



VIRTUAL WITNESSING OF WILLS AND POWERS OF ATTORNEY PERMITTED.

By: Amanda Miller-Fleming

The currently pandemic has left many uneasy and uncertain about the future and now more than ever many people have more time on their hands with the shut-down. We are now seeing a surge in those who are seeking to either create or update a previous Will and appoint Powers of Attorney, especially in clients from more vulnerable groups.

There are various formalities in the [Succession Law Reform Act](#) and the [Substitute Decisions Act, 1992](#) pertaining to the execution of Wills and Powers of Attorney in Ontario. Previously, strict adherence to these formalities needed to be observed in order for a Will and/or a Power of Attorney to be valid in Ontario.

For instance, a requirement under the *Succession Law Reform Act* states that in order for a Will to be valid in Ontario it must be signed by the person making the Will in the *presence* of two witnesses. This has been interpreted that the parties needed to be physically together when the document was signed. If these rules were not followed you ran the risk of the Will being deemed not valid. This has now changed in light of the current pandemic and social distancing.

The Government of Ontario issued an Emergency Order (“Order”), as outlined in [Ontario Regulation 129/20](#), permitting the virtual witnessing of Wills and Powers of Attorney for Property and Personal Care. The Emergency Order states that the requirement of a Will or Power of Attorney being executed in the presence of two witnesses may be “satisfied by means of audio-visual communication technology provided that at least one person who is providing services as a witness is a licensee within the meaning of the *Law Society Act*”.

The Emergency Order defines “audio-visual communication technology” as any electronic method of communication in which participants are able to see, hear and communicate with one another in real time”. Therefore, the use of Zoom, Skype, or other video chat technology can be used to execute these documents provided that all parties can communicate with each other while the documents are signed.

Further, the Order allows for “counterparts” if the Will or Power of Attorney is executed with the assistance of audio-visual communication technology. Essentially, if the parties are not in each other’s physical presence, and are executing the documents at the same time, they will not be able to execute the same document. Therefore, the requirement of execution is satisfied if each party executes identical copies of the Will or Power of Attorney in counterpart. These copies together will make the whole Will or Power of Attorney. The Order also states that the copies of either the Will or Power of Attorney are considered identical even if there are minor, non-substantive differences in format or

layout between the copies. This could be due to the parties having different software or differing settings when printing the documents.

This is a big step forward for the legal profession as it allows for flexibility while adhering to safety precautions as many are unwilling to risk exposure.



Amanda Miller-Fleming is a civil litigation lawyer and associate with O'Connor Richardson P.C. She has appeared before the Ontario Superior Court of Justice, Small Claims Court, and the Landlord and Tenant Board. She provides practical and strategic solutions that align with her clients' best interests.

The information contained in this article is intended to provide general information and is not intended to provide legal advice.