

# CAPACIDAD JURÍDICA Y DISCAPACIDAD

Proyecto a cargo de FUTUEX  
(Fundación Tutelar de Extremadura),  
Fundación Aequitas y Fundación  
Academia Europea de Yuste, en el  
marco del Congreso Permanente  
sobre Discapacidad y Derechos  
Humanos bajo la autoría de:  
Rafael de Lorenzo García  
Blanca Entrena Palomero  
Almudena Castro-Girona Martínez  
Miguel Ángel Cabra de Luna  
José Javier Soto Ruiz (Dirección)

Francisco J. Bariffi Artigue  
Agustina Palacios Rizzo (Recopilación y  
coordinación)

Prólogo: José Javier Soto Ruiz

CUADERNO DE TRABAJO N°16

NUEVA ZELANDA







## **CAPACIDAD JURÍDICA Y DISCAPACIDAD**







# **CAPACIDAD JURÍDICA Y DISCAPACIDAD**

**(Un estudio de Derecho Privado Comparado a la luz de  
la Convención Internacional sobre los Derechos de las  
Personas con Discapacidad)**

**CUADERNO DE TRABAJO N° 16 / NUEVA ZELANDA**



**Proyecto a cargo de FUTUEX (Fundación Tutelar de Extremadura), Fundación Aequitas y Fundación Academia Europea de Yuste, en el marco del Congreso Permanente sobre Discapacidad y Derechos Humanos bajo la autoría de:**

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## PRÓLOGO

*José Javier Soto Ruiz*

Con este tomo sobre Nueva Zelanda concluimos la primera fase de este proyecto, y se abre camino a la segunda, la de comparativa.

Quiero agradecer el esfuerzo de todos aquellos que han participado en este trabajo, especialmente de quienes con sus prólogos, artículos e introducciones han señalado aspectos esenciales que a partir de ahora han de ser abordados.

Muy especialmente a quienes han revisado la normativa, y comprobado que se trate de legislación en vigor. Intentaremos ahora mantener actualizada la normativa, ampliando a otras legislaciones, poniéndola a disposición de todos en la web.

Este es uno de los elementos esenciales del proyecto: proporcionando un material adecuado favorecer el conocimiento.

La dinámica que genera este conocimiento



contribuye a hacer cambios. Lo facilita el hecho de su aplicación en otros ordenamientos. Este es el reto de la segunda fase que a partir de ahora abordamos: conocer la aplicación y adecuación de la normativa, contrastar con la realidad, percibir su legitimidad desde el movimiento asociativo.

Concluimos las publicaciones en papel con la recopilación de Nueva Zelanda. Su lectura es especialmente interesante en relación a los mandatos de representación. La comparativa entre ésta legislación y otras como las de Australia, Francia, Usa, Canadá y España centrarán el debate de un grupo de expertos donde se analizará el alcance de la autonomía de la voluntad y de la capacidad.

En la web abordaremos asimismo la traducción de las recopilaciones, y se harán públicos los debates comparativos, comenzando con los del derecho común y foral en España, al que seguirá la comparativa entre la legislación de nuestro país y Portugal, y así sucesivamente... abriéndose de este modo al conocimiento que proporcionarán profesionales del derecho y las personas con discapacidad.

Quienes han considerado necesario conocer, estar allí donde podía haber lugar a un cambio



normativo que contribuya a cambios necesarios, y las instituciones que lo han hecho posible, tienen hoy el aval de una Convención Internacional que es fruto de su visión amplia y plural, y de su compromiso.

Queda ahora la realidad de su aplicación. Y aquí ese compromiso sigue siendo necesario.

Luchar por la justicia, por la igualdad, por la dignidad de las personas sigue siendo necesario.

Olivenza, 15 de Agosto de 2009.



## NUEVA ZELANDA

### 1) Breve descripción del sistema legal

#### *A) Sistema de gobierno*

Nueva Zelanda es una democracia parlamentaria que pertenece a la Mancomunidad Británica de Naciones (Commonwealth) por lo que mantiene una vinculación política con la Corona Británica.

Nueva Zelanda no cuenta con una constitución formal aunque existe una Ley Constitucional de 1986 (*Constitution Act 1986*) que regula el sistema de gobierno y sus poderes. El gobernador general (que es investido directamente por la monarquía británica) tiene el poder de nombrar y deponer al primer ministro, y disolver el parlamento. Asimismo, también preside el Consejo Ejecutivo, una especie de comité formal que reúne a todos los ministros de la Corona. El parlamento denominado Cámara de Representantes (*House of Representatives*) es unicameral y está compuesto por 120 miembros.

### ***B) Sistema Judicial***

El sistema judicial neozelandés consta de cuatro niveles: Tribunales de Distrito (*District Courts*), Tribunales de Segunda Instancia (*High Courts*), el Tribunal de Apelaciones (*Court of Appeal*) y la Suprema Corte, que en 2004 reemplazó al Comité Judicial del Privy Council, con sede en Londres, como la última instancia de apelación.

Hay diversos tribunales especializados en Nueva Zelanda, incluyendo el Tribunal de lo Familiar (*Family Court*), el Tribunal del Medio Ambiente (*Environment Court*) y el Tribunal de lo Laboral (*Employment Court*). El Tribunal de Waitangi y el Tribunal de Tierras Maoríes constituyen foros legales especializados en materia de derechos indígenas de propiedad y del Tratado de Waitangi.

### ***C) Sistema legal***

El sistema legal se desarrolló a partir de las leyes británicas. Gran parte de las leyes neozelandesas está codificada, pero el derecho consuetudinario inglés sigue siendo importante en muchos aspectos. En materia de derecho privado las principales leyes son: Protection of Personal and Property Rights Act 1988; Wills Act 2007; Property Law Act 2007; Contracts

(Privity) Act 1982; Care of Children Act 2004; Marriage Act 1955; Adoption Act 1955, Age of Majority Act 1970.

## **2)Concepto de discapacidad y de persona con discapacidad**

**Carta de Derechos Humanos de Nueva Zelanda de 1993 (*Human Rights Act 1993 No 82 (as at 01 October 2008), Public Act*)**

### **21. Causas prohibidas de discriminación (Prohibited grounds of discrimination)**

1) For the purposes of this Act, the prohibited grounds of discrimination are—

(...)

(h) Disability, which means—

(i) Physical disability or impairment:

(ii) Physical illness:

(iii) Psychiatric illness:

(iv) Intellectual or psychological disability or impairment:

(v) Any other loss or abnormality of psychological, physiological, or anatomical structure or function:

(vi) Reliance on a guide dog, wheelchair, or other remedial means:

(vii) The presence in the body of organisms capable of causing illness:

(...)

**Ley de Seguridad Social de las Personas con Discapacidad de 1975 (*Disabled Persons Community Welfare Act 1975 No 122 (as at 03 September 2007), Public Act*)**

**2. Interpretación (Interpretation)**

In this Act, unless the context otherwise requires,—

(...)

Disabled person means any person who suffers from physical or mental disablement to such a degree that he is seriously limited in the extent to which he can engage in the activities, pursuits, and processes of everyday life.

(...)

**Ley de Salud Mental (Evaluación y Tratamiento Obligatorio) de 1992. (*Mental Health (Compulsory Assessment and Treatment) Act 1992 No 46 (as at 01 July 2009), Public Act*)**

**2. Interpretación (Interpretation)**

(1) In this Act, unless the context otherwise requires,—

(...)

Mental disorder, in relation to any person, means an abnormal state of mind (whether of a continuous or an intermittent nature), charac-

terised by delusions, or by disorders of mood or perception or volition or cognition, of such a degree that it—

(a) Poses a serious danger to the health or safety of that person or of others; or

(b) Seriously diminishes the capacity of that person to take care of himself or herself;—

and mentally disordered, in relation to any such person, has a corresponding meaning

(...)

**Ley de Discapacidad Intelectual (Cuidados y Rehabilitación Obligatoria) de 2003 (*Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003*)**

**7. Significado de discapacidad intelectual (Meaning of intellectual disability)**

(1) A person has an intellectual disability if the person has a permanent impairment that—

(a) results in significantly sub-average general intelligence; and

(b) results in significant deficits in adaptive functioning, as measured by tests generally used by clinicians, in at least 2 of the skills listed in subsection (4); and

(c) became apparent during the developmental period of the person.

(2) Wherever practicable, a person's general intelligence must be assessed by applying stan-

dard psychometric tests generally used by clinicians.

(3) For the purposes of subsection (1)(a), an assessment of a person's general intelligence is indicative of significantly sub-average general intelligence if it results in an intelligence quotient that is expressed—

(a) as 70 or less; and

(b) with a confidence level of not less than 95%.

(4) The skills referred to in subsection (1)(b) are—

(a) communication:

(b) self-care:

(c) home living:

(d) social skills:

(e) use of community services:

(f) self-direction:

(g) health and safety:

(h) reading, writing, and arithmetic:

(i) leisure and work.

(5) For the purposes of subsection (1)(c), the developmental period of a person generally finishes when the person turns 18 years.

(6) This section is subject to section 8.

## **8. Personas que no tienen una discapacidad intelectual (Persons who do not have intellectual disability)**

(1) A person does not have an intellectual disability simply because the person—

- (a) has a mental disorder; or
- (b) has a personality disorder; or
- (c) has an acquired brain injury; or
- (d) does not feel shame or remorse about the harm that person causes to others.

(2) To avoid doubt, if—

(a) a person does not have an intellectual disability, the provisions of this Act relating to compulsory care cannot apply to the person, whether or not the person has any other disability:

(b) a person does have an intellectual disability, those provisions are not prevented from applying to the person simply because the person also has 1 or more of the characteristics described in subsection (1)(a) to (d).

### **3) Régimen general de capacidad jurídica**

**Carta de Derechos de Nueva Zelanda de 1990 (*New Zealand Bill of Rights Act 1990 No 109 (as at 03 September 2007), Public Act*)**

#### **5. Limitaciones justificadas (Justified limitations)**

Subject to section 4 of this Bill of Rights, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable

limits prescribed by law as can be demonstrably justified in a free and democratic society.

**6. Preferencia de las intepretaciones afines a la Carta de Derechos (Interpretation consistent with Bill of Rights to be preferred)**

Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.

***Ley de Mayoría de Edad de 1970 (Age of Majority Act 1970 No 137 (as at 03 September 2007), Public Act)***

**4. Mayoría de Edad (Age of majority)**

(1) For all the purposes of the law of New Zealand a person shall attain full age on attaining the age of 20 years.

(2) In the absence of a definition or of any indication of a contrary intention, the expressions adult, full age, infant, infancy, minor, minority, full capacity, majority, and similar expressions in any enactment or instrument shall be construed in accordance with subsection (1) of this section.

(3) This section shall not affect any reference in any enactment or instrument to an age expressed in years.

**Ley de Protección de los Derechos Personales y Patrimoniales de 1988 (*Protection of Personal and Property Rights Act 1988 No 4 (as at 01 July 2009), Public Act*)**

**4. Capacidad jurídica de las personas sujetas de ordenes en virtud de la presente Ley (Legal capacity of persons subject to orders under this Act)**

Except as provided by or under this Act or any other enactment, the rights, privileges, powers, capacities, duties, and liabilities of any person subject to an order under this Act whether in a personal, official, representative, or fiduciary capacity, shall, for all the purposes of the law of New Zealand (whether substantive, procedural, evidential, or otherwise), be the same as those of any other person.

**5. Presunción de competencia [ámbito personal] (Presumption of competence)**

For the purposes of this Part of this Act, every person shall be presumed, until the contrary is proved, to have the capacity—

(a) To understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare; and

(b) To communicate decisions in respect of those matters.

(...)

**24. Presunción de competencia [ámbito patrimonial] (Presumption of competence)**

For the purposes of this Part of this Act, every person shall be presumed, until the contrary is proved, to be competent to manage his or her own affairs in relation to his or her property.

**Ley de Salud Mental (Evaluación y Tratamiento Obligatorio) de 1992. (*Mental Health (Compulsory Assessment and Treatment) Act 1992 No 46 (as at 01 July 2009), Public Act*)**

**4. Regla general respecto a la posibilidad de recibir evaluación y tratamiento (*General rules relating to liability to assessment or treatment*)**

The procedures prescribed by Parts 1 and 2 of this Act shall not be invoked in respect of any person by reason only of—

(...)

(e) Intellectual disability.

**4) Régimen legal de incapacitación o limitación de la capacidad de obrar de las personas con discapacidad**

***A) De la protección de derechos personales***

**Ley de Protección de los Derechos Personales y Patrimoniales de 1988 (*Protection of Personal and Property Rights Act 1988 No 4 (as at 01 July 2009), Public Act*)**

**6. Competencia del Tribunal (Jurisdiction of Court under this Part)**

(1) Subject to subsection (2) of this section, a Court shall have jurisdiction under this Part of this Act in respect of any person who is ordinarily resident in New Zealand and who—

(a) Lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare; or

(b) Has the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare, but wholly lacks the capacity to communicate decisions in respect of such matters.

(2) Subject to section 12(3), no Court has jurisdiction under this Part in respect of a person who has not attained the age of 18 years and who—

(a) is not, and never has been, married or in a civil union; or

(b) is 16 years old or older and is not living, and never has lived, with another person as a de facto partner

(3) The fact that the person in respect of whom the application is made for the exercise of the Court's jurisdiction has made or is intending to make any decision that a person exercising ordinary prudence would not have made or would not make given the same circumstances is not in itself sufficient ground for the exercise of that jurisdiction by the Court.

**7. Personas legitimadas para ejercer una acción ante el Tribunal (Persons who may apply for exercise of Court's jurisdiction)**

Any one or more of the following persons may apply to a Court for the exercise of its jurisdiction under this Part of this Act:

(a) A person who seeks the exercise of the Court's jurisdiction in respect of himself or herself:

(b) A relative or an attorney of the person in respect of whom the application is made:

(c) A social worker:

(d) A medical practitioner:

(e) A representative of any group that is engaged, otherwise than for commercial gain, in the provision of services and facilities for the welfare of persons in relation to whom the Court has jurisdiction in accordance with section 6 of this Act:

(f) where the exercise of the Court's jurisdiction is sought in respect of any person

who is a patient or a resident in any place that provides hospital care, rest home care, or residential disability care within the meaning of the Health and Disability Services (Safety) Act 2001, the principal manager of that place:

(g) Where the exercise of the Court's jurisdiction is sought in respect of any person subject to a property order, the manager of that person's property:

(h) Any other person, with leave of the Court.

**8. Principales objetivos del Tribunal al ejercer su jurisdicción bajo la presente Parte (Primary objectives of Court in exercise of jurisdiction under this Part)**

The primary objectives of a Court on an application for the exercise of its jurisdiction under this Part of this Act shall be as follows:

(a) To make the least restrictive intervention possible in the life of the person in respect of whom the application is made, having regard to the degree of that person's incapacity:

(b) To enable or encourage that person to exercise and develop such capacity as he or she has to the greatest extent possible.

**9. Procedimiento a seguir por el Tribunal (Course to be followed by Court)**

(1) In considering an application for the exercise of its jurisdiction under this Part of this

Act, a Court shall determine whether or not the person in respect of whom the application is made is a person in relation to whom it has jurisdiction under this Part in accordance with section 6 of this Act.

(2) If the Court is satisfied that the person in respect of whom the application is made is a person in relation to whom it has jurisdiction under this Part of this Act in accordance with section 6 of this Act, the Court shall determine whether or not it should make an order under section 10 or section 11 or section 12 of this Act, and (if so) what kind of order or orders, having regard to the primary objectives specified in section 8 of this Act.

#### **10. Tipo de órdenes (Kinds of order)**

(1) On an application for the exercise of a Court's jurisdiction under this Part of this Act in respect of any person, the Court may, subject to subsection (2) of this section, make any one or more of the following orders:

(a) [Repealed]

(b) An order that any parent of the person make suitable arrangements for the personal care of the person after the parent's death:

(c) An order that the arrangements made by any parent of the person for the personal care of the person after the parent's death be observed, or be varied in any particular specified in the order:

(d) An order that the person shall enter, attend at, or leave an institution specified in the order, not being a psychiatric hospital or a licensed institution under the Mental Health Act 1969:

(e) An order that the person be provided with living arrangements of a kind specified in the order:

(f) An order that the person be provided with medical advice or treatment of a kind specified in the order:

(g) An order that the person be provided with educational, rehabilitative, therapeutic, or other services of a kind specified in the order:

(h) An order that the person shall not leave New Zealand without the permission of the Court, or shall leave New Zealand only on conditions specified in the order:

(i) An order appointing a person named in the order as next friend or guardian ad litem for the person for the purposes of any proceedings in a District Court:

(j) An order under section 11 of this Act that a person named in the order administer any item of property specified in the order:

(k) An order under section 12 of this Act appointing a welfare guardian for the person.

(2) No person (other than the person in respect of whom the application is made) shall be bound by a personal order unless that person is a party to the proceedings in which the order is made.

(3) In any order made under any of paragraphs (a) to (i) of subsection (1) of this section, the Court may specify a date by which the order is to be reviewed by the Court; and, if it does so, the Court shall also specify in the order the person or persons who is or are to be responsible for applying to the Court for a review of the order before the specified date.

(4) Where a Court makes any personal order, it may also make such other orders and give such directions as may be necessary or expedient to give effect, or better effect, to the personal order.

#### **11. Orden de administración patrimonial (Order to administer property)**

(1) Where, on an application to a Court for the exercise of its jurisdiction under this Part of this Act,—

(a) The person in respect of whom the application is made is not subject to a property order; and

(b) The Court considers that the making of a property order or the giving of a direction under section 64(3) of this Act would not be in accordance with section 8 of this Act; and

(c) The Court considers the making of an order under this section necessary in all the circumstances,—

the Court may, subject to subsection (2) of this

section, by order, appoint any person (but only 1 person) named in the order to administer, on behalf of the person in respect of whom the application is made, any property or income or benefit, belonging to the person or to which that person is or may become entitled, and specified in the order.

(2) No order may be made under this section in respect of either—

(a) Any item of property that exceeds \$2,000 in value, or such other amount as is, from time to time, prescribed by Order in Council for the purposes of this paragraph; or

(b) Any income or benefit in excess, in any 1 year, of \$20,000, or such other amount as is, from time to time, prescribed by Order in Council for the purposes of this paragraph.

(3) Every person who administers any property, income, or benefit pursuant to an order made under this section shall do so in such a way as to enable or encourage the person for whom he or she is acting to exercise and develop such capacity as that person has to the greatest extent possible.

(4) In any order made under this section, the Court shall specify a date, being not later than 3 years after the date of the order, by which the person appointed to administer the property is required to apply to the Court for a review of the order.

(5) The provisions of subsections (3) to (7) of section 31, sections 37, 43, 44, 49, and 50 (so far as it relates to expenses), and paragraphs (a), (b), and (e) of section 52 of this Act, so far as they are applicable and with any necessary modifications, shall apply to every person appointed to administer any property under this Act.

**12. Posibilidad del Tribunal de designar un tutor (Court may appoint welfare guardian)**

(1) Subject to the succeeding provisions of this section, on an application for the exercise of a Court's jurisdiction under this Part of this Act, the Court may make an order appointing a welfare guardian for the person in respect of whom the application is made in relation to such aspect or aspects of the personal care and welfare of that person as the Court specifies in the order.

(2) A Court shall not make an order under subsection (1) of this section unless it is satisfied—

(a) That the person in respect of whom the application is made wholly lacks the capacity to make or to communicate decisions relating to any particular aspect or particular aspects of the personal care and welfare of that person; and

(b) That the appointment of a welfare guardian is the only satisfactory way to ensure that appropriate decisions are made relating to

that particular aspect or those particular aspects of the personal care and welfare of that person.

(3) A Court may make an order under subsection (1) in respect of a person of the kind referred to in section 6(2) if, but only if,—

(a) No parent or guardian of that person is then living; or

(b) No parent or guardian of that person is in regular contact with that person, and the Court is satisfied in all the circumstances that it would be in the interests of that person to appoint a welfare guardian for that person.

(4) No person under the age of 20 years, and no body corporate, shall be appointed a welfare guardian under this section.

(5) A Court shall not appoint any person as a welfare guardian under this section unless it is satisfied—

(a) That the proposed appointee is capable of carrying out the duties of a welfare guardian in a satisfactory manner, having regard to the needs of the person in respect of whom the application is made, and the relationship between that person and the proposed appointee; and

(b) That the proposed appointee will act in the best interests of the person in respect of whom the application is made; and

(c) That there is unlikely to be any conflict between the interests of the proposed appointee and those of the person in respect of whom the application is made; and

(d) The proposed appointee consents to the appointment.

(6) The Court shall not appoint more than 1 welfare guardian for any person unless, in the exceptional circumstances of the case, the Court is satisfied that it would be in the interests of that person to do so.

(7) So far as is practicable in the circumstances, a Court shall ascertain the wishes of the person in respect of whom the application is made when determining whom to appoint as welfare guardian under this section.

(8) In any order under this section, the Court shall specify a date, being not later than 3 years after the date of the order, by which the welfare guardian is required to apply to the Court for a review of the order.

**13. Posibilidad del Tribunal de realizar una recomendación en lugar de una orden (Court may make recommendations instead of order)**

(1) On an application for the exercise of a Court's jurisdiction under this Part of this Act, the Court may, instead of making any order under sections 10 to 12 of this Act, make such recommendations as it thinks fit relating to the course of action that it considers should be followed by the parties or any of them or by the person in respect of whom the application is made.

(2) In any case to which subsection (1) of this section applies, the Court shall formally dismiss the application but shall reserve leave to the parties and the person in respect of whom the application is made to apply to the Court for directions relating to the implementation of any of the Court's recommendations.

(3) No recommendation made under this section shall be binding on any person.

#### **14. Órdenes provisionales (Interim orders)**

(1) On an application to a Court for the exercise of its jurisdiction under this Part of this Act, the Court may, either on the motion of the applicant or of its own motion, make an interim order under section 10 or section 11 or section 12 of this Act, pending the final determination of the application.

(2) Every party to the application, and the person in respect of whom the application is made, shall be given notice of any interim order made pursuant to this section, and shall be entitled to be heard on it.

(3) No interim order made pursuant to this section shall continue in force for more than 6 months after the date on which it is made.

(4) An interim order made pursuant to this section may be varied, discharged, or enforced in the same manner as if it were a final order of a Family Court.

(5) After hearing the parties, and the person in respect of whom the application is made, on any interim order made pursuant to this section, or such of them as wish to be heard, the Court may—

(a) Make one but only one further interim order; or

(b) Make a final order; or

(c) Dismiss the application.

**15. Orden por consentimiento (Orders by consent)**

On an application for the exercise of a Court's jurisdiction under this Part of this Act, the Court may make any order under section 10 or section 11 or section 12 or section 14 of this Act with the consent of each party to the proceedings, if the Court is satisfied that the person in respect of whom the application is made understands the nature and foresees the consequences of the order and consents to it.

**16. Personas susceptibles de una orden patrimonial (Persons subject to property order)**

(1) Where an application for the exercise of a Court's jurisdiction under this Part of this Act is made in respect of any person subject to a property order, any order made by the Court under section 10 or section 12 or section 14 of

this Act shall be binding on the manager of that person's property; and, in the event of any conflict arising between the powers and duties of the manager under Part 4 of this Act and the terms of the personal order, the personal order shall prevail.

(2) In any case to which subsection (1) of this section applies, the manager may apply to a Court for the variation, suspension, or discharge of the personal order, or for directions relating to its implementation.

### **17. Caducidad de las órdenes (Expiry of orders)**

(1) Except as provided in subsections (2) and (3) of this section, a personal order shall expire—

(a) On the date, or at the close of the period, specified in that behalf by the Court in the order; or

(b) If no such provision is made in the order,—

(i) On the expiry of a period of 12 months beginning with the date of the order; or

(ii) When the effect of the order is spent,—  
whichever is the earlier.

(2) Subject to subsection (3) of this section, every personal order in which provision is made for the review of the order before a specified date shall expire on that date unless, on a review of the order, the Court decides that it should continue beyond that date.

(3) Where, in any case to which subsection (2) of this section applies, an application for a review of the order is made but not determined before the specified date, the order shall remain in force pending the determination of the application.

***B)De la protección de derechos patrimoniales***

**Ley de Protección de los Derechos Personales y Patrimoniales de 1988 (*Protection of Personal and Property Rights Act 1988 No 4 (as at 01 July 2009), Public Act*)**

**25.Competencia del Tribunal (Jurisdiction of Court under this Part)**

(1) A Court shall have jurisdiction under this Part of this Act in respect of any property owned by any person—

(a) Who is domiciled or is ordinarily resident in New Zealand; and

(b) Who, in the opinion of the Court, lacks wholly or partly the competence to manage his or her own affairs in relation to his or her property.

(2) A Court shall also have jurisdiction under this Part of this Act in respect of any property situated in New Zealand and owned by any person—

(a) Who is not domiciled nor is ordinarily resident in New Zealand; and

(b) Who, in the opinion of the Court, lacks wholly or partly the competence to manage his or her own affairs in relation to his or her property so situated.

(3) The fact that the person in respect of whom an application is made for the exercise of the Court's jurisdiction is managing or is intending to manage his or her own affairs in relation to his or her property in a manner that a person of ordinary prudence would not adopt given the same circumstances is not in itself sufficient ground for the exercise of that jurisdiction by the Court.

(4) In determining whether or not it should exercise its jurisdiction under this Part of this Act in relation to any person, a Court may have regard to the degree to which the person is subject, or is liable to be subjected, to undue influence in the management of his or her own affairs in relation to his or her property.

**26. Personas legitimadas para ejercer una acción ante el Tribunal (Persons who may apply for exercise of Court's jurisdiction)**

Any one or more of the following persons may apply to a Court for the exercise of its jurisdiction under this Part of this Act:

(a) A person who seeks the exercise of the Court's jurisdiction in respect of himself or herself:

(b) A relative or an attorney of the person in respect of whom the application is made:

(c) A social worker:

(d) A medical practitioner:

(e) A trustee corporation:

(f) A representative of any group that is engaged, otherwise than for commercial gain, in the provision of services and facilities for the welfare of persons in relation to whom the Court has jurisdiction under this Act in accordance with section 25 of this Act:

(g) where the exercise of the Court's jurisdiction is sought in respect of any person who is a patient or a resident in any place that provides hospital care, rest home care, or residential disability care within the meaning of the Health and Disability Services (Safety) Act 2001, the principal manager of that place:

(h) Where a welfare guardian has been appointed for the person in respect of whom the application is made, that welfare guardian:

(i) Any other person, with leave of the Court.

**27. Necesidad de aplicación respecto de pacientes en hospitales etc. (Need for application in respect of hospital patient, etc, may be investigated)**

(1) Where—

(a) Any person is or has been admitted to any hospital, home, or other institution as a patient or resident; and

(b) The superintendent, licensee, supervisor, or other person in charge of the hospital, home, or other institution considers—

(i) That the patient or resident may be a person in relation to whom a Court has jurisdiction under this Part of this Act; and

(ii) That it may be desirable in the interests of the patient or resident that a manager be appointed under this Part of this Act in respect of any property owned by the patient or resident,—

the superintendent, licensee, supervisor, or other person in charge may give notice of the case to the Registrar of the Court.

(2) On receiving any notice under subsection (1) of this section, the Registrar may refer the matter to a trustee corporation with a request that the corporation investigate the case and report to the Registrar on—

(a) Whether any person described in section 26 of this Act is intending to make an application to the Court for the exercise of its jurisdiction under section 25 of this Act, or to a trustee corporation under section 32 or section 33 of this Act, in respect of any property owned by the patient or resident; and

(b) If no such person is intending to make such an application, whether the trustee corporation considers that such an application would be desirable in the interests of the patient.

(3) If the trustee corporation—

(a) Finds that no person described in section 26 of this Act intends to make such an application; and

(b) Considers that the making of such an application would be desirable in the interest of the patient; and

(c) Does not intend to make such an application itself,—

the trustee corporation may report accordingly to the Registrar.

(4) On receiving a report under subsection (3) of this section, the Registrar shall refer the matter to a Judge who may give to the Registrar all such directions as the Judge considers appropriate to have the matter drawn to the attention of such person or persons described in section 26 of this Act as the Judge thinks fit.

**28. Principales objetivos del Tribunal al ejercer su jurisdicción bajo la presente Parte (Primary objectives of Court in exercise of jurisdiction under this Part)**

The primary objectives of a Court on an application for the exercise of its jurisdiction under this Part of this Act shall be as follows:

(a) To make the least restrictive intervention possible in the management of the affairs of the person in respect of whom the application is made in relation to his or her property, having regard to the degree of that person's lack of competence:

(b) To enable or encourage that person to exercise and develop such competence as he or she has to manage his or her own affairs in relation to his or her property to the greatest extent possible.

**29. Procedimiento a seguir por el Tribunal (Course to be followed by Court)**

(1) In considering an application for the exercise of its jurisdiction under this Part of this Act, a Court shall determine whether or not the person in respect of whom the application is made is a person in relation to whom it has jurisdiction under this Part in accordance with section 25 of this Act.

(2) If the Court is satisfied that the person in respect of whom the application is made is a person in relation to whom it has jurisdiction under this Part of this Act in accordance with section 25 of this Act, the Court shall determine whether or not to make an order under section 31 of this Act, and (if so) in relation to what property, having regard to the primary objectives specified in section 28 of this Act.

(3) If the Court decides to make an order under section 31 of this Act in relation to any property, it shall determine which of the rights and powers specified in clause 1 of Schedule 1 to this Act the manager is to have in respect of that property, what other rights and powers (if any) the manager is to have in respect of that property, and what restrictions (if any) are to be imposed on the exercise of any such rights and powers.

### **30. Tipo de órdenes (Kinds of order)**

(1) Where a Court is satisfied—

(a) That an application for the exercise of its jurisdiction under this Part of this Act has been made or is to be made in relation to any person; and

(b) That there are reasonable grounds for believing that that person may be a person in relation to whom a Court has jurisdiction under this Part of this Act in accordance with section 25 of this Act; and

(c) That it is in the best interests of that person that urgent provision be made for the protection of his or her property or any part of it pending the final determination of the application for the exercise of the Court's jurisdiction,—

the Court may make a temporary order under this section.

(2) A temporary order may be made on the application of any person specified in section 26 of this Act.

(3) It shall not be necessary to serve a copy of an application for a temporary order on the person in respect of whom the order is sought, nor shall that person be entitled to attend, or be heard, or call or cross-examine witnesses in respect of the application, unless the Court otherwise orders.

(4) Nothing in sections 66 to 73 of this Act shall apply in respect of an application for a temporary order under this section.

(5) If a Court makes a temporary order, it shall appoint as temporary manager such fit and proper person (being a person who would be eligible for appointment as manager under section 31 of this Act) to take possession and control of the property of the person in respect of whom the order is made, or such of that person's property as may be specified in the order.

(6) Where a Court decides to make a temporary order, sections 16, 31, 35 to 53, and 57 of this Act shall apply with any necessary modifications.

(7) No temporary order made pursuant to this section shall continue in force for more than 3 months after the date on which it is made.

(8) A temporary order made pursuant to this section may be varied, discharged, or enforced in the same manner as if it were a final order of a Family Court.

### **31. Designación de un administrador (Appointment of manager)**

(1) Subject to the succeeding provisions of this section and to sections 31A and 31B of this Act, on an application for the exercise of a Court's jurisdiction under this Part of this Act, the Court may make an order appointing one or more suitable persons (whether or not the person or persons proposed in the application) to act as manager of the property, or any specified part of the property, of the person in respect of whom the application is made.

(2) Where the Court appoints 2 or more managers, their responsibility shall be jointly held, unless the Court orders otherwise.

(3) No person under the age of 20 years, and no body corporate other than a trustee corporation, shall be appointed a manager under this section.

(4) Where the person in respect of whom the application for the exercise of the Court's jurisdiction is made is a patient or resident of a hospital, home, or other institution, the superintendent, licensee, supervisor, or other person in charge of the hospital, home, or other institution shall not be appointed a manager under this section.

(5) The Court shall not appoint any person a manager under this section unless it is satisfied—

(a) That the proposed appointee is capable of carrying out the duties of a manager in a satisfactory manner, having regard to the needs of the

person in respect of whom the application is made, and the relationship between that person and the proposed appointee; and

(b) That the proposed appointee will act in the best interests of the person in respect of whom the application is made; and

(c) The proposed appointee consents to the appointment.

(6) In determining whom to appoint as manager under this section, a Court shall take into account any likely conflict between the interests of the proposed appointee and those of the person in respect of whom the application is made.

(7) So far as is practicable in the circumstances, a Court shall ascertain the wishes of the person in respect of whom the application is made when determining whom to appoint as manager under this section.

(8) In any order made under this section, the Court shall specify a date, being not later than 3 years after the date of the order, by which the manager is required to apply to the Court for a review of the order.

(...)

**32. Aplicación a empresa fiduciaria para actuar como administrador (Application to trustee corporation to act as manager)**

(1) Any person who—

(a) Has attained the age of 18 years; and  
(b) Is domiciled or is ordinarily resident in New Zealand; and

(c) Considers that he or she lacks wholly or partly the competence to manage his or her own affairs in relation to his or her property,—

may apply in accordance with the succeeding provisions of this section to a trustee corporation to act as manager of that person's property or of any part of it.

(2) Every application under this section shall be in writing, and shall—

(a) Contain particulars of the person's lack of competence to manage his or her own affairs in relation to his or her property; and

(b) Specify the property of the applicant, and the rights and powers in respect of that property, of which the applicant wishes the trustee corporation to assume control; and

(c) Be accompanied by—

(i) certificates from 2 medical practitioners (at least 1 of whom must be independent of the applicant, or a relative of the applicant) as to the extent of the applicant's lack of competence to manage his or her own affairs in relation to his or her property; and

(ii) A statutory declaration by the applicant that the applicant has received independent legal advice about, and understands the nature, purpose, and consequences of, the application

and the applicant's right under section 34(c) of this Act to declare that the trustee corporation shall no longer act as manager; and

(d) Be made to the trustee corporation within 30 days after the date of the earlier of the 2 medical certificates referred to in paragraph (c)(i) of this subsection, or of the date of the statutory declaration referred to in paragraph (c)(ii) of this subsection, whichever is the earlier.

(3) If the trustee corporation is satisfied that—

(a) The applicant is not wholly competent to manage his or her own affairs in relation to his or her property; and

(b) It is in the best interests of that person that a manager act for that person; and

(c) The applicant seeks to have the trustee corporation assume control of the property of the applicant, and of the applicant's rights and powers in respect of that property (as specified in the application) only to the extent necessary having regard to the degree of the applicant's lack of competence,—

the trustee corporation may accept the application and file a copy of it with a Court within 30 days after the making of the application.

(4) The trustee corporation shall make such inquiries and obtain such reports as it thinks necessary for the purposes of subsection (3) of this section.

(5) On the filing of a copy of an application under subsection (3) of this section, the trustee corporation shall become the manager of the property specified in the application and shall have and may exercise in respect of that property the rights and powers specified in the application.

**33. Aplicación a empresa fiduciaria en relación con cuantías menores (Application to trustee corporation in respect of small estates)**

(1) A person who may apply for an order under any of paragraphs (b) to (d) and (f) to (h) of section 26 of this Act may apply to a trustee corporation to act as manager for any other person in respect of any property of that other person, the gross value of which does not exceed \$100,000 or such other amount as is, from time to time, prescribed by Order in Council for the purposes of this subsection.

(2) No application may be made under subsection (1) of this section in relation to any property in respect of which a Court does not have jurisdiction under this Part of this Act.

(3) Every application under this section shall be in writing, and shall—

(a) Contain particulars of the person's lack of competence to manage his or her own affairs in relation to his or her property; and

(b) Specify the property of the person in respect of whom the application is made, and the rights and powers in respect of that property, of which the applicant wishes the trustee corporation to assume control; and

(c) be accompanied by certificates from 2 medical practitioners (at least 1 of whom must be independent of the applicant and the person in respect of whom the application is made) as to whether or not that person—

(i) lacks the competence to manage his or her own affairs in relation to his or her property, and, if so, to what extent; and

(ii) is able to understand the nature, purpose, and consequences of the application; and

(d) Where a certificate referred to in paragraph (c) of this subsection indicates that the person in respect of whom the application is made is able to understand the nature, purpose, and consequences of the application, be accompanied by a statutory declaration by the person that he or she has received independent legal advice about, and understands the nature, purpose, and consequences of, the application and that person's right under section 34(c) of this Act to declare that the trustee corporation shall no longer act as manager; and

(e) Be made to the trustee corporation within 30 days after the date of the earlier of the 2 medical certificates referred to in paragraph (c)

of this subsection or of the date of any statutory declaration referred to in paragraph (d) of this subsection, whichever is the earlier.

(4) If the trustee corporation is satisfied that—

(a) The person in respect of whom the application is made is not wholly competent to manage his or her own affairs in relation to his or her property; and

(b) It is in the best interests of that person that a manager act for that person; and

(c) The applicant seeks to have the trustee corporation assume control of the property of that person, and of that person's rights and powers in respect of that property (as specified in the application) only to the extent necessary having regard to the degree of that person's lack of competence,—

the trustee corporation may accept the application and file a copy of it with a Court within 30 days after the making of the application.

(5) The trustee corporation shall make such inquiries and obtain such reports as it thinks necessary for the purposes of subsection (4) of this section.

(6) On the filing of a copy of an application under subsection (4) of this section, the trustee corporation shall become the manager of the property specified in the application and shall have and may exercise in respect of that property the rights and powers specified in the application.

(7) If, after filing a copy of an application under subsection (6) of this section, the gross value of the person's property is found to exceed \$120,000 or such other amount as is, from time to time, prescribed by Order in Council for the purposes of this subsection at the time of such filing, the trustee corporation shall file in the Court a memorandum stating that fact, and seeking the leave of the Court to withdraw the application.

**34. Cuando una persona cesa de estar sujeta a una orden patrimonial (When a person ceases to be subject to property order)**

(1) A person shall cease to be subject to a property order where—

(a) The person dies; or

(b) The Court discharges the property order under section 87 of this Act; or

(c) In any case where a trustee corporation is acting as manager pursuant to section 32 or section 33 of this Act, 7 days after the person for whom the corporation is acting, by notice in writing to the corporation (a copy of which notice the corporation shall forthwith file with the Court) declares that the corporation shall no longer act as manager.

(2) Where—

(a) A trustee corporation is acting as mana-

ger pursuant to section 32 or section 33 of this Act; and

(b) The trustee corporation receives from the person for whom it is so acting a notice of a kind referred to in subsection (1)(c) of this section; and

(c) The trustee corporation knows that a welfare guardian or an attorney is acting for that person,—

the trustee corporation shall inform the welfare guardian or attorney of the receipt of the notice.

***C)De la reglas de procedimiento sobre órdenes judiciales patrimoniales y personales***

**Ley de Protección de los Derechos Personales y Patrimoniales de 1988 (*Protection of Personal and Property Rights Act 1988 No 4 (as at 01 July 2009), Public Act*)**

**63. Requisito de copia de la solicitud (Service of copy of application required)**

(1) Where an application is made for the exercise of a Court's jurisdiction under this Act, a copy of the application shall be served on the following persons:

(a) Subject to subsection (2) of this section, the person in respect of whom the application is made:

(b) Each parent or guardian of that person:

(c) If that person is not living with either of his or her parents or guardians, any person with whom that person is living:

(d) If it is proposed that a person be appointed as welfare guardian or manager, the proposed appointee:

(e) If a welfare guardian is acting for that person, that welfare guardian:

(f) If that person is subject to a property order, the manager of that person's property:

(g) Any other person specified by the Court.

(2) The Court may dispense with service under subsection (1)(a) of this section where it is satisfied that—

(a) The person in respect of whom the application is made wholly lacks the capacity to understand the nature and purpose of the proceedings; or

(b) Exceptional circumstances exist of a nature to justify dispensing with service.

(3) Any person served with proceedings under subsection (1) of this section shall be entitled to appear and be heard as a party to the proceedings.

#### **64. Unificación de solicitudes (Applications may be joined, etc)**

(1) Applications under Parts 1 and 3 of this Act may be joined, and, subject to any rules of Court, it shall not be necessary to file separate applications.

(2) A Court may hear and determine any proceedings before it under Part 1 of this Act in conjunction with any proceedings under Part 3 of this Act in any case where both proceedings are in respect of the same person, whether or not the parties to the proceedings are the same.

(3) If it appears to a Court hearing an application under Part 1 of this Act that a property order should be made, either in addition to or instead of a personal order, or if it appears to a Court hearing an application under Part 3 of this Act that a personal order should be made, either in addition to or instead of a property order, the Court may make all such orders and give all such directions as may be necessary to facilitate the hearing of an application under Part 3 or (as the case may require) Part 1 of this Act.

**65. Designación de un abogado o notario por parte del Tribunal o del Secretario (Appointment of barrister or solicitor by Court or Registrar)**

(1) On an application for the exercise of the Court's jurisdiction under this Act, a Court or the Registrar of a Court must appoint a barrister or solicitor to represent the person in respect of whom the application is made, unless the Court or the Registrar is satisfied that the person has retained or will retain a barrister or solicitor.

(2) So far as may be practicable, it shall be

the duty of the barrister or solicitor appointed under subsection (1) of this section to—

(a) Contact the person in respect of whom the application is made, explain to that person the nature and purpose of the application, and ascertain and give effect to that person's wishes in respect of the application; and

(b) Evaluate the solutions for the problem for which an order is sought submitted by other parties to the proceedings, taking account of the need to find a solution that—

(i) Makes the least restrictive intervention possible in the life of the person in respect of whom the application is made, having regard to the degree of incapacity or incompetence of that person; and

(ii) Enables or encourages the person in respect of whom the application is made to develop and exercise such capacity or competence that the person may have to the greatest extent possible.

(3) Without limiting anything in the preceding provisions of this section, in respect of any application for the exercise of the Court's jurisdiction under this Act, a Court may appoint, or direct the Registrar of the Court to appoint, a barrister or solicitor to assist the Court.

(4) A barrister or solicitor appointed under this section may call any person as a witness in the proceedings, and may cross-examine witnesses

called by any party to the proceedings or by the person in respect of whom the application is made or by the Court

(5) Fees for professional services provided by barristers or solicitors appointed under this section, and reasonable expenses incurred,—

(a) May be determined in accordance with regulations made under this Act; and

(b) Are payable out of public money appropriated by Parliament for the purpose.

(6) The bill of costs rendered by a barrister or solicitor appointed under this section shall be given to the Registrar of the Court in which the proceedings were heard, and the Registrar may tax the bill of costs.

(7) If the barrister or solicitor is dissatisfied with the decision of the Registrar as to the amount of the bill, the barrister or solicitor may, within 14 days after the date of the decision, apply to a Family Court Judge to review the decision; and the Judge may make such order varying or confirming the decision as the Judge considers fair and reasonable.

(8) Notwithstanding subsection (5) of this section, the Court shall have regard to the means of any party to the proceedings or the person in respect of whom the application is made, and shall, if it thinks proper, order any party or the person to refund to the Crown such amount as the Court specifies in respect of any fees or expenses paid

under that subsection; and the amount ordered to be refunded shall be a debt due to the Crown by that party or by that person and shall be recoverable accordingly in any court of competent jurisdiction.

*Audiencias preliminares (Pre-hearing conferences)*

**66. Llamado a audiencia preliminar (Calling of pre-hearing conference)**

(1) When an application for the exercise of the Court's jurisdiction under this Act has been filed in a Court, any of the following persons may request the Registrar to convene a pre-hearing conference:

- (a) The applicant;
- (b) The person in respect of whom the application is made;
- (c) Any barrister or solicitor appointed pursuant to section 65(1) of this Act to represent that person;
- (d) Any other person upon whom a copy of the application has been served in accordance with section 63 of this Act.

(2) When an application for the exercise of the Court's jurisdiction under this Act has been filed in a Court, any Family Court Judge may direct the Registrar to convene a pre-hearing conference.

(3) On receiving a request under subsection

(1) or a direction under subsection (2) of this section, the Registrar shall—

(a) Appoint a time and place for the holding of a pre-hearing conference, being as soon as reasonably practicable after the receipt of the request or direction; and

(b) Give notice to each of the persons referred to in paragraphs (a) to (d) of subsection (1) of this section of the time and place of the pre-hearing conference, and request each of those persons to attend the conference.

**67. Objetivos de la audiencia preliminar (Objectives of pre-hearing conference)**

The objectives of a pre-hearing conference shall be—

(a) To identify the problem for which an order of the Court is sought; and

(b) To reach agreement between the parties and the person in respect of whom the application is made on a solution for the problem.

**68. Procedimiento ante la audiencia preliminar (Procedure at pre-hearing conference)**

(1) Every pre-hearing conference shall be presided over by a Family Court Judge.

(2) The barrister or solicitor representing the person in respect of whom the application is made shall be present at the pre-hearing conference

to assist and advise that person (if that person is present) or to represent that person (if that person is not present).

(3) Subject to any direction by the presiding Judge to the contrary, any barrister or solicitor representing any other party to the application may be present at the pre-hearing conference to assist and advise that party.

(4) Subject to any direction by the presiding Judge to the contrary, every pre-hearing conference shall be held in private.

(5) The presiding Judge may from time to time adjourn a pre-hearing conference to such time and place as the Judge may determine.

**69. Delimitación de las cuestiones (Identification of issues)**

(1) If the parties at a pre-hearing conference agree on the nature of the problem for which an order of the Court is sought, and on the solution for that problem, the presiding Judge shall record in writing the terms of the agreement.

(2) Where agreement is not reached on all matters, the presiding Judge shall record in writing those matters on which there is agreement and those matters on which there is no agreement.

(3) In every case, the presiding Judge shall state in the record whether or not—

(a) The person in respect of whom the appli-

cation is made was present during the pre-hearing conference; and

(b) The person was able to understand the nature and purpose of the proceedings; and

(c) The person agreed to any matter referred to in subsection (1) of this section.

(4) The record made by the presiding Judge under subsection (1) or subsection (2) of this section shall be filed in the District Court in which the relevant application is filed.

**70. Poder del presidente del Tribunal de dictar una orden de consenso. (Power of presiding Judge to make consent orders)**

(1) Subject to subsection (2) of this section, at a pre-hearing conference the presiding Judge may, by consent of the parties, make any orders that could have been made by a Family Court exercising jurisdiction under this Act.

(2) The presiding Judge shall not make an order under subsection (1) of this section unless the Judge is satisfied that the person in respect of whom the application is made understands the nature and foresees the consequences of the order and consents to the order.

(3) An order made under this section shall for all purposes have the same effect as if it were made by consent in proceedings before a Family Court.

**71. Poder de exigir la comparecencia en la audiencia preliminar (Power to require attendance at pre-hearing conference)**

(1) Where a person fails to comply with a request under section 66 of this Act to attend a pre-hearing conference, a District Court Judge may, on the request of the Registrar of the Court, issue a summons requiring the person to attend a pre-hearing conference at a time and place to be specified in the summons.

(2) Subsections (1), (2), (3), and (5) of section 20 of the Summary Proceedings Act 1957 shall apply to a summons under this section as if it were a witness summons issued under that section.

**72. Confidencialidad (Privilege)**

(1) No evidence shall be admissible in any court, or before any person acting judicially, of any information, statement, or admission disclosed or made in the course of a pre-hearing conference.

(2) Nothing in subsection (1) of this section shall apply to a record made by a Family Court Judge under section 69 of this Act, or to any consent order made under section 70 of this Act, or to any proceedings for the review of such an order.

**73. El presidente del Tribunal puede actuar en los procedimientos subsiguientes (Presiding Judge may hear subsequent proceedings)**

The Family Court Judge who presides over a pre-hearing conference shall be entitled to hear any subsequent proceedings under that application unless in all the circumstances the Judge decides, of the Judge's own motion or on application by any party,—

(a) That it would be inappropriate for the Judge to do so; or

(b) That there is some other sufficient reason for the application to be heard by another Judge.

*Procedimientos ante el Tribunal (Proceedings before Court)*

**74. Comparecencia de la persona respecto de la cual se realiza la solicitud (Attendance of person in respect of whom application is made)**

(1) The person in respect of whom an application for the exercise of the Court's jurisdiction under this Act is made shall be present throughout the hearing unless excused or excluded by the Court under subsection (2) or subsection (3) of this section.

(2) The Court may excuse the person if it is satisfied that the person wholly lacks the capacity to understand the nature and purpose of the proceedings, or that attendance or continued attendance is likely to cause that person serious mental, emotional, or physical harm.

(3) The Court may exclude the person if it is satisfied that the person is causing such a disturbance that it is not practicable to continue with the hearing in the presence of that person.

(4) The Court may exercise its discretion to excuse or exclude the person at any stage of the hearing.

(5) The person shall be present while the Court makes any order upon the application unless—

(a) The person has been excused or excluded under subsection (2) or subsection (3) of this section; or

(b) There are exceptional circumstances justifying the Court making an order in the absence of the person.

**75. Derecho de la persona a ser oída y a pedir pruebas (Right of person to be heard and call evidence)**

(1) Where the person in respect of whom an application for the exercise of the Court's jurisdiction under this Act is made is not a party to the application, the person shall be entitled to be heard by the Court, whether in person or through a barrister or solicitor, and to call witnesses, and to cross-examine any witness called by any party to the proceedings.

(2) Without limiting anything in subsection (1) of this section, where the person is present

and appears capable of addressing the Court, the Court shall give the person an opportunity to do so; and, in any such case, the Court may, if it thinks it desirable to do so, require any parent or guardian of that person, or any other person with whom that person is living, or any barrister or solicitor representing any such parent, guardian, or other person, to withdraw from the Court while the person is addressing the Court.

(3) Nothing in this section shall limit or affect the rights of the person in respect of whom the application is made where the person is a party to the proceedings.

**76. El Tribunal puede solicitar una informe sobre la persona (Court may call for report on person)**

(1) On an application for the exercise of the Court's jurisdiction under this Act, a Court may, if it is satisfied that it is necessary for the proper disposition of the application,—

(a) request any person whom it considers qualified to do so to prepare a medical, psychiatric, psychological, or other report on the person in respect of whom the application is made; or

(b) direct the Registrar of the Court to request any person whom the Registrar considers qualified to do so to prepare a medical, psychiatric, psychological, or other report on the person in respect of whom the application is made.

(2) In deciding whether or not to request a report or make a direction under subsection (1) of this section, a Court may ascertain and have regard to the wishes of the parties and of the person in respect of whom the application is made.

(3) A copy of any report obtained under this section shall be given by the Registrar of the Court to—

(a) The barrister or solicitor for each party to the proceedings and for the person in respect of whom the application is made or, if any party is not represented by a barrister or solicitor, to that party; and

(b) Any barrister or solicitor appointed under section 65(3) of this Act.

(4) A report given to a barrister or solicitor under subsection (3) of this section shall not be given or be shown to the person for whom the barrister or solicitor is acting if the Court so orders.

(5) Fees for reports prepared pursuant to a request under subsection (1) of this section, and reasonable expenses incurred,—

(a) May be determined in accordance with regulations made under this Act; and

(b) Are payable by such party or parties to the proceedings as the Court orders or, if the Court so decides, are payable out of public money appropriated by Parliament for the purpose.

(5A) Any amount of any fees and expenses ordered to be paid by any party under subsection (5)(b) of this section shall, if paid by the Crown, be a debt due to the Crown by that party and, in default of payment of the amount, payment thereof may be enforced, by order of a District Court or the High Court as the case may require, in the same manner as a judgment of that Court.

(6) Any party to the proceedings, or the person in respect of whom the application is made, or any barrister or solicitor appointed under section 65(3) of this Act may tender evidence on any matter referred to in any such report.

(7) The Court may call the person making the report as a witness, either of its own motion or on the application of any party or the person in respect of whom the application is made.

### **77. Prueba (Evidence)**

In any proceedings under this Act, whether by way of hearing in the first instance or by way of appeal or otherwise, a court may receive any evidence that it thinks fit, whether it is otherwise admissible in a court of law or not.

### **79. Poder del Tribunal se llamar a testigos (Power of Court to call witnesses)**

(1) Without limiting anything in section 77 of this Act, in respect of any application for the exercise of the Court's jurisdiction under this

Act, a Court may, of its own motion, call as a witness any person whose evidence may in its opinion be of assistance to the Court.

(2) A witness called by a Court under this section shall have the same privilege to refuse to answer any question as the witness would have if the witness had been called by a party to the proceedings.

(3) A witness called by a Court under this section may be examined and re-examined by the Court, or by any barrister or solicitor assisting the Court, and may be cross-examined by or on behalf of any party to the proceedings or the person in respect of whom the application is made.

(4) Sections 20, 38, and 39 of the Summary Proceedings Act 1957, so far as they are applicable and with the necessary modifications, shall apply with respect to every person called as a witness by the Court under this section as if that person had been called by a party to the proceedings.

(5) The expenses of any witness called by a Court under this section shall be paid in the first instance, in accordance with the prescribed scale of witnesses' expenses, out of public money appropriated by Parliament for the purpose.

**79. Comparecencia a las audiencias  
(Attendance at hearings)**

(1) The following persons may attend a hearing of an application under this Act:

(a) officers of the Court:

(b) parties to the proceedings:

(c) lawyers representing parties to the proceedings:

(d) the person in respect of whom the application is made:

(e) the lawyer representing the person in respect of whom the application is made:

(f) a barrister or solicitor appointed under section 65(3) to assist the Court:

(g) witnesses:

(h) accredited news media reporters:

(i) persons whom the Judge permits to be present as support persons for any person described in paragraphs (b) and (d):

(j) any other person whom the Judge permits to be present.

(2) The Family Court Judge must agree to a request under subsection (1)(i) unless the Judge considers there is a good reason why the named support persons should not be permitted to be present.

(3) No support persons may help a party conduct his or her case.

(4) If, during a hearing, the Family Court Judge requests a person of any of the following kinds to leave the courtroom, the person must do so:

- (a) a witness;
  - (b) an accredited news media reporter;
  - (c) a support person whom the Judge permitted to be present under subsection (1)(i).
- (5) Nothing in this section limits any other power of the Court—
- (a) to hear proceedings in private; or
  - (b) to permit a McKenzie friend to be present;
- or
- (c) to exclude any person from the Court.

**80. Publicación de los informes y de los procedimientos (Publication of reports of proceedings)**

Sections 11B to 11D of the Family Courts Act 1980 apply to the publication of a report of any proceedings under this Act—

- (a) in a Family Court;
- (b) in any other court, in which case references in those sections to the Family Court or Court must be read as references to that other court.

**81. Costas (Costs)**

Subject to any other provision of this Act, a Court, on the hearing of any proceedings before it under this Act, may make such order as to costs as it thinks fit.

*Apelaciones y revisiones judiciales (Appeals and reviews)*

**82. Facultad del tribunal de determinar si la orden debe suspenderse durante la apelación (Court to state whether order is suspended pending appeal)**

When a Court makes a personal order or a property order, it shall state in the order whether, in the event of an appeal being lodged, the order is or is not to be suspended in whole or in part pending the determination of the appeal.

**83. Derecho de apelar al Tribunal Superior (Right of appeal to High Court)**

(1) If, on an application for the exercise of the Court's jurisdiction under this Act, the Court makes or refuses to make an order, or dismisses or otherwise finally determines the proceedings, a party to the proceedings or the person in respect of whom the application was made may appeal to the High Court against the order or other decision of the Court.

(2) If the Court makes an interlocutory or interim order, a party to the proceedings or the person in respect of whom the application was made may, with the leave of the Court, appeal to the High Court against the order.

(3) The High Court Rules and sections 74 to 78 of the District Courts Act 1947, with all necessary modifications, apply to an appeal under subsection (1) or subsection (2) as if it were an appeal under section 72 of that Act.

(4) On the ex parte application of the appellant, the Court may order that the appellant must not be required under section 74(1) of the District Courts Act 1947 to give the Registrar of the High Court security for costs.

(5) Subsection (4) overrides subsection (3).

**83A. Procedimiento en apelación ante el Tribunal Superior (Procedure on appeal to High Court)**

The High Court Rules and sections 75 to 78 of the District Courts Act 1947, with all necessary modifications, apply to an appeal under section 83.

**84. Apelación posterior ante la Corte de Apelaciones (Further appeal to Court of Appeal)**

A party to an appeal under section 83 may, with the leave of the Court of Appeal, appeal to the Court of Appeal against any determination of the High Court in the appeal.

**85. Apelaciones de decisiones del Tribunal Superior ante la Corte de Apelaciones (Appeals to Court of Appeal from decisions of High Court)**

(1) Where—

(a) An application to a Family Court for the exercise of the Court's jurisdiction under this

Act has been transferred to the High Court in accordance with section 14 of the Family Courts Act 1980; and

(b) The High Court has made or refused to make an order,—

a party to the proceedings or the person in respect of whom the application was made may, within 28 days after the making of the order or decision or within such further time as the Court of Appeal may allow, appeal to the Court of Appeal against the order or decision.

(2) Every appeal under subsection (1) of this section, except an appeal upon a question of law, shall be by way of rehearing of the original proceedings as if the proceedings had been properly commenced in the Court of Appeal.

(3) [Repealed]

### **86. Revisión judicial de órdenes personales (Review of personal orders)**

(1) Without limiting anything in sections 10(3), 11(4), and 12(7) of this Act, the following persons may at any time apply to a Court for a review of any personal order, whether made by consent or otherwise:

(a) The person in respect of whom the order was made:

(b) Any welfare guardian or manager who is acting for that person:

(c) Any other person, with the leave of the Court.

(2) Without limiting the discretion of the Court on any application under subsection (1) of this section, but subject to subsection (3) of this section, on an application made pursuant to section 10(3) or section 11(4) or section 12(7) of this Act, the Court shall review—

(a) The capacity of the person to understand the nature and to foresee the consequences of decisions in respect of matters relating to the personal care and welfare of the person; and

(b) The capacity of the person to communicate decisions in respect of such matters.

(3) Notwithstanding anything in subsection (2) of this section, where an application for review is made to provide for a new welfare guardian to be appointed in place of the present welfare guardian, the Court shall not be obliged to review (but may review) the matters specified in that subsection.

(4) On any application for the review of a personal order, the primary objectives of the Court shall be those set out in section 8 of this Act.

(5) Subject to subsection (6) of this section, on any application for review of a personal order, a Court may—

(a) Vary or decline to vary the order; or

(b) Discharge or decline to discharge the order; or

(c) Extend the order for a further period; or

(d) Make any order, whether in addition to or instead of the order under review, that it could have made on the original application.

(6) On any application to which subsection (2) of this section applies, the Court shall not make any order that would extend the effect of the original order beyond the date on which it would otherwise expire unless the Court is satisfied, having regard to the relevant provisions of Part 1 of this Act, that the order continues to be necessary in the interests of the person in respect of whom it was made.

(7) If the Court does make an order that extends the effect of the original order beyond the date on which it would otherwise have expired, the following provisions shall apply:

(a) In the case of an order made under section 11 of this Act, the Court shall specify a date, being not later than 3 years after the date of the new order, by which the person appointed to administer the property is to apply to the Court for a further review of the original order:

(b) In the case of an order made under section 12 of this Act, the Court shall specify a date, being not later than 3 years after the date of the new order, by which the welfare guardian is to apply to the Court for a further review of the original order:

(c) In any other case, the Court may specify a date by which the original order is to be further reviewed by the Court and, if it does so, the Court shall also specify the person or persons who is or are to be responsible for applying to

the Court for a further review of the original order before the specified date.

(8) Notwithstanding anything in paragraph (a) or paragraph (b) of subsection (7) of this section, the Court may specify a date, for a further review of the original order, later than 3 years but not later than 5 years after the date of the new order if it is satisfied, in the exceptional circumstances of the case, that an earlier review is not necessary in the interests of the person to whom the order relates.

**87. Revisión judicial de órdenes patrimoniales (Review of property orders)**

(1) Where a trustee corporation—

(a) Has filed in a Court an application made to the trustee corporation under section 32 or section 33 of this Act to act as manager of any property of a person; or

(b) Is deemed by subsection (3) or subsection (4) of section 117 of this Act to be a manager appointed under this Act in respect of the property of any person (being property the gross value of which, as at the commencement of this Act, did not exceed \$100,000),—

the trustee corporation shall, in accordance with subsection (1A) of this section, file in the Court the reports specified in subsection (1B) of this section.

(1A) The reports required by subsection (1) of this section shall,—

(a) Where subsection (1)(a) of this section applies, be filed not earlier than 2 years nor later than 3 years after the date of the filing of the application; or

(b) Where subsection (1)(b) of this section applies, be filed by the date specified in the programme drawn up in accordance with the Protection of Personal and Property Rights Regulations 1988.

(1B) The reports required under subsection (1) of this section comprise—

(a) a report from each of 2 medical practitioners (at least 1 of whom must be independent of the applicant, or any relative of the applicant) as to the extent to which the person subject to the order has the competence or lacks the competence to manage his or her own affairs in relation to his or her property; and

(b) A report from the trustee corporation on the current condition of the person subject to the order, which report—

(i) Shall indicate whether or not there has been any change in that person's condition since the application was made; and

(ii) Shall contain other relevant information.

(1C) If, after consideration of the reports filed in accordance with subsection (1) of this section, the Court is of the opinion—

(a) That the order should be discharged or that the order should be extended; and

(b) A full review by the Court in accordance with subsections (3) to (10) of this section is unnecessary,—

the Court may order that the order be discharged or that the order be extended with such variation, if any, as the Court may direct.

(1D) Notwithstanding subsections (1) to (1C) of this section, where the reports are filed under subsection (1)(a) of this section, the Court may if it thinks fit, either on its own motion or on the application of a person specified in subsection (2) of this section, direct that a full review of the case be undertaken and subsections (3) to (10) of this section shall apply with any necessary modification to every such review as if the original application filed in the Court were an order made by the Court.

(1E) Notwithstanding subsections (1) to (1C) of this section, where the reports are filed under subsection (1)(b) of this section, the Court may if it thinks fit, either on its own motion or on the application of a person specified in subsection (2) of this section, direct that a full review of the case be undertaken and subsections (3) to (10) of this section shall apply.

(1F) In any case other than a case in which reports have been filed under subsection (1) of this section in relation to a person subject to a property order, any person who, under a property order, is the manager of any property

and who is of the opinion that the property order should be discharged may file in the Court—

(a) a report from each of 2 medical practitioners (at least 1 of whom must be independent of the applicant or any relative of the applicant) as to the extent to which the person subject to the order has the competence to manage his or her own affairs in relation to his or her property; and

(b) A report from the manager on the current condition of the person subject to the order, which report—

(i) Shall set out the nature and extent of the change in that person's condition since the order was made; and

(ii) Shall contain other relevant information.

(1G) If, after consideration of the reports filed in accordance with subsection (1F) of this section, the Court is of the opinion—

(a) That the order should be discharged; and

(b) That a full review by the Court in accordance with subsections (3) to (10) of this section is unnecessary,—

the Court may order that the order be discharged.

(1H) Notwithstanding subsections (1F) and (1G) of this section, where an application is made under subsection (1F) of this section, the Court may if it thinks fit, either on its own motion or on the application of a person specified in subsection (2) of this section, direct that a full

review of the case be undertaken and subsections (3) to (10) of this section shall apply.

(2) Without limiting anything in section 31(8) of this Act or in subsections (1) to (1H) of this section, the following persons may at any time apply to a Court for a review of any property order, whether made by consent or otherwise:

(a) The person in respect of whom the order was made:

(b) The manager or any welfare guardian who is acting for that person:

(c) Any person described in paragraphs (b) to (h) of section 26 of this Act:

(d) Any other person, with the leave of the Court.

(3) Without limiting the discretion of the Court on any application under subsection (2) of this section, but subject to subsection (4) of this section, on an application made pursuant to section 31(8) of this Act or where the Court directs under subsection (1D) or subsection (1E) or subsection (1H) of this section that a full review of a case be undertaken, the Court shall review the competence of the person subject to the property order to manage his or her own affairs in relation to his or her property.

(4) Notwithstanding anything in subsection (3) of this section, where an application for review is made to provide for a new manager to be appointed in place of the present manager,

the Court shall not be obliged to review (but may review) the matters specified in that subsection.

(5) On any application for the review of a property order, the primary objectives of the Court shall be those set out in section 28 of this Act.

(6) Subject to subsection (7) of this section, on any application for review of a property order, a Court may—

(a) Vary or decline to vary the order; or

(b) Discharge or decline to discharge the order; or

(c) Extend the order; or

(d) Make any order, whether in addition to or instead of the order under review.

(7) On any application to which subsection (3) of this section applies, the Court shall not make any order that would extend the original order beyond the date on which it would otherwise expire unless the Court is satisfied, having regard to the relevant provisions of Part 3 of this Act, that the order continues to be necessary in the interests of the person in respect of whom it was made.

(8) If the Court does make an order that extends the effect of the original order beyond the date on which it would otherwise have expired, the Court shall specify a date, being not later than 3 years after the date of the new order, by which the manager is to apply to the Court for a further review of the original order.

(9) Notwithstanding anything in subsection (8) of this section, the Court may specify a date, for a further review of the original order, later than 3 years but not later than 5 years after the date of the new order if it is satisfied, in the exceptional circumstances of the case, that an earlier review is not necessary in the interests of the person to whom the order relates.

(10) No order to which subsection (8) or subsection (9) of this section applies shall automatically expire by reason only of the fact that the date specified for the first review or any further review has been reached.

**88. Procedimiento de revisión judicial  
(Procedure on review)**

On any application for the review of any personal order or property order, the provisions of sections 63 to 65 and 74 to 81 of this Act, so far as they are applicable and with any necessary modifications, shall apply.

**89. Revisión judicial de decisiones de tutores de bienestar y administradores  
(Review of welfare guardian's or manager's decisions)**

(1) A person for whom a welfare guardian or a manager is acting, and any other person with the leave of the Court, may at any time apply to a Court to review any decision made by the

welfare guardian or manager, and the Court may, if it thinks it reasonable to do so in all the circumstances, review the decision and make such order as it thinks fit.

(2) An order made under subsection (1) of this section shall have effect according to its tenor.

***D) De los poderes permanentes de representación (Enduring powers of attorney)***

**Ley de Protección de los Derechos Personales y Patrimoniales de 1988 (*Protection of Personal and Property Rights Act 1988 No 4 (as at 01 July 2009), Public Act*)**

**93A. Propósito de la presente Parte (Purpose of this Part)**

(1) The purpose of this Part is to enable a person (the donor) to—

(a) grant to another person an enduring power of attorney to act in relation to the donor's personal care and welfare if the donor becomes mentally incapable:

(b) grant to another person or persons enduring powers of attorney to act in relation to the donor's property affairs—

(i) if the donor becomes mentally incapable;  
or

(ii) while the donor is mentally capable and if the donor becomes mentally incapable:

(c) grant to another person an enduring power of attorney to act in both capacities.

(2) Accordingly, this Part—

(a) states the requirements for creating an enduring power of attorney:

(b) defines when a donor is mentally incapable for the purposes of this Part:

(c) states the duties of an attorney (in addition to those set out in the enduring power of attorney):

(d) sets out the Court's jurisdiction in respect of an enduring power of attorney:

(e) provides for the review by the Court of any decision of an attorney:

(f) establishes the circumstances in which an enduring power of attorney may be suspended or revoked.

**93B. Presunción de competencia (Presumption of competence)**

(1) For the purposes of this Part, every person is presumed, until the contrary is shown,—

(a) to be competent to manage his or her own affairs in relation to his or her property:

(b) to have the capacity—

(i) to understand the nature of decisions about matters relating to his or her personal care and welfare; and

(ii) to foresee the consequences of decisions about matters relating to his or her personal care and welfare or of any failure to make such decisions; and

(iii) to communicate decisions about those matters.

(2) A person must not be presumed to lack the competence described in subsection (1)(a) just because the person manages or intends to manage his or her own affairs in relation to his or her property in a manner that a person exercising ordinary prudence would not adopt in the same circumstances.

(3) A person must not be presumed to lack the capacity described in subsection (1)(b) just because the person makes or intends to make a decision in relation to his or her personal care and welfare that a person exercising ordinary prudence would not make in the same circumstances.

(4) A person must not be presumed to lack the competence described in subsection (1)(a) or, as the case may be, the capacity described in subsection (1)(b), just because the person is subject to compulsory treatment or has special patient status under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

#### **94. Intepretación (Interpretation)**

(1) For the purposes of this Part, the donor of an enduring power of attorney is mentally incapable in relation to property if the donor is not wholly competent to manage his or her own affairs in relation to his or her property.

(2) For the purposes of this Part, the donor of an enduring power of attorney is mentally incapable in relation to personal care and welfare if the donor—

(a) lacks the capacity—

(i) to make a decision about a matter relating to his or her personal care and welfare; or

(ii) to understand the nature of decisions about matters relating to his or her personal care and welfare; or

(iii) to foresee the consequences of decisions about matters relating to his or her personal care and welfare or of any failure to make such decisions; or

(b) lacks the capacity to communicate decisions about matters relating to his or her personal care and welfare.

(3) Nothing in subsection (1) or (2) affects any rule of law relating to capacity to give or to revoke a power of attorney.

(4) In this Part—

health practitioner—

(a) has the meaning given to it by section 5(1) of the Health Practitioners Competence Assurance Act 2003:

(b) in the case of a certificate of mental incapacity issued outside New Zealand, means a person registered as a medical practitioner by the competent authority of the State concerned

lawyer has the meaning given to it by section

6 of the Lawyers and Conveyancers Act 2006  
prescribed form means a form prescribed by  
regulations under this Act  
relevant health practitioner means a health  
practitioner—  
(a) whose scope of practice includes the  
assessment of a person’s mental capacity; or  
(b) whose scope of practice—  
(i) includes the assessment of a person’s men-  
tal capacity; and  
(ii) is specified in the enduring power of  
attorney (for example, a specialist).

**94A. Establecimiento del poder perma-  
nente de representación (Creation of endu-  
ring power of attorney)**

(1) This section applies only to a power of  
attorney executed after the commencement of  
section 7 of the Protection of Personal and  
Property Rights Amendment Act 2007.

(2) The instrument creating an enduring  
power of attorney—

(a) must be in the prescribed form; and  
(b) must have attached to it the certificate  
referred to in subsection (7).

(3) The instrument must be signed—

(a) by the donor, or by some other person in  
the presence of the donor and by the direction  
of the donor; and

(b) by the attorney (or if more than one, by  
each attorney).

(4) The signature of the donor must be witnessed by a person who, subject to subsection (8), is independent of the attorney (or of each attorney) and who is—

(a) a lawyer; or

(b) an officer or employee of a trustee corporation authorised by the corporation for the purposes of this subsection; or

(c) a legal executive who meets the requirements of subsection (9).

(5) The signature of an attorney must be witnessed by a person other than the donor or the donor's witness.

(6) Before the donor signs the instrument, the witness to the donor's signature must explain the effects and implications of the enduring power of attorney to the donor, and advise the donor of—

(a) the matters referred to in the notes to the prescribed form of power of attorney:

(b) the donor's right to suspend or revoke the power of attorney:

(c) in the case of a power of attorney in relation to property,—

(i) the donor's right to appoint more than one attorney, or a trustee corporation, as attorney; and

(ii) the donor's right to stipulate whether and, if so, how the attorney's dealings with the donor's property are to be monitored.

(7) The witness to the donor's signature must certify on the prescribed form that—

(a) the requirements of subsection (6) have been met; and

(b) the witness has no reason to suspect that the donor was or may have been mentally incapable at the time the donor signed the instrument; and

(c) the witness is independent of the attorney (or of each attorney) or that subsection (8)(a) or (b) applies.

(8) Despite subsection (4),—

(a) if the attorney is a trustee corporation, an officer or employee of that corporation authorised by the corporation for the purposes of this subsection may witness the donor's signature:

(b) if the attorney is appointed in his or her capacity as a lawyer, another lawyer in the attorney's firm or a legal executive in that firm who meets the requirements of subsection (9) may witness the donor's signature.

(9) A legal executive who witnesses the donor's signature—

(a) must be a member of the body that, immediately before the commencement of section 7 of the Protection of Personal and Property Rights Amendment Act 2007, was known as the New Zealand Institute of Legal Executives Inc; and

(b) must hold a current annual registration certificate issued by that body; and

(c) must have at least 12 months' experience as a legal executive; and

(d) must be employed by, and under the direct supervision of, a lawyer.

**95. Cuando un poder de representación es un poder de representación permanente (When power of attorney is an enduring power of attorney)**

(1) Except as otherwise provided in this section, a power of attorney that meets the requirements of section 94A is an enduring power of attorney.

(2) A power of attorney purporting to be an enduring power of attorney has effect even though it is not in the prescribed form, but only if—

(a) no prescribed provision is substantially omitted; and

(b) the differences are immaterial.

(3) A power of attorney shall not have effect as an enduring power of attorney unless the attorney, when signing the instrument creating it, is—

(a) An individual who is not less than 20 years of age, is not bankrupt, and is not subject to a personal order or a property order; or

(b) A trustee corporation.

(4) A power of attorney delegating trustee powers, authorities, and discretions under section 31 of the Trustee Act 1956 shall not have effect as an enduring power of attorney.

(5) A power of attorney that gives the attorney

the right to appoint a substitute or a successor shall not have effect as an enduring power of attorney; but an enduring power of attorney may provide for successive attorneys, the appointment of one being conditional upon the cessation of the appointment of another.

(6) A power of attorney executed before the commencement of this Act shall not have effect as an enduring power of attorney.

**96 No revocación del poder permanente de representación por la incapacidad mental sobreviniente del otorgante (Enduring power of attorney not revoked by donor's subsequent mental incapacity)**

An enduring power of attorney shall not be revoked by the donor's subsequent mental incapacity, but shall continue to have effect according to its tenor.

**97 Poder permanente de representación en relación con el patrimonio (Enduring power of attorney in relation to property)**

(1) A donor of an enduring power of attorney may authorise the attorney to act generally in relation to the whole or a specified part of the donor's affairs in relation to his or her property, or to act in relation to specified things on the donor's behalf, and in either case such authorisation may be given subject to conditions and restrictions.

(2) Where a donor of an enduring power of attorney authorises the attorney to act generally in relation to the whole or a specified part of the donor's affairs in relation to the donor's property, the attorney shall have authority to do anything on behalf of the donor that the donor can lawfully do by an attorney, but subject to sections 100 and 107 of this Act and to any conditions or restrictions contained in the enduring power of attorney.

(3) Where a donor of an enduring power of attorney has become mentally incapable, the attorney shall be authorised to make an application under section 122 of the Land Transfer Act 1952 to have a transmission registered where the attorney believes that the donor is entitled to any estate or interest in land by virtue of that transmission, and a District Land Registrar is authorised to accept such an application notwithstanding the fact that the attorney is not the person claiming to be entitled to the estate or interest in land.

(4) A donor of an enduring power of attorney may—

(a) authorise the enduring power of attorney to have effect while the donor is mentally capable and to continue to have effect if the donor becomes mentally incapable; or

(b) authorise the enduring power of attorney to have effect only if the donor becomes mentally incapable.

(5) If subsection (4)(b) applies, the attorney must not act in relation to the donor's property unless a relevant health practitioner has certified, or the Court has determined, that the donor is mentally incapable.

**97A. Ejercicio del poder permanente de representación en relación con el patrimonio (Exercise of enduring power of attorney in relation to property)**

(1) This section applies to an attorney acting under an enduring power of attorney in relation to the donor's property if the donor of the power becomes mentally incapable.

(2) The paramount consideration of the attorney is to use the donor's property in the promotion and protection of the donor's best interests, while seeking at all times to encourage the donor to develop the donor's competence to manage his or her own affairs in relation to his or her property.

(3) This section applies regardless of whether the enduring power of attorney is of the type referred to in section 97(4)(a) or (b).

**98. Poder permanente de representación en relación con el cuidado y bienestar personal (Enduring power of attorney in relation to personal care and welfare)**

(1) Subject to subsections (3) and (4) of this

section, a donor of an enduring power of attorney may authorise the attorney to act in relation to the donor's personal care and welfare, either generally or in relation to specific matters, and in either case such authorisation may be given subject to conditions and restrictions.

(2) Notwithstanding section 95(3) of this Act, an enduring power of attorney may not appoint a trustee corporation to be an attorney, nor may it appoint more than one individual to be attorneys, to act in relation to the donor's personal care and welfare.

(3) The attorney—

(a) must not act in respect of a significant matter relating to the donor's personal care and welfare unless a relevant health practitioner has certified, or the Court has determined, that the donor is mentally incapable; and

(b) must not act in respect of any other matter relating to the donor's personal care and welfare unless the attorney believes on reasonable grounds that the donor is mentally incapable.

(3A) For the purposes of subsection (3), a donor's mental capacity is determined—

(a) at the time a decision about the matter relating to the donor's personal care and welfare is being made or is proposed to be made; and

(b) in relation to the personal care and welfare matter concerned.

(3B) Despite subsection (3A),—

(a) if the donor is certified as mentally incapable because of a health condition that is likely to continue indefinitely, no further certificates are required under subsection (3)(a) in relation to any further personal care and welfare matters:

(b) if the donor is certified as mentally incapable because of a health condition that is likely to continue for a period specified in the certificate, no further certificates are required under subsection (3)(a) in relation to any further personal care and welfare matters that arise during the specified period.

(4) The attorney shall not act in respect of any matter relating to the donor's personal care and welfare where, if the attorney were the welfare guardian of the donor, the attorney would be denied the power to act by section 18 of this Act.

(5) Subject to subsections (3) and (4) of this section, any action taken by the attorney in relation to the donor's personal care and welfare shall have the same effect as it would have had if it had been taken by the donor and the donor had had full capacity to take it.

(6) In subsection (3)(a), a significant matter relating to the donor's personal care and welfare means a matter that has, or is likely to have, a significant effect on the health, wellbeing, or enjoyment of life of the donor (for example, a permanent change in the donor's residence, entering residential care, or undergoing a major medical procedure).

**98A. Ejercicio del poder permanente de representación en relación con el cuidado y bienestar personal (Exercise of enduring power of attorney in relation to personal care and welfare)**

(1) This section applies to an attorney acting under an enduring power of attorney in relation to the donor's personal care and welfare.

(2) The paramount consideration of the attorney is the promotion and protection of the welfare and best interests of the donor, while seeking at all times to encourage the donor to develop and exercise his or her capacity to—

(a) understand the nature and foresee the consequences of decisions relating to his or her personal care and welfare; and

(b) communicate such decisions.

(3) Without limiting the generality of subsection (2), the attorney must—

(a) encourage the donor to act on his or her own behalf to the greatest extent possible; and

(b) seek to facilitate the integration of the donor into the community to the greatest extent possible.

(4) When deciding any matter relating to the donor's personal care and welfare, the attorney must give due consideration to the financial implications of that decision in respect of the donor's property.

**99. Dos tipos de poderes que pueden ser otorgados (Both kinds of powers may be given)**

(1) Nothing in section 95 or section 97(1) or section 98(1) of this Act shall prevent a donor from—

(a) Authorising the attorney, whether in the same or in a separate document, to act both—

(i) In relation to the whole or a specified part of the donor's affairs in relation to his or her property, or to act in relation to specified things on the donor's behalf; and

(ii) In relation to the donor's personal care and welfare, either generally or in relation to specific matters; or

(b) Giving an enduring power of attorney to any person or persons for the purposes described in subparagraph (i) of paragraph (a) of this subsection, and, whether in the same or in a separate document, to another person for the purposes described in subparagraph (ii) of that paragraph.

(2) If subsection (1)(b) applies, the attorney responsible for the donor's property must give the attorney responsible for the donor's personal care and welfare any financial support required by that attorney to carry out his or her duties in relation to the donor's personal care and welfare.

(3) Subsection (2) is subject to—

- (a) the enduring power of attorney; and
- (b) any direction of the Court under section 101 made on the application of either attorney.

**99A. Obligación del representante de consultar (Attorney’s duty to consult)**

(1) When acting under an enduring power of attorney, the attorney must, as far as is practicable, consult—

- (a) the donor; and
- (b) in relation to any particular matter, any person specified in the enduring power of attorney to be consulted, generally, in respect of matters of that kind, or in respect of that matter.

(2) An attorney acting under an enduring power of attorney in relation to the donor’s personal care and welfare may, subject to any consultation under subsection (1), have regard to any advance directive given by the donor except to the extent that the directive would require the attorney to act in a manner contrary to section 98(4).

(3) The attorney may follow any advice given under subsection (1), or any advance directive given by the donor, and is not liable for anything done or omitted in following that advice or directive, unless done or omitted in bad faith or without reasonable care.

(4) The attorney may apply to a court for directions under section 101 in respect of any

advice given under subsection (1) or any advance directive given by the donor.

(5) The attorney is not liable in respect of anything done or omitted to be done in accordance with the Court's directions.

(6) Nothing in subsection (4) obliges the attorney to apply to a court for directions.

(7) If a donor has, under an enduring power of attorney, appointed one attorney in relation to his or her property and another attorney in relation to his or her personal care and welfare, both attorneys must consult each other regularly to ensure that the donor's interests are not prejudiced through any breakdown in communication between them.

**99B. El representante debe brindar información sobre el ejercicio de sus poderes (Attorney must provide information on exercise of powers)**

An attorney must promptly comply with any request for information relating to the exercise of the attorney's powers under the enduring power of attorney if—

(a) the person requesting the information is specified in the enduring power of attorney as a person to be provided with such information and the information requested is the kind of information specified in the enduring power of attorney to be provided to that person:

(b) the person requesting the information is a barrister or solicitor appointed under section 65 and the information requested is records of financial transactions that the attorney must keep under section 99C.

**99C. El representante debe guardar registros de operaciones patrimoniales (Attorney as to property must keep records)**

(1) An attorney under an enduring power of attorney in relation to a donor's property must keep records of each financial transaction entered into by the attorney under the enduring power of attorney while the donor is mentally incapable.

(2) An attorney who fails without reasonable excuse to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

**99D. Certificado médico de incapacidad (Medical certification of incapacity)**

(1) A certificate of the donor's mental incapacity under this Part must be—

(a) in the prescribed form; or

(b) if the certificate is issued outside New Zealand, in a form acceptable to the competent authority of the State concerned.

(2) The donor may specify in an enduring power of attorney that the assessment of his or

her mental capacity for the purposes of this Part be undertaken by a health practitioner with a specified scope of practice, but only if the scope of practice specified includes the assessment of a person's mental capacity.

(3) The cost of any medical assessment or examination reasonably required for the purpose of certifying whether the donor is mentally incapable under this Part is recoverable as a debt from the donor's property.

**100. Poder permanente de representación sujeto a una orden personal y patrimonial (Enduring powers of attorney subject to personal order and property order)**

Where an enduring power of attorney is given by a person who is or who subsequently becomes subject to a personal order or a property order, the order shall be binding on the attorney; and, in the event of any conflict arising between the powers and duties of the attorney and the terms of the order, the order shall prevail.

**100A. Suspensión del poder del representante para actuar (Suspension of attorney's power to act)**

(1) A donor of an enduring power of attorney who has been, but is no longer, mentally incapable may suspend the attorney's authority

to act under the enduring power of attorney by giving written notice to the attorney.

(2) An attorney whose authority is suspended may not act under the enduring power of attorney unless a relevant health practitioner has certified, or the Court has determined, that the donor is mentally incapable.

(3) The suspension does not revoke the enduring power of attorney.

(4) Nothing in this section affects the donor's right to revoke the enduring power of attorney while the donor is mentally capable.

**101. El Representante puede solicitar instrucciones al Tribunal (Attorney may seek directions from Court)**

(1) The attorney under an enduring power of attorney may apply to a Court for directions relating to the exercise of the attorney's powers.

(2) Nothing in subsection (1) of this section shall limit or affect the jurisdiction of any other court.

**102. Competencia del Tribunal en relación con un poder permanente de representación (Court's jurisdiction in respect of an enduring power of attorney)**

(1) A Court shall have jurisdiction to determine—

(a) Whether or not any instrument is an enduring power of attorney; or

(b) Whether or not the donor of an enduring power of attorney is mentally incapable.

(2) A Court shall have jurisdiction to do all or any of the following things in respect of an enduring power of attorney where the donor has become mentally incapable:

(a) Determine any question as to the meaning or effect of the instrument by which the power is given:

(b) Determine whether or not any such instrument has ceased to have effect:

(c) Give directions with respect to—

(i) The management or disposal by the attorney of the property and affairs of the donor; or

(ii) The rendering of accounts by the attorney and the production of the records kept by the attorney for the purpose; or

(iii) The remuneration or expenses of the attorney, whether or not in default of or in accordance with any provision made by the instrument, including directions for the repayment of excessive, or the payment of additional, remuneration; or

(iv) Any matter relating to the personal care and welfare of the donor:

(v) Any other matter on which the directions of the Court are sought under section 101 of this Act:

(d) Modify the scope of the enduring power of attorney by including or excluding—

(i) Part of the donor's affairs in relation to his or her property, or any powers relating to any such affairs; or

(ii) Any specific matters in relation to the donor's personal care and welfare, or any powers relating to any such matters, not being a matter referred to in section 98(4) of this Act:

(e) Require the attorney to furnish information or produce documents or things in his or her possession as attorney:

(f) Give any consent or authorisation to act that the attorney would have to obtain from the donor if the donor were mentally capable:

(g) Authorise the attorney to act, otherwise than in accordance with section 107 of this Act, to the benefit of the attorney or persons other than the donor, but subject to any conditions or restrictions contained in the instrument:

(ga) authorise the attorney to make any loan or advance of the donor's property subject to—

(i) any conditions that the Court considers appropriate; and

(ii) any conditions or restrictions contained in the instrument:

(h) Determine whether the donor of the power was induced by undue influence or fraud to create the power:

(i) Determine whether, having regard to all the circumstances and, in particular, the attorney's relationship with the donor, the attorney is suitable to be the donor's attorney.

(j) authorise an attorney acting under an enduring power of attorney in relation to a donor's property to execute a will for and on behalf of the donor if the Court is satisfied that—

- (i) the donor lacks testamentary capacity; and
- (ii) there is no express provision to the contrary in the enduring power of attorney.

(2A) For the purposes of any application for the exercise of the Court's jurisdiction under subsection (2)(j), section 55 applies as if every reference to a manager were a reference to the attorney, and every reference to a person subject to a property order were a reference to the donor.

(3) Nothing in the foregoing provisions of this section shall limit or affect the jurisdiction of any other court.

**102A. Personas que pueden solicitar el ejercicio de la competencia del Tribunal (Persons who may apply for exercise of Court's jurisdiction)**

An application to a court for the exercise of its jurisdiction under section 102 or 105 may be made by—

- (a) any person listed in section 103(1); or
- (b) any other person with the leave of the Court.

**103. Revisión de las decisiones del representante (Review of attorney's decisions)**

- (1) Any of the following people may at any

time apply to a court to review any decision made by an attorney acting under an enduring power of attorney while the donor is or was mentally incapable:

(a) the donor of the enduring power of attorney:

(b) a relative or attorney of the donor (not being the attorney whose decision is sought to be reviewed):

(c) a social worker:

(d) a medical practitioner:

(e) a trustee corporation:

(f) if the donor is a patient or a resident in any place that provides hospital care, rest home care, or residential disability care within the meaning of the Health and Disability Services (Safety) Act 2001, the principal manager of that place:

(g) any welfare guardian who has been appointed for the donor:

(h) a person authorised by a body or organisation contracted by the Government to provide elder abuse and neglect prevention services.

(2) Any other person may apply for a review if the Court gives leave to do so.

(3) For the avoidance of doubt, an application for review may be made while the enduring power of attorney is in force or after it is revoked by the death of the donor or otherwise.

(4) The Court may, if it thinks it reasonable to

do so in all the circumstances, review the decision and make any order it thinks fit.

(5) An order under subsection (4) has effect according to its tenor.

**103A. Validez de los actos realizados en virtud de un poder de representación que no se ajusta a los requerimientos de los artículos 94A o 95 (Validity of actions under power of attorney not meeting requirements of section 94A or 95)**

The fact that a power of attorney is not an enduring power of attorney because of any failure to meet the requirements of section 94A or 95 does not affect the validity of—

(a) any act of the attorney done under the power of attorney in good faith with no knowledge of the failure; or

(b) any transaction entered into by the attorney under the power of attorney if the other party to the transaction entered into it in good faith and with no knowledge of the failure.

**103B. Efectos de las decisiones del representante sobre terceros (Effect of attorney's decision on third parties)**

A person dealing with an attorney acting under an enduring power of attorney in respect of any matter within the power of attorney—

(a) does not have to inquire about the

concurrency or otherwise of the donor or any other person; and

(b) is not affected by notice that the donor or any other person has not concurred.

**103C. Efectos de las decisiones del representante anteriores a la notificación de revocación o suspensión (Effect of attorney's actions, etc, before notice of revocation or suspension received)**

(1) This section applies, instead of section 20(1) to (4) of the Property Law Act 2007, to enduring powers of attorney executed before or after the commencement of section 18 of the Protection of Personal and Property Rights Amendment Act 2007, but subject to section 20(5)(b) of the Property Law Act 2007.

(2) An enduring power of attorney continues in force until notice of an event revoking the power is received by the attorney.

(3) The authority of an attorney to act under an enduring power of attorney continues in force until notice suspending that authority is received by the attorney.

(4) Every act or thing within the scope of the enduring power of attorney done by or to the attorney in good faith before he or she receives notice of any event revoking the power of attorney has effect as if the event had not occurred.

(5) Every act or thing within the scope of an

enduring power of attorney done by or to the attorney in good faith before he or she receives notice that his or her authority to act under the power of attorney is suspended has effect as if the authority were not suspended.

(6) A person dealing with the attorney may rely on a certificate of non-revocation and non-suspension of the enduring power of attorney in the prescribed form as conclusive proof of the non-revocation and non-suspension of the power of attorney as at the date of the certificate if—

(a) the person—

(i) is dealing with the attorney in good faith; and

(ii) does not have actual knowledge that an event revoking the power of attorney has occurred, or that the attorney's authority to act under it has been suspended; and

(b) the certificate—

(i) is signed by the attorney or, if the attorney is a corporation, an officer or employee of the corporation authorised by the corporation for the purposes of this subsection; and

(ii) is given immediately before, or any time after, the doing of a thing by the attorney.

(7) A person who knowingly gives a false certificate commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

(8) An event revoking the power of attorney

means any event described in section 106(1) in which the enduring power of attorney ceases to have effect.

**104. Renuncia del representante (Disclaimer by attorney)**

(1) An attorney under an enduring power of attorney may not disclaim that power otherwise than by notice given as follows:

(a) Where the donor is not mentally incapable, by written notice to the donor:

(b) Where the donor is mentally incapable, by filing a notice in a Court.

(2) If the donor is mentally incapable, the attorney must file with the notice a report stating—

(a) that the attorney considers it is in the interests of the donor that a welfare guardian be appointed in relation to the donor's personal care and welfare, or a property manager be appointed in relation to the donor's property; or

(b) that the attorney considers it is not necessary that a welfare guardian or property manager be appointed, and why the attorney considers it not necessary.

(3) On receiving a report under subsection (2) of this section, the Registrar shall refer the matter to a Judge who may give to the Registrar all such directions as the Judge considers appropriate to have the matter drawn to the

attention of such person or persons described in section 103 as the Judge thinks fit.

**105. Poder de revocación de designación de representante por parte del Tribunal (Court may revoke appointment of attorney)**

(1) The Court may, in any proceeding commenced under section 101, 102A, or 103, revoke the appointment of an attorney under an enduring power of attorney if it is satisfied that the attorney—

(a) is not acting, or proposes not to act, in the best interests of the donor; or

(b) is failing, or has failed, to comply with any of the attorney's obligations under section 99A or 99B, or proposes not to comply with any of those obligations.

(1A) In any proceedings commenced under section 101 or 102, the Court may revoke the appointment of an attorney under an enduring power of attorney only on the motion of the donor or a party to the proceeding other than the attorney.

(2) Where a Court under paragraph (h) or paragraph (i) of section 102(2) of this Act determines that the donor of an enduring power of attorney was induced by undue influence or fraud to create the power or that the attorney is not suitable to be the donor's attorney, the Court shall revoke the appointment of the attorney.

**106. Circunstancias en la cuales un poder permanente de representación debe cesar sus efectos (Circumstances in which enduring power of attorney shall cease to have effect)**

(1) An enduring power of attorney shall cease to have effect when—

(a) The donor, by notice in writing to the attorney, revokes the power while mentally capable of doing so; or

(b) The donor dies; or

(c) The attorney gives notice of disclaimer in accordance with section 104 of this Act; or

(d) The attorney dies, or is adjudged bankrupt, or becomes a special or committed patient under the Mental Health Act 1969, or becomes subject to a personal order or a property order, or otherwise becomes incapable of acting; or

(e) In the case of an enduring power of attorney that appoints more than one attorney with joint but not several authority, one of the attorneys dies, or is adjudged bankrupt, or becomes a special or committed patient under the Mental Health Act 1969, or becomes subject to a personal order or a property order, or otherwise becomes incapable of acting; or

(f) A Court revokes the appointment of the attorney pursuant to section 105 of this Act.

(2) In any case where the enduring power of attorney provides for successive attorneys, the

appointment of one being conditional upon the cessation of the appointment of another, the provisions of paragraphs (c) to (f) of subsection (1) of this section shall apply only in respect of the last such attorney.

**107. Poder del representante de beneficiarse y de beneficiar a otros (Attorney's power to benefit self and others)**

(1) An attorney under an enduring power of attorney must not, at any time while the donor is mentally incapable, act to the benefit of the attorney or of a person other than the donor, or recover any expenses from the donor's property, unless and only to the extent that—

(a) the donor has specified a power to so act in the enduring power of attorney; or

(b) the Court authorises the attorney to so act in an order under section 102(2)(g) or (ga); or

(c) the attorney's actions relate to one or more of the following matters and the enduring power of attorney does not expressly provide otherwise:

(i) if the attorney and donor are married to, or in a civil union or de facto relationship with, each other, and are living together and sharing their incomes, any action taken by the attorney in respect of real or personal property that the donor and the attorney own jointly and not as tenants in common:

(ii) any payments of a kind described in subsection (2):

(iii) if acting under an enduring power of attorney in relation to the donor's property, any loan or advance or other investment of the donor's property that a trustee could make of trust funds under section 13A of the Trustee Act 1956.

(2) The payments referred to in subsection (1)(c)(ii) are payments (being payments for which receipts or other evidence are provided by the attorney) of—

(a) out-of-pocket expenses (other than lost wages or remuneration) reasonably incurred by an attorney; or

(b) professional fees and expenses reasonably incurred by an attorney who—

(i) has accepted appointment in a professional capacity; or

(ii) has undertaken work in any professional capacity to give effect to the decisions taken under the enduring power of attorney.

### **108. Procedimiento (Procedure)**

For the purpose of proceedings under this Part of this Act, the provisions of Part 6 (except section 64), and sections 83 to 85 of this Act, so far as they are applicable and with any necessary modifications, shall apply as if the donor were a person in respect of whom an application for a personal order or a property order was being sought or in respect of whom such an order had been made, subject to the following provisions:

(a) Where the application for the exercise of the Court's jurisdiction is made by any person other than the attorney, a copy of the application shall be served on the attorney (as well as the persons listed in section 63(1) of this Act):

(b) Where a donor has given 2 or more enduring powers of attorney and it is intended to apply to the Court under this Part of this Act in respect of any 2 or more of those powers, the applications may be joined, and, subject to any rules of Court, it shall not be necessary to file separate applications:

(c) A Court may hear and determine any proceedings before it under this Part of this Act in conjunction with any other proceedings under this or any other Part of this Act in any case where both proceedings are in respect of the same person, whether or not the parties to the proceedings are the same.

## **5) Instituciones de guarda y protección de las personas con discapacidad**

### ***A) De los tutores de bienestar (Welfare guardians)***

**Ley de Protección de los Derechos Personales y Patrimoniales de 1988 (*Protection of Personal and Property Rights Act 1988 No 4 (as at 01 July 2009), Public Act*)**

**18. Derechos y deberes de los tutores de bienestar (Powers and duties of welfare guardian)**

(1) No Court shall empower a welfare guardian, and no welfare guardian shall have power,—

(a) To make any decision relating to the entering into marriage or civil union by the person for whom the welfare guardian is acting, or to the dissolution of that person's marriage or civil union; or

(b) To make any decision relating to the adoption of any child of that person; or

(c) To refuse consent to the administering to that person of any standard medical treatment or procedure intended to save that person's life or to prevent serious damage to that person's health; or

(d) To consent to the administering to that person of electro-convulsive treatment; or

(e) To consent to the performance on that person of any surgery or other treatment designed to destroy any part of the brain or any brain function for the purpose of changing that person's behaviour; or

(f) To consent to that person's taking part in any medical experiment other than one to be conducted for the purpose of saving that person's life or of preventing serious damage to that person's health.

(2) Subject to subsection (1) of this section, a welfare guardian shall have all such powers as

may be reasonably required to enable the welfare guardian to make and implement decisions for the person for whom the welfare guardian is acting in respect of each aspect specified by the Court in the order by which the appointment of the welfare guardian is made.

(3) In exercising those powers, the first and paramount consideration of a welfare guardian shall be the promotion and protection of the welfare and best interests of the person for whom the welfare guardian is acting, while seeking at all times to encourage that person to develop and exercise such capacity as that person has to understand the nature and foresee the consequences of decisions relating to the personal care and welfare of that person, and to communicate such decisions.

(4) Without limiting the generality of subsection (3) of this section, a welfare guardian shall—

(a) Encourage the person for whom the welfare guardian is acting to act on his or her own behalf to the greatest extent possible; and

(b) Seek to facilitate the integration of the person for whom the welfare guardian is acting into the community to the greatest extent possible; and

(c) Consult, so far as may be practicable,—

(i) The person for whom the welfare guardian is acting; and

(ii) Such other persons, as are, in the opinion of

the welfare guardian, interested in the welfare of the person and competent to advise the welfare guardian in relation to the personal care and welfare of that person; and

(iii) A representative of any group that is engaged, otherwise than for commercial gain, in the provision of services and facilities for the welfare of persons in respect of whom the Court has jurisdiction in accordance with section 6 of this Act, and that, in the opinion of the welfare guardian, is interested in the welfare of the person and competent to advise the welfare guardian in relation to the personal care and welfare of that person.

(5) In addition to subsection (4)(c) of this section, where the person for whom the welfare guardian is acting is subject to a property order, the welfare guardian shall consult on a regular basis with the manager of that person's property to ensure that the interests of that person are not prejudiced through any breakdown in communication between the welfare guardian and the manager.

(6) A welfare guardian may apply to a Court for directions relating to the exercise of the powers of the welfare guardian, and the Court may give such directions as it thinks fit.

**19. Efectos de las decisiones de los tutores de bienestar (Effect of welfare guardian's decisions, etc)**

(1) Every decision made by a welfare guardian in the exercise of the powers conferred by or under this Part of this Act, and everything done by a welfare guardian in implementation of any such decision, shall have the same effect as it would have had if it had been made or done by the person for whom the welfare guardian is acting and that person had had full capacity to make or do it.

(2) No person dealing with a welfare guardian in respect of any matter within the powers of the welfare guardian shall be concerned to inquire as to the concurrence or otherwise of the person for whom the welfare guardian is acting or of any other person, or be affected by notice that any such person has not concurred.

**20. Responsabilidad del tutor de bienestar (Liability of welfare guardian)**

(1) Subject to subsection (2) of this section, no action shall lie against a welfare guardian in respect of anything done or omitted to be done by the welfare guardian in the exercise of the powers conferred by or under this Act, unless it is shown that the welfare guardian acted in bad faith or without reasonable care.

(2) A welfare guardian shall be personally liable in respect of any contract or arrangement entered into with, or liability incurred to, any person if the welfare guardian does not, before entering into the contract or arrangement or

incurring the liability, disclose to that person that the welfare guardian is acting in that capacity.

**21. Gastos del tutor de bienestar (Welfare guardian's expenses)**

(1) Subject to any order of a Court made under subsection (2) of this section, all expenses reasonably incurred by a welfare guardian in the exercise of the powers and duties conferred by or under this Act shall be charged against, and payable out of, the property of the person for whom the welfare guardian is acting.

(2) A Court may order that any expenses incurred or to be incurred by a welfare guardian in the exercise of the powers and duties conferred by or under this Act shall be met, in whole or in part, out of the Consolidated Account from money appropriated for the purpose by Parliament; and every such order shall have effect according to its tenor.

**22. Cuando un tutor de bienestar cesa sus funciones (When welfare guardian ceases to hold office)**

A welfare guardian shall cease to hold office—

(a) If the person for whom the welfare guardian is acting dies; or

(b) If the welfare guardian dies or is adjudged bankrupt or becomes a special patient or a committed patient under the Mental Health Act

1969 or becomes subject to a property order or becomes otherwise incapable of acting; or

(c) If the personal order by which the welfare guardian was appointed expires in accordance with section 17 of this Act or is discharged by the Court under section 86 of this Act.

**23. Designación del tutor de bienestar en caso de incumplimiento (Appointment of welfare guardian in event of noncompliance)**

(1) Where any person is required by a personal order to do anything and that person fails to comply with any of the requirements of the order, any party to the proceedings in which the order was made, or the person in respect of whom the order was made, may apply to a Court for the appointment of a welfare guardian.

(2) The function of a welfare guardian appointed under this section shall be to take all reasonable steps to ensure compliance with the order of the Court by the person who has so far failed to comply with it.

(3) A Court, on appointing a welfare guardian under this section, shall specify in the order by which the appointment is made the date on which the welfare guardian is to cease to act; and on that date the order shall expire.

(4) Subject to the preceding provisions of this section, the provisions of sections 19 to 22 of this

Act, so far as they are applicable and with the necessary modifications, shall apply to a welfare guardian appointed under this section as if the welfare guardian had been appointed under section 12 of this Act.

***B)De los administradores patrimoniales (Managers)***

**Ley de Protección de los Derechos Personales y Patrimoniales de 1988 (*Protection of Personal and Property Rights Act 1988 No 4 (as at 01 July 2009), Public Act*)**

**35. Patrimonio no transferido al administrador (Property not to vest in manager)**

The property of a person subject to a property order shall not vest in the manager, but the manager shall be entitled to the possession and management of so much of the property as the order applies to in accordance with the succeeding provisions of this Part of this Act.

**36. Funciones y deberes del administrador (Functions and duties of manager)**

(1) In managing any property under this Act, the first and paramount consideration of a manager shall be to use the property in the promotion

and protection of the best interests of the person for whom the manager is acting, while seeking at all times to encourage that person to develop and exercise such competence as that person has to manage his or her own affairs in relation to his or her property.

(2) Without limiting the generality of subsection (1) of this section, so far as is practicable in the circumstances and to encourage the person for whom the manager is acting to develop and exercise such competence as that person has to manage his or her own affairs in relation to his or her property, the manager may allow that person to have control of and deal with any part of the property.

**37. Seguridad en el desempeño de los deberes del administrador (Security for performance of manager's duties)**

(1) A Court may, if it thinks fit, require any manager (other than a trustee corporation), upon appointment or at any time thereafter, to give such security to Public Trust as the Court thinks fit for the due performance of the duties of the manager.

(2) The security may be a bond, with or without a surety or sureties, or such other security as the Court directs and approves.

(3) A Court may at any time, on the application of Public Trust, require a manager to give to

Public Trust further or other security for the due performance of the manager's duties.

(4) A Court may at any time give leave to Public Trust to enforce any such security, and Public Trust shall thereupon proceed by action or otherwise to enforce the security accordingly.

(5) All money so received by Public Trust shall be deemed part of the property for which the person is or was the manager, and all costs and expenses so incurred by Public Trust shall be paid out of that property.

(6) Public Trust may commence or institute proceedings against any such manager for any breach of duty, and may apply to the Court ex parte for an injunction to restrain any such breach or any threatened breach.

### **38. Poderes del administrador (Powers of manager)**

(1) A manager shall have all such rights and powers as the Court may confer on the manager in the property order, subject to any restrictions specified by the Court in the order.

(2) A manager of the property of a person subject to a property order may apply to a Court for directions relating to the exercise of any of the manager's rights and powers.

(3) Where a manager is, in accordance with this Act, authorised to make an application under section 122 of the Land Transfer Act 1952 to have

a transmission registered, a District Land Registrar is authorised to accept such an application notwithstanding the fact that the manager is not the person claiming to be entitled to the estate or interest in land.

**39. Poderes adicionales cuando se trata de un administrador designado por el Fideicomiso Público (Additional powers where Public Trust appointed manager)**

For the purpose of enabling Public Trust to exercise effectively any of the powers conferred on Public Trust by or under this Act or any other enactment or by any order of the Court or by law, or to do any other act or thing that Public Trust is thereby authorised or empowered to do, Public Trust may, either in Public Trust's own corporate name or in the name and on behalf of the person subject to a property order, exercise the powers in clause 1 of Schedule 2 to this Act.

**40. Aplicación de la Ley de Fideicomiso Público de 2001 (Application of Public Trust Act 2001)**

(1) The management of the property of a person subject to a property order in respect of which Public Trust is the manager or one of the managers shall be deemed to be placed in Public Trust; and, subject to the provisions of this Act, all the provisions of the Public Trust Act 2001,

so far as they are applicable and with any necessary modifications, shall extend and apply accordingly to the management of that person's property.

(2) All expenses incurred by Public Trust as manager, whether alone or together with any other person or persons, in respect of the maintenance of any person subject to a property order or in the management of the property of any such person, or in the exercise of the powers, authorities, and discretions conferred on Public Trust in respect of that property, shall be charged against and payable out of that person's property; and, in addition, there shall be payable in respect of that property remuneration and amounts in accordance with Public Trust's scale of charges.

(3) All such expenses, commissions, and other charges shall be payable out of the estate of the person subject to a property order notwithstanding that the person dies or his or her property otherwise ceases to be under the management of Public Trust before such payment is made.

(...)

**42. Poderes del administrador sujetos a las disposiciones de una orden personal (Manager's powers subject to provisions of personal order)**

Where a property order is made in respect of any person subject to a personal order, the exercise

by the manager of the rights and powers conferred by or under this Part of this Act shall be subject to the terms of the personal order.

**43. Deber del administrador de consultar (Manager's duty to consult)**

(1) In the management of the property of a person subject to a property order, the manager shall, as far as it may be practicable, consult—

(a) The person for whom the manager is acting; and

(b) Such other persons, as are, in the opinion of the manager, interested in the welfare of the person and competent to advise the manager in relation to the management of the person's property; and

(c) A representative of any group that is engaged, otherwise than for commercial gain, in the provision of services and facilities for the welfare of persons in respect of whose property the Court has jurisdiction in accordance with section 25 of this Act, and that, in the opinion of the manager, is competent to advise the manager in relation to the property that is subject to the property order.

(2) The manager may follow any advice given to the manager by the person for whom the manager is acting or by any other person referred to in subsection (1) of this section, and shall not be liable for anything done or omitted by the manager in following that advice, unless done or

omitted in bad faith or without reasonable care.

(3) In any case where the manager is of the opinion that any such advice conflicts with his or her duty as manager or with any rule of law or would or may expose the manager to liability or is otherwise objectionable, or in any case where conflicting advice is given to the manager, the manager may apply to a Court for directions in the matter, and shall not incur any liability in respect of anything done or omitted to be done in accordance with any such directions.

(4) In any case to which subsection (3) of this section applies, the Court may make such order as to costs as it thinks fit.

(5) Nothing in subsection (3) of this section shall oblige the manager to apply to a Court for directions.

(6) Without limiting any of the foregoing provisions of this section, where a welfare guardian has been appointed for the person for whom the manager is acting, the manager shall consult on a regular basis with that welfare guardian to ensure that the interests of the person for whom they are acting are not prejudiced through any breakdown in communication between the manager and the welfare guardian.

**44. Efectos de las decisiones del administrador (Effect of manager's decisions, etc)**

(1) Every decision made by a manager in the exercise of the powers conferred by or under this Part of this Act, and everything done by a manager in implementation of any such decision, shall have the same effect as it would have had if it had been made or done by the person for whom the manager is acting and that person had had full capacity to make or do it.

(2) Without limiting the generality of subsection (1) of this section, any contract, agreement, or other arrangement made or entered into by the manager in relation to any property of which he or she is the manager may be enforced in respect of the property, by proceedings (where necessary) brought against the manager in his or her capacity as manager, in the same manner and to the same extent as it could have been enforced if it had been made or entered into by the person for whom the manager is acting and that person had been fully competent to make or enter into it.

(3) No person dealing with a manager in respect of any matter within the powers of a manager shall be concerned to inquire as to the concurrence or otherwise of the person for whom the manager is acting or of any other person or be affected by notice that the person or any other person has not concurred.

**45. Requerimiento de una declaración  
(Statements required)**

(1) For the purposes of this section the term year, in relation to a manager, means a period of 12 months commencing with the date on which his or her managership begins or with an anniversary of that date.

(2) Every manager shall prepare a statement, in the prescribed form and containing the prescribed particulars, and file it in a Court together with 2 copies, as follows:

(a) Within 3 months after the date of the commencement of his or her managership, a statement of the property, as at that date, of the person for whom the manager is acting:

(b) Within 30 days after the expiry of each year during which his or her managership continues, a statement relating to the property, as at the expiry of that year, of the person for whom the manager is acting and to the management of that property by the manager during that year:

(c) Within 30 days after the date on which the manager ceases in accordance with section 52 of this Act to hold office as manager, a statement relating to the property, as at that date, of the person for whom the manager was acting and to the management of that property by the manager during the period commencing with the expiry of the last complete year of his or her managership and ending with that date.

(2A) Notwithstanding anything in subsections (1) and (2)(b) of this section, the Court may specify

both the period of 12 months that, in relation to any managership, is to constitute a year for the purposes of any statement required to be filed under subsection (2)(b) of this section and the transitional arrangements that, in relation to statements required to be filed under subsection (2)(b) of this section, are to apply in relation to a change of balance date.

(3) Every manager commits an offence and is liable upon conviction on indictment to imprisonment for a term not exceeding 3 years who, in a statement filed under this section, includes any particular knowing it to be false.

(4) Every manager commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who fails to file a statement when required to do so by subsection (2) of this section.

**46. Declaración a ser examinada por o en representación del Fideicomiso Público (Statement to be examined by or on behalf of Public Trust)**

(1) Where any statement is filed in a Court under section 45 of this Act by any manager who is not a trustee corporation, the Registrar of the Court shall forthwith transmit 1 copy of the statement to Public Trust, and send the other copy to the person for whom the manager is acting.

(2) Public Trust, or a chartered accountant appointed by Public Trust for the purposes of this

section, shall examine a statement transmitted to Public Trust under subsection (1) of this section, and shall prepare a report as to whether the statement is correct and, if not, in what respects it is deficient.

(3) A report under subsection (2) of this section shall be filed with the Court, and a copy of the report shall be given to the manager who filed the statement.

(4) Public Trust, or a chartered accountant appointed by Public Trust for the purposes of this section, shall have a right of access to the books, accounts, vouchers, securities, or other documents of the manager or in the manager's custody or under the manager's control, and to any securities and documents of title held by the manager on account of the person for whom he or she is acting as manager, and may require from the manager such information and explanation as may be necessary.

(5) If any person having the custody or control of any books, accounts, vouchers, securities, or other documents to which Public Trust, or a chartered accountant appointed by Public Trust for the purposes of this section, has a right of access under this section fails or refuses to allow Public Trust or that chartered accountant to exercise such access or in any way obstructs the preparation of a report under subsection (2) of this section, a Court, on the application of Public

Trust or the chartered accountant, may make such order as it thinks appropriate.

(6) The remuneration and expenses of Public Trust, or any chartered accountant appointed by Public Trust for the purposes of this section, shall be such as may be prescribed or (if not so prescribed) as may be determined by the Court, and shall, unless the Court otherwise orders, be borne by the property of the person for whom the manager is acting; and where the Court orders otherwise, such remuneration and expenses shall be borne by the manager personally or be apportioned between the manager and the property of the person for whom the manager is acting, as the Court thinks just.

(7) All expenses and costs for which the property of a person subject to a property order is liable under this section shall be a charge on that property, and that charge may be enforced in such manner as the Court directs.

(8) Public Trust, or a chartered accountant appointed by Public Trust for the purposes of this section, shall not be liable for any expenses or costs under this section.

**47. Inspección y copia de las declaraciones e informes por vacaciones (Inspection and copying of statements and reports by leave)**

Any person may, by leave of the Court or of the Registrar, inspect or make a copy of the whole or

any part of any statement or report filed in a Court under section 45 or section 46 of this Act.

**48. Ejecución del deber del administrador de preparar y presentar declaraciones (Enforcement of manager's duty to prepare and file statements)**

(1) Where a manager fails to file a statement in a Court when required to do so by section 45(2) of this Act, the Registrar of the Court shall draw the matter to the attention of a Judge, who may make an order directing the manager to remedy the default within such time as may be specified in the order.

(2) An order made under subsection (1) of this section may provide that all costs of and incidental to the application shall be borne by the manager.

(3) Nothing in this section shall limit or affect section 45(4) of this Act.

**49. Responsabilidad del administrador (Liability of manager)**

(1) Subject to subsection (2) of this section, no action shall lie against a manager in respect of anything done or omitted to be done by the manager in the exercise of the powers conferred by or under this Act, unless it is shown that the manager acted in bad faith or without reasonable care.

(2) A manager shall be personally liable in respect of any contract or arrangement entered into with, or liability incurred to, any person if the manager does not, before entering into the contract or arrangement or incurring the liability, disclose to that person that the manager is acting in that capacity.

**50. Gastos de administración y remuneración del administrador (Expenses of management and remuneration of managers)**

(1) All expenses properly incurred by a manager under this Part of this Act shall be charged against and payable out of the property of the person for whom the manager is acting.

(2) Except as provided by any other Act, no manager shall be entitled to remuneration for his or her services unless a Court otherwise directs, either in the property order or by a subsequent order.

(3) All such expenses, remuneration, and other charges shall be payable out of the property of the person for whom the manager is acting, although the person dies or the property otherwise ceases to be under the management of the manager before such payment is made.

(..)

**52. Cuando un administrador cesa sus funciones (When manager ceases to hold office)**

A manager shall cease to hold office as manager under this Part of this Act—

(a) If the person for whom the manager was acting dies; or

(b) If the manager dies or is adjudged bankrupt or becomes a special patient or a committed patient under the Mental Health Act 1969 or becomes subject to a property order or becomes otherwise incapable of acting; or

(c) Unless the Court otherwise orders in any case where there are 2 or more managers, if one of the other managers dies or is adjudged bankrupt or becomes a special patient or a committed patient under the Mental Health Act 1969 or becomes subject to a property order or becomes otherwise incapable of acting; or

(d) If the property order is discharged by the Court under section 87 of this Act; or

(e) Unless the Court otherwise orders, if another person is appointed as manager.

***C)De los poderes de los administradores***

**Ley de Protección de los Derechos Personales y Patrimoniales de 1988 (*Protection of Personal and Property Rights Act 1988 No 4 (as at 01 July 2009), Public Act*)**

**Anexo I (Schedule 1 -Powers of managers Section 29-)**

1. Subject to the terms of the property order (or, in a case where a trustee corporation has agreed to act as manager pursuant to an application under section 32 or section 33 of this Act, to the terms of the application) a manager may—

(a) Take possession of all of the property of the person and demand, receive, and recover possession of it from any person holding it, with further power—

(i) To institute or defend in the manager's own name or in the name of the person subject to a property order any action, suit, or other proceeding (either civil or criminal) concerning the property of the person and to suffer judgment to go by default; or to consent to any judgment, decree, or order in the action, suit, or proceeding on such terms as the manager thinks fit:

(ii) To take proceedings to cause to be adjudicated a bankrupt or placed in liquidation any person or company indebted to the person subject to a property order, or to make any application for or in relation to a summary instalment order in respect of any such person under subpart 3 of Part 5 of the Insolvency Act 2006; and to vote and act either personally or by proxy at all meetings of creditors and in all other matters relating to the bankruptcy or liquidation or summary instalment order:

(iii) In the name and on behalf of the person subject to a property order, to lodge a caveat under

the Land Transfer Act 1952 or a notice of claim under section 42 of the Property (Relationships) Act 1976:

(iv) To compromise or otherwise settle any claims or demands made by or against the person subject to a property order, or by or against the manager of the estate, on such terms as the manager thinks fit and on such evidence as the manager considers sufficient; and to submit such claims or demands to arbitration; and to do all acts and things necessary to render any such compromise or arbitration effectual:

(v) To give directions or consents with reference to the share or interest of the person subject to a property order in or under any trust, settlement, will, or intestacy:

(vi) To make any election arising out of or give directions with reference to the right, title, share, or interest of the person subject to the property order in or under any policy of assurance, or any pension, superannuation, benefit, benevolent, or other fund, or in any money arising from any such policy or fund:

(vii) To make an application under section 122 of the Land Transfer Act 1952 to have a transmission registered where the manager believes that the person subject to a property order is entitled to any estate or interest in land by virtue of that transmission:

(b) Apply and expend in the manager's

discretion, and to such extent as the manager thinks fit, any money belonging to the person subject to the property order including any money borrowed or advanced by the manager for any one or more of the following purposes:

(i) For or towards the maintenance, education, advancement, or benefit of the person, or of his or her spouse, civil union partner, child, grandchild, or other relative, or of any person wholly or partially dependent on the person:

(ii) In the doing or continuation of any acts of bounty or charity previously done or promised to be done by the person, or that might reasonably be expected of the person if he or she were not subject to a property order and that the manager, having regard to the circumstances and to the nature and value of the estate, considers proper and reasonable:

Provided that, in the exercise of the powers conferred by this subparagraph, the manager shall not, without the consent of the Court, expend any sum or sums that would, when added to any other sum or sums expended pursuant to this subparagraph during the preceding period of 12 months, exceed in the aggregate \$5,000:

(iii) In the acquisition of a home for the person or for his or her spouse, civil union partner, or children, by the purchase of freehold or leasehold land with a dwellinghouse erected on it; or by the purchase of freehold or leasehold land and the

erection on it of a dwellinghouse together with such outbuildings, fences, gates, paths, and other amenities and improvements as the manager thinks fit; or by the acquisition of a flat or apartment by any means that the manager may consider appropriate (whether by acquiring shares or interest in the land on which the premises are erected or in any other way), and with further power to enter into any lease, licence, agreement, or other arrangement under which the manager or his or her nominee or the person who is to occupy the flat or apartment has the right to occupy it (including an arrangement whereby any shares in a limited liability company and the benefit of any such lease, licence, or agreement may be held by that person or by some other nominee of the manager upon trust for the manager); or by such other means as in the circumstances of the case may appear to the manager to be reasonable and proper:

Provided that the manager shall not, without the consent of the Court, expend a sum or sums exceeding in the aggregate the specified sum in acquiring a home pursuant to the provisions of this subparagraph:

(iv) In the provision for the use and benefit of the person, or of his or her spouse, civil union partner, or children, of such furniture, clothing, and other articles of personal or household use or ornament (including motor vehicles) as the

manager, having regard to the circumstances and to the nature and value of the estate, considers proper and reasonable:

(v) In or towards the payment of any debt, obligation, or liability of the person, or incurred by the manager in the exercise of the powers vested in the manager by this or any other enactment or by any order of the Court or by law:

(vi) In or towards the payment of all rates, taxes, rent, insurance premiums, or other outgoings payable in respect of the property of the person or under any policy of insurance of any kind:

(vii) For the repair, maintenance, upkeep, or renovation of any property of the person:

(viii) For the reinstatement or rebuilding of any property of the person destroyed or damaged by fire or otherwise:

(ix) For the improvement or development of any property of the person by way of building or otherwise:

Provided that, in the exercise of the power conferred by this subparagraph, not more than the specified sum may be so expended for any one purpose without the consent of the Court:

(c) With the prior approval of the Court, to invest any money belonging to the person subject to a property order:

Provided that, where the money is to be invested in the manner authorised by the Trus-

tee Act 1956 for the investment of trust funds, it shall not be necessary to obtain the prior approval of the Court:

(d) Insure any of the property of the person subject to a property order against loss or damage to its full insurable value or for its full replacement value, or insure against any other risk or liability against which it would be prudent to insure:

(e) Carry out and perform contracts entered into by the person subject to a property order before the manager was appointed:

(f) Carry on any trade or business of the person subject to a property order or carry on the business of any partnership in which the person is a partner, for such period or periods, in either case, as the manager thinks fit, with further power—

(i) To employ any part of the property of the person in the trade or business and from time to time to increase or diminish the part of the person's property so employed:

(ii) To purchase stock, machinery, plant, implements, and chattels for the purposes of the trade or business:

(iii) To employ such managers, agents, servants, clerks, workmen, and others as the manager thinks fit:

(iv) Subject to the Sharemilking Agreements Act 1937, to enter into any sharemilking agree-

ment for such period and on such terms and conditions as the manager thinks fit:

(v) To agree on an alteration of the conditions of any partnership for the purpose of more advantageously carrying on or preserving the business, until the recovery of the person or disposing of it or winding it up:

(vi) To dissolve any partnership of which the person is a member in the same manner in all respects as the person could have done had he not been subject to this Act, and on such dissolution the manager in the name and on behalf of the person may join with the other partner or partners in disposing of the partnership property, whether real or personal, either to such partner or partners or to any other person on such terms and in such manner as the manager thinks fit:

(g) Where the person subject to a property order is a mortgagor or mortgagee of any land, agree to extend or vary the mortgage on such terms as the manager thinks fit:

(h) Exercise any power of sale or other power vested in the person subject to a property order as mortgagee, or as unpaid vendor, lessor, or bailee:

(i) In the name and on behalf of the person subject to a property order and in the same manner in all respects as the person could have done had he or she not been subject to a property order exercise, either in person or by proxy, all rights, powers, and privileges (including voting

powers) attaching to or exercisable in respect of any shares, stocks, debentures, debenture stock, bonds, notes (whether registered or unregistered, and whether or not they convey any right of conversion), and other securities or investments in or issued by any company or other incorporated body or by any Government or governmental agency (whether central or local) or by any public, municipal, or local corporation, board, or authority:

(j) Surrender, assign, or otherwise dispose of, with or without consideration, any onerous property belonging to the person subject to a property order or any policy of life insurance:

(k) In the name and on behalf of the person subject to a property order and whether the person is possessed of any estate or not, make any application to the Court under the Matrimonial Property Act 1963, the Property (Relationships) Act 1976, or any of the provisions of the Family Proceedings Act 1980 except Part 4 (which relates to the status of marriage or civil union), that the person would be entitled to make if he or she were not subject to a property order:

(l) In the name and on behalf of the person subject to a property order, enter into an agreement under Part 6 of the Property (Relationships) Act 1976:

(m) In the name and on behalf of the person subject to a property order enter into any scheme

of family arrangement to which the person is a necessary or proper party:

(n) Sell any of the property of the person subject to a property order, either subject to prior encumbrances or not, and either together or in lots, by public auction or public tender or private contract, and subject to any such conditions respecting title or evidence of title or other matters as the manager thinks fit; with power to modify or vary any contract or agreement for sale and purchase, or to agree to do so, and to buy in at any auction, and to cancel or rescind any contract or agreement for sale and purchase, or to agree to do so, and to buy in at any auction, and to cancel or rescind any contract or agreement for sale and purchase and to resell, without being answerable for any loss, and to compromise with or make allowances to any person with whom any such contract or agreement has been made, or who is the assignee thereof, in respect of any unpaid purchase money secured on mortgage or otherwise:

Provided that the manager shall not, without the consent of the Court, sell any freehold or leasehold land belonging to the person subject to a property order in any case where the value (as determined in accordance with section 28 of the Trustee Act 1956) of the land or of the share or interest of the person therein exceeds the specified sum; except that the manager may, without the

consent of the Court, sell any such land or the share or interest of the person therein for more than the specified sum if (in accordance with section 28 of the Trustee Act 1956) the manager has in good faith fixed the value of that land or of that share or interest immediately before the sale at the specified sum or less:

(o) Dispose of any of the property of the person subject to a property order by way of exchange for other property in New Zealand of a like nature and a like or better tenure; or, where the person has an undivided share in any property, concur in the partition of the property; and give or take any property by way of equality of exchange or partition:

Provided that the manager shall not, without the consent of the Court, exchange any freehold or leasehold land in any case where the value (as determined in accordance with section 28 of the Trustee Act 1956) of the land or of the share or interest of the person therein exceeds the specified sum:

(p) Subdivide any freehold or leasehold land belonging to the person subject to a property order or in which the person has any share or interest, and construct, dedicate, make, and maintain, or contribute money towards the construction, dedication, making and maintenance of roads, streets, access ways, service lanes, footpaths, and reserves, and sewerage, water, electricity, drainage,

and other works (whether on land belonging to the person or elsewhere), and do all such other things and make all such other payments as are required by any law or bylaw relating to subdivisions or as the manager thinks are necessary or are likely to be beneficial to the person or to his or her estate or to any part of it:

(q) Grant, reserve, or acquire easements and profits à prendre, and enter into party wall agreements and agreements that relate to fencing, or to which section 4 of the Fencing Act 1978 applies, and execute all necessary documents to give effect thereto:

(r) Let or sublet or lease or sublease any property of the person subject to a property order for such term, at such rent (with or without a fine, premium, or foregift) and on and subject to such covenants and conditions as the manager thinks fit, with power at any time to reduce the rent or otherwise vary or modify the terms, and with further power—

(i) To grant to a lessee or sublessee a right of renewal for on or more terms at a rent to be fixed or made ascertainable in a manner specified in the original lease or sublease:

(ii) To grant a lease with an optional or compulsory purchasing clause:

(iii) To grant to a lessee or sublessee a right to claim compensation for improvements made or to be made by the lessee or sublessee in, upon, or about the property that is leased or subleased:

Provided that the manager shall not, without the consent of the Court, grant a lease or sublease for a term of more than 10 years or a lease or sublease with a right or rights of renewal if the aggregate duration of the original and of the renewed terms could exceed 10 years; and shall not, without the consent of the Court, grant a lease with an optional or compulsory purchasing clause in any case where the value (as determined in accordance with section 28 of the Trustee Act 1956) of the property to be leased or of the share or interest of the person therein exceeds the specified sum at the time of the granting of the lease:

(s) Accept the surrender of any lease, sublease, or tenancy:

(t) Accept a lease, sublease, or tenancy of any property, or a renewal of a lease, sublease, or tenancy, at such rent, on such terms, and subject to such covenants and conditions as the manager thinks fit:

(u) Surrender any lease, sublease, or tenancy:

(v) In the name and on behalf of the person subject to a property order exercise any option to purchase property conferred on the person:

Provided that the manager shall not, without the consent of the Court, exercise the power conferred by this paragraph if the price payable for the property exceeds or may exceed the specified sum:

(w) In the name and on behalf of the person subject to a property order settle or join with his or her spouse in settling any property as a joint family home under the Joint Family Homes Act 1964, or apply for cancellation of the registration of any property as a joint family home; and, in consideration of any such cancellation, or on any other occasion when the manager considers it reasonable or proper to so, enter into such agreement or arrangement as the manager thinks just and equitable concerning the future ownership, occupation, or possession of that property, or concerning the proceeds of the sale, letting, or other disposition of it:

(x) Grant powers of attorney to any person in or out of New Zealand to do any act or thing with respect to the property of the person subject to a property order that the manager of the estate of the person can do, during any temporary period of absence or incapacity of the manager or in any other circumstances specified by the Court:

(y) Concur or join with any other person or persons in doing any one or more of the foregoing things.

2. For the purpose of exercising the powers conferred by this Act, where appropriate, a manager may execute, give, and do all such assurances, notices, and things as the manager considers necessary for or reasonable incidental to the exercise of a power or the doing of an act or thing

that the manager is authorised to exercise or do as a manager; and all assurances, notices, and things so executed, given, or done shall have the same force and effect as if executed, given, or done by the person who subject to a property order and as if the person had not been so subject.

3. In this Schedule the expression the specified sum means \$120,000 or such other amount as is, from time to time, prescribed by Order in Council for the purposes of this clause.

#### **6)Capacidad jurídica de las personas con discapacidad para la realización de actos jurídicos**

**Ley de Protección de los Derechos Personales y Patrimoniales de 1988 (*Protection of Personal and Property Rights Act 1988 No 4 (as at 01 July 2009), Public Act*)**

#### **53. Derechos de las personas sujetas a una orden patrimonial (Powers of persons subject to property orders)**

(1) Subject to section 36(2) of this Act, a person subject to a property order shall be incapable of exercising personally any of the powers vested in the manager in respect of any property to which the manager's powers extend.

(2) Every transfer, lease, mortgage, or other disposition of property, and every contract (except

for necessities), made or entered into by a person subject to a property order who, by virtue of subsection (1) of this section does not have the capacity to make or enter into it shall, unless it is made or entered into with the leave of a Court, be avoidable by that person or by the manager acting for that person.

(3) A Court may give leave to any person subject to a property order to make any such transfer, lease, mortgage, or other disposition, or to enter into any such contract, if the Court is satisfied that the transaction is for the person's benefit and that the person consents to it with adequate understanding of its nature.

(4) A manager shall not be entitled to avoid any transaction under subsection (2) of this section in any case where an application in writing has been made to the manager by any party to the transaction requiring the manager to decide whether or not to avoid the transaction, and the manager has, for a period of 28 days after the receipt of the application or such extended period as may be allowed by a Court, failed to give to that party notice whether the manager is avoiding the transaction or not.

(5) If the manager, after any such application, does not, within the period or extended period referred to in subsection (4) of this section, avoid the transaction, the manager shall be deemed to have continued it.

(6) Subject to subsection (8) of this section, if any transaction is avoided under subsection (2) of this section, a Court, on the application of any party to the transaction or of the manager, may make such orders as it thinks just for the purpose of adjusting the rights of the parties and of any other person who has received any property or money comprised in the transaction (not being a person who has received the property or money from a party in good faith and for valuable consideration or who claims through such a person).

(7) Without limiting the generality of subsection (6) of this section, on an application under that subsection, a Court may make an order for the restitution or transfer or payment by or to the person subject to a property order or the manager or any other person of any property or money, in whole or in part, or of any sum representing the value, in whole or in part, of any such property.

(8) Relief under subsections (6) and (7) of this section may be denied wholly or in part if the person from whom relief is sought received the property or money in good faith and has so altered his or her position in reliance on having received an indefeasible interest in it that, in the Court's opinion, it would be inequitable to grant relief, or to grant relief in full, as the case may be.

(9) For the purposes of subsection (2) of this section, the question whether goods or services are necessaries is a question of fact.

**54. Derechos testamentarios de una persona sujeta a una orden patrimonial (Testamentary powers of person subject to property order)**

(1) Without limiting the generality of section 4 of this Act, a person subject to a property order shall not, by reason only of being subject to that order, be incapable of making testamentary dispositions.

(2) A Court may direct that a person subject to a property order may make a testamentary disposition only by leave of the Court; and, in such a case, a testamentary disposition made without the leave of the Court shall be ineffective for all purposes.

(3) The Court may grant leave to make a testamentary disposition under subsection (2) of this section in respect of a testamentary disposition already made or to be made.

(4) The Court may cause inquiries to be made as to the existence of any testamentary disposition made by a person subject to a property order before the making of the property order (whether such testamentary disposition was made before or after the passing of this Act), and may direct that any such testamentary disposition shall be deposited in the Court.

(5) If it appears to the Court that a testamentary disposition was made when the person was unable to manage his or her own affairs in relation to his or her property, the Court may cause inquiries to be made, in such manner as the Court thinks fit, whether that testamentary disposition expresses the present desire and intention of the person.

(6) If the Court is satisfied that the testamentary disposition does not express the present desire and intention of the person, a Court may, in any case where such a course is possible, cause the present desire and intention of the person to be ascertained to the Court's satisfaction, and may authorise the execution by the manager under section 55 of this Act of a new testamentary disposition of that person's estate in accordance with that present desire and intention.

**55. Autorización del Tribunal al administrador para realizar disposición testamentaria en nombre una persona sujeta a una orden patrimonial (Court may authorise manager to make testamentary disposition for person subject to property order)**

(1) Where the Court has given a direction under section 54(2) of this Act that a person subject to a property order may make a testamentary disposition only by leave of the

Court, or the Court is satisfied that such a person lacks testamentary capacity, the Court may authorise the manager acting for that person to execute a will for and on behalf of that person in such terms as the Court directs.

(2) Before a Court authorises a manager to execute a testamentary disposition under subsection (1) of this section, it shall settle the proposed terms of the testamentary disposition provisionally, and hear such persons who wish to be heard and whom the Court is satisfied have a proper interest in the matter.

(3) A testamentary disposition executed by a manager under this section may, while the person continues to lack testamentary capacity, be varied, or revoked and substituted, by another testamentary disposition authorised by the Court and executed by the manager in the same manner as the original testamentary disposition.

(4) Any testamentary disposition executed by a manager under this section shall be—

(a) Signed in the manager's name for and on behalf of the person for whom it is made, in the presence of 2 or more witnesses present at the same time; and

(b) Attested and subscribed by those witnesses in the presence of the manager; and

(c) Sealed with the seal of the Court.

(5) The following provisions apply to a testa-

mentary disposition authorised and executed under this section:

(a) it is valid despite—

(i) section 11 of the Wills Act 2007; and

(ii) sections 9 and 10 of the Wills Act 1837 of the United Kingdom Parliament; and

(b) it has the same effect for all purposes as it would have had if the person subject to the property order—

(i) had had testamentary capacity; and

(ii) had executed the testamentary disposition in the manner required by the applicable section.

(6) The Law Reform (Testamentary Promises) Act 1949, the Family Protection Act 1955, and all other enactments and rules of law relating to the estates of deceased persons shall apply in respect of any testamentary disposition executed under this section as if the person to whom it relates had had testamentary capacity and had executed the testamentary disposition in accordance with law.

(7) Notwithstanding paragraph (c) of subsection (4) of this section, a testamentary disposition that is signed in accordance with paragraph (a) of that subsection, and attested and subscribed in accordance with paragraph (b) of that subsection, shall be valid notwithstanding that the person to whom the testamentary disposition relates dies before it is sealed with the seal of the Court so long as the terms of the testamentary disposition accord with the directions of the Court.

(8) A testamentary disposition authorised and executed in accordance with this section shall continue to have effect, until it is revoked, notwithstanding that the person to whom it relates has ceased to be subject to a property order.

**56. Derecho testamentario sin afectar (Testamentary law otherwise unaffected)**

Except as provided in sections 54 and 55 of this Act, nothing in this Act shall affect the law relating to testamentary dispositions.

**57. Procedimientos, ejecuciones, etc., a no proceder sin autorización del Tribunal (Proceedings, execution, etc, not to proceed without leave of Court)**

(1) From the date on which an application is made for a property order in respect of any person, no person shall, without the leave of a Court,—

(a) Bring or continue any proceedings (not being proceedings under this Act or proceedings in the High Court) against the person in respect of whom the application is made; or

(b) Issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgment or order (not being a judgment or order given under this Act) against the person in respect of whom the application is made; or

(c) enter into possession, sell, appoint a rece-

iver, or take or continue any power or right under or in pursuance of any mortgage, charge, instrument, or other security over the property of the person in respect of whom the application is made; or

(d) Determine or forfeit any tenancy, re-take or re-enter any premises, or take or continue any power or right under or in pursuance of any lease, tenancy, or agreement to let or lease against the property of the person in respect of whom the application is made.

(2) This section shall also apply to a company and its property, and to any subsidiary of a company and the subsidiary's property, where the person in respect of whom the application is made is a member of the company and holds more than 50 percent of its equity share capital or issued shares, as the case may be.

(3) For the purposes of subsection (2) of this section,—

(a) In the case of a company registered under the Companies Act 1955, the terms company, subsidiary, and equity share capital shall have the meanings assigned to them by sections 158 and 158A of the Companies Act 1955:

(b) In the case of a company registered under the Companies Act 1993, the terms company and subsidiary shall have the meanings assigned to them by sections 5 and 6 of the Companies Act 1993.

**58. Preservación notoria del carácter de los bienes enajenados (Notional preservation of character of assets converted)**

(1) Where any property (including money) is derived from any sale, mortgage, charge, or other disposition of any other property belonging to a person subject to a property order pursuant to any powers conferred by or under this Act or any former corresponding Act, the person whose property is so disposed of, and anyone claiming through that person, shall have the same interest in the property so derived, so far as it has not been applied or spent or disposed of in accordance with any powers so conferred, as he or she would have had in the property disposed of if no disposition had been made, and the surplus property so derived shall be deemed to be of the same nature as the property disposed of.

(2) In any such case, the manager may, for the purpose of giving better effect to the provisions of subsection (1) of this section, carry to a separate account an amount representing the property so derived, or any balance for the time being remaining.

(3) While an amount stands to the credit of that separate account, any payments from the property of the person subject to a property order shall be made out of any other property properly available for the purpose, except so far as the manager decides that the payment should be

made wholly or partly from the separate account.

(4) Subject to subsection (5) of this section, this section shall apply in all cases, whether the property was so derived before or after the commencement of this Act, but shall not apply to any property so derived by the disposition of any property belonging to a mentally defective person who died before the 18th day of October 1957 (being the date of the commencement of the Mental Health Amendment Act 1957), unless the Court had, in the lifetime of that person, made an order that would have been authorised by section 60 of this Act if it had then been in force.

(5) No distribution that has been made before the commencement of this Act of property affected by any such order shall be disturbed by reason of this section or of section 59 or section 60 of this Act.

(6) This section shall not apply to income arising from any such property so derived during the lifetime of the person subject to a property order.

**59. Preservación notoria del carácter del dinero gastado para ciertos fines (Notional preservation of character of money expended for certain purposes)**

(1) A Court shall have power to order that

the whole or any part of any money expended or to be expended for—

(a) The improvement, security, or advantage of any property of a person subject to a property order; or

(b) Repaying money secured by a mortgage or other charge over such property,—

shall be a charge upon the property, but so that no right of sale during the lifetime of the person shall be conferred by the charge.

(2) The charge may include interest on the money if the Court thinks fit, and the Court may give directions regarding payment of interest.

(3) The charge may take effect in favour of a person as trustee for the person subject to a property order as part of that latter person's personal estate or of a specified part thereof.

(4) At any time before the death of a person in respect of whom the Court has made an order under this section, and whether or not that person is still subject to a property order, the Court may vary or discharge the charge and give any consequential directions.

(5) Nothing in this section shall apply to any mortgage or charge in favour of any other person who advances the money, nor shall it restrict the operation of section 56 of the Public Trust Act 2001 or affect any charge created by subsection (4) of that section.

**60. El Tribunal puede emitir órdenes para preservar la naturaleza y la devolución de la bienes (Court may make orders for preserving nature and devolution of property)**

(1) A Court shall have power, in the management of the property of a person subject to a property order, to make such orders as it thinks fit for the purpose of preserving the nature, quality, tenure, and devolution of the property or of any part of it.

(2) Without limiting the generality of subsection (1) of this section, a Court may direct that any money shall be carried to a separate account, and may declare the notional character that the money in that account bears, and may order such assurances and things to be executed and done as it thinks expedient.

(3) At any time before the death of the person subject to a property order, and whether or not he or she is still subject to such an order, the Court may vary or discharge the order, and give any consequential directions.

**61. Terminación de la preservación notoria del carácter de los bienes (Termination of notional preservation of character of assets)**

(1) Section 58 of this Act shall cease to apply to any capital money, and any charge on property

created under an order of the Court made under section 59 of this Act shall be extinguished, and any order of the Court made under section 60 of this Act shall cease to have effect, if, at any time after section 58 of this Act became applicable to the capital money, or the charge came into existence, or the order was made, as the case may be (in this section referred to as a subsequent time), the person subject to a property order has been entitled for any continuous period of 12 months to manage the capital money, or the property charged, or the money or other property affected by the order, as the case may be.

(2) If the person subject to a property order has not been so entitled, section 58 of this Act shall continue to apply to any of his or her capital money to which it has become applicable, and any such charge or order shall continue to exist and have effect, except so far as the person has, at any subsequent time, while having the necessary capacity to do so,—

(a) Made a valid testamentary disposition of, or paid or transferred to any other person beneficially, the capital money or the property charged or the money or other property affected by the order, as the case may be; or

(b) In the case of property charged, released the charge.

(3) This section shall not limit or affect any power of the Court under section 59 or section

60 of this Act to vary or discharge any such charge or order.

(4) Subsection (2) of this section shall have effect whether or not the person continues to be subject to a property order or to be entitled to manage all or any of his or her money and other property.

**62. El Tribunal puede resolver sobre los intereses en beneficio de una persona sujeta a una orden patrimonial (Court may settle the beneficial interests of person subject to property order)**

(1) A Court may direct a settlement to be made of all or any of the property of a person subject to a property order on such trusts and subject to such powers and provisions as the Court may think fit; and, in particular, the Court may give such directions—

(a) Where the property has been acquired under a settlement or will, or on intestacy, or represents property so acquired; or

(b) Where,—

(i) By reason of any change in the law or of any change in circumstances since the execution by the person of a testamentary disposition; or

(ii) By reason of any absence of information at the time of that execution; or

(iii) On account of the former management of the property or the expenditure of money in improving or maintaining it; or

(iv) For any other special reason,—

the Court is satisfied that the devolution or distribution of the property of the person, either under any testamentary disposition or on intestacy, would be such as might cause injustice or hardship to any person.

(2) A Court may direct the transfer by way of gift of any of the property of a person subject to a property order for the maintenance and benefit of members of the person's family or for the provision of other persons or purposes for whom or which the person might be expected to provide if he or she were able to manage his or her own affairs in relation to his or her property.

(3) A Court may direct the manager, to execute any transfer or other instrument, and to do any other act or thing, that may be required for giving effect to the transfer or settlement, in the name and on behalf of the person, and for that purpose may make a vesting order or appoint a person to convey; and any settlement or transfer approved by the Court shall be as effectual and binding on all persons interested as if it had been made by the person while of full competence.

(4) This section applies whether or not the person has executed a testamentary disposition and notwithstanding that it is not known whether the person has executed such a disposition or not, but does not apply when the person is a minor who is not married or in a civil union.

(5) An application to a Court for an order under this section may be made by any of the following persons:

(a) Any person who has or would have had any interest in the property of the person subject to a property order or any expectation of succession to any such property, whether that interest or expectation arises or could have arisen under a testamentary disposition that is known to exist or in the event of the intestacy of the person:

(b) The manager:

(c) Any other person who adduces proof of circumstances that, in the opinion of the Court, make it proper that that person should make the application.

(6) Subject to making due provision for the maintenance of the person subject to a property order in accordance with his or her means and way of life, whether out of the capital or income of the property settled or other property or partly in one way and partly in another, and to providing, by means of a power of appointment or revocation, or otherwise, for the possibility of the person recovering full competence to manage his or her own affairs in relation to his or her property, the Court may, in making any order under this section, have regard to all or any of the following matters:

(a) The manner in which the property has been settled or dealt with on former occasions:

(b) In the case of any land or business, the welfare of the persons employed in connection with the land or business, and the expediency of settling other assets to devolve with the land or business:

(c) The provisions of any testamentary disposition of the person subject to a property order:

(d) The expediency of providing for—

(i) Payments or annuities for the wife, husband, civil union partner, de facto partner, or children of the person subject to a property order or for other persons dependent on that person, and for other annual or capital charges and the power to create them:

(ii) The continuation or provision of any superannuation or pension, and the application of any part of the income for charitable purposes:

(iii) Discretionary trusts, trusts for effecting or maintaining policies of insurance, powers of appointment, sinking funds for making good any losses (instead of or in addition to insurance), or any other purposes:

(iv) The extension of any statutory powers of investment, management, or otherwise:

(v) The manner in which any costs are to be raised and paid, whether out of the settled property or otherwise:

(vi) Any other matter or thing that the Court may consider material, having regard to the nature of the settlement, development, and

enjoyment, and to the persons who are to take, either successively or otherwise.

(7) At any time before the death of a person in respect of whom it has made an order under this section, and whether or not he or she is still subject to a property order, the Court may, in respect of any property remaining subject to the trusts of a settlement made under this section, on being satisfied that any material fact was not disclosed to the Court when the settlement was made, or on account of any substantial change in circumstances, by order vary the settlement in such manner as it thinks fit, and give any consequential directions.

(8) Without limiting the provisions of section 111 of this Act, rules of Court may be made for all or any of the following purposes:

- (a) Giving effect to the provisions of this section:
- (b) Compelling information to be furnished respecting, and production of, testamentary dispositions, and their lodgment in Court:
- (c) Making representation orders.

## **7) Normativa general sobre discapacidad**

·Disabled Persons Community Welfare Act 1975 No 122 (as at 03 September 2007), Public Act

·New Zealand Public Health and Disability Act 2000 No 91 (as at 01 November 2008), Public Act

·Human Rights Act 1993 No 82 (as at 01 October 2008), Public Act

·New Zealand Bill of Rights Act 1990 No 109 (as at 03 September 2007), Public Act

·Criminal Procedure (Mentally Impaired Persons) Act 2003

·Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 No 116 (as at 18 May 2009), Public Act

·Mental Health (Compulsory Assessment and Treatment) Act 1992 No 46 (as at 01 July 2009), Public Act

·Protection of Personal and Property Rights Act 1988

·Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 No 64, Public Act

·Health and Disability Commissioner Act 1994 No 88 (as at 01 November 2008), Public Act





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