

LATEST UPDATE ON VIRTUAL WITNESSING OF WILLS AND POWERS OF ATTORNEY: EXTENSION IN ONTARIO TO NOVEMBER 21, 2020

by Sasha Kraus

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In what is becoming a familiar refrain, the Ontario government has once again extended the time for Wills and Powers of Attorney to be witnessed virtually (i.e. over a video link) by 30 days to **November 21, 2020**.

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Background

In response to the COVID-19 pandemic, the Ontario Government enacted The *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, SO 2020 c. 17 (the "**Act**") on July 24, 2020. The Act provided that any orders previously made under the *Emergency Management and Civil Protection Act* (the "**EMCP Act**") that had not been revoked as of the effective date of the Act are continued as valid orders under the Act and cease being orders under the EMCP Act. The Act also imposed time limitations on such orders (providing that orders can be extended for up to 30 days at a time). An order continued under the Act ceases to apply 30 days after it is continued under the Act unless the Lieutenant Governor in Council, by order, extends the effective date of the order.

Regulation [O. Reg. 129/20](#), which allows for virtual witnessing in counterpart for the execution and witnessing of Wills and Powers of Attorney in Ontario (the "**Regulation**"), was originally made effective under the EMCP Act as of April 22, 2020 (and, as mentioned above, was continued under the Act in July with effect until late August). In late August, the Regulation was extended by 30 days by [O. Reg. 458/20](#), which regulation itself was amended in late September by [O. Reg. 499/20](#) (to extend the application of the Regulation to late October) and again, just a few days ago, by [O. Reg. 589/20](#) (to extend the application of the Regulation to November 21, 2020, as first mentioned above).

The Future of Virtual Witnessing

The Ontario Government, in consultation with the Chief Medical Officer of Health for Ontario, remains cautious and has continued to keep a watchful eye on certain social activities in order to maintain social distancing measures. The pre-COVID-19 requirement that a testator or grantor be in the physical presence of two witnesses when signing their Wills and Powers of Attorney became an arduous requirement due to the risks associated with the pandemic. The Government has enacted the abovementioned orders with this in mind, and continues to extend the virtual witnessing measures regularly, which provides the flexibility required to address the ongoing health risks and effects associated with COVID-19.

There continue to be mixed emotions with regards to virtual signing and witnessing of Wills and Powers of Attorney. It is a more cumbersome ordeal, involving additional costs and efforts due to the intricacies involved. For these reasons, some clients still prefer to sign their documents in person, as long as the appropriate safety precautions are taken. However, virtual witnessing is a good solution for many

individuals and will continue to be a solution moving forward as cases of COVID-19 are expected to increase through the colder months.

It is important that testators/grantors continue to consult with their estate planning lawyers to discuss the options available to them. Virtual witnessing and executions of Wills and Powers of Attorney in Ontario will likely continue to be a staple in this area of law for the near future (and it should be noted that the Regulation may be extended by further orders up to July 24, 2021).

For a more detailed history of the recent legislation, as well as a list of suggested best practices for virtual witnessing of Wills and Powers of Attorney, please refer to our previous [newsletter](#) written by Mary Wahbi and Kathryn Balter.