

1980

## c 264 Mental Incompetency Act

Ontario

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## CHAPTER 264

## Mental Incompetency Act

Interpre-  
tation

## 1. In this Act,

- (a) "contingent right", as applied to land, includes a contingent and an executory interest, a possibility coupled with an interest whether the object of the gift or limitation or such interest or possibility is or is not ascertained, and a right of entry whether immediate or future and whether vested or contingent;
- (b) "convey" and "conveyance", applied to a person, mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another land whereof such person is seised, or in which such person is entitled to a contingent right, either for the whole estate of such person or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance;
- (c) "court" means the county or district court of a county or district;
- (d) "land" includes messuages, tenements, and hereditaments, corporeal and incorporeal of every tenure or description, whatever may be the estate or interest therein, and whether entire or undivided;
- (e) "mentally incompetent person" means a person,
- (i) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or
  - (ii) who is suffering from such a disorder of the mind,
- that he requires care, supervision and control for his protection and the protection of his property;

- (f) "mental incompetency" means the condition of mind of a mentally incompetent person;
- (g) "mortgage" includes every interest or property in real or personal estate that is a security for money or money's worth;
- (h) "possessed" is applicable to any vested estate less than a life estate at law or in equity, in possession or in expectancy in any land;
- (i) "seised" is applicable to any vested interest for life or of a greater description, and extends to estates at law and in equity in possession or in futurity in any land;
- (j) "stock" includes shares and any fund, annuity or security transferable in books kept by a company or society, or by instrument of transfer alone, or by instrument of transfer accompanied by other formalities, and any share or interest therein, and also shares in ships registered under the Acts relating to merchant shipping;
- (k) "trust" and "trustee" include implied and constructive trusts and cases where the trustee has some beneficial interest, and also the duties incident to the office of personal representative of a deceased person, but not the duties incident to an estate conveyed by way of mortgage. R.S.O. 1970, c. 271, s. 1.

#### JURISDICTION OF COURT

Jurisdiction,  
county and  
district  
courts

**2.**—(1) Except where otherwise provided, proceedings under this Act shall be brought in the county or district court of the county or district in which the person against whom the proceedings are to be brought has his fixed place of abode.

Idem

(2) Where the person against whom proceedings under this Act are to be brought has no fixed place of abode in Ontario, the proceedings shall, except where otherwise provided, be brought in the county or district court of any county or district in which such person has property. R.S.O. 1970, c. 271, s. 2.

Removal of  
proceedings  
into  
Supreme  
Court

**3.**—(1) The respondent in proceedings under this Act may, upon such notice and otherwise as the rules of court prescribe, require the proceedings to be removed into the Supreme Court.

(2) Upon the filing of the notice and proof of service thereof, the clerk of the county or district court shall forthwith transmit the papers to the proper office of the Supreme Court in the county or district in which the proceedings were brought. <sup>Transmission of papers</sup>

(3) When the papers are received at the proper office of the Supreme Court, the proceedings are *ipso facto* in the Supreme Court and the provisions of this Act respecting such proceedings in a county or district court apply to the proceedings in the Supreme Court. R.S.O. 1970, c. 271, s. 3. <sup>Removal of proceedings</sup>

4.—(1) Subject to the *Mental Health Act*, the court has all the powers, jurisdiction and authority of Her Majesty over and in relation to the persons and estates of mentally incompetent persons, including the care and the commitment of the custody of mentally incompetent persons and of their persons and estates. <sup>Powers of the court R.S.O. 1980, c. 262</sup>

(2) The court may make orders for the custody of mentally incompetent persons and the management of their estates, and every such order takes effect, as to the custody of the person, immediately and, as to the custody of the estate, upon the completion of the committee's security. R.S.O. 1970, c. 271, s. 4. <sup>Orders of court</sup>

5. The powers conferred by this Act upon the court may be exercised by a judge thereof in chambers. R.S.O. 1970, c. 271, s. 5. <sup>Exercise of powers</sup>

6. Where proceedings under this Act are in the Supreme Court, it may delegate to a master, official referee or other officer any or all of its powers under this Act except the making of a declaration of mental incompetency, the confirmation of the appointment of a committee or the confirmation of a scheme of management. R.S.O. 1970, c. 271, s. 6. <sup>Delegation of powers, S.C.O.</sup>

DECLARATION OF MENTAL INCOMPETENCY

7.—(1) The court upon application supported by evidence may by order declare a person a mentally incompetent person if the court is satisfied that the evidence establishes beyond reasonable doubt that he is a mentally incompetent person. R.S.O. 1970, c. 271, s. 7 (1). <sup>Declaration of mental incompetency</sup>

(2) The application may be made by the Attorney General by any one or more of the next of kin of the alleged mentally incompetent person, by his or her wife or husband, by a creditor, or by any other person. R.S.O. 1970, c. 271, s. 7 (2); 1972, c. 1, s. 9 (7). <sup>By whom application to be made</sup>

- Appeal** (3) The alleged mentally incompetent person and any person aggrieved or affected by the order has the right to appeal therefrom.
- Procedure** (4) The practice and procedure on the appeal shall be the same as on an appeal from an order made by a judge of the court. R.S.O. 1970, c. 271, s. 7 (3, 4).
- Issue to try the alleged mental incompetency** **8.**—(1) Where in the opinion of the court the evidence does not establish beyond reasonable doubt the alleged mental incompetency, or where for any other reason the court considers it expedient so to do, instead of making an order under subsection 7 (1), the court may direct an issue to try the alleged mental incompetency.
- Method of trial** (2) Subject to section 9, the issue shall be tried with or without a jury as the court directing it or the judge presiding at the trial may order.
- Time and place** (3) The trial shall take place at such time and place as the court may direct.
- Production of mentally incompetent person** (4) On the trial of the issue the alleged mentally incompetent person, if within the jurisdiction of the court, shall be produced, and shall be examined at such time and in such manner, either in open court or privately, and, where the trial is with a jury, before the jury retire to consider their verdict, as the presiding judge may direct, unless the court by the order directing the issue or the judge presiding at the trial dispenses with the production of the mentally incompetent person or with his examination.
- Scope of inquiry** (5) On the trial of the issue the inquiry shall be confined to the question whether or not the person who is the subject of the inquiry is at the time of the inquiry a mentally incompetent person and incapable of managing himself or his affairs, and the presiding judge shall make an order in accordance with the result of the inquiry.
- (6) The practice and procedure as to the preparation, entry for trial and trial of the issue, and all the proceedings incidental thereto, shall be the same as in the case of any other issue directed by the court or a judge.
- Appeal** (7) The alleged mentally incompetent person and any person aggrieved or affected thereby have the like right to move against a verdict or to appeal from an order made upon or after the trial as may be exercised by a party to an action in the court including the right of appeal, and the court hearing any such motion or appeal has the same powers as upon a motion against a verdict or an appeal from a judgment entered at or after the trial of an action.

(8) Subject to section 11, the order or judgment of the court or, where the issue is tried by a jury, the verdict of the jury is final unless set aside upon appeal or motion under subsection (7). R.S.O. 1970, c. 271, s. 8.

9.—An alleged mentally incompetent person is entitled to demand, by notice in writing to be given to the person applying for the declaration of his mental incompetency and also to be filed in the office of the clerk of the county or district court in which the proceedings have been brought, at least ten days before the first day of the sittings at which the issue is directed to be tried, that any issue directed to determine the question of his mental incompetency shall be tried with a jury, and, unless he withdraws the demand before the trial, or the court is satisfied by personal examination of the mentally incompetent person that he is not mentally competent to form and express a wish for a trial by jury and so declares by order, the issue shall be tried by a jury. R.S.O. 1970, c. 271, s. 9.

10.—(1) For the purposes of the examination mentioned in section 9, or where it is considered proper for any other purpose, the court may require the alleged mentally incompetent person to attend at such convenient time and place as the court appoints.

(2) The court may by order require an alleged mentally incompetent person to attend and submit to examination by one or more medical practitioners at such time and place as the order directs. R.S.O. 1970, c. 271, s. 10.

SUPERSEDING DECLARATION OF MENTAL INCOMPETENCY

11.—(1) Upon application at any time after the expiration of one year from the date of the order by which a person has been declared a mentally incompetent person, or sooner by leave of the court, the court, if satisfied that the person has become mentally competent and capable of managing his own affairs, may make an order so declaring.

(2) Any such order is subject to appeal as provided by subsections 7 (3) and (4).

(3) Instead of making an order under subsection (1), the court may direct an issue to try the question of the recovery of the person so formerly declared or adjudged a mentally incompetent person.

(4) Any issue so directed is subject to sections 8 and 9.

Order  
superseding  
declaration  
of mental  
incom-  
petency

(5) Where a person formerly declared a mentally incompetent person has been found to be mentally competent and capable of managing his own affairs and the time for appealing from or moving against the order or verdict has expired, or if an appeal is taken or a motion made, when the same has been finally dismissed, an order may be issued superseding, vacating, and setting aside the order declaring the mental incompetency of the person for all purposes except as to acts or things done in respect of the person or estate of the mentally incompetent person while the order was in force. R.S.O. 1970, c. 271, s. 11.

COMMITTEES OF ESTATES OR MENTALLY INCOMPETENT  
PERSONS

Supple-  
mental  
powers of  
court

**12.**—(1) Where an order has been made declaring a person a mentally incompetent person under section 7 or incapable of managing his affairs under section 39, the court, in the same or a subsequent order, shall,

- (a) appoint a committee of the person or of the estate of the person, or both;
- (b) propound a scheme for the management of the estate of the person; and
- (c) fix a time for the passing of the accounts of the committee,

but no order, in so far as it appoints a permanent committee or propounds a scheme of management, is effective until confirmed by the Supreme Court in the manner prescribed by the rules of court.

Order to  
be filed  
in S.C.O.

(2) The appointment of the committee and the scheme of management shall be filed in the office of the local registrar of the Supreme Court and shall be forthwith transmitted by him to the Registrar of the Supreme Court for confirmation as required by subsection (1).

Interim  
committee

(3) The court may appoint a committee to act with such powers as it may confer upon him until a scheme of management is propounded and a permanent committee appointed, and any such appointment need not be confirmed. R.S.O. 1970, c. 271, s. 12.

Duties

**13.** Where a committee of the estate of a mentally incompetent person has been appointed,

- (a) the committee shall, within six months after being appointed, file in the office of the clerk of the court

in which the appointment was made a true inventory of the whole real and personal estate of the mentally incompetent person, stating the income and profits thereof, and setting forth the debts, credits, and effects of the mentally incompetent person, so far as they have come to the knowledge of the committee;

- (b) if any property belonging to the estate is discovered after the filing of the inventory, the committee shall file a true account of such property from time to time as it is discovered;
- (c) every inventory and account shall be verified by the oath of the committee;
- (d) the committee shall give security for the due performance of his duties in such amount as the court may direct, which security shall be in the form of a bond in the name of the clerk of the court and shall be filed in his office; and
- (e) the committee shall pass his accounts from time to time at such intervals as the court may direct. R.S.O. 1970, c. 271, s. 13.

MANAGEMENT AND ADMINISTRATION

**14.** The powers conferred by this Act as to the management and administration of a mentally incompetent person's estate are exercisable in the discretion of the court for the maintenance or benefit of the mentally incompetent person or of his family or, where it appears to be expedient, in the due course of management of the property of the mentally incompetent person. R.S.O. 1970, c. 271, s. 14.

Powers of court as to maintenance of mentally incompetent person or his family

**15.** Nothing in this Act subjects a mentally incompetent person's property to claims of his creditors further than it is now subject thereto by due course of law. R.S.O. 1970, c. 271, s. 15.

Rights of creditors

**16.—(1)** The court may order that any property of the mentally incompetent person, whether present or future, be sold, charged, mortgaged, dealt with or disposed of as is considered most expedient for the purpose of raising or securing or repaying, with or without interest, money that is to be or has been applied to,

Power to raise money for certain purposes

- (a) payment of the mentally incompetent person's debts or engagements;



- (b) discharge of any encumbrance on his property ;
- (c) payment of any debt or expenditure incurred for his maintenance or otherwise for his benefit ;
- (d) payment of or provision for the expenses of his future maintenance.

Terms of charge or mortgage

(2) Where a charge or mortgage is made under this Act for the expenses of future maintenance, the court may direct the same to be payable either contingently if the interest charged is contingent or future, or upon the happening of the event if the interest is dependent on an event that must happen, and either in a gross sum or in annual or other periodical sums, and at such times and in such manner as are considered expedient. R.S.O. 1970, c. 271, s. 16.

Charging mentally incompetent person's estate for permanent improvements

**17.**—(1) The court may order that the whole or a part of any moneys expended or to be expended under an order of the court for the permanent improvement, security, or advantage of the property of the mentally incompetent person, or of a part thereof, shall, with interest, be a charge upon the improved property or any other property of the mentally incompetent person, but so that no right of sale or foreclosure during the lifetime of the mentally incompetent person is conferred by the charge.

Interest, how to be met

(2) The interest shall be kept down during the mentally incompetent person's lifetime out of the income of his general estate, as far as his general estate is sufficient to bear it.

To whom charge to be made

(3) The charge may be made either to a person advancing the money or, if the money is paid out of the mentally incompetent person's general estate, to a person as trustee for him as part of his personal estate. R.S.O. 1970, c. 271, s. 17.

Powers of committee under order of court

**18.** The court may by order authorize and direct the committee of the estate of a mentally incompetent person to do all or any of the following things :

- (a) sell any property belonging to the mentally incompetent person ;
- (b) make exchange or partition of any property belonging to the mentally incompetent person, or in which he is interested, and give or receive any money for equality of exchange or partition ;
- (c) carry on any trade or business of the mentally incompetent person ;

- (d) grant leases of any property of the mentally incompetent person for building, agricultural, or other purposes;
- (e) grant leases of minerals forming part of the mentally incompetent person's property, whether the minerals have been worked or not, and either with or without the surface or other land;
- (f) surrender any lease and accept a new lease;
- (g) accept a surrender of any lease and grant a new lease;
- (h) execute any power of leasing vested in a mentally incompetent person having a limited estate only in the property over which the power extends;
- (i) perform any contract relating to the property of the mentally incompetent person entered into by him before his mental incompetency;
- (j) surrender, assign, or otherwise dispose of with or without consideration any onerous property belonging to the mentally incompetent person;
- (k) exercise any power or give any consent required for the exercise of any power where the power is vested in the mentally incompetent person for his own benefit or the power of consent is in the nature of a beneficial interest in the mentally incompetent person;
- (l) give consent to the transfer or assignment of a lease where the consent of the mentally incompetent person to the transfer or assignment thereof is requisite;
- (m) invest or reinvest any money in his hands belonging to the mentally incompetent person in the classes of securities in which a trustee may invest trust money under the *Trustee Act*. R.S.O. 1970, c. 271, s. 18. R.S.O. 1980, c. 512

**19.** Any property taken in exchange and any renewed lease accepted on behalf of a mentally incompetent person under this Act shall be to the same uses and be subject to the same trusts, charges, encumbrances, dispositions, devices, and conditions as the property given in exchange or the surrendered lease was or would, but for the exchange or surrender, have been subject to. R.S.O. 1970, c. 271, s. 19. Property exchanged and renewed lease to be to same uses as before

Extent  
of leasing  
power

**20.**—(1) The power to authorize leases of a mentally incompetent person's property under this Act extends to property of which the mentally incompetent person is tenant in tail, and every lease granted pursuant to any order under this Act binds the issue of the mentally incompetent person and all persons entitled in remainder and reversion expectant upon the estate tail of the mentally incompetent person, including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the mentally incompetent person has the same rights and remedies against the lessee, his executors, administrators and assigns as the mentally incompetent person or his committee would have had.

Term

(2) Leases authorized to be granted or accepted by or on behalf of a mentally incompetent person under this Act may be for such number of lives or such term of years, at such rent and royalties, and subject to such reservations, covenants, and conditions as the court may approve.

Premiums,  
etc., on  
renewal

(3) Premiums or other payments on the renewal of leases may be paid out of the mentally incompetent person's estate, or charged with interest on the leasehold property. R.S.O. 1970, c. 271, s. 20.

Nature of  
proceeds of  
sale and  
mortgage

**21.**—(1) The mentally incompetent person, his heirs, executors, administrators, next of kin, devisees, legatees and assigns have the same interest in any money arising from any sale, mortgage or other disposition, under the powers of this Act, which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage or disposition, if no sale, mortgage or disposition had been made, and the surplus money shall be of the same nature as the property sold, mortgaged or disposed of.

and of  
money re-  
ceived from  
certain other  
sources

(2) Money received for equality of partition and exchange, or under any lease of unopened mines, and all premiums and sums of money received upon the grant or renewal of a lease, where the property the subject of the partition, exchange or lease was land of the mentally incompetent person, shall, subject to the application thereof for any purposes authorized by this Act, as between the representatives of the real and personal estate of the mentally incompetent person, be considered as real estate, except in the case of premiums and sums of money received upon the grant or renewal of leases of property of which the mentally incompetent person was tenant for life, in which case the premiums and sums of money are personal estate of the mentally incompetent person.

(3) In order to give effect to this section, the court may direct any money to be carried to a separate account, and may order such assurances and things to be executed and done as are considered expedient. R.S.O. 1970, c. 271, s. 21.

Powers of court

**22.** The committee of the estate, or such person as the court may approve, shall, in the name and on behalf of the mentally incompetent person, execute and do all such assurances and things for giving effect to any order under this Act as the court may direct, and every such assurance and thing is valid and effectual and takes effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject. R.S.O. 1970, c. 271, s. 22.

Power to carry orders into effect

**23.** Where a power is vested in a mentally incompetent person in the character of trustee or guardian, or the consent of a mentally incompetent person to the exercise of a power is necessary in the like character, or as a check upon the undue exercise of the power, and it appears to the Supreme Court to be expedient that the power should be exercised or the consent given, the committee of the estate, in the name and on behalf of the mentally incompetent person, under an order of the Supreme Court made upon the application of any person interested, may exercise the power or give the consent in such manner as the order may direct. R.S.O. 1970, c. 271, s. 23.

Powers vested in mentally incompetent person as trustee or guardian

**24.** Where the Supreme Court exercises, in the name and on behalf of a mentally incompetent person, a power of appointing new trustees vested in the mentally incompetent person, the Supreme Court, where it seems to be for the mentally incompetent person's benefit and also expedient, may make any order respecting the property subject to the trust that might have been made in the same case under the *Trustee Act* on the appointment thereunder of a new trustee or new trustees. R.S.O. 1970, c. 271, s. 24.

Appointment of trustees by S.C.O.

R.S.O. 1980, c. 512

**25.—(1)** Where it appears to the court that there is reason to believe that the mental incompetency of a mentally incompetent person so found is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision be made for the maintenance of the mentally incompetent person, or of the mentally incompetent person and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income or of ready money belonging to him and standing to his account with a banker or agent, or being in the hands of any person for his use, is readily available, and may be safely and

Provision for maintenance when disability is temporary

properly applied in that behalf, the court may allow there-out such amount as is considered proper for the temporary maintenance of the mentally incompetent person or of the mentally incompetent person and the members of his immediate family who are dependent upon him for maintenance, and may, instead of proceeding to order a grant of the custody of the estate, order or give liberty for the payment of any such sum of money, or any part thereof, to such person as in the circumstances of the case it is thought proper to entrust with the application thereof, and may direct it to be paid to such person accordingly, and when received to be applied and it shall accordingly be applied in or towards such temporary maintenance.

Effect of receipt

(2) The receipt in writing of the person to whom payment is to be made for any money payable to him by virtue of an order under this section is a good discharge, and every person shall act upon and obey every such order.

Liability to account

(3) The person receiving any money by virtue of an order under this section shall pass an account thereof when and as the court may direct. R.S.O. 1970, c. 271, s. 25.

#### VESTING ORDERS

Power to transfer stock

**26.** Where any stock is standing in the name of or is vested in a mentally incompetent person beneficially entitled thereto, or is standing in the name of or vested in the committee of the estate of a mentally incompetent person so found in trust for the mentally incompetent person or as part of his property, and the committee dies intestate, or himself becomes a mentally incompetent person, or is out of Ontario, or it is uncertain whether the committee is living or dead, or he neglects or refuses to transfer the stock, or to receive or pay over the dividends thereof as directed by an order of the Supreme Court, then the Supreme Court may order some fit person to transfer the stock to or into the name of a new committee, or of the Accountant of the Supreme Court, or otherwise, and also to receive and pay over the dividends in such manner as it may direct. R.S.O. 1970, c. 271, s. 26.

Stock in name of mentally incompetent person out of jurisdiction

**27.** Where any stock is standing in the name of or vested in a person residing out of Ontario, the Supreme Court, upon proof that he has been declared a mentally incompetent person and that his personal estate has been vested in a person appointed for the management thereof according to the law of the place where he is residing, may order some fit person to make such transfer of the stock or any part

thereof to or into the name of the person so appointed, or otherwise, and also to receive and pay over the dividends thereof as it may direct. R.S.O. 1970, c. 271, s. 27.

**28.—**(1) Where a mentally incompetent person is solely or jointly seised or possessed of any land upon trust or by way of mortgage, the Supreme Court may by order vest the land in such person or persons for such estate and in such manner as it may direct. Power to vest land of mentally incompetent trustee or mortgagee

(2) Where a mentally incompetent person is solely or jointly entitled to a contingent right in any land upon trust or by way of mortgage, the Supreme Court may by order release the land from the contingent right and dispose of it to such person as it may direct. Or a contingent right

(3) An order made under subsection (1) or (2) has the same effect as if the trustee or mortgagee had been sane and had executed a deed conveying the land for the estate named in the order, or releasing or disposing of the contingent right. Effect of order

(4) Where an order may be made under this section, the court may, if it is more convenient, appoint a person to convey the land or release the contingent interest, and a conveyance or release by such person in conformity with the order has the same effect as an order under subsection (1) or (2). R.S.O. 1970, c. 271, s. 28. Conveyance

**29.—**(1) Where a mentally incompetent person is solely entitled to any stock or chose in action upon trust or by way of mortgage, the Supreme Court may by order vest in any person the right to transfer or to call for a transfer of the stock or to receive the dividends thereof, or vest in any person the chose in action, or any interest in respect thereof. Mentally incompetent trustee or mortgagee of chose in action

(2) Where a person is jointly entitled with a mentally incompetent person to any stock or chose in action upon trust or by way of mortgage, the Supreme Court may make an order vesting the right to transfer or to call for a transfer of the stock or to receive the dividends thereof or vesting the chose in action or any interest in respect thereof either in such person alone or jointly with any other person. Jointly interested

(3) Where any stock is standing in the name of a deceased person whose personal representative is a mentally incompetent person or where a chose in action is vested in a mentally incompetent person as the personal representative of a deceased person, the Supreme Court may make an order vesting the right to transfer or to call for a transfer of the Mentally incompetent personal representative

stock or to receive the dividends thereof or vesting the chose in action or any interest in respect thereof in any person whom it may appoint.

**Transfer**

(4) Where an order may be made under this section, the court may, if it is more convenient, appoint some fit person to make or join in making the transfer. R.S.O. 1970, c. 271, s. 29.

**Execution of powers of attorney and transfers**

**30.**—(1) The person in whom the right to transfer or to call for a transfer of any stock is vested may execute and do all powers of attorney, assurances and things to complete the transfer according to the order, and the transfer is valid and effectual to all intents and purposes, and banks and other companies and their officers and all other persons are bound to obey every such order according to its terms.

**Bank or company to be bound by order**

(2) After notice in writing of an order under this Act, it is not lawful for a bank or other company to transfer stock to which the order relates or pay any dividends except in accordance with the order. R.S.O. 1970, c. 271, s. 30.

**Order to be complete discharge**

**31.** This Act and every order purporting to be made under this Act is a full indemnity and discharge to any bank and other company and society and their respective officers and servants and all other persons for all acts and things done or permitted to be done pursuant thereto so far as relates to any property in which a mentally incompetent person is interested either in his own right or as trustee or mortgagee, and it is not necessary to inquire into the propriety of any order purporting to be made under this Act relating to any such property or the jurisdiction to make such order. R.S.O. 1970, c. 271, c. 31.

**Order to be conclusive evidence of mental incompetency**

**32.** The fact that an order made under this Act for conveying or vesting land or releasing or disposing of a contingent right has been founded on an allegation of the mental incompetency of a trustee or mortgagee is conclusive evidence of the fact alleged in any court upon any question as to the validity of the order, but this section does not prevent the court from directing a reconveyance of any land or contingent right dealt with by the order, or from directing any party to any proceeding concerning such land or right to pay any costs occasioned by the order, where the order appears to have been improperly obtained. R.S.O. 1970, c. 271, s. 32.

**Order vesting in trustees of charities**

**33.** The powers conferred by this Act as to vesting orders may be exercised by vesting any land, stock or chose in action in the trustee or trustees of any charitable society or in any incorporated charitable body over which the court would

have jurisdiction upon action duly instituted, whether the appointment of such trustee or trustees was made by instrument under a power or by the court under its general or statutory jurisdiction. R.S.O. 1970, c. 271, s. 33.

**34.** The court may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under this Act is to be exercised. <sup>Declarations and directions by court</sup> R.S.O. 1970, c. 271, s. 34.

**35.** Where the court has jurisdiction to order a conveyance or transfer of land or stock or to make a vesting order, an order may also be made appointing a new trustee or trustees. <sup>Appointment of new trustee</sup> R.S.O. 1970, c. 271, s. 35.

#### MISCELLANEOUS

**36.** Where there is money in any court to the credit of a person who has been found or who is alleged to be a mentally incompetent person and the person is resident in Great Britain or Ireland or in any part of Canada other than Ontario, upon production of an order made by a court having jurisdiction where the person is resident authorizing any person to receive such money, the court may make an order for payment of such money to the person designated in the order to receive it. <sup>Money in court</sup> R.S.O. 1970, c. 271, s. 36.

**37.** The court may order the costs, charges, and expenses of and incidental to orders, issues, directions, conveyances, transfers, and all proceedings of whatever nature under this Act to be paid by any party to the application, issue or proceeding, or out of the estate of the mentally incompetent person or alleged mentally incompetent person, or partly in one way and partly in another. <sup>Costs</sup> R.S.O. 1970, c. 271, s. 37.

**38.** Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may make rules for carrying this Act into effect and for regulating the costs in relation thereto, and except where inconsistent with this Act or such rules, the *Judicature Act* and the rules made thereunder apply to proceedings under this Act. <sup>Rules</sup> R.S.O. 1980, c. 223, s. 38.

#### APPLICATION OF ACT TO PERSONS NOT MENTALLY INCOMPETENT, BUT INCAPACITATED BY MENTAL INFIRMITY

**39.**—(1) The provisions of this Act relating to management and administration apply to every person not declared to be mentally incompetent with regard to whom it is proved, <sup>Extension of Act</sup>



to the satisfaction of the court, that he is, through mental infirmity, arising from disease, age or other cause, or by reason of habitual drunkenness or the use of drugs, incapable of managing his affairs.

**Application  
of section**

(2) This section applies although the person is not a mentally incompetent person.

**Powers of  
committee,  
how  
exercised  
and by  
whom**

(3) Such of the powers of this Act as are made exercisable by the committee of the estate under order of the court shall be exercised in the cases provided for by subsection (1) by such person, in such manner, and with or without security, as the court may direct, and any such order may confer upon the person therein named authority to do any specified act or exercise any specified power, or may confer a general authority to exercise on behalf of the person to whom the order relates until further order, all or any such powers without further application to the court.

**Liability  
of person  
appointed**

(4) Every person appointed to do any such act or exercise any such power is subject to the jurisdiction and authority of the court as if such person were the committee of the estate of a mentally incompetent person so declared.

**Application  
of s. 14**

(5) Section 14 applies to the cases provided for by subsection (1), and the person in respect of whom the order is made or any person aggrieved or affected by the order has the like right to appeal therefrom as is provided for by section 7.

**Proceedings  
on applica-  
tion to  
discharge  
order**

(6) Upon application at any time after the expiration of one year from the date of the order by which a person has been declared incapable of managing his affairs under subsection (1), or sooner by leave of the court, the like proceedings may be taken and the like order made as provided in section 11 in the case of a person who has been declared a mentally incompetent person. R.S.O. 1970, c. 271, s. 39.