

The Missing Persons and Presumption of Death Act

being

Chapter M-20.01 of *The Statutes of Saskatchewan, 2009* (effective September 28, 2009) as amended by the *Statutes of Saskatchewan, 2015, c I-9.11; 2018, c 22; 2021, c 17; and 2024, c 4.*

NOTE:

This consolidation is not official and is subject to House amendments and Law Clerk and Parliamentary Counsel changes to Separate Chapters that may be incorporated up until the publication of the annual bound volume. Amendments have been incorporated for convenience of reference and the official Statutes and Regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the official Statutes and Regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER M-20.01

An Act respecting Missing Persons and Persons Presumed to be Dead and repealing *The Absentee Act*

PART I Preliminary Matters

Short title

1 This Act may be cited as *The Missing Persons and Presumption of Death Act*.

Interpretation

2 In this Act:

- (a) **“capacity”** means the ability:
 - (i) to understand information relevant to making a decision; and
 - (ii) to appreciate the reasonably foreseeable consequences of making or not making a decision mentioned in subclause (i);
- (b) **“court”** means the Court of King’s Bench;
- (b.1) **“health information”** means personal health information as defined in *The Health Information Protection Act* and includes any additional prescribed information;
- (b.2) **“minister”** means the member of Executive Council to whom for the time being the administration of this Act is assigned;
- (c) **“missing person,”** except in Part II.1, means a person who:
 - (i) has not been heard from or of, by the persons who would likely hear from the person, for at least three months and whose whereabouts are unknown despite reasonable efforts to locate the person; or
 - (ii) has been missing for less than three months, but who is otherwise a missing person within the meaning of subclause (i), and who is declared by the court to be a missing person, on an application accompanied by evidence to the satisfaction of the court that there is urgent need for a property guardian to be appointed pursuant to this Act for the preservation of the estate or the support of the dependants of that person;
- (c.1) **“police service”** means:
 - (i) a police service within the meaning of *The Police Act, 1990*;
 - (ii) the Royal Canadian Mounted Police; or
 - (iii) a prescribed agency or organization;

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- (d) **“prescribed”** means prescribed in the regulations;
- (e) **“property guardian”** means:
 - (i) a property guardian of a missing person’s estate appointed by the court pursuant to this Act; or
 - (ii) in the circumstances set out in section 7, the public guardian and trustee;
- (f) **“public guardian and trustee”** means the corporation sole of the Public Guardian and Trustee for Saskatchewan continued pursuant to section 3 of *The Public Guardian and Trustee Act*;
- (g) **“spouse”** means:
 - (i) the legally married spouse of the missing person; or
 - (ii) a person, including a person less than 18 years of age, who has cohabited with the missing person as spouses continuously for a period of not less than two years.

2009, cM-20.01, s2; 2018, c22, s3; 2024, c4, s32.

Crown bound

2.1 The Crown is bound by this Act.

2018, c22, s4.

PART II

Declaration of Missing Person and Appointment of Property Guardian**Persons who may apply for declaration and appointment**

3(1) Subject to subsection (3), the persons entitled to apply to the court for an order declaring someone a missing person and appointing a property guardian are the following, in order of priority:

- (a) the spouse of the person alleged to be missing;
- (b) a child of the person alleged to be missing;
- (c) a parent or legal guardian of the person alleged to be missing;
- (d) a brother or sister of the person alleged to be missing;
- (e) a grandchild, great-grandchild or grandparent of the person alleged to be missing;
- (f) a nephew, niece, uncle or aunt of the person alleged to be missing;
- (g) any other person who, in the opinion of the court, has a sufficient interest in the estate of the person alleged to be missing;
- (h) the public guardian and trustee.

- (2) An application pursuant to this section must be made in the prescribed form.
- (3) If the court is satisfied that it is in the best interests of the estate of the person alleged to be missing, the court may accept and act on an application from a person mentioned in subsection (1) notwithstanding that another person mentioned in that subsection may be higher in the order of priority set out in that subsection.

2009, cM-20.01, s 3.

Notice of application

- 4(1) In this section and in sections 16 and 22, “**nearest relative**” means:
 - (a) the spouse of the person alleged to be missing; and
 - (b) an individual mentioned in clauses 3(1)(b) to (f), other than the applicant, who is over 18 years of age.
- (2) A copy of every application pursuant to section 3 must be given to:
 - (a) if the application is not made by the public guardian and trustee, the public guardian and trustee;
 - (b) the nearest relative of the person alleged to be missing who is highest in the order of priority set out in clauses 3(1)(a) to (f) unless that nearest relative has consented in the prescribed form to the application; and
 - (c) any other person that the court considers necessary.

2009, cM-20.01, s 4.

Statement of objection

- 5(1) A person who is provided with a copy of the application pursuant to section 4 may, within 10 days after the last person is served, file a statement of objection with the court setting out the reasons he or she objects to the application.
- (2) Any person who claims to have a sufficient interest in the estate of the person alleged to be missing may file a statement of objection with the court within 10 days after the last person is served pursuant to section 4.
- (3) A statement of objection mentioned in subsections (1) and (2) is to be in the prescribed form.
- (4) A person filing a statement of objection pursuant to this section shall serve a copy of it on the applicant, the persons mentioned in section 4 and any person who consented in the prescribed form to the order requested in the application.

2009, cM-20.01, s 5.

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- 6(1)** On an application pursuant to section 3, the court may make an order pursuant to this section if the court is satisfied that:
- (a) the person who is the subject of the application:
 - (i) is a missing person; and
 - (ii) has property in Saskatchewan; and
 - (b) it is advisable that a property guardian be appointed for the estate of the person who is the subject of the application.
- (2)** In the circumstances mentioned in subsection (1), the court may make an order:
- (a) declaring the person who is the subject of the application as a missing person; and
 - (b) appointing the applicant, or any other person that the court considers appropriate, as the property guardian for the estate of the missing person.
- (3)** The court may impose any terms and conditions that the court considers appropriate on a property guardian, including terms and conditions respecting security to be provided by the property guardian.

2009, cM-20.01, s 6.

When public guardian and trustee may act as property guardian

- 7(1)** The public guardian and trustee may do the things mentioned in subsection (2) if:
- (a) the value of a person's estate is less than the prescribed amount and the public guardian and trustee is satisfied that the person is a missing person and has property in Saskatchewan; or
 - (b) the public guardian and trustee is satisfied that:
 - (i) the person is a missing person;
 - (ii) a property guardian has not been appointed pursuant to this Act; and
 - (iii) it is necessary or appropriate to take possession of the person's property for the purpose of preserving and protecting that property.
- (2)** In the circumstances mentioned in subsection (1), the public guardian and trustee:
- (a) may exercise the powers conferred on a property guardian pursuant to this Act with respect to the estate of the person mentioned in subsection (1) without being required to apply to the court to be appointed as a property guardian; and
 - (b) if the public guardian and trustee acts pursuant to this section, shall fulfil the responsibilities imposed by this Act on a property guardian with respect to the estate of the person mentioned in subsection (1).

- (3) If the public guardian and trustee acts pursuant to this section with respect to a person's estate, the public guardian and trustee is deemed to be the property guardian of that person's estate as if the public guardian and trustee had been appointed as property guardian and as if the person had been declared a missing person.
- (4) If the public guardian and trustee acts pursuant to this section with respect to a person's estate, the public guardian and trustee may:
- (a) sign under seal a notice, in the prescribed form, indicating that he or she is acting as property guardian pursuant to the authority of this section; and
 - (b) after preparing a notice pursuant to clause (a) and without being required to obtain an order of the court pursuant to section 8, require any person or any public body, including the Crown, to provide the public guardian and trustee with any information, including the information mentioned in subsection 8(4), with respect to the missing person that is within the knowledge of, or is in any record in the possession or control of, the person or public body.
- (5) A notice prepared pursuant to subsection (4) is deemed to be, in the absence of evidence to the contrary, proof of the facts stated in the notice.

2009, cM-20.01, s 7.

Access to information

8(1) Repealed. 2018, c22, s5.

- (2) A judge of the court may make an order pursuant to this section if, on an application without notice, the judge is satisfied that the applicant requires an order pursuant to this section in aid of all or any of the following:
- (a) an application to obtain an order appointing the person as a property guardian;
 - (b) an attempt to locate a person who has been reported as missing to a police service;
 - (c) an application to deal with any other matter governed by this Act that the judge considers appropriate.
- (3) An application for an order pursuant to this section:
- (a) must be made by a person mentioned in subsection 3(1); and
 - (b) must be in the prescribed form.
- (4) In the circumstances mentioned in subsection (2) and notwithstanding any other Act or law restricting the disclosure of the information, the judge of the court may order any person or any public body, including the Crown, to provide the applicant or any other person whom the judge considers appropriate with any of the following information with respect to the missing person or the person mentioned in clause (2)(b) that is within the knowledge of, or is in any record in the possession or control of, the person or public body:
- (a) information respecting finances;

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- (b) information respecting any accounts and transactions;
- (c) telephone or electronic communication records;
- (d) health information;
- (e) identification information, including a photograph;
- (f) any other information that the judge considers appropriate.

2009, cM-20.01, s8; 2018, c22, s5.

Inventory of estate

9(1) The property guardian shall, at the time of the application or within six months after being appointed, provide the local registrar of the court and the public guardian and trustee with an accurate inventory of the estate of the missing person, so far as this information has come to the knowledge of the property guardian, that:

- (a) states the income and profits of the estate of the missing person; and
- (b) sets out the assets, debts and credits of the missing person.

(2) An inventory required pursuant to this section must be in the prescribed form.

(3) If property belonging to the estate of a missing person is discovered after an inventory has been provided pursuant to subsection (1), the property guardian shall provide the local registrar of the court and the public guardian and trustee with an accurate inventory of the estate immediately on the property being discovered.

(4) The property guardian shall verify by affidavit every inventory required pursuant to this section.

(5) The public guardian and trustee may carry out an investigation to ensure the accuracy of an inventory provided pursuant to this section.

(6) If a property guardian does not provide an inventory pursuant to subsection (1) or (3), the public guardian and trustee may request that the court review the order appointing the property guardian and make any further order that the court considers appropriate.

2009, cM-20.01, s9.

Powers and duties of property guardian

10(1) A property guardian may:

- (a) do anything respecting the estate of the missing person that the missing person could do except:
 - (i) make a will; or
 - (ii) change an election or designation made by the missing person; and
- (b) sign documents and do all things necessary to give effect to the authority vested in the property guardian.

- (2) On application by the property guardian or any other person whom the court considers appropriate, the court may authorize the sale, lease or other disposition of the missing person's property if the court is satisfied that the sale, lease or other disposition is required in the interests of the estate of the missing person.
- (3) Subject to any direction of the court, a property guardian has authority to spend moneys out of the estate of the missing person for either or both of the following purposes:
- (a) locating the missing person;
 - (b) determining if the missing person is alive or dead.
- (4) Without being required to obtain an order of the court pursuant to section 8, a property guardian may require any person or any public body, including the Crown, to provide the property guardian with any information, including the information mentioned in subsection 8(4), with respect to the missing person that is within the knowledge of, or is in any record in the possession or control of, the person or public body.
- (5) A property guardian may pay, out of the estate of the missing person, any amounts the property guardian considers appropriate or necessary towards the maintenance or education of the missing person's dependants.

2009, cM-20.01, s 10.

Filing of order in Land Titles Registry

- 11(1)** If, in the opinion of a property guardian, the missing person has an interest in a title to land or in a registered interest in land, the property guardian shall register the following in the Land Titles Registry:
- (a) a notice of his or her authority to act in the prescribed form;
 - (b) a copy, certified by a local registrar of the court to be a true copy, of the order appointing him or her to act as a property guardian.
- (2) If the public guardian and trustee is acting pursuant to section 7 with respect to a person's estate and, in the opinion of the public guardian and trustee, that person has an interest in a title to land or in a registered interest in land, the public guardian and trustee shall register the following in the Land Titles Registry:
- (a) a notice of the public guardian and trustee's authority to act in the prescribed form;
 - (b) a copy of the notice issued pursuant to clause 7(4)(a).
- (3) The notice mentioned in clause (1)(a) or (2)(a) is to contain a description of the titles and registered interests with respect to which the notice is to be registered.
- (4) On receipt of the documents mentioned in subsection (1) or (2), the Registrar of Titles shall register the notice mentioned in clause (1)(a) or (2)(a), as the case may be, against all titles and interests described in the notice.

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(5) After a notice is registered pursuant to subsection (4), any application to transfer title or to amend, assign or discharge an interest with respect to which the registered notice applies must be authorized by the property guardian in writing.

(6) Subsection (5) does not apply to:

- (a) an application to transfer title or to amend, assign or discharge an interest based on a court order; or
- (b) an application to register a transfer of title if the consent of the registered owner is not required pursuant to *The Land Titles Act, 2000*.

2009, cM-20.01, s 11.

Withdrawal or amended notice

12(1) A property guardian shall apply to the Registrar of Titles, in the prescribed form, to discharge a notice registered pursuant to subsection 11(1) or to register an amended notice containing the alterations and corrections to the notice registered pursuant to subsection 11(1) if:

- (a) the appointment for which the notice was registered pursuant to subsection 11(1) has been varied;
- (b) the missing person with respect to whom the notice was registered pursuant to subsection 11(1) does not have an interest in the title or interest, or in any specified part of the title or interest, described in the notice; or
- (c) an error was made in the notice registered pursuant to subsection 11(1).

(2) The public guardian and trustee shall apply to the Registrar of Titles, in the prescribed form, to discharge a notice registered pursuant to subsection 11(2) or to register an amended notice containing the alterations and corrections to the notice registered pursuant to subsection 11(2) if:

- (a) the person with respect to whom the notice was registered pursuant to subsection 11(2) does not have an interest in the title or interest, or in any specified part of the title or interest, described in the notice; or
- (b) an error was made in the notice registered pursuant to subsection 11(2).

(3) If there is a transfer of title or an assignment of an interest that is the subject of a notice mentioned in subsection 11(1) and the transfer or assignment is in accordance with the order mentioned in clause 11(1)(b), registration of the transfer or assignment in the Land Titles Registry is deemed to be a discharge of that notice respecting the title transferred or interest assigned.

(4) If there is a transfer of title or an assignment of an interest that is the subject of a notice mentioned in subsection 11(2) and the transfer or assignment is in accordance with the notice mentioned in clause 11(2)(b), registration of the transfer or assignment in the Land Titles Registry is deemed to be a discharge of that notice respecting the title transferred or interest assigned.

2009, cM-20.01, s 12.

Discharge of property guardian

13(1) Any of the following may apply to the court for an order to discharge a property guardian:

- (a) if the person with respect to whose estate the property guardian was appointed ceases to be a missing person, the person;
 - (b) a person having, in the opinion of the court, a sufficient interest in the estate of the missing person;
 - (c) the public guardian and trustee;
 - (d) the property guardian.
- (2) On an application to the court by a person mentioned in subsection (1), the court may discharge the property guardian if the court is satisfied that:
- (a) the person with respect to whose estate the property guardian was appointed has ceased to be a missing person; or
 - (b) the property guardian:
 - (i) is unable or unwilling to act or continue to act;
 - (ii) fails to act in accordance with an order pursuant to this Act;
 - (iii) acts in an improper manner or in a manner that has endangered or that may endanger the estate of the missing person;
 - (iv) is not a suitable person to act as a property guardian; or
 - (v) lacks capacity.
- (3) Before discharging a property guardian pursuant to this section, the court may make an order requiring the property guardian to file and pass the property guardian's accounts in accordance with this Act.
- (4) The court may appoint the public guardian and trustee as the property guardian if:
- (a) the property guardian has been discharged;
 - (b) in the opinion of the court:
 - (i) the estate is still in need of a property guardian; and
 - (ii) no application for another order to appoint a property guardian pursuant to this Act has been made; and
 - (c) the public guardian and trustee consents in writing to the appointment.

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14(1) If a property guardian dies without a will, the public guardian and trustee may assume the position of property guardian and exercise the powers of the property guardian until a new property guardian is appointed.

(2) If a property guardian dies with a will, the executor of the deceased property guardian may assume the position of property guardian and exercise the powers of the property guardian until a new property guardian is appointed.

(3) Immediately on assuming the position of property guardian in accordance with subsection (2), the executor shall give written notice of that fact to the public guardian and trustee.

2009, cM-20.01, s 14.

PART II.1

Police Service Access to Records**Definitions**

14.1 In this Part:

“government institution” means a government institution as defined in *The Freedom of Information and Protection of Privacy Act*;

“local authority” means a local authority as defined in *The Local Authority Freedom of Information and Protection of Privacy Act*;

“missing person” means a person whose whereabouts are unknown despite reasonable efforts to locate the person and:

- (a) who has not been in contact with those individuals who would likely or normally be in contact with the person; or
- (b) whose safety is feared for given the person’s age, physical or intellectual capabilities or the circumstances surrounding the person’s absence;

“person”, except if used to refer to a missing person, includes:

- (a) a partnership;
- (b) an unincorporated association;
- (c) a government institution;
- (d) a local authority; or
- (e) any other prescribed entity;

“record access order” means an order made pursuant to section 14.4;

“search order” means an order made pursuant to section 14.3;

“vulnerable person” means a person for whom a decision-maker has been appointed pursuant to *The Adult Guardianship and Co-decision-making Act* or a personal attorney is acting pursuant to *The Powers of Attorney Act, 2002*, or any other prescribed person.

2018, c22, s6.

When application may be made

14.2(1) A member of a police service may apply for a search order or a record access order if the police service is conducting an investigation into a missing person.

(2) An application for a search order or a record access order may be made to the court without notice in the prescribed manner.

2018, c22, s6.

Search order

14.3 If the court is satisfied by information on oath or affirmation that there are reasonable grounds to believe that a missing person who is a minor or a vulnerable person or belongs to any category of prescribed persons may be in a dwelling or other premises, the court may make an order authorizing members of a police service to enter, by force if necessary, the dwelling or other premises and search for the missing person.

2018, c22, s6.

Record access order

14.4(1) The court may make an order requiring a person to give the police service access to, and if requested, copies of, all or some of the records mentioned in subsection (2) if the court is satisfied that:

- (a) the order may assist the police service in its attempt to locate the missing person; and
- (b) the records are in the possession or under the control of the person.

(2) In an order made pursuant to subsection (1), access to all or some of the following records may be required:

- (a) records containing contact or identification information;
- (b) telephone and other electronic communication records, including:
 - (i) records related to signals from a wireless device that may indicate the location of the wireless device;
 - (ii) cell phone records;
 - (iii) inbound and outbound text messaging records; and
 - (iv) internet browsing history records;

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- (c) global positioning system tracking records;
 - (d) video records, including closed circuit television footage;
 - (e) records containing employment information;
 - (f) records containing health information;
 - (g) records from a school, university or other educational institution containing attendance information;
 - (h) records containing travel and accommodation information;
 - (i) records containing financial information;
 - (j) any other records specified in the order that the court considers appropriate.
- (3) If the missing person is a minor or a vulnerable person and there are reasonable grounds to believe that the missing person may be in the company of another person, the court may order that members of the police service be given access to and, if requested, copies of the records set out in subsection (2) regarding the person who may be in the company of the missing person.
- (4) The court may impose any restrictions or limits on the records to be produced in an order pursuant to this section that the court considers appropriate.
- (5) The court may include a provision in an order pursuant to this section requiring a person to provide members of the police service with an accounting of the efforts made by the person to locate any records that cannot be found.

2018, c 22, s 6.

Emergency demand for records

14.5(1) In this section, “**commanding officer**” means:

- (a) the chief of a police service;
 - (b) the commanding officer of the Royal Canadian Mounted Police; or
 - (c) the senior officer in an agency or organization that is prescribed as a police service.
- (2) A member of a police service may serve a written demand on a person requiring that person to give members of the police service access to those records that are in the person’s possession or under the person’s control if the member has reasonable grounds to believe that:
- (a) a missing person is at risk of imminent serious bodily harm or death;
 - (b) immediate access to the records mentioned in subsection (3) may assist the police service in locating the missing person before he or she suffers any harm; and
 - (c) it is not practicable to obtain a record access order given the urgency of the circumstances.

- (3) The following records relating to a missing person may be specified in a demand for records pursuant to subsection (2):
- (a) records containing contact or identification information;
 - (b) the following telephone and electronic communication records:
 - (i) records related to signals from a wireless device that may indicate the location of the wireless device;
 - (ii) cell phone records;
 - (iii) inbound and outbound text messaging records;
 - (iv) internet browsing history records;
 - (c) global positioning system tracking records;
 - (d) video records, including closed circuit television footage;
 - (e) records containing employment information to the extent that the records might indicate when the missing person was last seen or heard from and when, where and how the missing person is paid;
 - (f) records containing health information to the extent that the records might indicate if the missing person has recently been admitted to a hospital and, if so, the name of the hospital, the date and time of admission and the reason for admission;
 - (g) records from a school, university or other educational institution containing attendance information;
 - (h) records containing travel and accommodation information;
 - (i) records containing financial information to the extent that the records might indicate:
 - (i) if one or more of the missing person's credit cards were recently used and, if so, when, from where and for what purpose the credit card was used; or
 - (ii) if one or more of the missing person's bank accounts were recently accessed and, if so when, from where and for what purpose the bank account was accessed;
 - (j) any other prescribed records.
- (4) With respect to those records mentioned in clauses (3)(b) to (j), a demand for records pursuant to subsection (2) must specify the period that the requested records relate to and that period must not exceed 14 days before the alleged date of disappearance.
- (5) A demand for records pursuant to subsection (2) must be in the prescribed form.

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(6) A person who is served with a demand for records pursuant to subsection (2) must locate all the records specified in the demand that are in his or her possession or under his or her control and give members of the police service access to and, if requested, copies of those records as soon as possible, having regard to the urgent circumstances of the demand.

(7) When a member of a police service serves a demand for records pursuant to subsection (2) on a person, the member must file a written report with his or her commanding officer that sets out the circumstances in which the demand was made.

2018, c22, s6.

Failure to comply with demand

14.6(1) If a person who is served with a demand for records pursuant to section 14.5 does not comply with the demand, a member of the police service may apply to the court in the prescribed manner for an order directing the person to comply with the demand.

(2) The court may make an order requiring the person to comply with a demand for records if the court is satisfied that:

(a) the records in question are in the possession or under the control of the person; and

(b) the order may assist the police service in locating the missing person.

(3) An order pursuant to this section may be subject to any terms or conditions that the court considers appropriate in the circumstances.

2018, c22, s6.

Restriction on use

14.7(1) Notwithstanding *The Local Authority Freedom of Information and Protection of Privacy Act*, a police service may use information and records obtained pursuant to this Act only for:

(a) the purpose of locating a missing person or a use consistent with that purpose; or

(b) a purpose for which the information may be disclosed pursuant to section 14.8.

(2) If the investigation into a missing person becomes a criminal investigation, this section does not prevent information and records obtained by a police service pursuant to this Act from being used in the criminal investigation.

2018, c22, s6.

Disclosure of information and records limited

14.8(1) Any information or records obtained by a police service pursuant to this Act are confidential and may not be disclosed except in accordance with this section.

(2) Notwithstanding *The Local Authority Freedom of Information and Protection of Privacy Act*, information or records obtained by a police service pursuant to this Act may be disclosed only:

- (a) for the purpose of locating a missing person or a use consistent with that purpose;
- (b) if required by law;
- (c) to another law enforcement agency in Canada or a law enforcement agency in another country under an arrangement, written agreement, treaty or legislative authority, but only to the extent necessary to further the investigation into the missing person;
- (d) if the person to whom the information or records relate has consented to the disclosure; or
- (e) in accordance with subsections (3) to (6).

(3) Notwithstanding *The Local Authority Freedom of Information and Protection of Privacy Act*, for the purposes of furthering its investigation into a missing person, a police service may release to the public the following information obtained pursuant to this Act relating to the missing person through a media release, by posting the information on a website or in any other manner the police service considers appropriate:

- (a) the missing person's name;
- (b) a physical description of the missing person;
- (c) a photograph of the missing person;
- (d) if the missing person has a medical condition that poses a serious or immediate threat to the person's health, a statement that the missing person may need immediate medical attention;
- (e) pertinent vehicle information;
- (f) the location where the missing person was last seen;
- (g) the circumstances surrounding the disappearance of the missing person.

(4) A police service may publicly announce that a missing person has been located.

(5) A police service may disclose information and records obtained pursuant to this Act to other police services, law enforcement agencies, government institutions and local authorities to the extent necessary to coordinate investigations and other activities respecting missing persons.

(6) If an investigation into a missing person becomes a criminal investigation, this section does not prevent the disclosure of information and records obtained pursuant to this Act for the purposes of the criminal investigation.

cM-20.01 MISSING PERSONS AND PRESUMPTION OF DEATH**No access to privileged information**

14.9 Nothing in this Act compels the disclosure of any information or records that are subject to any type of legal privilege, including solicitor-client privilege.

2018, c 22, s 6.

Other rights unaffected

14.91 This Act does not restrict any authority that a police service would otherwise have to collect any information or records.

2018, c 22, s 6.

Offence

14.92(1) No person shall contravene section 14.7 or 14.8.

(2) Every person who contravenes section 14.7 or 14.8 is guilty of an offence and liable on summary conviction to a fine of not more than \$50,000.

2018, c 22, s 6.

Protection from liability

14.93 No action or proceeding lies or shall be commenced against a member of a police service or any other person if that person is acting pursuant to the authority of this Act or the regulations, for anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done by that person or by any of those persons pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any order made pursuant to this Act or any duty imposed by this Act or the regulations.

2018, c 22, s 6.

Annual report re emergency demands

14.94(1) If a police service has made a demand for records pursuant to section 14.5, it must prepare an annual report regarding its demand for records.

(2) The annual report mentioned in subsection (1) must:

- (a) indicate the number of missing person investigations in which a demand for records was made in the year;
- (b) indicate the number of persons who were served with a demand for records in the year; and
- (c) contain prescribed information regarding each demand for records.

(3) The police service must:

- (a) provide the annual report to the minister; and
- (b) make the annual report available to the public in the prescribed manner.

2018, c 22, s 6.

PART III
Presumption of Death

Order re presumption of death

15(1) Any of the persons mentioned in subsection 3(1) may apply for an order pursuant to this section declaring that the person who is the subject of the application is presumed to be dead.

(2) An application pursuant to this section must be made in the prescribed form.

(3) Subject to subsection (4), on an application pursuant to this section, the court may make an order declaring that the person who is the subject of the application is presumed to be dead for all purposes or only for those purposes specified in the order if the court is satisfied that:

(a) the person who is the subject of the application has been absent and not been heard from or of by the applicant, or to the knowledge of the applicant by any other person, since a day named in the application;

(b) the applicant has no reason to believe that the person is living; and

(c) reasonable grounds exist for supposing that the person is dead.

(4) An order made pursuant to subsection (3) does not apply for the purpose of:

(a) **Repealed.** 2021, c17, s2.

(b) section 8-140 or 8-195 of *The Insurance Act*.

(5) An order made pursuant to this section must state the date on which the person who is the subject of the order is presumed to have died.

(6) An order, or a certified copy of an order, made pursuant to this section declaring that a person is presumed to be dead for all purposes or for the purposes specified in the order is proof of death in all matters requiring proof of death for those purposes.

(7) The local registrar of the court shall forward to the Registrar of Vital Statistics an order made pursuant to this section within 30 days after the date the order was made.

(8) Without limiting the generality of clause (3)(c), in a proceeding pursuant to this section, a court may consider as reasonable grounds to suppose that person is dead evidence that:

(a) for a period of seven years or more a person has been missing; and

(b) the applicant has made reasonable efforts to locate that person.

2009, cM-20.01, s 15; 2015, cI-9.11, s 11-8; 2021,
c 17, s2.

Notice of application

16 A copy of every application pursuant to section 15 must be given to:

(a) if the application is not made by a property guardian of the person who is the subject of the application, the property guardian;

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- (b) if the application is not made by the public guardian and trustee, the public guardian and trustee;
- (c) if a property guardian has not been appointed, a property guardian appointed pursuant to *The Adult Guardianship and Co-decision-making Act*, or an attorney appointed pursuant to *The Powers of Attorney Act, 2002*, for the person who is the subject of the application;
- (d) the nearest relative of the person who is the subject of the application who is highest in the order of priority set out in clauses 3(1)(a) to (f) unless that nearest relative has consented in the prescribed form to the application; and
- (e) any other person that the court considers necessary.

2009, cM-20.01, s 16; 2018, c22, s 7.

Statement of objection

17(1) A person who is provided with a copy of the application pursuant to section 16 may, within 10 days after the last person is served, file a statement of objection with the court setting out the reasons he or she objects to the application.

(2) Any person who claims to have a sufficient interest in the estate of the person who is the subject of the application may file a statement of objection with the court within 10 days after the last person is served pursuant to section 16.

(3) A statement of objection mentioned in subsections (1) and (2) is to be in the prescribed form.

(4) A person filing a statement of objection pursuant to this section shall serve a copy of it on the applicant, the persons mentioned in section 16 and any person who consented in the prescribed form to the order requested in the application.

2009, cM-20.01, s 17.

Duty of executor or administrator

18 If an order has been made declaring that a person is presumed to be dead for all purposes or for the purpose of distributing his or her estate, and the executor or administrator of the estate of the person presumed to be dead subsequently believes or there are reasonable grounds for the executor or administrator to believe that the person is not dead, the executor or administrator shall not, after the time that the belief or reasonable grounds arise, deal with the estate or the remaining estate unless the presumption of death is confirmed by a further order made pursuant to section 15.

2009, cM-20.01, s 18.

Effect of presumption on property guardian and attorney

19 On the making of an order pursuant to section 15 presuming the death of a person, the following are terminated:

- (a) the powers of a property guardian;

(b) if a property guardian has not been appointed, the powers of a property guardian appointed pursuant to *The Adult Guardianship and Co-decision-making Act* for that person;

(c) if a property guardian has not been appointed, the powers of any attorney appointed by that person pursuant to *The Powers of Attorney Act, 2002*.

2009, cM-20.01, s 19.

Status of property if person later found alive

20(1) Subject to subsection (2), if a person who is presumed to be dead is, in fact, alive, any distribution of his or her property made in reliance on an order made pursuant to this Act, and, in the case of an order made pursuant to this Part not in contravention of section 15, is deemed to be a final distribution and to be the property of the person to whom it has been distributed as against the person presumed to be dead.

(2) If a person who is presumed to be dead is found by the court to be alive, the court may, on the application of any interested person, by order, give any directions that the court considers appropriate respecting the property of the person found to be alive and its preservation and return.

2009, cM-20.01, s 20.

**PART IV
General**

Property guardians are trustees

21 Every property guardian is a trustee.

2009, cM-20.01, s 21.

Annual accounting

22(1) Every property guardian shall:

(a) provide an annual accounting of the decisions made, actions taken and consents given respecting the estate of the missing person to:

(i) the local registrar of the court; and

(ii) the public guardian and trustee; and

(b) verify by affidavit the annual accounting required pursuant to this section.

(2) Every annual or other accounting required pursuant to this section must be in the prescribed form.

(3) If a property guardian does not provide an annual accounting pursuant to this section, the public guardian and trustee may request that the court review the order appointing the property guardian.

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- (4) Information provided pursuant to this section shall only be made available, on request, to:
- (a) persons to whom a copy of an application is given pursuant to section 4;
 - (b) the nearest relative mentioned in clause 4(2)(b) to whom a copy of an application pursuant to section 3 was given or who consented to that application; and
 - (c) any other person that the court directs.
- (5) Within six months after an order of presumption of death is made pursuant to section 15, the property guardian shall:
- (a) provide a final accounting of the decisions made, actions taken and consents given respecting the estate of the missing person to:
 - (i) the local registrar of the court; and
 - (ii) the public guardian and trustee; and
 - (b) verify by affidavit the final accounting required pursuant to this section.
- (6) If a property guardian does not provide a final accounting pursuant to this section, the public guardian and trustee may request that the court issue an order directing the property guardian to provide that final accounting.
- (7) The public guardian and trustee may carry out an investigation to ensure the accuracy of an annual accounting or final accounting pursuant to this section.

2009, cM-20.01, s22.

Effect of appointment of property guardian

23 An order appointing a property guardian for a missing person's estate terminates the following:

- (a) the powers of a property guardian appointed pursuant to *The Adult Guardianship and Co-decision-making Act* for the missing person;
- (b) the powers of any attorney appointed by the missing person pursuant to *The Powers of Attorney Act, 2002*;
- (c) any other appointment or authority given by the missing person pursuant to any Act or law with respect to his or her property.

2009, cM-20.01, s23.

Real property sold or distributed

24(1) A person purchasing real property in good faith and for value from a property guardian or a person beneficially entitled to the real property to whom that real property has been conveyed by a property guardian holds the property freed and discharged from all debts or liabilities of the missing person except those that are specifically charged on the property.

(2) Real property that has been conveyed by a property guardian to a person beneficially entitled to it continues to be liable for the debts of the missing person so long as it remains vested in that person, or in any person claiming under him or her not being a purchaser in good faith and for value, to the same extent as if it had remained vested in the property guardian.

(3) In the event of a sale or mortgage of the real property mentioned in subsection (2) in good faith and for value by the person beneficially entitled to it, he or she is personally liable for the debts mentioned in that subsection to the extent to which the real property was liable when vested in the property guardian.

2009, cM-20.01, s24.

Order re fees

25 The court may make an order setting a fee for services rendered by the property guardian by payment from time to time out of the estate of the missing person.

2009, cM-20.01, s25.

Application for advice or directions

26 A property guardian may apply to the court for advice or directions.

2009, cM-20.01, s26.

Act is indemnity

27(1) This Act and every order made pursuant to this Act are deemed to be full indemnities and discharges to any person for all acts and things done or permitted to be done pursuant to this Act or the order insofar as those acts or things relate to any property in which a missing person is interested, either in the missing person's own right or in trust.

(2) For the purposes of subsection (1), a person is not required to inquire into the propriety of an order or the jurisdiction of the court to make an order purporting to have been made pursuant to this Act.

2009, cM-20.01, s27.

Notice required to property guardian re judgments and executions

28 Unless 30 days' written notice of the intention to do so has been given to the property guardian, no person shall:

- (a) enter a judgment against a missing person in an action or proceeding brought or taken against the missing person before the date the property guardian was appointed or became property guardian; or
- (b) execute a judgment obtained against a missing person before the date the property guardian was appointed or became property guardian.

2009, cM-20.01, s28.

cM-20.01 MISSING PERSONS AND PRESUMPTION OF DEATH**Copies of orders to public guardian and trustee**

29 The local registrar of the court shall provide to the public guardian and trustee, without charge, a certified copy of:

- (a) every order appointing a person as a property guardian; and
- (b) every order made pursuant to section 13 or 15.

2009, cM-20.01, s 29.

Regulations

30 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) prescribing forms for the purposes of this Act;
- (c) prescribing an amount for the purposes of section 7;
- (d) for the purposes of section 8, prescribing information or classes of information as health information;
 - (d.1) prescribing any other entities or persons for the purposes of section 14.1;
 - (d.2) respecting applications for search orders and record access orders pursuant to subsection 14.2(2);
 - (d.3) respecting demands for records pursuant to section 14.5;
 - (d.4) respecting applications for orders pursuant to section 14.6;
 - (d.5) respecting annual reports pursuant to section 14.94;
 - (d.6) respecting the collection, use and retention of information and records obtained pursuant to this Act;
 - (d.7) respecting the service of orders pursuant to this Act;
 - (d.8) respecting the type of records to be kept and maintained pursuant to Part II.1.
- (e) prescribing any other matter or thing required or authorized by this Act to be prescribed in the regulations;
- (f) respecting any other matter or thing the Lieutenant Governor in Council considers necessary or expedient to carry out the intent of this Act.

2009, cM-20.01, s 30; 2018, c22, s 8.

PART V

Repeal, Transitional and Coming into Force**RSS 1978, cA-3 repealed**

31 *The Absentee Act* is repealed.

2009, cM-20.01, s31.

Transitional

32(1) In this section, “**former Act**” means *The Absentee Act* as that Act existed before the coming into force of this Act.

(2) On the repeal of the former Act pursuant to section 31:

(a) every person who was declared to be an absentee pursuant to the former Act is deemed to be a missing person for the purposes of this Act;

(b) every order declaring a person as an absentee pursuant to the former Act is deemed to be an order declaring the person as a missing person pursuant to this Act and that order may be dealt with as if it were made pursuant to this Act;

(c) every person who was appointed a committee to manage the property of a person who was declared to be an absentee pursuant to the former Act is deemed to be a person appointed as a property guardian pursuant to this Act, and that person:

(i) may exercise the powers conferred on a property guardian pursuant to this Act with respect to that person’s estate; and

(ii) shall fulfil the responsibilities imposed by this Act on a property guardian with respect to that person’s estate; and

(d) every order appointing a person as a committee pursuant to the former Act is deemed to be an order appointing the person as a property guardian pursuant to this Act and that order may be dealt with as if it were made pursuant to this Act.

2009, cM-20.01, s32.

Coming into force

33 This Act comes into force on proclamation.

2009, cM-20.01, s33.

