

1980

c 118 Developmental Services Act

Ontario

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CHAPTER 118

Developmental Services Act

1. In this Act,

Interpre-
tation

- (a) "administrator" means the person who is responsible for the operation and management of a facility;
- (b) "attending physician" means the physician to whom responsibility for the observation, care and treatment of a resident has been assigned;
- (c) "developmental handicap" means a condition of mental impairment present or occurring during a person's formative years, that is associated with limitations in adaptive behaviour;
- (d) "Director" means a person appointed as such, for all or any of the purposes of this Act;
- (e) "facility" means any place designated by the regulations in which assistance and services or either of them are provided for persons with a developmental handicap;
- (f) "Minister" means the Minister of Community and Social Services;
- (g) "Ministry" means the Ministry of Community and Social Services;
- (h) "physician" means a legally qualified medical practitioner;
- (i) "regulations" means the regulations made under this Act; and
- (j) "resident" means a person with a developmental handicap who resides in a facility. 1974, c. 2, s. 1.

Facilities established

2. (1) The Minister may establish, operate and maintain one or more facilities and may furnish such services and assistance as he considers necessary upon such terms and conditions as he sees fit.

Purchase of assistance and services

(2) The Minister may by written agreement or otherwise purchase from any person, services and assistance for or on behalf of persons with a developmental handicap or believed to have a developmental handicap and may direct payment of expenditures as are necessary for these purposes. 1974, c. 2, s. 2.

Administration vested in Director

3.—(1) Except where a board has been appointed under subsection (2), the administration of every facility established, or operated by the Minister, is vested in the Director.

Board of governors appointed

(2) The Lieutenant Governor in Council may appoint a board of governors to maintain and operate any facility operated and maintained under subsection 2 (1), and every such board is a body corporate.

R S O 1980, c 95 not to apply

(3) The *Corporations Act* does not apply to a board appointed under subsection (2).

Administrator to superintend

(4) Subject to subsection (1), the administrator shall superintend the operation and management of all the affairs of the facility for which he is appointed and shall supervise all officers, clerks, employees and all the residents therein.

Minister, Director or administrator may appoint persons

(5) Where this Act or the regulations require or authorize the Minister, Director or administrator to do any act, such act may be done by any person whom the Minister, Director or administrator, as the case may be, appoints. 1974, c. 2, s. 3.

Patients deemed discharged

R S O 1980, c 262

4.—(1) Every person with a developmental handicap who on the 1st day of April, 1974 resided in a psychiatric facility under the regulations to the *Mental Health Act* shall, upon the designating of all or any part of the psychiatric facility as a facility under this Act, be deemed to have been discharged as a patient under the provisions of the *Mental Health Act* and admitted as a resident pursuant to the provisions of this Act.

Certificate of incompetence deemed issued and received

(2) Where the Public Trustee was committee of the estate of a person who is deemed to have been discharged under subsection (1), a certificate of incompetence shall be deemed to have been issued under subsection 10 (3) and received by the Public Trustee. 1974, c. 2, s. 4.

5. Any premises or part or parts thereof which were designated as a psychiatric facility under the regulations to the *Mental Health Act*, and which were operated by the Minister of Health shall, upon being designated as a facility under this Act, be operated and maintained by the Minister and the administration thereof shall, subject to subsection 3 (2), vest in the Director. 1974, c. 2, s. 5.

Designated facilities vest in Director R.S.O. 1980, c. 262

6. Where a facility was incorporated under another Act and is designated under this Act, the designation shall not be deemed to affect the continuation of the facility's status as a corporation. 1974, c. 2, s. 6.

Corporate status continued

7. Any person who,

- (a) believes he is a person with a developmental handicap; or
- (b) wishes to apply on behalf of a person whom he believes is a person with a developmental handicap,

Persons may apply for admission to facilities

may apply for admission to a facility or for any item of assistance or service which the Minister may make available to persons with a developmental handicap. 1974, c. 2, s. 7.

8.—(1) No action, prosecution or other proceeding for damages for anything done or omitted to be done in compliance or intended compliance with this Act or the regulations shall be commenced against the Director, a Board appointed under subsection 3 (2) or any officer or employee of a facility for any act done in good faith in the execution or intended execution of his or its duty or for any alleged neglect or default in the execution in good faith of his or its duty.

Protection from personal liability

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by an agent or servant of the Crown to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted. 1974, c. 2, s. 8.

Crown not relieved of liability R.S.O. 1980, c. 393

9. No action lies against the Director or any officer or employee of a facility for any tort of any resident. 1974, c. 2, s. 9.

Protection from tort liability re resident

10.—(1) Forthwith upon the admission of a resident to a facility, he shall be examined by a physician to determine whether he is competent to manage his estate.

Examination as to competency upon admission

Idem,
at any time

(2) The attending physician may examine a resident at any time to determine whether he is competent to manage his estate.

Certificate
of in-
competence

(3) If, after an examination under subsection (1) or (2), the examining physician is of the opinion that the resident is not competent to manage his estate, he shall issue a certificate of incompetence in the prescribed form and the administrator shall forward the certificate to the Public Trustee.

Idem,
exceptional
circum-
stances

(4) Where circumstances are such that the Public Trustee should immediately assume management of an estate, the administrator shall notify the Public Trustee forthwith that a certificate of incompetence has been issued.

Appointment
by resident

(5) Notwithstanding that no certificate of incompetence has been issued in his case, a resident may, at any time, in writing signed and sealed by him, appoint the Public Trustee as committee of his estate while he is a resident in a facility, and any such appointment may be revoked by the resident at any time in writing signed and sealed by him.

Where Public
Trustee is
committee
at time of
admission
of resident

(6) Where the Public Trustee is committee of a person with a developmental handicap or believed to have a developmental handicap at the time of his admission to a facility, a certificate of incompetence shall be deemed to have been issued and forwarded to the Public Trustee under subsection (3).

Where section
does not apply
R.S.O. 1980,
c. 264

(7) This section does not apply to a resident whose estate is under committeeship under the *Mental Incompetency Act*, 1974, c. 2, s. 10.

Where Public
Trustee may
replace
committee
appointed
under
R.S.O. 1980,
c. 264

11.—(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 resident, 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.

Duty of
Public
Trustee
where
committee
appointed
under
R.S.O. 1980,
c. 264

(2) If at any time a committee of the estate of a resident 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 resident that has come into his hands.

Consent of
Public
Trustee
to order

(3) An order shall not be made under the *Mental Incompetency Act* for the appointment of a committee of a resident

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 resident are not rendered invalid by the making of an order appointing another committee. 1974, c. 2, s. 11. Acts of Public Trustee not affected

12. The Public Trustee is committee of the estate of a resident and shall assume management thereof, Where Public Trustee committee

(a) upon receipt of a certificate of incompetence;

(b) upon receipt of notice under subsection 10 (4); or

(c) upon receipt of an appointment under subsection 10 (5). 1974, c. 2, s. 12.

13. Upon the Public Trustee becoming committee of the estate of a resident, the administrator shall forthwith forward a statement of the financial affairs of the resident to the Public Trustee. 1974, c. 2, s. 13. Financial statement

14. The attending physician may, after examining a resident for that purpose, cancel the resident's certificate of incompetence, and in such case the administrator shall forward a notice of cancellation in the prescribed form to the Public Trustee. 1974, c. 2, s. 14. Cancellation of certificate of incompetence

15.—(1) A resident who is about to be discharged from a facility and whose estate is being managed by the Public Trustee shall be examined by his attending physician to determine whether or not he will, upon discharge, be competent to manage his estate. Examination as to competency before discharge

(2) Where the attending physician is of the opinion, after the examination referred to in subsection (1), that the resident will not, upon discharge, be competent to manage his estate, he shall issue a notice of continuance in the prescribed form and the administrator shall forward the notice to the Public Trustee. 1974, c. 2, s. 15. Notice of continuance

16. The Public Trustee ceases to be committee of the estate of a resident and shall relinquish management thereof, Where Public Trustee ceases to be committee

(a) upon receipt of notice of cancellation of the certificate of incompetence of the resident;

(b) upon receipt of a revocation in writing, signed and sealed by the resident, of an appointment referred to in subsection 10 (5);

- (c) upon receipt of notice of discharge of the resident, unless he has at that time received a notice of continuance; or
- (d) upon the expiration of three months after the resident's discharge, where a notice of continuance was received. 1974, c. 2, s. 16.

Application to county or district court as to competency

17.—(1) Where a certificate of incompetence or a notice of continuance has been issued, the resident or any person acting on his behalf, may apply to the county or district court of the county or district in which the resident resides at the time of the application for a review of the decision.

Application by originating notice of motion

(2) The application shall be made by originating notice of motion.

Service and practice

(3) The notice of motion shall be served upon,

(a) the Minister; and

(b) the administrator of the facility in which the resident resides,

and the practice and procedure of the court pertaining to applications by originating notice of motion applies, so far as it is applicable, to an application under this section, except as otherwise provided by this section.

Further evidence

(4) In addition to the evidence adduced by affidavit, the court may direct such further evidence to be given as it considers necessary.

Court may affirm or rescind decision

(5) On a review under this section, the court may affirm the decision of the person issuing the certificate of incompetence or may rescind it or refer the matter back to the administrator to be disposed of in accordance with such directions as the court considers proper under this Act and the regulations, and the administrator shall give effect to any direction given by the court under this section. 1974, c. 2, s. 17.

Leave of judge to bring action

18. No person, other than the Public Trustee, shall bring an action as next friend of a person of whose estate the Public Trustee is committee under this Act without the leave of a judge of the court in which the action is intended to be brought, and the Public Trustee shall be served with notice of the application for such leave. 1974, c. 2, s. 18.

Service of documents

19. When an action or proceeding is brought or taken against a resident in a facility for whom a committee has not been appointed by the court and such action or proceeding

is in connection with the estate of such person, the writ or other document by which the proceedings are commenced and any other document requiring personal service shall be served upon the Public Trustee endorsed with a written statement of the name of the facility in which the resident is located, and shall also be served upon the resident, unless in the opinion of the attending physician personal service upon the resident would cause serious harm to him by reason of his developmental handicap, in which case it shall also be served upon the administrator. 1974, c. 2, s. 19.

20. The Public Trustee as committee of a resident has and may exercise all the rights and powers with regard to the estate of the resident that the resident would have if of full age and of sound and disposing mind. 1974, c. 2, s. 20.

Rights and powers of Public Trustee as committee

21. A person of whose estate the Public Trustee is committee under this Act and his heirs, executors, administrators, next of kin, legatees, devisees and assigns shall have the same interest in any money or other property, real or personal, arising from a sale, mortgage, exchange or other disposition by the Public Trustee acting as such committee as they would have had in the property the subject of the sale, mortgage, exchange or other disposition if no sale, mortgage, exchange or other disposition had been made, and the surplus money or property shall be of the same nature as the property sold, mortgaged, exchanged or disposed of. 1974, c. 2, s. 21.

Nature of proceeds of sale, etc.

22. Upon the Public Trustee becoming committee of the estate of a person under this Act, every power of attorney of such person is void. 1974, c. 2, s. 22.

When powers of attorney void

23. Any recital in a lease, mortgage or conveyance that a person is a resident in a facility and that the Public Trustee is his committee is admissible in evidence as *prima facie* proof of the facts recited. 1974, c. 2, s. 23.

Recitals in documents

24. The powers conferred upon the Public Trustee as committee of the estate of a resident may be exercised,

Purposes for which powers of Public Trustee may be exercised

- (a) until the committee ship is terminated notwithstanding that the resident has been discharged from the facility;
- (b) to carry out and complete any transaction entered into by the resident before he became a resident in a facility;
- (c) to carry out and complete any transaction entered into by the committee notwithstanding that the

committeeship has been terminated or that the resident has died after the transaction was commenced. 1974, c. 2, s. 24.

Lien of
Public
Trustee for
costs, etc.

25.—(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 his accounts, whether before or after the termination of the committeeship or the death of the person of whose estate he is committee under this Act, and any moneys advanced or liability incurred by him 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 such person.

Notice of
lien in case
of real
property

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

Withholding
of moneys to
secure costs

(3) Where the Public Trustee is proceeding to have his accounts passed after the termination of the committee-ship or the death of a person referred to in subsection (1), the Public Trustee may withhold sufficient moneys from the person's estate to adequately secure the costs of or arising from or out of the passing of such accounts. 1974, c. 2, s. 25.

When gifts,
etc., deemed
fraudulent

26. Every gift, grant, alienation, conveyance or transfer of property made by a person who is or becomes a resident shall be deemed to be fraudulent and void 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 his mental incompetence. 1974, c. 2, s. 26.

Death of
resident

27. Upon the death of a resident and until letters probate of the will or letters of administration of the estate of the resident 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. 1974, c. 2, s. 27.

Passing of
accounts

28. The Public Trustee is liable to render an account as to the manner in which he has managed the property of the resident 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. 1974, c. 2, s. 28.

29. For the services rendered by the Public Trustee as committee of a resident, he may be allowed compensation 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. 1974, c. 2, s. 29.

Compensation of Public Trustee

30.—(1) Where a person, with respect to whom a notice of continuance has been received by the Public Trustee, may not, based upon a report of the attending physician or other evidence available to the Public Trustee, be competent to manage his estate upon the termination of the committee-ship or a person discharged has refused or neglected to take his property or any part thereof from the Public Trustee, the Public Trustee may apply to the Supreme Court for directions as to the disposal of such property, and the court may make such order as it considers just, and may in its discretion order that the Public Trustee continue to manage the estate of such person with all the rights and powers that the Public Trustee would have had under this Act if the committee-ship had not been terminated.

Application for directions

(2) Where the Public Trustee continues to manage an estate under subsection (1), the Supreme Court may, upon application, make such further order as it considers just and may, in its discretion, order that the management of the estate by the Public Trustee be relinquished. 1974, c. 2, s. 30.

Further orders

31. The Public Trustee shall, out of the money in his hands belonging to a resident for whom he is committee, pay the proper charges for his maintenance in the facility in which he is a resident, and he may also pay such sums as he considers advisable to the resident'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 resident. 1974, c. 2, s. 31.

Payments out of resident's moneys

32. If there is any money in court to the credit of a resident, it shall be paid out to the Public Trustee upon his written application, and it is not necessary to obtain an order of the court or a judge for such purpose. 1974, c. 2, s. 32.

Payments out of moneys in court

What
Public
Trustee
not required
to do

33. Nothing in this Act makes it the duty of the Public Trustee to institute proceedings on behalf of a resident or to intervene in respect of his estate or any part thereof or to take charge of any of his property. 1974, c. 2, s. 33.

Patients
in another
province with
estate in
Ontario

34.—(1) Where a person who is suffering from a developmental handicap resides 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 such person in the other province or territory to be committee of the estate in Ontario.

Order
conclusive

(2) The order making the appointment is conclusive proof that all the conditions precedent to the appointment have been fulfilled.

Rights and
powers of
appointee

(3) The appointee under such an order possesses the same rights, powers, privileges and immunities as are conferred by this Act upon the Public Trustee and he is subject to the same obligations and shall perform the same duties. 1974, c. 2, s. 34.

Minister may
designate
officers

35.—(1) The Minister may appoint officers of the Ministry or other persons who shall advise and assist the administrator in all matters pertaining to persons with a developmental handicap and who shall have such other duties as are assigned to them by this Act or the regulations.

Powers

(2) Any such officer or person may at any time, and shall be permitted so to do by the authorities thereat, visit and inspect any facility and, in so doing, may interview residents, examine books, records and other documents relating to residents, examine the condition of the facility and its equipment, inquire into the adequacy of its staff, the range of services provided and any other matter considered relevant to the care of residents by such officer or person.

Inspection

(3) The books of account and any other records of every facility or class of facility shall be open at all reasonable times for inspection by an officer or person appointed under subsection (1). 1974, c. 2, s. 35.

Provincial
aid

36. The Minister may direct payment of provincial aid to or for the benefit of persons with a developmental handicap, or believed to have a developmental handicap, or to or for any facility or class of facility in which a person with a developmental handicap resides, in such amounts and under such conditions as are prescribed by the regulations. 1974, c. 2, s. 36.

37. The moneys required for the purposes of this Act shall be paid out of moneys that are appropriated therefor by the Legislature. 1974, c. 2, s. 37. ^{Moneys}

38. The Lieutenant Governor in Council may make regulations, ^{Regulations}

- (a) designating facilities or classes of facilities to which this Act and the regulations apply and limiting, restricting or exempting any such facility or class of facility from the application of any part of the regulations;
- (b) respecting the construction, renovation, alteration and maintenance of any facility or class of facility;
- (c) respecting the management, conduct, operation, use and control of any facility or class of facility;
- (d) prescribing the accommodation, facilities, equipment and services in any facility or class of facility;
- (e) providing for the officers and staff and prescribing their duties and qualifications in any facility or class of facility;
- (f) prescribing the procedure for selecting and evaluating the site of any facility or class of facility and for the development and preparation of plans for the site and buildings and for the information to be contained in such plans;
- (g) providing for the approval of facilities within a class and prescribing the terms and conditions upon which any such facility may be approved for persons with a developmental handicap;
- (h) for the purposes of this Act and the regulations, defining "assistance" and "services" and prescribing classes of services and classes of assistance and the items, services and payments to be included in any such definition or in any such class of services or class of assistance and prescribing the terms and conditions upon which such services or assistance or any class thereof may be provided;
- (i) prescribing the classes of grants or allowances by way of provincial aid to or for the benefit of persons with a developmental handicap or believed to have a developmental handicap, or to or for

any facility or class of facility and the methods of determining the amounts of such grants or allowances, the terms and conditions for the payment thereof and providing for the manner, times and methods of payment and the suspension and withholding of grants and allowances and for the making of deductions from grants and allowances;

- (j) prescribing the persons or classes of persons who may be eligible for services and assistance or any class thereof and prescribing the terms and conditions of eligibility for services and assistance or any classes thereof requiring information to be submitted and providing for the investigation and determination of eligibility for such services or assistance or any classes thereof;
- (k) prescribing the charges that shall be made for the provision of services and assistance or any class thereof to a person with a developmental handicap or believed to have a developmental handicap and limiting, restricting or exempting the persons or any class of persons to whom such charges shall be made;
- (l) prescribing the persons and authorities or classes of persons or authorities that are liable for or exempted from the cost of services and assistance or any class of services or assistance to persons with a developmental handicap or believed to have a developmental handicap and prescribing rules for determining the amounts to be contributed towards the cost of such services or assistance or class thereof by the person or authority or class of person or authority who are liable therefor;
- (m) providing for the recovery of any sum as a debt due to the Crown or to the board of any facility in any court of competent jurisdiction from any person or his estate or authority liable therefor, of the cost or any part of the cost of any services or assistance or any class thereof provided to or for a person with a developmental handicap or believed to have a developmental handicap;
- (n) providing for an agreement to be entered into with or on behalf of any resident or class of resident in a facility or in any class of facility, for the administrator in charge of the facility or class of facility, to receive, hold and administer real and personal property of the resident or class

of resident in trust for certain purposes, and providing for the terms and conditions of trust upon which the administrator may receive and hold such property;

- (o) providing for the establishment of in-service training programs for members of the staff of any facility or class of facility;
- (p) providing for any parent or guardian of a child with a developmental handicap or believed to have a developmental handicap to enter into agreement with the Minister or any child welfare authority appointed by the Minister, for the purposes of providing services or assistance or any class thereof, and providing for the terms and conditions in any such agreement upon which such services or assistance or any class thereof may be provided;
- (q) governing applications for payment of grants or allowances under this Act;
- (r) prescribing the records and accounts to be kept in respect of facilities or class of facilities, the claims and returns to be made to the Minister and the method, time and manner in which such claims and returns are to be made;
- (s) prescribing additional duties of officers or persons appointed by the Minister under section 35;
- (t) respecting the examination of persons and the admission, transfer, discharge and placement of residents;
- (u) prescribing rules governing the operation, management functions and powers of boards appointed by the Lieutenant Governor in Council under subsection 3 (2); and
- (v) prescribing forms and providing for their use. 1974, c. 2, s. 38.

