



HULL & HULL LLP
Barristers and Solicitors

Drafting Effective Powers of Attorney

When assisting clients in creating incapacity plans, it is important to explain the nature and effect of default provisions outlined within the *Substitute Decisions Act, 1992* that will apply in the absence of contrary terms appearing within planning documents. Considerations in respect of the appointment of attorneys and how they are permitted to act apply to Continuing Powers of Attorney for Property and Powers of Attorney for Personal Care alike.

For example, clients may not know that, unless they indicate otherwise within their Power of Attorney documents:

- Multiple attorneys will be appointed jointly, meaning that they cannot act independently (pursuant to subsections 7(4) and 46(4) of the *Substitute Decisions Act*). If a client does not wish all decisions to be made jointly by the attorneys for property and/or personal care, they can consider appointing them "jointly and severally", or providing that decisions are made by a majority of the attorneys (if more than two are appointed).
- Upon the death, incapacity, or resignation of one of multiple attorneys, the remaining attorney(s) will be authorized to act in their absence, without triggering the appointment of an individual named as an alternate attorney for property or personal care (pursuant to subsections 7(5) and 46(5) of the *Substitute Decisions Act*). If a client wishes an alternate appointment to take effect if one of multiple attorneys ceases to act, this should be specified within the document.
- Attorneys are granted broad decision-making authority. Attorneys for property are entrusted to do anything with the grantor's property that the grantor could do him or herself while capable, except to make a will (pursuant to subsections 7(2) and (6) of the *Substitute Decisions Act*). Attorneys for personal care may be required to make life or death decisions on behalf of the grantor, including those to which the *Health Care Consent Act, 1996* applies (pursuant to subsection 49(1) of the *Substitute Decisions Act*). Accordingly, if the client wishes to restrict the authority of the attorneys in any way, related terms should be included in the document.

It is important for drafting solicitors to be familiar with the terms of the *Substitute Decisions Act* and to take the time to review any that may be relevant in the circumstances with clients to ensure that Power of Attorney documents accurately reflect their intentions.