CANADIAN BAR ASSOCIATION

CANADIAN LEGAL CONFERENCE

AUGUST 17, 2010

NIAGARA FALLS, ONTARIO

FAR-FLUNG FAMILIES:

Power of Attorney Jurisdictional Issues

Margaret E. Rintoul
Blaney McMurtry LLP
Toronto, Ontario

mrintoul@blaney.com

USE OF ONTARIO POWERS OF ATTORNEY OUTSIDE OF ONTARIO:

limitations and opportunities in other provinces and U.S. settings

Powers of Attorney are generally accepted in most Common Law jurisdictions and many Civil Law jurisdictions, as a means of allowing individuals and trust companies to act on behalf of other individuals in investment management, business dealings and general financial management.[1] In a society where family members are scattered throughout the world, and individuals have assets or interests in assets scattered over several countries, the use of powers of attorney across political borders is important.

In any examination of powers of attorney across various jurisdictions, it is often considered advisable to have a power of attorney prepared according to the rules of the jurisdiction where property (particularly land) is located, so as to ensure that the forms

with which regulatory and registration bodies are familiar, are in use. Therefore, for the Ontario resident who has a condo in Florida or Arizona and wants to be able to ensure that a sale can be completed in his or her absence, or that banking can be carried on seamlessly, it may be appropriate to have general powers of attorney prepared according to the local laws of each of Ontario, Florida and Arizona, by lawyers in each of those jurisdictions. The one big caveat to that approach is that at least in Ontario, the act of signing a new power of attorney has the effect of revoking existing ones, unless the language is such that such revocation is specifically prevented.[2]

When only one power of attorney exists, for a single jurisdiction, and the donor is no longer able to provide new ones, but the need is there to deal with the property (for instance where the Ontario resident with the Florida condo has grown too old and infirm to use it and the family have to sell it) the matter at issue is the ability to use the Ontario power of attorney to sell the Florida property. The same situation arises where someone has moved to the US to retire, and has done all of their documents according to the local regulations, but left property of some sort, perhaps the family cottage, unsold in Ontario.

Particularly where real estate is involved, the local laws must be complied with, in terms of the form of execution of the document (formal validity) and the contents (essential validity), which includes the enforceability of the document during mental incapacity. In Ontario, no power of attorney can be used when the donor is mentally incapable, unless the document states that it is valid during any subsequent mental incapacity of the donor. However, the *Substitute Decisions Act, 1992* in Ontario provides in terms of the manner and formalities of execution of a power of attorney from another jurisdiction, that the power of attorney is valid if at the time of its execution, it complied with the internal law

of the place there it was executed, where the donor was domiciled or where the donor had his or her habitual residence.[3] To establish those criteria, an opinion from a lawyer in the jurisdiction where the document was prepared as to the formal validity including witnessing requirements, and perhaps specific attention to domicile and/or habitual residence may be needed in order to resolve the matter.

ATTORNEY APPOINTED BY ONTARIO RESIDENT BUT RESIDENT OUTSIDE OF ONTARIO:

application to property inside and outside of Ontario

Ontario rules do not restrict the appointment of an attorney under a power of attorney to a person resident in Ontario, although there are many practical reasons why it is probably most appropriate to do so. As long as the named attorney is of legal age, at least in Ontario, and able and willing to act, he or she can exercise the powers of an attorney for an Ontario resident as set out in the *Substitute Decisions Act, 1992*. There are no requirements for bonding to allow someone to act under a valid power of attorney, and there are no residence requirements. This may not apply to all jurisdictions, and if the need arises, the residency rules for a particular province or state should be reviewed before going forward with any document preparation.

Depending upon the nature of the management and control involved, the use of a non-resident attorney for a resident of Canada could conceivably have income tax issues. If the management and control of the assets of an incapable person is clearly outside of Canada, query whether there could be an issue as to whether the individual is now to be treated as having left Canada with the inherent issues relating to departure tax and non-resident withholding taxes. If there is no evidence that the individual is anything other

than a Canadian resident (i.e. they are physically in Canada) there is probably little issue. If however the donor of the power of attorney is still able to travel outside of Canada, there could be issues of residence and the length of time outside of Canada would need to be carefully monitored to ensure that Canadian residence was maintained (assuming that it is desirable to maintain Canadian tax residence).

Since attorneys acting under powers of attorney are agents if the donor is capable and the equivalent of guardians if the donor is incapable, the attorney is not a trustee while acting in that role, so the rules governing the residence of trusts need not be applied.

ATTORNEY IN ONTARIO APPOINTED BY OUTSIDE RESIDENT: power of attorney made pursuant to Ontario requirements

If the power of attorney is made under Ontario laws (the *Substitute Decisions Act, 1992*) by a person who is not resident in Ontario, but has property in Ontario to be managed, there should be no particular management difference for the attorney between that scenario and a scenario where the donor is a resident in Ontario. The attorney will be governed by the *Substitute Decisions Act, 1992* in the management of the person's affairs if they are incapable. If the donor is still capable, the attorney acts as his or her agent to do what needs to be done in Ontario, and the power of attorney should be recognized as such by financial institutions, land registrars and such. For the most part this ought to be the easiest approach where management of Ontario property is required.

If the donor has become incapable and there is an attorney or guardian or the equivalent appointed in another jurisdiction, in addition to the attorney in Ontario, there may be issues of accountability, but the Ontario attorney would presumably be bound by the

obligations created under the *Substitute Decisions Act, 1992* for actions in Ontario, and would be accountable to the substitute decision maker elsewhere if that decision maker is not the attorney him or herself.

power of attorney made under laws outside of Ontario and what is needed to comply with Ontario law

There is no prescribed form for a power of attorney in Ontario but for it to be effective after the onset of incapacity, the document must specifically state that it is the intention of the donor that the document will be effective and can be exercised during the grantor's incapacity to manage property.[4] If the document is made according to the rules of another jurisdiction, it will be recognized in Ontario under the conflict of laws rules noted above. However, if another jurisdiction was to have powers of attorney that are not effective during mental incapacity (which was the case in Ontario before 1981), it is highly unlikely that such a document could be used for the management of property in Ontario if the donor was by that time incapacitated.

GUARDIANSHIP WHERE NO POWER OF ATTORNEY:

Ontario guardianship sought by non-resident and bonding requirements

Where there is no power of attorney in place, where an attorney has died or resigned and there is no alternate named in the power of attorney itself, or there are disputes surrounding the validity of the appointment and/or the action of the named attorney, the only alternative in Ontario is the appointment of a guardian. Similar provisions apply in the other provinces, where the designation may differ such that a person may be designated as a committee, a conservator or a guardian.

Ontario has two forms of guardianship, one designated at Statutory Guardianship, which is defined by the *Substitute Decisions Act, 1992* and applies to the Public Guardian and Trustee, or to individuals who apply to the Public Guardian and Trustee to be appointed as Statutory Guardians[5], and the other form which is a court-appointed guardian and which arises out of a court application.[6] Statutory Guardianship occurs when an individual is found to be incapable on a formal assessment, and there is no known power of attorney, resulting in the Public Guardian and Trustee being notified and she then becomes the statutory guardian, with her office managing the affairs of the incapable individual. Spouses or family members can apply to become the Statutory Guardian to replace the Public Guardian and Trustee, by filing a prescribed application form and completing a management plan that the Public Guardian and Trustee will accept. A court application is needed where there is no known power of attorney, or where there is a dispute over validity of an existing power of attorney, or the actions of an attorney acting under a power of attorney, or where the Public Guardian and Trustee has refused an appointment, or the person wanting to replace the Public Guardian and Trustee does not fit within the definition of persons who can replace her, namely a spouse or partner of the incapable person, a relative, an attorney under an incomplete power of attorney or a trust company.[7]

There is no requirement that a guardian be an Ontario or Canadian resident, but it is highly unlikely that anyone not resident in Ontario, or at least in Canada, could expect to be appointed as either a statutory guardian or a court-appointed guardian without posting an administration bond. Generally such bonds carry with them an annual premium of \$10.00 for every \$1,000.00 of value belonging to the incapable person, and must be

issued by a Canadian insurance company. A non-resident may not be able to obtain the necessary bonding, making a non-resident guardian a practical impossibility even if it is a legal possibility.

Where there are minimal assets, or no other logical person to be appointed guardian, bonding requirements may be waived. The Public Guardian and Trustee on an application to her office can waive bonding requirements, or alternatively can insist upon a bond being posted before statutory guardianship is turned over to an individual, whether resident or non-resident.[8] If the Public Guardian and Trustee requires security, and the applicant cannot or does not wish to obtain a bond, there is provision for him or her to apply to court for an appointment as guardian and for a waiver or reduction of the bonding requirement.[9] Often the fact of a refusal by the Public Guardian and Trustee to waive or reduce a bond will result in a court application.

reissuing of guardianship in Ontario when obtained in another jurisdiction (usually to be able to sell real estate)

When guardianship, committeeship or conservatorship has been issued in another jurisdiction, either another province or outside of Canada, and it is necessary to deal with assets in Ontario, particularly land, a form of reissuing of the document will be necessary. The Substitute Decisions Act, 1992 sets out the process for the required resealing of foreign orders. The effect of the resealing is to essentially make the foreign order into an Ontario order, which in turn makes the foreign guardian subject to the laws of Ontario governing guardians of incapable adults.[10]

PRACTICAL MATTERS OF MANAGING PURSUANT TO POWER OF ATTORNEY:

confirm when management actually starts and maintain complete records from that time

Guardianships have a specific starting point, in that there is a court order that creates the appointment. Similarly statutory guardianships have a specific starting point which is the date of issue of a certificate of incapacity if the Public Guardian and Trustee is appointed, or the date specified by the Public Guardian and Trustee if guardianship is turned over to another person.

For powers of attorney, regardless of their origins or residence, in Ontario there is an issue as to the starting point for the liability of the attorney for management issues. By statute, an attorney acting on behalf of an incapable person has all of the obligations and liabilities of a court-appointed or statutory guardian[11]. However, in Ontario most powers of attorney are prepared such that they are valid and can be used from the time they are signed, although they are usually used only when the donor starts to become incapacitated. For an otherwise well person who suffers a debilitating stroke such that the attorney must take over management, it is also a relatively easy thing to determine the point where the attorney's legal obligations start. That said, there are many instances where the attorney starts to provide substantial assistance well before the donor could be considered to be legal incapable of managing his or her affairs. At the same time, unless the donor voluntarily gives up all direct involvement with his or her finances, or is physically and mentally unable to take any role in his or her finances, it is often the case that an individual is still quite active in writing cheques and withdrawing money from bank and investment accounts well after the attorney under the power of attorney has

started to take a role in assisting with financial management. As long as the donor is mentally capable, the attorney who is acting plays the role of an agent of the donor and is answerable to the donor. After the death of the donor, there may be a responsibility to answer to the personal representative of the donor, in the same way that any agent is answerable, and subject to the same limitation periods and other provisions.[12]

As a practical matter, anyone taking on the role of management under a power of attorney needs to make it very clear the point at which he or she is assuming the role effectively as guardian, and from that point forward, all aspects of the management are the responsibility of the attorney in the same way as if he or she was a statutory or court-appointed guardian. If others, including the donor him or herself, are still taking a role in dealing with the finances, it is up to the attorney to ensure that he or she is fully in control of them and fully aware of all that is going on. To do less is to risk liability for events that occur and which the attorney perhaps has no knowledge of.

prohibition against intermingling of money and placing in joint ownership with the attorney

It should be relatively obvious, but often seems to be ignored by attorneys in actual fact, that assets being managed must be kept separate from those of the attorney him or herself. This applies regardless of the residence of the property, the attorney or the donor. However, many of the issues that lead to litigation involving powers of attorney arise from the failure of an attorney to properly separate personal assets from those of the donor of the power of attorney, and/or using the donor's assets to fund personal expenses. This is particularly problematic when the donor is living with the person who holds the power of attorney and realistically should be sharing some of the living expenses.

Most banks now refuse to allow an attorney, acting under a power of attorney, to place funds belonging to the attorney into joint accounts with him or herself. Potentially more problematic is the handling of accounts that are already joint between the donor and the attorney, or even between the donor and others. If the joint accounts are between husband and wife, who are attorneys for each other, there is generally no practical problem in continuing to operate the accounts as they were. If the joint accounts are between the donor and an attorney who is not a spouse, for example one of the adult children, or the joint account is joint between the donor and someone who is not the attorney, the attorney should take care to determine the source of the funds in the account and the way in which each of the account holders have access to the funds. Canadian law since the Supreme Court of Canada cases of *Pecore* v. *Pecore*[13] and *Madsen Estate* v. *Saylor*[14] is that after the death of a joint account holder, without proof that a joint account was intended as a gift to the surviving account holder, those funds are held by the surviving joint account holder in trust for the estate of the deceased holder.

Management of the accounts during the lifetime of the donor is an issue to establish that all payments from such accounts are fully for the benefit of the donor of the power of attorney, assuming that the money originated with that person. If the funds were deposited by both account holders, it may be appropriate for management purposes, and to avoid future problems, to separate the funds into new bank accounts. The consequence will be that probate fees (Estate Administration Tax in Ontario) will be payable on the amount remaining at death, but the expenses of the Estate Administration Tax may be minor compared to the expense of unraveling the ownership of the funds during and after the lifetime of the donor of the power of attorney.

LIMITATIONS ON ACTIONS OF ATTORNEY (WHAT CONSTITUTES TESTAMENTARY ACTIONS):

Under a Power of Attorney, an Attorney can do anything that the donor could do if capable, other than make a will.[15] The *Substitute Decisions Act, 1992* is silent as to what constitutes the making of a will or a testamentary action. Consequently, in an era where many steps can be taken which greatly affect the disposition of assets at death, it is not completely clear the extent to which an attorney can act to affect the distribution of assets on death. However, in the management of the assets of an incapable person, the paramount issue is that the actions of the attorney/guardian must be solely for the benefit of the incapable person. For that reason, investments and altering of investments and ownership of them as a means of estate planning do not strictly speaking fit into the authority of the attorney/guardian. As noted above, most banks will not allow an attorney using a power of attorney to transfer bank accounts and investments into a joint account where the attorney and the incapable person are the joint holders. Similarly, most life insurance companies will not accept changes in beneficiary designations from an attorney, nor will financial institutions accept changes in designated beneficiaries or successor annuitants on registered funds like Registered Retirement Savings Plans and Registered Retirement Income Funds from an attorney/guardian.

If the power of attorney is specifically drafted to include rights to make such changes, and it is therefore clear that the donor of the power of attorney intended the attorney to have such powers, it is likely that financial institutions will accept such instructions. However, it is likely that the financial institutions asked to accept such instructions will want indemnities from the attorney and clearance from their own legal departments and

probably the lawyer acting for the attorney and/or the donor to confirm that such actions can be taken.

APPLICATION OF POWERS OF ATTORNEY BEFORE OR DURING INCAPACITY (COMMON LAW PROVINCES AND TERRITORIES)

British Columbia

In British Columbia, a written power of attorney will be valid both before and after mental infirmity, but not necessarily incapacity, where it states that it is valid despite the mental infirmity of the donor.[16] The power of attorney must be signed by the donor and a witness, other than the attorney or spouse of the attorney.[17]

The power of attorney will terminate when any of the following criteria are met: (a) an order is made under section 3 of the *Patients Property Act* to declare a donor incapable.; (b) a committee is appointed under section 6(1) of that act to act for the donor; (c) as provided in section 19 of that act, which is described as follows.[18] When a donor becomes a patient as defined in the *Patients Property Act*, the power of attorney is suspended and the PGT becomes the donor's committee.[19] If the PGT then decides that it is most appropriate for it to continue managing the donor's property, the suspended power of attorney becomes terminated. Alternatively, the PGT can also decide that it is not necessary or desirable to continue to manage the patient's property and in this case the suspension on the power of attorney is lifted.[20]

Note that several proposed changes have been made to the B.C. legislation but they are not yet in force.

Alberta

In Alberta, it is possible to create a power of attorney that continues or springs into effect upon the donor's incapacity or other future specified event. The following criteria must be met: (a) the donor must be an adult who is mentally capable of understanding the nature and effect of an enduring power of attorney; (b) it must be written, dated and signed; and (c) the document must state that the power of attorney is to continue despite any future medical incapacity, or that it will take effect upon the mental incapacity or infirmity of the donor.[21] The power of attorney can be made contingent upon a certain event or a specified future time.[22]

The power of attorney will terminate if any of the following conditions are met: (a) it is revoked in writing by the donor while the donor is mentally capable of understanding the revocation; (b) if the attorney renounces the appointment and gives notice to the donor; (c) on granting of a termination order by the court; (d) on granting of a trusteeship order; (e) on the death of the donor or the attorney; (f) on the granting of a trusteeship in respect of the attorney.[23] The donor may designate who is responsible for deciding that the specified event which triggers the power of attorney to spring in to event has occurred.[24]

Saskatchewan

In Saskatchewan, it is possible to create a power of attorney that continues or springs into effect upon the donor's incapacity.[25] The power of attorney can also be created to spring into effect on a future date or occurrence of a specified contingency which is not limited to incapacity.[26] In order for a power of attorney to be valid in Saskatchewan, the following criteria must be met: (a) the donor must have had the capacity to understand the nature and effect of the enduring power of attorney; (b) it must be in writing; (c) it

must be dated and signed by or for the donor; (d) it must be witnessed as prescribed by the legislation.[27] The donor's incapacity will not terminate a power of attorney. However, in addition to the typical reasons for termination (i.e. death of donor), termination will occur where a personal decision maker is appointed under the Adult Guardianship and Co-decision-making Act or on the appointment of the PGT under the *Public Guardian and Trustee Act*.[28] The donor may name one or more persons to decide on the fulfillment of the specified contingency for the power of attorney to come into effect.[29]

Manitoba

In Manitoba, it is possible to create both powers of attorney that endure post-incapacity and springing powers of attorney. For a power of attorney to be valid, the following criteria must be met: (a) its donor must be mentally capable of understanding its nature and effect; (b) the power must be in writing; (c) the power must be executed as required by the act; (d) the document must expressly state that the power of attorney is to continue despite the mental incompetence of the donor.[30] Witnesses to the execution are limited to certain individuals including superior court judges, lawyers, and police officers.[31]

In addition to the regular avenues of termination for a power of attorney, termination will occur when: (a) a substitute decision maker is appointed for the donor pursuant to the *Vulnerable Persons Living with a Mental Disability Act* and the appointment specifies that the powers of the substitute decision maker relate to the donor's estate; (b) when the custody or administration of the estate of the donor is taken over by the Public Trustee by order of the court.[32]

An enduring power of attorney will be suspended where an emergency substitute decision maker is appointed for the donor under the *Vulnerable Persons Living with a Mental Disability Act* (where the power extends to the donor's property).[33] A suspension will also occur where the Public Trustee becomes committee of both property and personal care of the donor. The Public Trustee must then make a decisions as to whether it should continue to act as committee of the donor or if the power of attorney should continue.[34] If the Public Trustee decides to act as committee, the power of attorney is terminated when notice of the decision is given.[35]

The donor may specify who will decide and declare that the future date or specified contingency has occurred for the power of attorney to take effect.[36]

Ontario

For a power of attorney to be valid in Ontario, the following conditions must be met: (a) the donor must be capable as defined by the *Substitute Decisions Act*, meaning that he or she must meet seven tests set out in the act which are knowledge of the extent and approximate value of his or her property, awareness of obligations to dependents, knowledge of the extent of the powers of the attorney appointed, knowledge that the attorney appointed must account for his or her dealings, knowledge that the power of attorney can be revoked if the donor is still capable, knowledge that unless the attorney acts prudently in the management of property its value may go down, and appreciation of the possibility that the attorney could misuse the authority give to him or her,[37] (b) the power shall be executed in the presence of two witnesses; (c) the donor must be at least 18 years of age.[38]

The power will terminate (a) when the attorney dies or becomes incapable unless another person is entitled to act or the power of attorney provides for the substitution of another person; (b) when the court appoints a guardian of property under section 22 of the *Substitute Decisions Act*; (c) when the donor executes a new power of attorney, unless they provide that there will be multiple powers of attorney; (d) when the donor dies; (e) if the power is revoked while the donor is still capable

A power of attorney for property can be used before and after incapacity if it states that it is valid during subsequent incapacity, and it also states that it is effective from the date of signature.[39] Powers of attorney can be specified to take effect only on the onset of incapacity , as defined by a capacity assessment, and it is possible to specify the nature of the assessment or who the assessor will be.[40]

The majority of powers of attorney for Property in Ontario are written to take effect when signed, so they do not require an assessment of capacity in order to be validly used.

Personal care powers of attorney are to be used only after the onset of incapacity when the donor is determined to be unable to make care decisions.[41]

New Brunswick

In New Brunswick, a power of attorney can be used both before and after incapacity if the following criteria are met: (a) there is a provision expressly allowing the power to be exercised during such incompetence; (b) the donor signed it or it was signed in the name of the donor in accordance with the act; (c) the power is witnessed by an adult person other than the donee.[42] In this province the power is terminated when a court appoints a committee of the estate of the donor, when another person is substituted for the donee, or

when the Public Trustee becomes committee of the estate of the donor pursuant to subsection 38(1) of the *Mental Health Act*.[43] There are no provisions that relate to assessments of capacity and mental incompetence is defined as "… mental incompetence of such a nature that it would, but for section 58.2, terminate a power of attorney."[44]

Nova Scotia

In Nova Scotia, powers of attorney can be used both before and after incapacity. Legal incapacity does not terminate the power as long as the power is signed by the donor and witnessed in accordance with the act, and contains a provision expressly stating that the power continues during any legal incapacity.[45]

Section 59 of the Nova Scotia *Hospitals Act* describes circumstances where the Public Trustee should assume management of an individual's estate. This section also grants authority to the Public Trustee to take possession of any property and effects and to do what is necessary to protect it.[46] An enduring power of attorney can include a provision that expressly excludes a grant of authority to the Public Trustee in the circumstances described in the *Hospitals Act.*[47]

This legislation does not expressly describe the situations where the power of attorney terminates.

Prince Edward Island

In P.E.I., powers of attorney can be used both before and after a donor's incapacity so long as there is a provision in the power of attorney that expressly states that the power continues despite any subsequent legal incapacity of the donor.[48] For a power of attorney to be valid, it must be witnessed in accordance with the statute.[49]

The legislation in this province is quite brief and does not describe situations where the power of attorney will automatically terminate. It does state that the Public Trustee or persons interested may apply under section 10(1) to substitute the acting attorney.[50]

Newfoundland and Labrador

In Newfoundland, a power of attorney can be used both before and after legal incapacity as long as a provision in the power of attorney expressly states that it may be exercised during the donor's incapacity and the document is signed and witnessed in accordance with the act.[51] The donor of a power of attorney can exclude the possibility of having a registrar appointed as guardian pursuant to section 20 of the *Mentally Disabled Persons' Estate Act* by documenting such intent in the power of attorney.[52]

Nunavut

In Nunavut, a power of attorney can be used before or after incapacity as long as the document expressly states that it will endure despite any incapacity and the other requirements of the act are adhered to.[53] In order for the power of attorney to be valid, these other conditions must also be met: (a) it is in writing; (b) the donor is at least 19; (c) it is dated, signed and witnessed in accordance with the act.[54] The donor must also be capable of understanding the nature and effect of the document in general.[55]

The power of attorney will terminate upon the issuance of a trusteeship order or a declaration of mental incompetence under section 31 of the *Guardianship and Trusteeship Act* in respect of the donor, in addition to any of the regular reasons for termination such as death.[56]

A power of attorney can also spring into effect upon a future specified time or contingency.[57] Donors may specify an individual or a group of prescribed professionals to declare that the date or contingency has occurred for the springing power of attorney to take effect.[58]

North West Territories

In the North West Territories, a power of attorney can both spring into effect or continue post-incapacity as long as this is explicitly stated in the written power of attorney.[59] The other formal requirements are: (a) it is in writing; (b) it is dated, signed, and witnessed in accordance with the act; (c) it provides the particulars of when it comes into force and whether it should continue upon any mental incapacity of the donor after its execution.[60] In addition to the more typical avenues of termination, the power of attorney will terminate upon the issuance of a trusteeship order or a declaration of mental incompetence under section 31 of the *Guardianship and Trusteeship Act* in respect of the donor.[61]

Yukon

In the Yukon Territory, a power of attorney can both spring into effect or continue post-incapacity as long as the desired effect is expressly stated in the written power of attorney.[62] The other formal requirements are: (a) the donor is an adult at the time of executing the power of attorney; (b) the power of attorney is in writing, dated, and signed; (c) the donee attorney acknowledges their appointment.[63] Lastly, the donor must be mentally capable at the time of execution of the power of attorney.[64]

In addition to the typical avenues of termination, the power of attorney will terminate on the appointment of a guardian for the donor under the *Adult Protection and Decision Making Act*.[65]

---

[1] For purposes of this Paper, references to Powers of Attorney, unless specifically stated, will mean Powers of Attorney for Property or Enduring Powers of Attorney, not powers of attorney for personal care management. The paper concentrates on the Common Law Provinces only and all statutory references are limited to the Common Law Provinces and Territories. The writer wishes to thank Christine Dankowych, student-at-law for her research assistance in the preparation of this paper.

[2] As a example of how this can happen, In Ontario for many years there were concerns that the specific powers of attorney presented by banks to appoint an attorney to have access to bank accounts with that branch had the effect of revoking general powers of attorney. The Canadian Bankers Association was brought into the discussions and eventually the standard power of attorney forms presented by banks were altered to specifically exclude in their revocations any pre-existing general powers of attorney

[3] *Substitute Decisions Act,* S.O. 1992, c. 30, s. 85.

[4] *Substitute Decisions Act, ibid*., s. 7.

[5] *Substitute Decisions Act, ibid.,* s. 15-21.

[6] *Ibid.,* s. 22-30.

[7] *Substitute Decisions Act, ibid.,* s. 17 (1).

[8] *Substitute Decisions Act, ibid.,* s. 17 (6).

[9] *Ibid.,* s. 17 (7).

[10] *Ibid.,* s. 86.

[11] *Substitute Decisions Act, ibid*., s. 38.

[12] *Fair v. Campbell (Estate)*, [2002] O.J. No. 5926, 3 E.T.R. (3d) 67, (Ont. S.C.J.).

[13] 2007 SCC 17, 1 S.C.R. 795.

[14] 2007 SCC 17, 1 S.C.R. 838, 279 D.L.R. (4th) 547.

[15] *Substitute Decisions Act, supra* note 3, s. 7(2).

[16] *Power of Attorney Act*, R.S.B.C. 1996, c. 370, s. 8(1).

[17] *Ibid.,* s. 8(1)(b).

[18] *Ibid.,* s. 8(2).

[19] *Patients Property Act*, R.S.B.C. 1996, c. 349, s. 1, 19.1(1)(a), 6(3).

---

[20] *Ibid.,* s. 19.1(3)(a), 19.1(4)(a), 19.1(4)(b).

[21] *Powers of Attorney Act*, R.S.A. 2000, c. P-20, s. 2(1) [*Powers of Attorney Act Alberta*].

[22] *Ibid.,*. s. 5(1).

[23] *Powers of Attorney Act Alberta, ibid.,* s. 13(1)

[24] *Ibid.,* s. 5(2).

[25] *Powers of Attorney Act*, S.S. 2002, c. P-20.3, s. 2(1) [*Powers of Attorney Act Sask.*].

[26] *Ibid.,* s. 9.

[27] *Ibid.,* s. 4, 11(1), 12(1).

[28] *Adult Guardianship and Co-decision-making Act*, S.S. 2000, c. A-5.3; *Powers of Attorney Act*, 2002, S.S. 2002, c. P-20.3, s. 19(1)(g); *Public Guardian and Trustee Act*, S.S. 1983, c. P-36.3.

[29] *Powers of Attorney Act Sask., supra* note 25, s. 9.1(1).

[30] *Powers of Attorney Act*, C.C.S.M. 1996, c. P97, s. 10(3), 10(1) [*Powers of Attorney Act Manitoba*].

[31] *Ibid.,* s. 11(1).

[32] *Powers of Attorney Act Manitoba, ibid.,* s. 13.

[33] *Vulnerable Persons Living with a Mental Disability Act*, S.M. 1993, c. 29; *Powers of Attorney Act Manitoba, supra* note 30, s. 14(1).

[34] *Mental Health Act,* S.M. 1998, c. 36, s. 67(1), 67(3)(b).

[35] *Ibid.,* s. 67(5)(a).

[36] *Powers of Attorney Act Manitoba*, *supra* note 30, *s*. 6(2).

[37] *Substitute Decisions Act, supra* note 3, s. 8 (1) (a)-(g)

[38] *Ibid.,*. s. 4., 8(1), 10(1).

[39] *Ibid.,* s. 9.

[40] *Substitute Decisions Act, ibid.,* s. 16.

[41] *Ibid* s. 45, 49(1)(b).

[42] *The Property Act,* R.S.N.B. 1973, c. P-19, s. 58.2(1) [*Property Act*].

[43] *Ibid.,* s. 58.3.

[44] *The Property Act, ibid.,* s. 58.1.

[45] *Powers of Attorney Act,* R.S.N.S. 1989, c. 352, s. 3.

[46] *Hospitals Act,* R.S.N.S. 1989, c. 208, s. 59(1)-(2).

[47] *Supra* note 45, s. 4.

[48] *Powers of Attorney Act,* R.S.P.E.I. 1988, c. P-16, s. 5.

[49] *Ibid*., s. 6.

[50] *Ibid.,* s. 10(3).

[51] *Enduring Powers of Attorney Act,* R.S.N. 1990, c. E-11, s. 3(1), 5.

[52] *Ibid*., s. 13.

[53] *Powers of Attorney Act,* S.Nu. 2005, c. 9, s. 10(1).

[54] *Ibid.,* s. 10(1).

[55] *Ibid.,* s. 10(3)

[56] *Ibid.,* s. 16(1)

[57] *Ibid.,* s. 3(1).

[58] *Ibid.* s. 3(3), 3(4).

[59] *Powers of Attorney Act,* S.N.W.T. 2001, c. 15, s. 13(1).

[60] *Ibid.,* s. 13(1).

[61] *Ibid*., s. 16(1).

[62] *Enduring Power of Attorney Act,* R.S.Y. 2002, c. 73, s. 3(1).

[63] *Enduring Power of Attorney Act, ibid.,* s. 3(1).

[64] *Ibid.,* s. 4

[65] *Ibid.,* s. 14(1).