1978

**c 50 The Mental Health Amendment Act, 1978**

Ontario

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CHAPTER 50

An Act to amend The Mental Health Act

Assented to June 23rd, 1978

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of The Mental Health Act, being chapter 269 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following clauses:

   (ca) "involuntary patient" means a person who is detained in a psychiatric facility under a certificate of involuntary admission or a certificate of renewal;

   (fa) "mentally competent" means having the ability to understand the subject-matter in respect of which consent is requested and able to appreciate the consequences of giving or withholding consent;

   (ga) "nearest relative" means,

   (i) the spouse who is of any age and mentally competent, or

   (ii) if none or if the spouse is not available, any one of the children who has attained the age of majority and is mentally competent, or

   (iii) if none or if none is available, either of the parents who is mentally competent or the guardian, or

   (iv) if none or if neither is available, any one of the brothers or sisters who has attained the age of majority and is mentally competent, or
(x) if none or if none is available, any other of the next of kin who has attained the age of majority and is mentally competent;

(ha) "out-patient" means a person who is registered in a psychiatric facility for observation or treatment or both, but who is not admitted as a patient and is not the subject of an application for assessment;

(ja) "prescribed" means prescribed by the regulations;

(la) "regional review board" means the review board appointed under section 27 having jurisdiction in respect of the psychiatric facility in which the person in respect of whom a hearing is required is a patient;

(ma) "restrain" means keep under control by the minimal use of such force, mechanical means or chemicals as is reasonable having regard to the physical and mental condition of the patient.

2. The said Act is amended by adding thereto the following section:

1a. Nothing in this Act shall be deemed to affect the rights or privileges of any person except as specifically set out in this Act.

3. Section 8 of the said Act is repealed and the following substituted therefor:

8.—(1) Where a physician examines a person and has reasonable cause to believe that the person,

(a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself;

(b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(c) has shown or is showing a lack of competence to care for himself,
and if in addition the physician is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

(d) serious bodily harm to the person;
(e) serious bodily harm to another person; or
(f) imminent and serious physical impairment of the person,

the physician may make application in the prescribed form for a psychiatric assessment of the person.

(2) An application under subsection 1 shall set out clearly that the physician who signs the application personally examined the person who is the subject of the application and made careful inquiry into all of the facts necessary for him to form his opinion as to the nature and quality of the mental disorder of the person.

(3) A physician who signs an application under subsection 1,

(a) shall set out in the application the facts upon which he formed his opinion as to the nature and quality of the mental disorder;
(b) shall distinguish in the application between the facts observed by him and the facts communicated to him by others; and
(c) shall note in the application the date on which he examined the person who is the subject of the application.

(4) An application under subsection 1 is not effective unless it is signed by the physician within seven days after he examined the person who is the subject of the examination.

(5) An application under subsection 1 is sufficient authority for seven days from and including the day on which it is signed by the physician,

(a) to any person to take the person who is the subject of the application in custody to a psychiatric facility forthwith; and
(b) to detain the person who is the subject of the application in a psychiatric facility and to restrain, observe and examine him in the facility for not more than 120 hours.
4. — (1) Subsection 1 of section 9 of the said Act is repealed and the following substituted therefor:

(1) Where information upon oath is brought before a justice of the peace that a person within the limits of the jurisdiction of the justice,

(a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself;

(b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(c) has shown or is showing a lack of competence to care for himself,

and in addition based upon the information before him the justice of the peace has reasonable cause to believe that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

(d) serious bodily harm to the person;

(e) serious bodily harm to another person; or

(f) imminent and serious physical impairment of the person,

the justice of the peace may issue his order in the prescribed form for the assessment of the person by a physician.

(2) Subsection 2 of the said section 9 is repealed.

(3) Subsection 4 of the said section 9 is repealed and the following substituted therefor:

(4) An order under this section shall direct, and, for a period not to exceed seven days from and including the day that it is made, is sufficient authority for any constable or other peace officer to whom it is addressed to take the person named or described therein in custody forthwith to an appropriate place where he may be detained for assessment by a physician.

5. Sections 10, 11 and 12 of the said Act are repealed and the following substituted therefor:

10. Where a constable or other peace officer observes a person who acts in a manner that in a normal person would
be disorderly and has reasonable cause to believe that the person,

(a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself;

(b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(c) has shown or is showing a lack of competence to care for himself,

and in addition the constable or other peace officer is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

(d) serious bodily harm to the person;

(e) serious bodily harm to another person; or

(f) imminent and serious physical impairment of the person,

and that it would be dangerous to proceed under section 9, the constable or other peace officer may take the person in custody to an appropriate place for assessment by a physician.

11. An assessment under section 9 or 10 shall be conducted by a physician forthwith after receipt of the person at the place of assessment and where practicable the place shall be a psychiatric facility or other health facility.

12. Subject to subsection 3b of section 13, the attending physician may change the status of an informal patient to that of an involuntary patient by completing and filing with the officer in charge a certificate of involuntary admission.

6.—(1) Subsections 1 to 3 of section 13 of the said Act are repealed and the following substituted therefor:

(a) shall release the person from the psychiatric facility if the attending physician is of the opinion that the person is not in need of the treatment provided in a psychiatric facility;
(b) shall admit the person as an informal patient if the attending physician is of the opinion that the person is suffering from mental disorder of such a nature or quality that the person is in need of the treatment provided in a psychiatric facility and is suitable for admission as an informal patient; or

(c) shall admit the person as an involuntary patient by completing and filing with the officer in charge a certificate of involuntary admission if the attending physician is of the opinion both that the person is suffering from mental disorder of a nature or quality that likely will result in,

(i) serious bodily harm to the person,

(ii) serious bodily harm to another person, or

(iii) imminent and serious physical impairment of the person,

unless the person remains in the custody of a psychiatric facility and that the person is not suitable for admission as an informal patient.

(2) The physician who completes a certificate of involuntary admission pursuant to clause c of subsection 1 shall not be the same physician who completed the application for psychiatric assessment pursuant to section 8.

(3) The officer in charge shall release a person who is the subject of an application for assessment under section 8 or who is the subject of an order under section 25 upon the completion of 120 hours of detention in the psychiatric facility unless the attending physician has released the person, has admitted the person as an informal patient or has admitted the person as an involuntary patient by completing and filing with the officer in charge a certificate of involuntary admission.

(3a) An involuntary patient may be detained, restrained, observed and examined in a psychiatric facility,

(a) for not more than two weeks under a certificate of involuntary admission; and

(b) for not more than,

(i) one additional month under a first certificate of renewal,

(ii) two additional months under a second certificate of renewal, and
(iii) three additional months under a third or subsequent certificate of renewal,

that is completed and filed with the officer in charge by the attending physician.

(3b) The attending physician shall not complete a certificate of involuntary admission or a certificate of renewal unless, after he has examined the patient, he is of the opinion both,

(a) that the patient is suffering from mental disorder of a nature or quality that likely will result in,

(i) serious bodily harm to the patient,

(ii) serious bodily harm to another person, or

(iii) imminent and serious physical impairment of the patient,

unless the patient remains in the custody of a psychiatric facility; and

(b) that the patient is not suitable for admission or continuation as an informal patient.

(2) The said section 13 is amended by adding thereto the following subsection:

(6) Forthwith following completion and filing of a certificate of involuntary admission or of a certificate of renewal, the officer in charge or his delegate shall review the certification documents to ascertain whether or not they have been completed in compliance with the criteria outlined in this Act and where, in his opinion, the documents are not properly completed, the officer in charge shall so inform the attending physician and, unless the person is re-examined and released or admitted in accordance with subsections 1 and 2, the officer in charge shall release the person.

7. Subsection 1 of section 21 of the said Act, exclusive of the clauses, is repealed and the following substituted therefor:

(1) Where a person who is subject to detention is absent without leave from a psychiatric facility, a constable or other peace officer or any one appointed by the officer in charge may return the person to the psychiatric facility or take the
person to the psychiatric facility nearest to the place where
the person is apprehended,

8. Section 25 of the said Act is repealed and the following substi-
tuted therefor:

25. Where the Minister has reasonable cause to believe that there may come or be brought into Ontario a person suffering from mental disorder of a nature or quality that likely will result in,

(a) serious bodily harm to the person; or

(b) serious bodily harm to another person,

unless the person is placed in the custody of a psychiatric facility, the Minister by an order in the prescribed form may authorize any one to take the person in custody to a psychiatric facility and the order is authority to admit, detain, restrain, observe and examine the person in the psychiatric facility.

9. The said Act is amended by adding thereto the following section:

25a. A constable or other peace officer or any one who takes a person in custody to a psychiatric facility shall remain at the facility and retain custody of the person so taken until the facility accepts the custody of the person.

10. The said Act is further amended by adding thereto the following section:

26a.—(1) In this section,

(a) "clinical record" means the clinical record compiled in a psychiatric facility in respect of a patient, and includes a part of a clinical record;

(b) "patient" includes former patient, out-patient, and former out-patient.

(2) Except as provided in subsections 3 and 5, no person shall disclose, transmit or examine a clinical record.

(3) The officer in charge and the attending physician in the psychiatric facility in which a clinical record was prepared may examine the clinical record and the officer in charge
may disclose or transmit the clinical record to or permit the examination of the clinical record by,

(a) where the patient has attained the age of majority and is mentally competent, any person with the consent of the patient;

(b) where the patient has not attained the age of majority or is not mentally competent, any person with the consent of the nearest relative of the patient;

(c) any person employed in or on the staff of the psychiatric facility for the purpose of assessing or treating or assisting in assessing or treating the patient;

(d) the chief executive officer of a health facility that is currently involved in the direct health care of the patient upon the written request of the chief executive officer to the officer in charge;

(e) with the consent of the patient or, where the patient has not attained the age of majority or is not mentally competent, with the consent of the nearest relative of the patient or, where delay in obtaining the consent of either of them would endanger the life, a limb or a vital organ of the patient, without the consent of either of them, a person currently involved in the direct health care of the patient in a health facility;

(f) a person for the purpose of research, academic pursuits or the compilation of statistical data.

(4) Where a clinical record,

(a) is transmitted or copied for use outside the psychiatric facility for the purpose of research, academic pursuits or the compilation of statistical data, the officer in charge shall remove from the part of the clinical record that is transmitted or from the copy, as the case may be, the name of and any means of identifying the patient; and

(b) is disclosed to or examined by a person for the purpose of research, academic pursuits or the compilation of statistical data, the person shall not disclose the name of or any means of identifying the patient and shall not use or communicate the information or material in the clinical record for a purpose other than research, academic pursuits or the compilation of statistical data.
(5) Subject to subsections 6 and 7, the officer in charge or a person designated in writing by the officer in charge shall disclose, transmit or permit the examination of a clinical record pursuant to a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act.

(6) Where the disclosure, transmittal or examination of a clinical record is required by a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act and the attending physician states in writing that he is of the opinion that the disclosure, transmittal or examination of the clinical record or of a specified part of the clinical record,

(a) is likely to result in harm to the treatment or recovery of the patient; or

(b) is likely to result in,

(i) injury to the mental condition of a third person, or

(ii) bodily harm to a third person,

no person shall comply with the requirement with respect to the clinical record or the part of the clinical record specified by the attending physician except under an order of,

(c) the court before which the matter is or may be in issue; or

(d) where the disclosure, transmittal or examination is not required by a court, under an order of the Divisional Court,

made after a hearing from which the public is excluded and that is held on notice to the attending physician.

(7) On a hearing under subsection 6, the court or body shall consider whether or not the disclosure, transmittal or examination of the clinical record or the part of the clinical record specified by the attending physician

(a) is likely to result in harm to the treatment or recovery of the patient; or
is likely to result in,

(i) injury to the mental condition of a third person, or

(ii) bodily harm to a third person,

and for the purpose the court or body may examine the clinical record, and, if satisfied that such a result is likely, the court or body shall not order the disclosure, transmittal or examination unless satisfied that to do so is essential in the interests of justice.

(8) Where a clinical record is required pursuant to subsection 5 or 6, the clerk of the court or body in which the clinical record is admitted in evidence or, if not so admitted, the person to whom the clinical record is transmitted shall return the clinical record to the officer in charge forthwith after the determination of the matter in issue in respect of which the clinical record was required.

(9) No person shall disclose in an action or proceeding in any court or before any body any knowledge or information in respect of a patient obtained in the course of assessing or treating or assisting in assessing or treating the patient in a psychiatric facility or in the course of his employment in the psychiatric facility except,

(a) where the patient has attained the age of majority and is mentally competent, with the consent of the patient;

(b) where the patient has not attained the age of majority or is not mentally competent, with the consent of the nearest relative of the patient; or

(c) where the court or, in the case of a proceeding not before a court, the Divisional Court determines, after a hearing from which the public is excluded and that is held on notice to the patient or (where the patient has not attained the age of majority or is not mentally competent) the nearest relative of the patient, that the disclosure is essential in the interests of justice.

11. Sections 28, 29 and 30 of the said Act are repealed and the following substituted therefor:
An attending physician who completes a certificate of involuntary admission or a certificate of renewal shall give or transmit a notice in writing of completion and filing of the certificate to the patient who is the subject of the certificate and to the area director for the area, in accordance with The Legal Aid Act, in which the psychiatric facility is located.

(2) A notice under subsection 1 shall inform the patient and the area director that the patient or any person on his behalf is entitled to a hearing by the regional review board if the patient or the person gives or transmits to the officer in charge or to the regional review board notice in writing requiring a hearing and the patient or the person may so require such a hearing.

(3) An involuntary patient, or any person on his behalf, may apply in the prescribed form to the chairman of the regional review board having jurisdiction to inquire into whether the patient is suffering from mental disorder of a nature or quality that likely will result in,

(a) serious bodily harm to the patient;
(b) serious bodily harm to another person; or
(c) imminent and serious physical impairment of the patient,

unless the patient remains an involuntary patient in the custody of a psychiatric facility.

(4) An application under subsection 1 may be made,

(a) when a certificate of involuntary admission respecting the patient comes into force;
(b) when any certificate of renewal respecting the patient comes into force; or
(c) when the patient, after having been admitted to a psychiatric facility, is subsequently continued as an involuntary patient.

(5) An application under subsection 1 may be made at any time by the Minister, the Deputy Minister or the officer in charge in respect of any involuntary patient.

(6) On the completion of a fourth certificate of renewal and on the completion of every fourth certificate of renewal
thereafter, the patient shall be deemed to have applied in the
described form pursuant to subsection 3 to the chairman of
the regional review board having jurisdiction.

29. Notwithstanding that a hearing is required or an
appeal is taken against a certificate of involuntary admission
or a certificate of renewal, the certificate is effective until
confirmed or rescinded on a hearing or appeal.

30. The attending physician, the patient or other person
who has required the hearing and such other persons as the
regional review board may specify are parties to the pro­
ceedings before the board.

30a. Where a patient or other person gives or transmits
to the officer in charge a notice in writing pursuant to sub­
section 2 of section 28, the officer in charge shall transmit the
requirement to the regional review board.

30b. A regional review board that received notice in
writing requiring a hearing under subsection 2 of section 28
or under section 30a shall appoint a time and place for and
hold the hearing.

30c. Within seven days from the day that a regional review
board completes a hearing under section 30b, the board by
an order in writing shall confirm or revoke the certificate of
involuntary admission or the certificate of renewal and for
the purpose the board may substitute its opinion for that
of the attending physician.

30d.—(1) A party to a proceeding shall be afforded an
opportunity to examine and to copy, before the hearing,
any written or documentary evidence that will be produced
or any report, the contents of which will be produced or any
report, the contents of which will be given in evidence at
the hearing.

(2) Subject to section 26a, a party to a proceeding or the
counsel or agent representing the party, or both, is entitled
to examine and to copy any clinical record prepared in respect
of the patient.

30e.—(1) Members of a regional review board holding a
hearing shall not have taken part before the hearing in any
investigation or consideration of the subject-matter of the
hearing and shall not communicate directly or indirectly in
relation to the subject-matter of the hearing with any person
or with any party or his representative except under notice
to and opportunity for all parties to participate, but the
regional review board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

(2) No member of a regional review board shall participate in a decision of a regional review board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of a regional review board shall be given unless all members so present participate in the decision.

(3) The findings of fact of a regional review board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of The Statutory Powers Procedure Act, 1971.

(4) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him by the regional review board within a reasonable time after the matter in issue has been finally determined.

30f.—(1) A party to proceedings before a regional review board may appeal from its decision in accordance with the rules of court to the county or district court of the county or district in which is located the psychiatric facility where the patient is detained.

(2) Where a party appeals from a decision or order of a regional review board, the regional review board shall forthwith file in the county or district court the record of the proceedings before it in which the decision was made, which shall constitute the record in the appeal.

(3) An appeal under this section may be made on questions of law or fact or both.

(4) On an appeal under this section, the court may exercise all the powers of the regional review board.

(5) For the purpose of subsection 4, the court may substitute its opinion for that of the attending physician or of the regional review board.

(6) On an appeal under this section, the court may refer the matter back to the regional review board for rehearing, in whole or in part, in accordance with such directions as the court considers proper.
12. The said Act is further amended by adding thereto the following section:

31a.—(1) In this section, "psychosurgery" means any procedure that, by direct or indirect access to the brain, removes, destroys or interrupts the continuity of histologically normal brain tissue, or which inserts indwelling electrodes for pulsed electrical stimulation for the purpose of altering behaviour or treating psychiatric illness, but does not include neurological procedures used to diagnose or treat organic brain conditions or to diagnose or treat intractable physical pain or epilepsy where these conditions are clearly demonstrable.

(2) Psychiatric treatment shall not be given to an involuntary patient without the consent of the patient or, where the patient has not reached the age of majority or is not mentally competent, the consent of the nearest relative of the patient except under the authority of an order of a regional review board made on the application of the officer in charge.

(3) The consent of an involuntary patient or the nearest relative of an involuntary patient to treatment while an involuntary patient does not include and shall not be deemed to include psychosurgery.

(4) Where,

(a) an involuntary patient or the nearest relative of an involuntary patient, as the case requires, refuses consent or an involuntary patient is not mentally competent and there is no relative of the patient from whom consent may be requested to the provision of a specific psychiatric treatment or a specific course of psychiatric treatment to the patient; and

(b) the attending physician, a psychiatrist who is a member and a psychiatrist who is not a member of the medical staff of the psychiatric facility in which the patient is detained each state in the prescribed form:

(i) that he has examined the patient,

(ii) that he is of the opinion that the mental condition of the patient will be or is likely to be substantially improved by the specific psychiatric treatment or the specific course of psychiatric treatment, and
(iii) that the mental condition of the patient will not or is not likely to improve without the specific treatment or course of treatment,

the attending physician on notice to the patient or the nearest relative, as the case requires, may apply to the regional review board for an order authorizing the providing of the treatment or course of treatment to the patient.

(5) Where the attending physician applies for a hearing under subsection 4, the regional review board shall appoint a time for and hold the hearing and shall issue its decision within seven days after the completion of the hearing and, where the board is satisfied,

(a) that the mental condition of the patient will be or is likely to be substantially improved by the specific psychiatric treatment or course of treatment for the providing of which authority is sought; and

(b) that the mental condition of the patient will not or is not likely to improve without the specific psychiatric treatment or course of treatment,

the board by order may authorize the providing of the psychiatric treatment or course of treatment specified in the application, but the board shall not authorize and no order of the board is or shall be deemed to be authority to perform psychosurgery.

(6) The attending physician and the patient or, where the patient is not mentally competent, the nearest relative or, if none, the Official Guardian and such other persons as the regional review board may specify are parties to the proceedings before the board.

13. Sections 32 to 38 of the said Act are repealed and the following substituted therefor:

32.—(1) Forthwith upon the admission of a patient to a psychiatric facility, a physician shall examine the patient to determine whether or not he is competent to manage his estate.

(2) The attending physician may examine a patient and a physician may examine an out-patient at any time to determine whether or not the patient or out-patient is competent to manage his estate.

(3) After an examination under subsection 1 or 2, the physician or attending physician, as the case may be, shall
enter his determination, together with written reasons therefor, in the clinical record prepared in respect of the patient.

(4) A physician or attending physician who performs an examination under subsection 1 or 2 and who is of the opinion that the patient or out-patient is not competent to manage his estate shall issue a certificate of incompetence in the prescribed form and the officer in charge shall transmit the certificate to the Public Trustee.

(5) Where circumstances are such that the Public Trustee should immediately assume management of an estate, the officer in charge or, where the officer in charge is not present in the psychiatric facility, the physician or attending physician shall notify the Public Trustee in the fastest manner possible that a certificate of incompetence has been issued.

(6) A patient or out-patient may appoint the Public Trustee as committee of the estate of the patient or out-patient.

(7) An appointment under subsection 6,

(a) is not valid unless it is signed and sealed by the patient or out-patient; and
(b) may be revoked by a written revocation signed and sealed by the patient or out-patient.

(8) Where the Public Trustee is committee of the estate of a patient or out-patient at the time of his admission to or receipt in a psychiatric facility, a certificate of incompetence shall be deemed to have been issued and transmitted to the Public Trustee under subsection 4.

(9) Subsections 1 to 8 do not apply to a patient or out-patient whose estate is under committeeship under The Mental Incompetency Act.

33.—(1) Notwithstanding that under The Mental Incompetency Act a person other than the Public Trustee has been appointed as the committee of the estate of a patient or out-patient, the Supreme Court may at any time upon the application of the Public Trustee appoint him as committee in the stead of the person appointed under that Act, and on appointment the Public Trustee has and may exercise all the rights and powers conferred upon him by this Act with regard to the management of estates.

(2) If at any time a committee of the estate of a patient or out-patient is appointed under The Mental Incompetency Act, the Public Trustee thereupon ceases to be committee and shall account for and transfer to the committee so appointed.
the estate of the patient or out-patient that has come into his hands.

(3) An order shall not be made under The Mental Incompetency Act for the appointment of a committee of a patient or out-patient without the consent of the Public Trustee unless seven days notice of the application has been given to him.

(4) The acts of the Public Trustee while committee of a patient or out-patient are not rendered invalid by the making of an order appointing another committee.

34. The Public Trustee is committee of the estate of a patient or out-patient and shall assume management thereof,

(a) upon receipt of a certificate of incompetence;

(b) upon receipt of notice under subsection 5 of section 32;

(c) upon receipt of an appointment under subsection 6 of section 32; or

(d) upon receipt of a notice of continuance under section 37.

35. Upon the Public Trustee becoming committee of the estate of a patient or out-patient, the officer in charge shall forthwith forward a financial statement in the prescribed form to the Public Trustee.

36. The attending physician may, after examining a patient or out-patient for that purpose, cancel the certificate of incompetence issued in respect of the patient or out-patient and the officer in charge shall forward a notice of cancellation in the prescribed form to the Public Trustee.

37.—(1) Where the Public Trustee is managing the estate of a patient or out-patient, the attending physician shall examine the patient or out-patient within twenty-one days before he is discharged from a psychiatric facility to determine whether or not he will be competent to manage his estate.

(2) Where the attending physician is of the opinion, after the examination referred to in subsection 1, that the patient or out-patient will not, upon discharge, be competent to manage his estate, he shall issue a notice of continuance in the prescribed form and the officer in charge shall forward the notice to the Public Trustee.
The officer in charge shall transmit to the Public Trustee notice of the discharge from the psychiatric facility of a patient or an out-patient in respect of whom a certificate of incompetence is in force.

38. The Public Trustee ceases to be committee of the estate of a patient or out-patient and shall relinquish management thereof,

(a) upon receipt of notice of cancellation of the certificate of incompetence of the patient or out-patient;

(b) upon receipt of a revocation in writing, signed and sealed by the patient or out-patient, of an appointment referred to in subsection 6 of section 32;

(c) upon receipt of notice of discharge of the patient or out-patient, unless he has at that time received a notice of continuance; or

(d) upon the expiration of six months after the discharge of the patient or out-patient, where a notice of continuance was received.

14.—(1) Subsection 1 of section 39 of the said Act is repealed and the following substituted therefor:

(1) Where a certificate of incompetence or a notice of continuance has been issued, the patient or out-patient may apply in the prescribed form to the chairman of the review board having jurisdiction to inquire into whether or not the patient or out-patient is competent to manage his estate.

(2) Subsection 2 of the said section 39 is amended by striking out "twelve-month" in the second line and inserting in lieu thereof "six-month".

15. Sections 41, 42, 45, 46 and 48 to 51 of the said Act are repealed and the following substituted therefor:

41. Where an action or proceeding is brought or taken against a person,

(a) who is a patient or out-patient; and

(b) for whose estate a committee has not been appointed by a court,

and the action or proceeding is in connection with the estate of the person, the writ or other document by which
the action or proceeding is commenced and any other document requiring personal service,

(c) shall be endorsed with the name of the psychiatric facility in or of which the person is a patient or out-patient;

(d) shall be served,

(i) on the Public Trustee, and

(ii) on the person, or where the attending physician is of the opinion that personal service on the person would cause or would be likely to cause serious harm to him by reason of his mental condition, on the officer in charge.

42. The Public Trustee as committee of a patient or out-patient has and may exercise all the rights and powers with regard to the estate of the patient or out-patient that the patient or out-patient would have if of full age and of sound and disposing mind.

45. A recital in a lease, mortgage or conveyance that a person is a patient in or an out-patient of a psychiatric facility and that the Public Trustee is his committee is admissible in evidence as *prima facie* proof of the facts recited.

46. The powers conferred upon the Public Trustee as committee of the estate of a patient or out-patient may be exercised,

(a) until the committeeship is terminated notwithstanding that the patient or out-patient has been discharged from the psychiatric facility;

(b) to carry out and complete any transaction entered into by the patient or out-patient before he became a patient or out-patient in a psychiatric facility;

(c) to carry out and complete any transaction entered into by the committee notwithstanding that the committeeship has been terminated or that the patient or out-patient has died after the transaction was commenced.
48. Where the Public Trustee is committee of the estate of a patient or out-patient, every gift, grant, alienation, conveyance or transfer that is not made for full and valuable consideration actually paid or secured or that is made at or after the time when the purchaser of transferee had notice of the mental condition of the patient or out-patient, or the fact that he was a patient or out-patient or of the committee-ship shall be deemed to be fraudulent and void as against the Public Trustee.

49. Upon the death of a patient or out-patient of whose estate the Public Trustee is committee and until letters probate of the will or letters of administration of the estate of the patient or out-patient are granted to a person other than the Public Trustee and notice thereof is given to the Public Trustee, the Public Trustee may continue to manage the estate and exercise with respect thereto the powers that an executor would have if the property were devised or bequeathed to him in trust for payment of debts and distribution of the residue.

50. The Public Trustee is liable to render an account as to the manner in which he has managed the property of a patient or an out-patient in the same way 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 from time to time to bring in and pass his accounts and tax costs in like manner as a trustee but is personally liable only for wilful misconduct.

51. The Public Trustee may be allowed compensation for services rendered as committee of the estate of a patient or out-patient in an amount not exceeding the amount that a trustee would be allowed for like services, but in cases of poverty or hardship the Public Trustee may forego any claim for compensation.

16. Subsection 2 of section 52 of the said Act is repealed and the following substituted therefor:

(2) Where the Supreme Court is satisfied, on application by the Public Trustee with notice to the person, that a person who was discharged as a patient or out-patient subject to a notice of continuance will continue to be incompetent to manage his estate after the expiry of the notice of continuance, the court by order may extend the committee-ship of the Public Trustee for such period of time, or may make such other order, as the court considers proper.
(3) Where the Public Trustee continues to manage an estate under subsection 1 or 2, the Supreme Court, upon application, may make such further order as it considers just and, in its discretion, may order that the management of the estate by the Public Trustee be relinquished.

17. Sections 53 to 55 of the said Act are repealed and the following substituted therefor:

53. The Public Trustee, out of the moneys in his hands belonging to a person who is a patient or out-patient of whose estate the Public Trustee is committee, shall pay the proper charges for maintenance of the person as a patient in or an out-patient of the psychiatric facility and the Public Trustee may also pay such sums as he considers advisable to the patient's or out-patient's family or other persons dependent upon him, and the payments for the maintenance of the family and other dependants may be made notwithstanding that such payments may prevent the payment of maintenance that otherwise would be due from the patient or out-patient.

54. Moneys in court to the credit of a patient or out-patient of whose estate the Public Trustee is committee shall be paid out to the Public Trustee upon his written application, and it is not necessary to obtain an order of a court or a judge for such purpose.

55. Nothing in this Act makes it the duty of the Public Trustee to institute proceedings on behalf of a patient or out-patient of whose estate the Public Trustee is committee or to intervene in respect of the estate or any part thereof or to take charge of any property of the patient or out-patient.

18. Subsection 1 of section 56 of the said Act is repealed and the following substituted therefor:

(1) Where a person who is suffering from a mental disorder is a patient in or an out-patient of a psychiatric facility in another province or territory of Canada and has estate situate in Ontario, the Lieutenant Governor in Council may appoint the official of the other province or territory who is charged with the duty of managing the estate of the person in the other province or territory to be committee of the estate in Ontario.

19. Section 60 of the said Act is repealed and the following substituted therefor:
60. Every person who contravenes any provision of this Act or the regulations is guilty of an offence and on summary conviction is liable to a fine of not more than $10,000.

20. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

21. The short title of this Act is The Mental Health Amendment Act, 1978.