

## Powers of Attorney Across the Country

Prepared for the Ontario Bar Association

“Cross Country Expedition: Probate and Incapacity Planning and Administration Across Provincial Boundaries”

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### Introduction

This paper, and the attached chart, provides a summary of how the legislation in the provincial and territorial jurisdictions across Canada addresses power of attorney issues. This is not an exhaustive legislative review of the laws in each jurisdiction, rather it is a synopsis of some key power of attorney issues which Ontario lawyers should be aware of when advising or drafting for clients who may be:

- 1) moving out of Ontario,
- 2) residing part time in another province,
- 3) holding assets in another province that an attorney will have to manage, or
- 4) acting as an attorney for a person who may move to or reside part time in another province or hold assets in another province.

Please note that this paper is a legislative review only and does not account for interpretations of the law by the courts.

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## Inter-provincial recognition of powers of attorney

Due to the differences among the provinces regarding the formalities required for a valid grant of a power of attorney, it is possible that a power of attorney that has been validly granted in one province may not be recognized by other provinces, *unless* recognition of powers of attorney from other provinces is specifically provided for in the province's legislation.

Non-recognition of powers of attorney from other provinces is inconvenient where the client moves from province A to province B (or resides part of the year in each of province A and province B) and must incur the time and expense to have a new power of attorney drafted in accordance with the formalities of province B after already having done so in province A. The non-recognition becomes problematic where a client grants a continuing power of attorney in one province when he or she is capable of doing so, and then moves to another province after becoming incapable of granting a new power of attorney that would conform to that province's power of attorney legislation. Therefore, it is necessary to advise clients that a valid power of attorney may not be recognized outside of the province in which it was granted and to take steps to assist the client to proactively deal with this issue rather than reactively dealing with it once a problem arises.

In Ontario, section 85 of the *Substitute Decisions Act, 1992*<sup>1</sup>, provides that a continuing power of attorney for property or a power of attorney for personal care is valid if at the time of its execution it complied with the

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<sup>1</sup> *Substitute Decisions Act, 1992*, S.O. 1992, c.30

internal law of the place where a) the power of attorney was executed, b) the grantor was then domiciled, or c) the grantor then had his or her habitual residence.

Interestingly, many of the other provinces and territories now have similar legislation, however, there is a distinction in many of the provinces between recognition of powers of attorney for property and recognition of powers of attorney for personal care or personal directives. The former are recognized in many of the provinces and territories if they comply with the law of the place where they were made, whereas the latter are recognized if they comply with the law of the jurisdiction where they are being used or relied upon. This is an important distinction for lawyers to consider when drafting powers of attorney for a client who wants the document to be recognized by another jurisdiction.

In the Northwest Territories, section 25 of the *Powers of Attorney Act*<sup>2</sup> recognizes springing and enduring powers of attorney (what we call powers of attorney and continuing powers of attorney for property), so long as they a) are valid in accordance with the law of the place where they were made, and b) specify when the document comes into force and whether it remains in force notwithstanding any subsequent mental incapacity of the donor. Under the Northwest Territories' *Personal Directives Act*<sup>3</sup>, which came into force on January 1, 2006, a personal directive (similar to our power of attorney for personal care) made in another jurisdiction will be recognized so long as a) a lawyer entitled to practice law in that jurisdiction has certified in

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<sup>2</sup> *Powers of Attorney Act*, S.N.W.T. 2001, c.15, as amended S.N.W.T. 2002, c.20

<sup>3</sup> *Personal Directives Act*, S.N.W.T. 2005, c.16

writing that the directive meets the requirements for personal directives under the legislation of that jurisdiction; or b) the directive would have met the applicable Northwest Territories' requirements.

In the Yukon, section 3(5) of the *Enduring Powers of Attorney Act*<sup>4</sup> recognizes an enduring power of attorney from another jurisdiction if it is a valid power of attorney under the laws of the place where it is made and if it is not terminated by the subsequent mental incapacity of the donor.

However, under the *Adult Protection and Decision Making Act*<sup>5</sup>, a person can enter into a “representation agreement” to appoint someone to make financial and non-financial decisions (excluding decisions pertaining to care under the *Care Consent Act*<sup>6</sup>), but there is nothing in the Act that provides for the recognition of representation agreements made in other provinces, such as British Columbia. Under the *Care Consent Act*<sup>7</sup>, care directives that are made outside of the Yukon are considered valid in the Yukon only if they comply with the requirements in the Yukon *Care Consent Act*<sup>8</sup>.

The Nunavut *Powers of Attorney Act*<sup>9</sup> provides for the recognition of springing and enduring powers of attorney for property made in other jurisdictions if they are valid in the law of that place and they provide the appropriate statement as to their commencement or continuation. Currently, there is no legislation in Nunavut regarding powers of attorney for personal care or personal care directives.

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<sup>4</sup> *Enduring Power of Attorney Act*, R.S.Y. 2002, c.73

<sup>5</sup> *Adult Protection and Decision-Making Act*, S.Y. 2003, c.21

<sup>6</sup> *Care Consent Act*, S.Y. 2003, c.21

<sup>7</sup> *Ibid* 6

<sup>8</sup> *Ibid* 6

<sup>9</sup> *Powers of Attorney Act*, S.Nu. 2005,c.9

The Alberta *Powers of Attorney Act*<sup>10</sup> recognizes enduring powers of attorney from other jurisdictions if they are valid according to the law of that place and if the attorney's authority is not terminated due to any subsequent mental incapacity of the grantor. The *Personal Directives Act*<sup>11</sup> is silent on the issue of recognition of personal directives made in other jurisdictions, which may leave a door open for recognition of inter-provincial personal directives or powers of attorney for personal care that, at a minimum, comply with Alberta's requirements for valid personal directives.

Likewise, all of the British Columbia legislation<sup>12</sup> regarding powers of attorney and representation agreements for property and personal care is silent on the issue of inter-provincial recognition, therefore, when advising or drafting for a client who resides or has property in both Ontario and British Columbia, it would be prudent to ensure the documents are valid in accordance with both Ontario and British Columbia law since there is no legislative guarantee that a document that only meets Ontario's requirements will be recognized in B.C.

Saskatchewan's *Powers of Attorney Act*<sup>13</sup> provides for the recognition of enduring powers of attorney that a) were validly made in accordance with the law of the place where they were executed, b) do not terminate due to any subsequent incapacity of the grantor, and, c) where it is to be a contingent appointment, provide that they come into effect on a specified

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<sup>10</sup> *Powers of Attorney Act*, RSA 2000 cP-20

<sup>11</sup> *Personal Directives Act*, RSA 2000 cP-6

<sup>12</sup> Specifically, the *Power of Attorney Act*, RSBC 1996, c.370, the *Representation Agreement Act*, RSBC 1996, c.404, the *Health Care (Consent) and Care Facility (Admission) Act*, RSBC 1996, c.181, and the *Patients' Property Act*, RSBC 1996, c.349

<sup>13</sup> *Powers of Attorney Act*, SS 2002, cP-20.3, as amended SS 2004, c.21

future date or on the occurrence of a specified contingency. The Saskatchewan *Health Care Directives and Substitute Health Care Decision Makers Act*<sup>14</sup> provides for the recognition of health care directives made outside of the province so long as they comply with the requirements of the Saskatchewan Act.

The Manitoba *Powers of Attorney Act*<sup>15</sup> recognizes foreign enduring powers of attorney if they are valid according to the law of that place and if the power of attorney continues despite any subsequent mental incapacity of the grantor. The Manitoba *Health Care Directives Act*<sup>16</sup> recognizes health care directives that were made outside of Manitoba so long as they comply with the requirements of the Manitoba Act.

In Quebec, the *Civil Code*<sup>17</sup> provides for the creation of a “mandate” which is described as a contract by which a person, the mandator, empowers another person, the mandatary, to represent him in the performance of a juridical act with a third person, and the mandatary, by his acceptance, binds himself to exercise the power. This power, and the writing evidencing it, is called the power of attorney. The “juridical acts” can relate to both personal care and property. A mandate given in anticipation of future incapacity must be verified through a court process called “homologation”. A power of attorney from a foreign jurisdiction would have to undergo this court process in order to be recognized in Quebec.

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<sup>14</sup> *Health Care Directives and Substitute Health Care Decision Makers Act*, ss, 1997, c.H-0.001, amended 2000, c.A-5.3; and 2004, c.65

<sup>15</sup> *The Powers of Attorney Act*, C.C.S.M. 1996, c.P97

<sup>16</sup> *Health Care Directives Act*, C.C.S.M.1992 c.H27

<sup>17</sup> *Civil Code*, R.S.Q. 1991, c. 64

In Prince Edward Island, although the *Powers of Attorney Act*<sup>18</sup> is silent on the issue of recognition of foreign powers of attorney for property, the *Consent to Treatment and Health Care Directives Act*<sup>19</sup> provides a thorough legislative scheme for recognition of foreign health care directives. Specifically, section 34 of that Act provides for the recognition of foreign health care directives that are either a) made in accordance with P.E.I. law; or b) meet the formal legal requirements of i) the place where the directive was made or ii) the place where the maker of the directive was habitually resident at the time the directive was made.

In New Brunswick, the *Property Act*<sup>20</sup> and the *Infirm Person Act*<sup>21</sup> are silent on the issue of recognition of foreign powers of attorney for property and personal care. In Nova Scotia, the *Powers of Attorney Act*<sup>22</sup> and the *Medical Consent Act*<sup>23</sup> are silent on the issue of recognition of foreign powers of attorney for property and medical directives. This is also the case with the Newfoundland *Enduring Powers of Attorney Act*<sup>24</sup> and *Advance Health Care Directives Act*<sup>25</sup>.

### Execution of powers of attorney

Since some Canadian jurisdictions, as described above, are silent on the issue of recognition of foreign powers of attorney, an Ontario lawyer may

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<sup>18</sup> *Powers of Attorney Act*, R.S.P.E.I. 1988, c.P-16

<sup>19</sup> *Consent to Treatment and Health Care Directives Act*, 1996 c. 10, R.S.P.E.I. 1988, c.C-17.2

<sup>20</sup> *Property Act*, R.S.N.B. c.P-19

<sup>21</sup> *Infirm Person Act*, R.S.N.B. c.I-8

<sup>22</sup> *Powers of Attorney Act*, R.S.N.S., 1989, c.352

<sup>23</sup> *Medical Consent Act*, R.S.N.S., 1989, c.279

<sup>24</sup> *Enduring Powers of Attorney Act*, RSNL1990, c.E-11, amended 1997 c13 s19; 2001 c22 ss3&4

<sup>25</sup> *Advance Health Care Directives Act*, SNL1995 c.A-4.1; amended 1999 c22 s2

find themselves in the position of having to draft a power of attorney that complies with the formalities of execution of another province so that it is considered to be a valid document in that province. In this situation, one should keep in mind that some of the jurisdictions have requirements that go beyond Ontario's requirements for due execution.

For example, in the Yukon, a valid power of attorney must be accompanied by 1) a certificate of legal advice signed by a lawyer who is not the attorney or the attorney's spouse; and 2) an acknowledgement signed by the attorney of their agreement to the appointment. And in Manitoba, a witness to the execution of an enduring power of attorney must be an individual registered or qualified to be registered to solemnize marriages, a judge, justice of the peace or magistrate, a notary public, a lawyer entitled to practice in Manitoba, a member of the RCMP, or a municipal police officer.

However, it should be noted that, for the purposes of Ontario's recognition of foreign powers of attorney pursuant to section 85(1) of the *Substitute Decisions Act*<sup>26</sup>, which provides for the recognition of foreign powers of attorney so long as they complied with the foreign jurisdiction's internal law, section 85(4) provides that the following requirements of another jurisdiction's internal law will be considered formalities only: a) Any requirement that special formalities be observed by grantors answering a particular description; and b) Any requirement that witnesses to the execution of the power of attorney possess certain qualifications.

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<sup>26</sup> Ibid 1



## Duties and obligations of attorneys for property

In Ontario, an attorney for property or personal care is not under a positive obligation to act. In other words, there is no provision in the *Substitute Decisions Act*<sup>27</sup> that imposes a duty on attorneys to take action to protect the interests of the grantor even if the attorney knows that the grantor is incapable of making decisions themselves.<sup>28</sup>

That is not the case in several other jurisdictions. In the Northwest Territories, the Yukon, Nunavut, Alberta and Manitoba, there exists a positive duty for an attorney, who has accepted the appointment or has acted pursuant to the appointment, to take action on behalf of the grantor to protect the grantor's interests during any period in which the attorney knows, or ought to know, that the grantor is unable to make reasonable judgments in respect to matters relating to the grantor's estate. In Manitoba, the obligation extends further to the extent that the attorney is held liable for any loss to the grantor occasioned by the attorney's failure to act. Although this positive duty to act is a lofty ideal, attorney's can avoid being held to this standard simply by not commencing to act and not indicating acceptance of the appointment in any manner. In the Yukon however, this problem is avoided from the time of execution of the power of attorney since one of the formal requirements of due execution is that the attorney shall, at the time of

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<sup>27</sup> Ibid 1

<sup>28</sup> However, the Ontario Superior Court of Justice stated in *Fareed v. Wood*, 2005 CarswellOnt 2572, that attorneys for property are accountable for all of the grantor's property after the attorney commences to act, even if the grantor is still making transactions with their property themselves. Therefore, although there is no legislative duty to *commence* acting in Ontario, once the attorney does commence to act, there is a duty to account for the *full* value of the grantor's property – one could say this is akin to a positive duty to act since the attorney is, at that time, obligated to take steps to ensure that the property is being properly managed.

execution, sign an acknowledgement a) of their appointment as the attorney for the grantor and b) that they have been advised of the responsibilities of an attorney and that they have agreed to undertake these responsibilities.

In Quebec, the *Civil Code*<sup>29</sup> provides that a person acting under a mandate, a mandatary, is bound to fulfill the mandate and inform the grantor of the mandate, the mandator, of his performance. The mandatary binds himself to this obligation when he accepts the appointment.

Tied to this duty to act is the concept of renunciation. In Ontario, a person can resign as one's attorney so long as the proper notice is given in accordance with the *Substitute Decisions Act*<sup>30</sup>. In the provinces where there exists a positive duty to act, an attorney is specifically prohibited from renouncing the appointment unless permission to do so is obtained from the court.

In all of the jurisdictions, an attorney for property can be ordered by the court to account for their management of the grantor's property. In many of the jurisdictions, specifically the Northwest Territories, Nunavut, British Columbia, Saskatchewan, and Manitoba, there also exists a positive duty to account either on demand (by the grantor, a named person in the power of attorney, or a family member) or annually.

It is important, therefore, when advising clients who are considering acting as an attorney for someone who resides or has assets outside of Ontario, or

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<sup>29</sup> Ibid 16

<sup>30</sup> Ibid 1

clients who are making a power of attorney which they hope to be able to use in another jurisdiction, that the following issues are considered: 1) Is there a positive duty for my attorney to act in the other jurisdiction? 2) Can the attorney resign if he or she wants to without a court order? 3) What are the accounting obligations in the other jurisdiction? And 4) Given the answers to the previous questions, is the proposed attorney willing and available to assume this level of responsibility and what are the risks to both the attorney and grantor if these obligations are not met?

### Accounting by personal care attorneys

When it comes to the obligations of personal care attorneys or agents/proxies/representatives acting under personal directives or representation agreements, the legislation is not as specific as it is for property attorneys. In Ontario, although the *Substitute Decisions Act*<sup>31</sup> requires personal care attorneys to keep records of the decisions they have made on behalf of the grantor, there is no duty to account for those decisions provided for in the legislation. This does not mean that the request could not be made in court for an order requiring a personal care attorney to account, but, in Ontario, it is not specifically provided for in the legislation.

In Alberta, an agent appointed under the *Personal Directives Act*<sup>32</sup> has a duty to keep records of the decisions made and must provide a copy of the record upon the demand to do so by the maker of the directive, the maker's

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<sup>31</sup> Ibid 1

<sup>32</sup> Ibid 11

lawyer, or the maker's legal representative or other agent who has authority with respect to a matter addressed in the record.

In British Columbia, representatives appointed under the *Representation Agreement Act*<sup>33</sup>, both for property *and* for personal care, must keep accounts and records and must produce them upon request to do so by the grantor, the grantor's monitor, or the Public Guardian and Trustee.

In Saskatchewan, an attorney for personal affairs appointed under the *Powers of Attorney Act*<sup>34</sup> must account for the decisions they have made upon the request to do so by the grantor, a person named in the power of attorney by the grantor, an adult family member of the grantor, or the grantor's property attorney. Where the demanding party is unable to obtain an accounting from the personal affairs attorney, a request can be made that the Public Guardian and Trustee demand an accounting, failing which the court can be asked to order it.

In New Brunswick, a personal care attorney appointed under the *Infirm Persons Act*<sup>35</sup> has "the same obligations as a committee of the person", which may include accounting obligations.

### Compensation for personal care attorneys

In contrast to the legislative provisions in almost all of the jurisdictions for the provision of compensation for attorneys for property, most of the

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<sup>33</sup> *Representation Agreement Act*, RSBC 1996, c.405

<sup>34</sup> *Ibid* 12

<sup>35</sup> *Ibid* 20

jurisdictions, including Ontario, the Yukon, Nunavut, Manitoba, New Brunswick, Prince Edward Island, Nova Scotia, and Newfoundland, are silent on the issue of whether an attorney for personal care is entitled to remuneration for the services provided pursuant to that appointment. In fact, some of the jurisdictions, including the Northwest Territories, Alberta, and British Columbia, explicitly prohibit personal care attorneys from taking compensation unless permission to do so is granted in the authorizing document itself, or by the court.

Only in Saskatchewan and Quebec are there provisions for remuneration for personal care attorneys. Under section 17 of the Saskatchewan *Powers of Attorney Act*<sup>36</sup>, an attorney (both for property and personal care) can charge a reasonable fee for services rendered, but if they do so, they must provide an annual accounting rather than providing an accounting only upon demand. In Quebec, section 2134 of the *Civil Code*<sup>37</sup> provides that remuneration, if any, of the mandatary (attorney for property or personal care) is determined by the contract, usage, or law on the basis of the value of the services rendered. The Code further provides that, pursuant to section 2150, the mandatary shall be reimbursed for any reasonable expenses incurred in the fulfillment of the mandate and shall be paid the remuneration to which he is entitled.

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<sup>36</sup> Ibid 12

<sup>37</sup> Ibid 16

## Revocation

Pursuant to sections 12(1) and 53(1) of the *Substitute Decisions Act*<sup>38</sup>, an Ontario power of attorney for property or personal care is revoked automatically upon the making of a subsequent power of attorney for property or personal care that does not expressly provide for the existence of multiple powers of attorney.

Quebec has a similar provision for the revocation of a mandate, which can relate to property or personal care. As well, in the Yukon, representation agreements, which can be for property or personal care or both, can be revoked by the making of a subsequent representation agreement. Another interesting point to take note of with respect to representation agreements in the Yukon is that they expire after a maximum term of three years.<sup>39</sup>

None of the other provinces or territories has provisions for the automatic revocation of a power of attorney for property by the making of a subsequent power of attorney for property. However, many of the jurisdictions, including the Northwest Territories, Alberta, Saskatchewan, Manitoba, Prince Edward Island, and Newfoundland, have provisions for the automatic revocation of a power of attorney for personal care/ personal directive/ health care directive upon the making of a subsequent one.

Of the jurisdictions that do not provide for the automatic revocation of powers of attorney for property, most have legislation that addresses the

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<sup>38</sup> Ibid 1

<sup>39</sup> Yukon Regulations, O.I.C. 2005/78, section 9

issue of how and/or when a grantor can revoke a power of attorney for property. The chart attached to this paper summarizes the various legislation provisions in this regard.

The advising or drafting lawyer must be aware of the implications of this in that the granting of a power of attorney or directive in one province could inadvertently revoke documents previously granted in another jurisdiction. One also needs to be aware of the converse – that one should not assume that the making of a new document will revoke previously made documents that exist outside of Ontario and therefore, a grantor can end up with two valid powers of attorney appointing different individuals to do the same job, a situation that could potentially lead to conflict down the road.

### Conclusion

When advising a client who wishes to grant a power of attorney or a client who is acting as an attorney under a power of attorney, it would be prudent to obtain the following information:

- 1) Where does the grantor reside and does he or she have more than one residence that may be in different jurisdictions?
- 2) Does the grantor own any assets located outside of Ontario?
- 3) Does the grantor plan on moving away from Ontario in the foreseeable future?
- 4) Did the grantor previously live in a jurisdiction outside of Ontario and if so, did he or she grant a power of attorney in that jurisdiction which he or she wants to remain in effect?

- 5) Is the proposed attorney willing and available to assume the level of responsibility of an attorney pursuant to the various legislative duties and obligations?
- 6) Will granting a power of attorney in Ontario revoke any previously made powers of attorney in other jurisdictions? If it will revoke other powers of attorney, is that the desired effect and will the Ontario power of attorney be recognized by the other jurisdiction now that that jurisdiction's power of attorney has been revoked? If it will not revoke other powers of attorney, does the previously made power of attorney need to be revoked by some other means and what is the method for doing so?

As the population ages, relocates, acquires transnational assets, and takes up part-time retirement retreats on the other side of the country, it is important for lawyers to ask these questions and research the power of attorney legislation in the various jurisdictions before advising a client or drafting a power of attorney that could otherwise have some unintended consequences. The legislation can be obtained from the following sources:

Northwest Territories – <a href="http://www.gov.nt.ca">www.gov.nt.ca</a>	Yukon – <a href="http://www.gov.yk.ca">www.gov.yk.ca</a>
Nunavut – <a href="http://www.nunavutcourtofjustice.ca">www.nunavutcourtofjustice.ca</a>	Alberta – <a href="http://www.qp.gov.ab.ca">www.qp.gov.ab.ca</a>
British Columbia – <a href="http://www.qp.gov.bc.ca">www.qp.gov.bc.ca</a>	New Brunswick – <a href="http://www.gnb.ca">www.gnb.ca</a>
Saskatchewan – <a href="http://www.gov.sk.ca">www.gov.sk.ca</a>	Manitoba – <a href="http://www.gov.mb.ca">www.gov.mb.ca</a>
Ontario – <a href="http://www.e-laws.gov.on.ca">www.e-laws.gov.on.ca</a>	Nova Scotia – <a href="http://www.gov.ns.ca">www.gov.ns.ca</a>
Newfoundland – <a href="http://www.hoa.gov.nl.ca">www.hoa.gov.nl.ca</a>	P.E.I. – <a href="http://www.gov.pe.ca">www.gov.pe.ca</a>
Quebec – <a href="http://www.publicationsduquebec.gouv.qc.ca">www.publicationsduquebec.gouv.qc.ca</a>	



Province/ Territory	Legislation	Authorizing documents	Recognition of Powers of attorney from other provinces	Revocation	Positive duty to act and Duty to account	Compensation for personal care attorneys
Ontario	- Substitute Decisions Act	- Power of attorney for property - Continuing power of attorney (property) - Power of attorney for personal care	- Property – Yes - Person – Yes	- Power of attorney for property, continuing power of attorney, and power of attorney for personal care are revoked upon making of subsequent power of attorney unless document provides for existence of multiple powers of attorney - Or, grantor can revoke power of attorney if he or she is capable to do so (same test as capacity to give a power of attorney), and so long as the revocation is in writing and observes the same formalities of giving a power of attorney.	- Positive duty to act (property and person) – No. - Attorney for property must account if ordered to do so by the court - Attorneys for property and personal care must keep detailed and accurate records and accounts of their decision making	- The Act is silent on the issue of compensation for personal care attorneys
Northwest Territories	- Powers of Attorney Act - Personal Directives Act - Land Titles Act	- Springing and enduring powers of attorney (property) - Personal directives appointing an agent	- Property – Yes - Person – Yes	- Grantor can revoke springing or enduring power of attorney so long as mentally capable of doing so and must give notice of the revocation to the attorney - Attorney (property) cannot renounce (resign) while under the duty to act unless court approves request to do so. - Director of personal directive can revoke the directive if they understand the nature and effect of the revocation, by a) identifying a date or triggering event for	- Positive duty to act (property) – Yes, so long as attorney has indicated acceptance of the appointment. - Positive duty to act (person) – No - Duty to account upon demand by any person named as a recipient of an accounting in a springing or enduring power of attorney, or annually to the nearest relative (other than the spouse, common law	- Agents acting pursuant to a personal directive are prohibited receiving remuneration unless the personal directive provides otherwise.

Province/ Territory	Legislation	Authorizing documents	Recognition of Powers of attorney from other provinces	Revocation	Positive duty to act and Duty to account	Compensation for personal care attorneys
				<p>revocation in the directive, b) making a subsequent contradictory directive, or c) making any document, including a subsequent directive, that indicates an intention to revoke any prior directives.</p>	<p>partner or attorney)</p>	
Yukon	<ul style="list-style-type: none"> <li>- Enduring Powers of Attorney Act</li> <li>- Adult Protection and Decision Making Act</li> <li>- Care Consent Act</li> <li>- Land Titles Act</li> </ul>	<ul style="list-style-type: none"> <li>- Enduring powers of attorney (property)</li> <li>- Representation agreements for property or the person</li> <li>- Care directives</li> </ul>	<ul style="list-style-type: none"> <li>- Enduring powers of attorney for property – Yes</li> <li>- Representation agreements for property or the person – Act is silent, therefore, <i>maybe</i> Yes if complies with Yukon law</li> <li>- Care directive – Yes, if complies with Yukon law</li> </ul>	<ul style="list-style-type: none"> <li>- Grantor of enduring power of attorney can revoke it when the grantor is mentally capable of understanding the nature and effect of the revocation, must revoke in writing, and give notice to the attorney</li> <li>- Attorney (property) cannot renounce (resign) while under the duty to act unless court approves request to do so.</li> <li>- Revocation of representation agreements (property and person): Maker can revoke by <ul style="list-style-type: none"> <li>a) making a new representation agreement, b) expressing an intention to revoke the agreement either orally or in writing, or c) destroying all the original executed copies of the agreement with the intention of revoking it.</li> </ul> </li> <li>- Expiration of representation agreements: Pursuant to</li> </ul>	<ul style="list-style-type: none"> <li>- Positive duty to act (property attorney) – Yes, so long as attorney has agreed in writing to the appointment at the time the power of attorney is executed.</li> <li>- Positive duty to act (personal attorney) – No</li> <li>- Positive duty to act (representative) – No</li> <li>- Attorney for property must account if ordered to do so by the court</li> <li>- Representative must sign a declaration indicating their willingness to act.</li> </ul>	<ul style="list-style-type: none"> <li>- Adult Protection and Decision Making Act is silent on issue of comp for personal representatives, but provides for guardian’s of the person to make court application to request compensation and reimbursement of expenses.</li> </ul>

Province/ Territory	Legislation	Authorizing documents	Recognition of Powers of attorney from other provinces	Revocation	Positive duty to act and Duty to account	Compensation for personal care attorneys
				Yukon Regulations, O.I.C. 2005/78, section 9, a representation agreement remains in force for a maximum three years from the date it is executed.		
Nunavut	- Powers of Attorney Act - Land Titles Act	- Springing and enduring powers of attorney (property)	- Property – Yes - Person – N/A	- Revocation of power of attorney for property: must meet capacity requirement in law to revoke and must be in prescribed revocation form. - Attorney cannot renounce (resign) while under the duty to act unless court approves request to do so.	- Positive duty to act (property) – Yes, so long as attorney has indicated acceptance of the appointment. - Attorney for property who is under a duty to act must account upon the demand to do so of any person named in the power of attorney as a recipient of an accounting.	- No legislation providing for personal care substitute decision makers.
Quebec	Civil Code	- A mandate is a contract by which a person empowers another person to perform acts on his behalf. The power, and the writing evidencing it, is called the power of attorney.	- Property and Person – Yes, but a court process called homologation must occur in order for the power of attorney to be recognized	- Revocation: Mandator (grantor) of the mandate must be capable of revoking, then can do so either by granting new mandate to another person or by giving written notice of the revocation to the current mandatary (attorney) , or verbal notice if the mandate was made verbally. - If mandator is incapable of revoking, then court ordered revocation can be requested by interested party or Public	- Mandatary is bound to fulfill the mandate once the appointment has been accepted, and to inform the mandatory of his performance, and must refrain from using information obtained during the mandate for his own benefit and can be liable for damages to the mandator and enrichment to himself	- Section 2134 of the Civil Code of Quebec provides that remuneration, if any, of the mandatary is determined by the contract, usage or law on the basis of the value of the services rendered. - Section 2150 provides that the mandator shall reimburse the

Province/ Territory	Legislation	Authorizing documents	Recognition of Powers of attorney from other provinces	Revocation	Positive duty to act and Duty to account	Compensation for personal care attorneys
				Curator - Renunciation: Mandatary (attorney) cannot renounce his or her mandate without providing for his or her replacement if the mandate so requires or has applied for the institution of protective supervision (guardianship)		mandatory for any expenses incurred and shall pay him the remuneration to which he is entitled
Alberta	- Powers of Attorney Act - Personal Directives Act	- Enduring powers of attorney (property) - Personal directive appointing an agent	- Property – Yes - Person – Legislation is silent, therefore, <i>maybe</i> Yes if complies with Alberta law	- Revocation of power of attorney for property: grantor must be capable of understanding nature and effect of the revocation and the revocation must be in writing - Attorney cannot renounce (resign) while under the duty to act unless court approves request to do so. - Maker of personal directive can revoke the directive if they understand the nature and effect of the revocation, by a) identifying a date or triggering event for revocation in the directive, b) making a subsequent contradictory directive, c) making any document, including a subsequent directive, that indicates an intention to revoke any prior directives, or	- Positive duty to act (property) – Yes, so long as attorney has indicated acceptance of the appointment. - Attorney for property must account upon being ordered by court to do so - Positive duty to act (person) – No - Agent under personal directive has duty to keep records of decisions made and must provide copy of record upon demand of maker of directive, maker’s lawyer, maker’s legal representative and other agent who has authority with respect to a matter addressed in the record.	- Compensation for agents under personal directive prohibited by Act, unless provided for by the grantor in the personal directive

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				d) destroying all the original executed copies of the agreement with the intention of revoking it		
British Columbia	- Power of Attorney Act - Representation Agreement Act - Health Care (Consent) and Care Facility (Admission) Act - Patients' Property Act	- Powers of attorney and enduring powers of attorney - Representation agreements (for property and/or person)	- Powers of attorney for property and Representation Agreements (property and person) – Act is silent, therefore, <i>maybe</i> Yes if complies with B.C. law	- Revocation of representation agreement: Grantor must be capable of making agreement in order to revoke, and written notice must be given to each representative, alternate representative, and monitor - Revocation of power of attorney must be express and notice given to the attorney	- Positive duty to act – No - Representatives (both property and person) must keep accounts and records and must produce them upon request by the grantor, the grantor's monitor, or the PGT.	- Representative under representation agreement not entitled to compensation unless agreement expressly authorizes it and sets the amount and rate of compensation; and the court authorizes the compensation to be paid <i>or</i> the grantor consults with a person pursuant to the Act
Saskatchewan	- Powers of Attorney Act - Health Care Directives and Substitute Health Care Decision Makers Act	- Enduring powers of attorney (property and person) - Directive appointing a proxy to make health care decisions	- Property and person power of attorney – Yes - Directive – Yes if complies with Saskatchewan law	- Revocation of enduring power of attorney (property or person): On the written revocation by the grantor while the grantor is capable of understanding the nature and effect of an enduring power of attorney and the effect of terminating an enduring power of attorney - Revocation of care directive: Grantor can revoke the directive orally, in writing, by destroying the directive; OR	- Positive duty to act (property and person) – No - Attorney for property must account upon demand to do so made by the grantor, a person named in the power of attorney by the grantor, an adult family member of the grantor, or the grantor's personal attorney (attorney under a power of	- Under s. 17 of the Powers of Attorney Act, an attorney (both property and personal care) can charge a reasonable fee for services rendered, but if they do so, they must provide an annual accounting. - Health Care Directives and Substitute Health

Province/ Territory	Legislation	Authorizing documents	Recognition of Powers of attorney from other provinces	Revocation	Positive duty to act and Duty to account	Compensation for personal care attorneys
				by making a new directive (Note; silent on whether grantor has to be capable to do so).	attorney for personal affairs) - Attorney for personal affairs must account upon demand to do so made by the grantor, a person named in the power of attorney by the grantor, an adult family member of the grantor, or the grantor's property attorney (attorney under a power of attorney for property) - Where unable to get accounting upon demand, can request PGT to demand it, or court to order it	Care Decision Makers Act is silent on the issue of comp for proxies acting under directive
Manitoba	- Powers of Attorney Act - Health Care Directives Act - (Note: the 'Vulnerable Persons Living With a Mental Disability Act' deals with substitute decision makers akin to Ontario's	- Springing and enduring powers of attorney for property - Health care directive with a proxy	- Property – Yes - Person (health care directive) – Yes, if complies with Manitoba law	- Revocation of powers of attorney for property: Powers of Attorney Act is silent on the issue. - Attorney cannot renounce (resign) while under the duty to act unless court approves request to do so. - Revocation of care directives: Health care directive can be revoked, so long as the maker has capacity to make health care decisions,	- Positive duty to act – Yes, if attorney at any time acted under the power of attorney or otherwise indicated acceptance of the appointment as attorney, and is liable for any loss to the donor occasioned by the failure to act - Duty to account upon demand by any person	- Act is silent on issue of compensation for proxies under health care directive

Province/ Territory	Legislation	Authorizing documents	Recognition of Powers of attorney from other provinces	Revocation	Positive duty to act and Duty to account	Compensation for personal care attorneys
	guardians of property and the person)			a) by a later directive, b) by a later revocation in writing in accordance with the Act, c) by the destruction, with the intent to revoke, of all original signed copies of the directive by the maker or at the direction and in the presence of the maker. If the proxy is the maker's spouse, then automatic revocation upon divorce.	named as a recipient of an accounting in an enduring power of attorney, or annually to the nearest relative (other than the spouse, common law partner or attorney)	
New Brunswick	- Property Act - Infirm Persons Act	- Power of attorney for property - Power of attorney for personal care	- Property and Person – Acts are silent, therefore <i>maybe</i> Yes if complies with N.B. law	- Power of attorney for property can be revoked by donor so long as donor does not suffer from mental incompetence, but Act is silent on method of revocation - Revocation of Power of attorney for personal care – Act is silent.	- Attorney for property must account if ordered to do so by the court - Attorney for personal care has “same obligations as committee of the person” which may include accounting obligations - Positive Duty to Act (property and person) – No	- Act is silent on issue of compensation for personal care attorneys
Prince Edward Island	- Powers of Attorney Act - Consent to Treatment and Health Care Directives Act	- Power of attorney (property) - Health care directive with a proxy	- Property – Act is silent - Person (health care directive) – Yes	- Power of attorney (property) may be revoked by the donor at any time while he has legal capacity. Act is silent as to method of revocation. - Revocation of care directives: Health care directive can be revoked, so	- Attorney for property must account if ordered to do so by the court - Proxy under a health care directive is valid only if the proxy agrees to the appointment in writing prior to the	Act is silent on issue of compensation for proxies acting under a health care directive.

Province/ Territory	Legislation	Authorizing documents	Recognition of Powers of attorney from other provinces	Revocation	Positive duty to act and Duty to account	Compensation for personal care attorneys
				long as the maker has capacity to make decisions, a) by a later directive, b) by a later revocation in writing in accordance with the Act, c) by the destruction, with the intent to revoke, of all original signed copies of the directive by the maker or at the direction and in the presence of the maker. If the proxy appointed under the directive is the maker's spouse, then automatic revocation upon divorce.	maker's incapacity - Positive duty to act (property) – No - Positive duty to act (person) – No. In fact, Act provides that no action lies against any health care proxy for failing to make decisions on behalf of the maker.	
Nova Scotia	- Powers of Attorney Act - Medical Consent Act	- Enduring power of attorney (property) - An authorization (to give medical consent)	- Property and Person – Acts are silent, therefore <i>maybe</i> Yes if complies with N.S. law	- Revocation of enduring powers of attorney for property: Powers of Attorney Act is silent on the issue. - Medical Consent Act provides that an authorization is terminated when it is revoked by the maker, but is silent re capacity to revoke and method of revocation	- Attorney for property must account when ordered by court to do so. - Positive duty to act (person) – No - Positive duty to act (property) – No	- Act is silent on issue of comp. for individuals authorized to make medical decisions.
Newfoundland	- Enduring Powers of Attorney Act - Advance Health Care Directives Act	- Enduring power of attorney (property) - Advance health care directive	- Property and Person – Acts are silent, therefore <i>maybe</i> Yes if complies with Nfld. law	- Enduring Powers of Attorney Act refers to termination upon revocation, but is silent re capacity to revoke and method of revocation - Advance Health Care Directives Act provides that	- Attorney for property must account when ordered by court to do so - Positive duty to act (person) – No - Positive duty to act (property) – No	- Act is silent on issue of compensation for substitute decision makers appointed under advance health care directives



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				<p>directives can be revoked, so long as the maker has capacity to make health care decisions, a) by a later directive, b) by a later revocation in writing in accordance with the Act, c) by the destruction, with the intent to revoke, of all original signed copies of the directive by the maker or at the direction and in the presence of the maker. If the substitute decision maker appointed under the directive is the maker's spouse, then automatic revocation upon divorce.</p>		

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