

Witnessing of Will and Powers of Attorney by Video

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The Ontario Government has issued an Order in Council that allows for the remote signing of wills and powers of attorney while Ontario is under a state of emergency. The new development changes the traditional requirement for the valid signing of a will or power of attorney where the individual and two witnesses must be physically together when each of them sign.

As of today, it will be possible to validly sign a will or power of attorney with the two witnesses viewing the signing by way of a video conference call. The call must be through an audio visual platform that is defined as a means of electronic communication where the participants can see, hear and communicate with each other in real time. While the actual Order in Council does not specify that the call must be recorded, for evidentiary purposes, recording of the call is definitely advisable, and it will be our practice to do so.

At least one of the witnesses must be a lawyer or licensed paralegal for the remote signing process to be considered valid.

Since access to a form of video conferencing is necessary to allow for remote signing, the person signing a will or power of attorney must have access to a computer or phone with camera capabilities. This may be an issue for some elderly people who are confined to a long term care or hospital facility but hopefully staff in such facilities would assist in providing hardware.

We can assist by establishing video calls among clients and one or our lawyer and a second witness. We have also made arrangements to accommodate remote signing of Wills and Powers of Attorneys.

The information contained in this article is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.

