refused or neglected to take possession of any or all property which had been administered by the Public Trustee, the Public Trustee may apply to the court for directions as to the disposal of such property and the court may make such order as it considers just and may order that the Public Trustee continue to manage the estate of that person with all of the rights and powers that the Public Trustee would have had if the committee had not been terminated.

Order for management by Public Trustee to continue

(2) Where the Public Trustee continues to manage an estate under subsection (1), the court may, on application, make such further order as it considers just and it may order that the management of the estate by the Public Trustee be relinquished. 1994,c.52,s.21.

Relinquishment of management

### Costs of the Public Trustee

**22.** (1) The costs, charges and expenses of the Public Trustee, including the costs, charges and expenses of or arising from or out of the passing of the accounts of the Public Trustee, whether before or after the termination of the committee or the death of the person of whose estate the Public Trustee is committee under this Act, or by an order made under this Act, and any moneys advanced or liability incurred by the Public Trustee for or on behalf of such person or for the maintenance of such person's family are a lien upon the real and personal property of that person.

Lien for costs

(2) In the case of real property, the Public Trustee may register in the appropriate office of the Registrar of Deeds, a certificate under the hand and seal of the Public Trustee giving notice of the lien claimed and the real property against which it is claimed.

Registration of lien

(3) Where the Public Trustee is having the accounts passed after the termination of the committee or the death of the incompetent person, the Public Trustee may withhold sufficient funds from the person's estate to adequately secure the costs of or arising from the passing of the accounts. 1994,c.52,s.22.

Withholding funds to secure costs

### Court Appointed Committees, Order for Examination

**23.** (1) Subject to subsection (2), where a person is believed to be incompetent, the court may, on application, order that the person be examined by two physicians to ascertain the person's state of mind and capability of managing the person's financial affairs and the physicians

Examination by order of the court

shall provide their medical opinion in accordance with the order and in the form approved by the Minister.

Content of application

- (2) An application under this section shall contain
- (a) the name, age and residence of the person believed to be incompetent;
  - (b) an inventory of the real and personal estate of the person believed to be incompetent so far as the information may be obtained by the applicant, and verified by the applicant or other credible person; and
  - (c) such other information as may be required by the regulations or ordered by the court. 1994, c.52, s.23.

#### Service of Application for an Order for Examination

Service

**24.** (1) Subject to subsection (2), any person who is the subject of an application made under section 23 shall, at least ten days before the date of the hearing of the application, be served with a copy of the application.

Exception

(2) Service of the application shall not be made on the person believed to be incompetent where the person's physician informs the applicant that service of the application could reasonably harm the person's mental condition. 1994,c.52,s.24.

#### Application for Order Appointing Committee

Appointment of committee by court

**25.** (1) Subject to subsections (2) and (3), the court may, on application, order the appointment of a committee for a person examined under section 23, where the court is satisfied that the person is incompetent and incapable of managing the person's affairs and that it is in the best interests of the incompetent person that the management of that person's estate should be committed to some other person.

*Idem*

(2) The Public Trustee may make application under subsection (1).

Notice

(3) No order shall be made for the appointment of a committee under this section unless the Public Trustee was served with notice not less than ten clear days before the application was made.

Intervention by Public Trustee

(4) The Public Trustee may intervene and be made a party to any application under this section.

Appointment, terms of order

(5) If the court is satisfied by the medical opinions and other evidence presented on the application, the court may make an order appointing a fit and proper person to be the committee of the incompetent person, but

- (a) the Public Trustee shall not be the committee, without the Public Trustee's consent;
- (b) except where the Public Trustee is the committee, the court shall order that the committee give security by bond or recognizance with such sureties and in such form as the Court may order for the faithful performance of the committee's duties;
- (c) the court may direct such allowance to be made out of the estate for the maintenance and medical treatment of the incompetent person as it considers proper;
- (d) the court may order that dependents of the incompetent person may be provided for out of the estate; and
- (e) the court may place such conditions on the order as the court may consider just or necessary.

(6) Unless otherwise ordered, an order made pursuant to subsection (4) shall be served on Service

- (a) the person found to be incompetent; and
- (b) the most immediately available adult member of the person's family, or in the absence of such, the nearest known adult relative of the person. 1994,c.52,s.25.

#### Powers and Duties of Court Appointed Committees

**26.** (1) The committee of the estate of an incompetent person shall take into its custody or under its control all property to which the incompetent person is entitled or of which the person is possessed and collect in and receive debts owing to the person. Powers

(2) The committee may, in the name and on behalf of a incompetent person, execute and make all such assurances and do such things as are necessary for giving effect to any order made under, or to any authority given under this Part. *Idem*, assurances

(3) The court may order on such terms as it considers just, that a committee do all or any of the following: Order of court

- (a) take such action as is considered necessary to preserve the person's estate;
- (b) bring any action, suit or other proceeding to recover real or personal property of the incompetent person, and the committee shall, for the purposes of such action, suit or proceeding, have and exercise all of the rights and powers that the person would have if competent;
- (c) grant leases of any property owned by the person;
- (d) surrender a lease, with or without accepting a new lease or accept a surrender of a lease;

- (e) with or without consideration, surrender, transfer or otherwise dispose of the person's property; and
- (f) bring an action on behalf of the person, and the court may make such other orders as it considers just or necessary.

## General powers

- (4) Unless the Court otherwise orders, a committee may
- (a) make valid and binding leases of real property in the person's estate for any term not exceeding three years;
  - (b) pay periodically, as may be required, a reasonable amount for the maintenance of the incompetent person;
  - (c) invest any money in the estate in securities authorized for trustees pursuant to the *Trustee Act*;
  - (d) pending the investment of any money in the estate, deposit it, during such time as may be reasonable in the circumstances,
    - (i) in any bank, trust company or credit union, or
    - (ii) in any corporation empowered under the law of the province to accept moneys for deposit and that has been approved for that purpose by the Lieutenant Governor in Council;
  - (e) transfer property held in trust by the incompetent person, either solely or jointly with another person, to the person beneficially entitled thereto;
  - (f) give a consent to the transfer or assignment of a lease where the consent of the incompetent person is required;
  - (g) perform a contract entered into by the incompetent person before the person became incompetent;
  - (h) draw, accept and endorse bills of exchange and promissory notes, endorse bonds, debentures, coupons and other negotiable instruments and securities and assign choses in action;
  - (i) on behalf of the incompetent person give or receive a notice.
- 1994,c.52,s.26.

## Filing of inventory

- 27.** (1) Unless a court otherwise orders, where a committee of the estate of an incompetent person has been appointed, the following provisions shall in every case be observed:
- (a) the committee shall, within three months of its appointment, file with the Prothonotary a true inventory of the whole real and personal estate of the incompetent person, stating the income and profits thereof, and setting forth the person's debts, credits and effects, so far as they have come to the knowledge of the committee;
  - (b) where any property belonging to the estate is discovered after the filing of an inventory, the committee shall file a true account of it within twenty days of its discovery;
  - (c) every inventory and account shall be verified by the oath or affirmation of the committee or of some person in a position to verify them.

(2) The committee shall file annually with the Prothonotary in the month of its appointment, a full accounting of the moneys received and disbursed, with a short statement and account of the present state of the financial affairs of the incompetent person.

Accounting

(3) The court may order that a committee file a physician's certificate with its annual report, setting out the state of mind of the incompetent person. 1994,c.52,s.1.27.

Physician's certificate

**28.** The court may order the sale or disposition of any assets of an incompetent person for the purpose of raising, securing or repaying, with or without interest, money which is to be or has been applied to

Order for sale of assets

- (a) payment of debts or other obligations;
  - (b) discharge of an encumbrance on the person's property;
  - (c) payment of a debt or expenditure incurred for the person's maintenance and that of any person dependent upon the person or otherwise for the dependent's benefit;
  - (d) payment of, or provision for, the expenses of the person's future maintenance and that of the person's dependents; or
  - (e) the improvement, security or advantage of the person's property.
- 1994,c.52,s.28.

#### Substitution of Committees

**29.** (1) The court may on application, make an order appointing a committee in substitution for an existing committee.

Substitution of committee

(2) An order under subsection (1) appointing a new committee does not invalidate the acts of any previously appointed committee.

Effect of order

(3) Where a person acting as committee

- (a) dies or resigns; or
- (b) fails to render an account within such time as the court considers reasonable,

Replacement of committee

the court, on application of any interested person willing to act as committee, may appoint that person as committee and make such orders as it considers just to enable that person to act.

(4) No application under subsection (1) or (3) shall be heard by a court unless the Public Trustee is served with a copy of the notice of application at least ten clear days prior to the hearing of the application, and the Public Trustee may intervene and be made a party to the application. 1994,c.52,s.29.

Notice of application

## Administration Expenses

- Expenses **30.** The Court may direct to be paid out of the estate of the incompetent person
- (a) any reasonable expenses incurred by the committee in the course of administering the person's estate; and
  - (b) an allowance for the committee's work of administering the person's estate, together with reasonable costs and expenses incurred in the management of the person's estate. 1994,c.52,s.30.

## Service of Documents on Incompetent Persons

- Service **31.** (1) When a proceeding is taken against an incompetent person who does not have a committee, and the proceeding is with respect to the estate of that person, any documents requiring personal service upon the incompetent person shall be served upon the Public Trustee endorsed with a written statement of the whereabouts of the incompetent person.
- Copies (2) The Public Trustee shall ensure that the incompetent person is provided with copies of the proceedings unless otherwise advised by the attending physician of the person that copies or notification would be detrimental to the mental health of the person.
- No obligation to defend (3) Nothing in this section shall be construed to place an obligation on the Public Trustee to defend the proceeding. 1994,c.52,s.31.

## Termination of Committees

- Restoration of reason **32.** (1) Where the capacity to make decisions of a person found to be incompetent under this Act is restored, the person or the committee of that person may apply to the court for an order terminating the committee.
- Application (2) Subsection (1) applies to any committee created under this Act.
- Termination of committee and transfer of property (3) Where the court determines that a person is competent, the person's committee shall be terminated and the court may order any of the person's real or personal property in the hands of the committee or of any other person to be transferred or paid to the person declared to be competent.
- Accounts (4) On termination under subsection (2), the committee shall render a true account of the person's estate and shall transfer custody of the person's real and personal property to the person, after deducting all just and necessary costs, charges and expenses which the committee may have incurred or be liable to pay in the course of administering the person's estate.

(5) Where an incompetent person dies before the committee is terminated, the committee shall render an account of its administration of the person's estate unto the personal representative of the deceased and the committee shall transfer all real and personal property of the deceased to the personal representative. 1994,c.52,s.32. Death

#### Committee Register

**33.** (1) There shall be a Committee Register maintained by the Prothonotary in which all committees for incompetent persons shall be registered and the following entries made: Register

- (a) an order appointing a committee under section 25 shall be entered in the register upon the filing of the order in the court file;
- (b) where the Public Trustee becomes committee pursuant to section 14, the Public Trustee shall file a notice, in the form approved by the Minister, which shall be entered in the register upon receipt by the Prothonotary;
- (c) an order substituting a committee under subsection 29(1) or appointing a committee under subsection 29(3) shall be entered in the register upon the filing of the order in the court file;
- (d) an order terminating a committee under section 32 shall be entered in the register upon the filing of the order in the court file.

(2) No order appointing a committee shall be granted pursuant to section 25 unless the applicant has searched the register and determined that there is no other committee responsible for that incompetent person. 1994,c.52,s.33. Search

#### Non-Resident Incompetent Persons

**34.** (1) Where a person who has been declared incompetent in another province or territory of Canada has an estate in Prince Edward Island, the Lieutenant Governor in Council may appoint the official who is charged with the duty of administering the estate of the person in the other province or territory, to be the committee of the estate of that person in Prince Edward Island. Appointment of official of other jurisdiction

(2) An order in council of the other province or territory appointing the official and any other certificates or orders purporting to appoint the official as committee shall be sufficient proof of the appointment. Evidence

(3) The person appointed pursuant to subsection (1) shall have the same rights, powers, privileges and immunities as a committee as the Public Trustee under this Part and the official shall perform the same duties and is subject to the same obligations as the Public Trustee. 1994,c.52,s.34. Powers, etc.

**PART IV  
UNCLAIMED INTANGIBLE PROPERTY**

Purpose	<b>35.</b> (1) This Part safeguards the rights of owners of intangible property by providing a method for them to recover, in perpetuity, their intangible property that has been held by others.
<i>Idem</i>	(2) This Part also allows unclaimed intangible property to be used for the benefit of the people of Prince Edward Island until the property is claimed by its owner. 1994,c.52,s.35.
Right to unclaimed intangible property	<b>36.</b> The Public Trustee has the right to claim and receive unclaimed intangible property that is in Prince Edward Island or the ownership of which is governed by the law of Prince Edward Island. 1994,c.52,s.36.
Unclaimed intangible property	<b>37.</b> (1) Subject to subsection (5), intangible property is unclaimed if no communication is received from the owner by the holder of the property within the time set out in subsection (2) or (3) and, where applicable, in the manner specified in those subsections.
Time periods, general	(2) Intangible property which does not fall within subsection (3) becomes unclaimed five years after the date on which it becomes payable or distributable by the holder.
Exceptions	(3) The following are exceptions to subsection (2): <ol style="list-style-type: none"> <li>1. A travellers' cheque becomes unclaimed fifteen years after the date of the issue of the travellers' cheque.</li> <li>2. A money order becomes unclaimed seven years after the date of the issuance of the money order.</li> <li>3. A cheque, bank draft or other similar instrument becomes unclaimed five years after the date on which the cheque, bank draft or other similar instrument becomes payable or, if payable on demand, five years after the date of issuance of the cheque, bank draft or other similar instrument.</li> <li>4. Subject to section 47, a demand deposit, savings deposit or matured time deposit with a financial organization becomes unclaimed five years after the last date on which the owner of the deposit <ol style="list-style-type: none"> <li>(i) increased or decreased the amount of the deposit,</li> <li>(ii) presented the passbook or other similar evidence of the deposit for the crediting of interest, or</li> <li>(iii) communicated with the financial organization on any matter as evidenced by a record on file at the financial organization.</li> </ol> </li> <li>5. Subject to section 49, an amount held or owing under a life insurance contract, an endowment insurance contract or an annuity contract that has matured becomes unclaimed three years after the</li> </ol>

date on which the money becomes due and payable according to the records of the insurer under the contract.

6. A deposit made by a customer with a public utility as a deposit to secure payment or as payment in advance for utility services to be furnished becomes unclaimed one year after the date of termination of the utility services to the customer.

7. A refund becomes unclaimed one year after the date on which it becomes payable.

8. Subject to section 50, a share or other intangible ownership interest in a business organization becomes unclaimed five years after the date on which a dividend, distribution or other amount becomes payable or distributable or, where no dividend, distribution or other amount has become payable or distributable, twenty years from the prescribed date if the owner has not communicated with the holder during the twenty-year period.

9. Subject to section 50, a dividend, distribution or other amount payable or distributable in respect of a share or other intangible ownership interest mentioned in paragraph 8 is unclaimed at the time when that share or other intangible ownership interest becomes unclaimed.

10. Intangible property that is distributable in the course of the dissolution of a business organization becomes unclaimed one year after the date specified for final distribution if it remains undistributed at that time.

11. Intangible property held in a fiduciary capacity becomes unclaimed five years after the last to occur of any date on which

(i) the property, income or increment becomes payable or distributable,

(ii) the beneficiary has accepted payment of principal or income, or

(iii) the beneficiary has communicated with the holder, or otherwise indicated an interest in the property, as evidenced by the records of the holder.

12. Intangible property that is held for the owner by a court, a tribunal or governmental organization becomes unclaimed one year after the date on which the intangible property becomes payable or distributable.

13. An unpaid wage, including a wage represented by an un-presented payroll cheque, that is owing in the ordinary course of business becomes unclaimed one year after the date on which the wage becomes payable.

14. Benefits payable by an employer, including vacation pay entitlements and other benefits, become unclaimed one year after the date on which they are payable.

Interest, etc.	(4) When any intangible property becomes unclaimed, all interest, income and other accretions to the property held by the holder at the time the property is transferred to the Public Trustee are unclaimed and shall be transferred to the Public Trustee with the property.
Exempted property	(5) Intangible property which is exempt from the application of this Part by regulations under section 76 is not unclaimed for the purposes of this section. 1994,c.52,s.37.

#### Notice, Report, Transfer

Notice to owner	<b>38.</b> (1) A holder of unclaimed intangible property that has a value of more than such amount as may be prescribed who has an address for the owner of the property shall send written notice in the prescribed form to the owner.
Time	(2) The holder shall send the notice not less than ninety days and not more than twelve months before the date by which the holder is required to report to the Public Trustee as required by this Part.
Content	(3) The notice shall state that the holder is holding the property, that the property is subject to this Act and any other prescribed information.
Inaccurate address	(4) Subsection (1) does not apply if the holder has reasonable grounds for believing that the address of the owner in the records of the holder is inaccurate.
Charge for notice	(5) No holder shall charge more than the prescribed amount for sending written notice under this section. 1994,c.52,s.38.
Report to Public Trustee	<b>39.</b> (1) Every holder of unclaimed intangible property shall file annually with the Public Trustee a report within the prescribed time and in the prescribed form in respect of the property.
Extension of time	(2) The Public Trustee may extend the time for filing the report if satisfied that there are reasonable grounds for granting the extension.
Time of grant of extension	(3) The Public Trustee may grant an extension before or after expiry of the time for filing the report. 1994,c.52,s.39.
Notice of proposed transfer	<b>40.</b> The Public Trustee shall cause notices to be published, in accordance with the regulations, listing the names of, and other prescribed information relating to, the owners of property recorded in reports filed under this Act and the regulations with the Public Trustee by holders of such property. 1994,c.52,s.40.
Transfer to Public Trustee	<b>41.</b> (1) Within six months after the date on which a holder of unclaimed intangible property is required to file a report under section 39 in respect

of the property, the holder shall transfer the property to the Public Trustee.

(2) Subsection (1) does not apply in respect of property that has been claimed by the owner. Exception

(3) A holder who transfers property under this section shall file with the Public Trustee, at the time of the transfer, Further reports

(a) a second report in the prescribed form in respect of the property mentioned in the first report; and

(b) a report in the prescribed form in respect of any property claimed by the owner from the holder between the dates of filing the first and second reports. 1994,c.52,s.1.41.

**42.** (1) The Public Trustee may require the transfer to the Public Trustee of records related to unclaimed intangible property transferred under this Act. Transfer of records

(2) The Public Trustee may extend the time for making a transfer under subsection (1) if the Public Trustee is satisfied that there are reasonable grounds for granting the extension. Extension of time

(3) The Public Trustee may grant an extension before or after expiry of the time for making the transfer. Time of grant of extension

(4) A holder of unclaimed intangible property may transfer to the Public Trustee any record in respect of the property that the Public Trustee is willing to accept. 1994,c.52,s.42. Voluntary transfer

**43.** The holder of unclaimed intangible property composed of shares or any other intangible ownership interest in a business organization who is required to transfer the property to the Public Trustee shall, at the request of the Public Trustee, issue and deliver to the Public Trustee a certificate showing the Public Trustee as owner of the property or, if the holder does not issue certificates of ownership, other evidence of ownership satisfactory to the Public Trustee, and the change of ownership shall be recorded in the records of the holder. 1994,c.52,s.43. Certificate of ownership

**44.** The Public Trustee shall cause a notice in the prescribed form to be published annually in the Gazette, listing the names of, and other prescribed information relating to, the owners of unclaimed intangible property transferred to the Public Trustee in the previous year. 1994, c.52, s.44. Notice by Public Trustee

**45.** The owner of unclaimed intangible property transferred to the Public Trustee has the right to claim the property from the Public Trustee in accordance with this Part. 1994,c.52,s.45 Right of owner

## Special Rules

Charges to reduce value prohibited	<b>46.</b> (1) A holder of intangible property shall not impose a charge against the owner of the property because the owner has failed to communicate with the holder or because there have been no transactions with respect to the property.
Exception	(2) Subsection (1) does not apply if the charge is authorized under any Act or if there is a written contract between the holder and the owner pursuant to which the holder may impose the charge and <ul style="list-style-type: none"> <li>(a) the holder regularly imposes such charges; and</li> <li>(b) the holder does not regularly reverse or otherwise cancel such charges after imposing them.</li> </ul>
Limit	(3) Despite subsection (2), a charge mentioned in subsection (1) shall not exceed the prescribed amount.
Deemed charge	(4) For the purposes of this section, ceasing to make payment of, or to credit, interest shall be deemed to be the imposition of a charge and the amount of the unpaid or uncredited interest shall be deemed to be the amount of the charge. 1994,c.52,s.46.
Automatic renewal of deposits	<b>47.</b> (1) For the purposes of paragraph 4 of subsection 37(3), the automatic renewal of a demand deposit, savings deposit or matured time deposit with a financial organization does not prevent the commencement of the period of time.
Exception	(2) Subsection (1) does not apply if the owner of the deposit communicated with the bank or financial organization at or about the time of renewal to consent to the renewal. 1994,c.52,s.47.
Travellers' cheques and money orders	<b>48.</b> The Public Trustee does not have the right to claim and receive unclaimed intangible property represented by a travellers' cheque, money order or similar written instrument unless <ul style="list-style-type: none"> <li>(a) the records of the issuer show that the travellers' cheque, money order or similar written instrument was purchased in the province; or</li> <li>(b) the issuer has its principal place of business in the province and the records of the issuer do not show that the travellers' cheque, money order or similar written instrument was purchased in another jurisdiction. 1994,c.52,s.48.</li> </ul>
Insurance and annuity contracts	<b>49.</b> (1) For the purposes of paragraph 5 of subsection 37(3), an annuity contract, a life insurance contract or an endowment insurance contract not matured by proof of the death of the annuitant or the person whose life was insured according to the records of the insurer shall be deemed to be matured and the proceeds are due and payable if

(a) the insurer has reasonable grounds for belief that the person has died, and the contract was in force on the date the person is believed to have died; or (b) the person, if alive, would have attained the limiting age under the mortality table on which the reserve for the contract is based, and the contract was in force on the date on which the person would have attained that age.

(2) Subsection (1) does not apply if, within the preceding three years, any person who is entitled to do so has assigned an interest in the contract, readjusted or paid premiums on the contract, borrowed from the insurer against the contract or otherwise communicated with the insurer. 1994,c.52,s.49. Application of s (1)

**50.** (1) For the purposes of paragraph 8 of subsection 37(3), a share or any other intangible ownership interest in a business organization is not unclaimed unless Shares

(a) there have been at least five consecutive dividends, distributions or other sums payable or distributable in respect of the share or other intangible ownership interest; and

(b) at least five years have elapsed since the date when the earliest of the five consecutive dividends, distributions or other sums mentioned in clause (a) became payable or distributable and no dividend, distribution or other sum that became payable or distributable on or after that date has been claimed by the owner.

(2) If five dividends, distributions or other sums are payable or distributable, the period of time for determining whether the interest is unclaimed intangible property shall be calculated from the date of payment or distribution of the first unclaimed dividend, distribution or other sum. Calculation of time

(3) For the purposes of this Act, a person who holds intangible property as a transfer agent for the issuer of shares is the holder of the property only in so far as the interest of the issuer is concerned, and the issuer is the holder of the property in respect of the interest of the owner. Holder

(4) Where a broker, depository or other fiduciary is the holder of a share or other intangible ownership interest and has not paid or distributed to the owner the dividends, distributions or other sums payable or distributable mentioned in subsection (1) in respect of the share or interest for the period mentioned in that subsection, the share or other interest, including the dividends, distribution or other sums payable or distributable, is unclaimed. 1994,c.52,s.50. Application to brokers, etc.

**51.** Funds in a registered retirement savings plan or registered education savings plan, as defined by the *Income Tax Act* (Canada), or similar plan Retirement accounts and plans

are not payable or distributable for the purposes of this Act until five years after the date when, under the terms of the plan, distribution of all or part of the funds is mandatory and the owner or beneficiary of the funds has not communicated with the holder in that time as evidenced by the records of the holder. 1994, c.52, s.51.

#### Public Trustee

Unclaimed Intangible Property Account	<b>52.</b> (1) The Public Trustee shall establish in the accounts of the Public Trustee an account to be known as the Unclaimed Intangible Property Account.
Record	(2) The Public Trustee shall record in the Unclaimed Intangible Property Account all unclaimed intangible property transferred to the Public Trustee and the proceeds of disposition of the property. 1994,c.52,s.52.
Fees and expenses	<b>53.</b> The Public Trustee is entitled to charge against the Unclaimed Intangible Property Account the fees and expenses of administration in respect of property received and administered under this Act. 1994,c.52,s.53.
Transfer to Minister of Finance and Municipal Affairs	<b>54.</b> (1) The Public Trustee shall transfer to the Minister of Finance and Municipal Affairs at the close of each fiscal year for deposit into the Operating Fund the balance remaining recorded in the Unclaimed Intangible Property Account.
Reserve	(2) The Public Trustee may retain out of the moneys to be transferred a reasonable reserve, in an amount approved by the Minister of Finance and Municipal Affairs, against future claims and expenses against the Account.
Insufficient reserve	(3) If the amount held in the Account, together with the reserve retained under subsection (2), is insufficient to meet claims against it, the Minister of Finance and Municipal Affairs may pay from the Operating Fund to the credit of the Account such sum as is, in his or her opinion, sufficient to meet the claims that cannot be satisfied from it. 1994,c.52,s.54; 1997,c.20,s.3; 2010,c.31,s.3.

#### Claims

Filing of claim	<b>55.</b> A person claiming an interest in unclaimed intangible property transferred to the Public Trustee may file a claim with the Public Trustee in the prescribed form. 1994,c.52,s.55.
Response to claim	<b>56.</b> (1) The Public Trustee shall consider and respond in writing to each claim within ninety days after the claim is filed.

(2) The Public Trustee may defend any claim made under section 55 and may exercise any powers and make any defence that the holder could exercise or make. 1994,c.52,s.56. Defence of claim

**57.** (1) If a claim is allowed, the Public Trustee shall transfer to the claimant the intangible property transferred to the Public Trustee or, if the property has been sold by the Public Trustee, the net proceeds of the sale. Return of intangible property

(2) The Public Trustee is entitled to be paid by the person to whom intangible property is transferred under subsection (1) or to retain out of the net proceeds of sale the expenses and prescribed fees of the Public Trustee. Expenses and fees

(3) Expenses and fees mentioned in subsection (2) shall be deposited in the Unclaimed Intangible Property Account. 1994,c.52,s.57. *Idem*

**58.** (1) If unclaimed intangible property in respect of which a claim is allowed was interest-bearing to the owner on the date of transfer to the Public Trustee, the Public Trustee shall pay to the claimant an amount in respect of interest calculated at the lesser of the prescribed rate or the rate the property was earning immediately before transfer to the Public Trustee. Interest

(2) If unclaimed intangible property in respect of which a claim is allowed is transferred to the Public Trustee in a form other than money, the Public Trustee also shall pay to the claimant any dividend, interest or other increment realized or accrued on the property from the date the property was transferred to the Public Trustee to and including the date the property was converted into money and thereafter shall pay an amount in respect of interest in accordance with subsection (1). *Idem*

(3) Interest begins to accrue on the date when the unclaimed intangible property is transferred to the Public Trustee, in the case of money, and, in the case of property other than money, on the date when the property was converted into money, and ceases on the earlier of the expiration of ten years after that date or the date on which the property is transferred to the owner. 1994, c.52, s.1.58. Calculation of interest

**59.** (1) A holder who transfers property to the Public Trustee for the purposes of this Act in good faith is relieved of all liability to the extent of the value of the property paid or transferred for any claim in respect of the property and no cause of action is available against such a holder in respect of the property. Liability

(2) If a holder transfers property to the Public Trustee in good faith and thereafter another person claims the property from the person who was Indemnity

the holder or another jurisdiction claims the property under its laws relating to escheat or unclaimed property, the claim shall be presented to the Public Trustee under section 55. 1994,c.52,s.59.

Claim for appreciation in value

**60.** No person has the right to claim against the Crown, the Public Trustee, the holder, or a transfer agent, a registrar or other person acting for or on behalf of a holder for any appreciation in the value of unclaimed intangible property occurring after transfer by the holder to the Public Trustee. 1994,c.52,s.60.

Determination of rights by court

**61.** (1) Upon application, a court of competent jurisdiction may determine the rights of a claimant under this Part.

Time

(2) An application under subsection (1) shall not be commenced before the expiry of the period of time within which the Public Trustee is required to respond to a claim under this Part. 1994,c.52,s.61.

Costs

**62.** (1) A court that determines an application respecting property transferred to the Public Trustee under this Act may award costs to be paid out of the value of the property.

Exception

(2) The court shall not award costs against the Public Trustee or the holder who transferred the property to the Public Trustee.

Application of ss (2)

(3) Subsection (2) does not apply if the court determines that the Public Trustee or the holder who transferred the property to the Public Trustee failed to act in accordance with this Act or the regulations and the failure to act prejudiced the interest of the owner of the property. 1994,c.52,s.62.

### Inspection

Appointment of inspectors

**63.** The Public Trustee is an inspector and may appoint in writing one or more other persons as inspectors. 1994,c.52,s.63.

Entry

**64.** An inspector may at any reasonable time, without a warrant, enter the business premises of a holder of intangible property, or any person considered by the Public Trustee to be a holder thereof, to make an inspection for the purposes of this Act and the regulations. 1994,c.52,s.64.

Inspection

**65.** Upon an inspection, an inspector has the right to examine the business records of the holder to determine whether the holder is complying with this Act and the regulations. 1994,c.52,s.65.

**66.** (1) Every holder of intangible property whose business records are the subject of an inspection shall co-operate fully with the inspector, including, Co-operation

- (a) permitting the inspector to enter all premises where the holder keeps business records;
- (b) producing to the inspector the holder's business records;
- (c) permitting the inspector to examine the holder's business records and providing such assistance as is requested by the inspector; and
- (d) providing to the inspector information requested by the inspector in respect of the holder's business records and in respect of intangible property held by the holder for any other person.

(2) Every employee of a business organization whose business records are the subject of an inspection also shall provide the co-operation specified in subsection (1). Employees

(3) Upon an inspection under this section, an inspector Powers of inspection

- (a) has the right to inspect the premises and the operations carried out on the premises;
- (b) has the right to free access, at any reasonable time, to all books of account, documents, correspondence and records, including all records that are relevant to the purposes of the inspection, regardless of the form or medium in which such records are kept, but, if such books, documents, correspondence or records are kept in a form or medium that is not legible, the inspector is entitled to require the person apparently in charge of them to produce a legible physical copy for examination by the inspector;
- (c) has the right to remove from the premises, upon giving a receipt therefor and showing the certificate of appointment issued by the Public Trustee, any material referred to in clause (b) that relates to the purposes of the inspection for the purpose of making a copy thereof, provided that the material is promptly returned to the person apparently in charge of the premises from which the material was removed; and
- (d) may question a person on matters that are or may be relevant to an inspection under this Act, subject to the person's right to have counsel or some other representative present during the examination. 1994,c.52,s.66.

**67.** No person shall hinder, obstruct or fail to co-operate with an inspector carrying out an inspection. 1994,c.52,s.67. Obstruction

**68.** (1) The Public Trustee may apply to a judge for a warrant if a holder of intangible property, or a person believed to be a holder of intangible property, Application for warrant

- (a) denies an inspector entry to the holder's business premises;

- (b) instructs an inspector to leave the holder's business premises;
- (c) obstructs an inspector carrying out an inspection; or
- (d) fails to co-operate with an inspector carrying out an inspection.

Issuance of warrant	(2) A judge may issue a warrant in the prescribed form if satisfied on evidence upon oath or affirmation <ul style="list-style-type: none"> <li>(a) that there is reasonable ground for believing that it is necessary to enter any business premises and to examine a holder's business records for the purposes of this Act; and</li> <li>(b) that an inspector has been denied entry, instructed to leave, obstructed or refused production of any business record.</li> </ul>
Action under warrant	(3) A warrant under this section shall authorize the Public Trustee, and any person acting under the direction of the Public Trustee, to enter the business premises of the holder named in the warrant, to examine the holder's business records and, upon giving a receipt therefor, to remove the business records or any part of them for the purpose of making copies by force, if necessary, together with such police officers as they call upon to assist them.
Execution of warrant	(4) A warrant issued under this section shall be executed at reasonable times as specified in the warrant.
Expiry of warrant	(5) A warrant issued under this section shall state the date on which it expires, which shall be a date not later than fifteen days after the warrant is issued.
Notice of application	(6) A judge may hear an application for a warrant under this section without notice to and in the absence of a representative of the holder whose records are to be inspected. 1994,c.52,s.68.

#### Miscellaneous

Reports to be verified	<b>69.</b> All reports to the Public Trustee required under this Act shall be verified as to their completeness and accuracy in accordance with the regulations. 1994,c.52,s.69.
Failure to report	<b>70.</b> (1) Every person who fails, without reasonable excuse, to file a report as required by this Act and the regulations shall pay a penalty of not more than \$500 for each day or part of a day on which the failure occurs or continues.
Failure to transfer	(2) Every person who fails, without reasonable excuse, to transfer unclaimed intangible property to the Public Trustee when required by this Act and the regulations shall pay a penalty in an amount equal to 10 per cent of the value of the unclaimed intangible property.

(3) Every person who fails, without reasonable excuse, to transfer unclaimed intangible property to the Public Trustee when required by this Act and the regulations shall pay a penalty in an amount equal to interest at the prescribed rate on the value of the property calculated from the date when the person should have transferred the property to the Public Trustee to and including the date on which the property is transferred to the Public Trustee.

Interest

(4) Every penalty under subsection (1), (2) or (3) shall be paid to the Public Trustee and shall form part of the Unclaimed Intangible Property Account.

Payment

(5) Upon application by the Public Trustee, a court of competent jurisdiction may order a person to pay a penalty that the person owes under subsection (1), (2) or (3). 1994,c.52,s.70.

Order

**71.** Upon application by the Public Trustee, a court of competent jurisdiction may order a holder of unclaimed intangible property to transfer the property to the Public Trustee in accordance with this Act and the regulations. 1994,c.52,s.71.

Application to court

**72.** A copy of any business record related to an inspection and purporting to be certified by an inspector is admissible in evidence in any action, application or prosecution as proof, in the absence of evidence to the contrary, of the original. 1994,c.52,s.72.

Copies

**73.** Every person who is required to file a report with the Public Trustee in respect of intangible property shall preserve the records relating to the property for the prescribed period of time. 1994,c.52,s.73.

Retention of property

**74.** (1) Every person who obstructs or hinders an inspector carrying out or attempting to carry out an inspection under this Act is guilty of an offence.

Offences

(2) Every person who participates in, assents to or acquiesces in the making of an incorrect statement or omission in a report or return under this Act or the regulations is guilty of an offence.

*Idem*

(3) Every person who fails to preserve a record in accordance with this Act or the regulations is guilty of an offence.

Records

(4) Every director or officer of a body corporate that is guilty of an offence under this Act who authorizes, permits or acquiesces in the offence is guilty of an offence. 1994,c.52,s.74.

Director or officer

**75.** Every person who is guilty of an offence under this Act is liable on conviction to a fine of not more than \$5,000 or, if the person is a body

Penalty

corporate, to a fine of not more than \$25,000 for every day or part of a day on which the offence occurs or continues. 1994,c.52,s.75.

## Compensation

**76.** (1) A provision of an agreement to recover or assist in recovering unclaimed intangible property that provides for compensation or for payment of expenses, or for both, is not valid in respect of that part of the compensation or expenses, or both, that exceeds 20 per cent of the value of the property.

## Public Trustee

(2) Despite the existence of an agreement to recover or assist in recovering unclaimed intangible property, the Public Trustee has the right to transfer property or to make payment, or both, directly to the owner of the property. 1994,c.52,s.76.

## Regulations

**77.** The Lieutenant Governor in Council may make regulations,

- (a) prescribing any matter referred to in this Part as prescribed;
- (b) respecting the times within which holders of unclaimed intangible property shall report thereon to the Public Trustee;
- (c) requiring that reports to the Public Trustee respecting unclaimed intangible property be accompanied by certificates verifying their accuracy and completeness as reflecting the records of the holder making the report, prescribing the forms of such reports and by whom such reports shall be signed;
- (d) exempting holders of unclaimed intangible property of prescribed classes or of less than the prescribed value from reporting the names and addresses of the owners of the property to the Public Trustee;
- (e) exempting kinds or classes of property from the application of this Part or the regulations;
- (f) exempting classes of persons from reporting or transferring property under this Part or the regulations;
- (g) respecting the records that shall be kept by the Public Trustee in respect of property transferred to the Public Trustee under this Part;
- (h) respecting the publication of notices by the Public Trustee listing property paid or transferred to the Public Trustee under this Part;
- (i) respecting the fees and expenses that may be charged by the Public Trustee for the care and administration of property under this Part;
- (j) prescribing rules and conditions for determining when intangible property is or is not in Prince Edward Island for the purposes of this Part;
- (k) prescribing the time when and the circumstances in which intangible property not mentioned in section 37 becomes unclaimed;
- (l) prescribing an amount for the purposes of subsection 38(1).

1994,c.52,s.77.

**78.** (1) The periods of time set out in this Part for calculating when intangible property becomes unclaimed apply in respect of periods of time before as well as after the coming into force of this Part. Transitional

(2) Every provision of any bylaw, letters patent or articles of incorporation or association or in any other similar instrument, whether made before or after the coming into force of this Part, that extinguishes or forfeits an owner's interest in intangible property before it is to be transferred to the Public Trustee under this Part is void. Void provisions

(3) Subsection (2) does not apply in respect of the extinguishment or forfeiture of an owner's interest in intangible property before a date that is ten years before the date on which this Part comes into force. Exception

(4) Subject to this section, this Part does not revive the interest of an owner in intangible property if that interest has, before the day on which this Part comes into force, been extinguished or made unenforceable unless, Interest not revived

(a) on or after that date, the financial or other records of the holder show the entitlement of the owner to that interest;

(b) the holder regularly waives the extinguishment or unenforceability of such interests. 1994,c.52,s.78.

#### PART V GENERAL

**79.** Consequential amendments. 1994,c.52,s.79 Consequential amendments

**80.** Repealed by 1994,c.52,s.80 Repeal

**81.** The *Estates of Incompetent Persons Act* R.S.P.E.I. 1988, Cap. M-6 is repealed. 1994,c.52,s.81. Repeal