

Virtual Signing and Witnessing of Wills and Powers of Attorney One Year Later - One Year Later

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As we continue well into year two of the COVID-19 Pandemic, most professionals have become much more comfortable with video conferences with clients, digital signatures, the paperless and virtual office and all things remote in terms of the working world. For estate planning lawyers, the Pandemic spurred a lot of people to actively work on their estate planning to prepare the wills and powers of attorney that they had been putting off for years. All of these documents had to be signed and in answer to issues of quarantine, lock down and self-isolation, and as part of the Emergency Measures that were enacted by the Ontario government in March and April of 2020, the concept of virtual signing of wills and powers of attorney was introduced. The provisions were time limited and extended regularly until early in 2021.

In February of 2021, through an omnibus Bill 245 entitled *Accelerating Access to Justice Act 2021*, amendments to the *Succession Law Reform Act*, and the *Substitute Decisions Act 1992* were introduced to make virtual signing of wills and powers of attorney a permanent feature.

Bill 245 was passed and received Royal Assent on April 19, 2021. The first major effect the Bill has on existing wills and powers of attorney signed virtually is to make the provisions in the statute effective as of April 7, 2020 so that all wills and powers of attorney signed by way of video conferencing tools over the past year according to the rules in place in the various emergency orders and amendments are confirmed. The second effect was to confirm the process for virtual signing of wills and powers of attorney going forward. There had been debate about whether the final version of a will signed virtually had to be complete copies of the will as signed by the testator (the will maker) and each of the witnesses (2 copies if the witnesses themselves were in separate places and 1 copy if the witnesses were together and signed the same document). The more convenient approach was to have the will signed by the testator plus additional signing pages attached containing the signatures of the witnesses

making up the final will, in the same way that commercial documents are signed as counterparts. Another approach was to have the testator sign the will and then courier it to the witnesses who would sign in turn and finally return the fully signed document to the lawyer who is one of the witnesses (for a virtually signed will one witness must be a lawyer or licensed paralegal).

Bill 245 in its terms has confirmed that a virtually signed will or power of attorney must contain complete copies of the entire document as signed by each of the testator and the witnesses in the case of a will and the grantor and the witnesses in the case of a power of attorney. These final terms were stated to come into effect on a date to be proclaimed. The Attorney General for Ontario has now announced that the date on which the final terms come into effect will be May 20, 2021.

Bill 245 does not affect the traditional signing of wills and powers of attorney where the testator or grantor and the witnesses are together when all of them sign the documents. There are enough ways to meet in person with all COVID -19 distancing protocols observed, particularly now that the weather is warmer. Meetings can be outside. They can even be in separate rooms provided the parties can see each other through windows and the documents can be moved from room to room. People can wear masks and stay 2 metres apart and still easily see each other sign documents. Even though virtual signing is available and valid, it is now one of two legal avenues available to sign a will, and we have found that meeting in person is still a viable and preferable option for most clients.

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