



HULL & HULL LLP
Barristers and Solicitors

Estate Planning During COVID-19

COVID-19 has changed the way that lawyers are able to practice law for the time being. Without any solid idea of how long many of us may be working remotely with limited in-person contact with clients, it is crucial that estate planning solicitors continue to assist clients in creating or amending estate plans during this period of uncertainty.

The main challenge that estate planning solicitors face in terms of assisting clients with estate planning results from section 4 of the *Succession Law Reform Act*, which requires the testator to sign a Last Will and Testament (or acknowledge his or her signature) in the presence of two witnesses who are present and sign the document at the same time. Typically, clients would attend at the lawyer's office, would be provided with the witnesses, and the lawyer would ensure the due execution of the will. In the present circumstances, however, this is inconsistent with advice provided by Health Canada, limiting the ability of estate planning solicitors to ensure due execution of testamentary documents.

Limited Retainers

There are, nevertheless, several options to facilitate the effective creation or updating of an estate plan without an in-person meeting, if necessary. For example, lawyers may wish to use a [limited retainer](#), which excludes any role or responsibility in the execution and storage of testamentary documents. In such circumstances, it is prudent to provide clients with a [will execution checklist](#) that explains what they need to do to see to the due execution of the document in the presence of witnesses.

Technology

Technology may be of assistance in efficiently assisting clients in creating or amending an estate plan without in-person meetings. Software like [Hull E-state Planner](#) may be helpful in gathering information from clients, obtaining and documenting their instructions, illustrating an estate plan, and formulating a draft will in a timely manner. Lawyers can also "meet" with clients virtually to review the estate plan, draft planning documents, and/or supervise their execution and the witnessing of the will - however, it may remain difficult to ensure that the will is properly executed and witnessed without being in the physical presence of the testator.

Holograph Wills

In limited circumstances, where time restrictions or a client's isolation may not provide an opportunity to obtain instructions and prepare a formal will and/or the client is in isolation and is unable to meet with witnesses, lawyers can consider providing clients with the [information that they need to prepare their own holograph will](#) in accordance with section 6 of the *Succession Law Reform Act*.

Lawyer Review of Testamentary Documents

Regardless of which option may be considered most appropriate in the circumstances, it will be important that lawyers plan to meet with clients when we safely can to review (and, if necessary, fix) the testamentary documents that may be executed without direct lawyer supervision as a result of the COVID-19 pandemic.

It is possible that provincial legislation will be amended in the coming weeks or months to address the current challenges of assisting clients in estate planning. Our firm will continue to monitor developments and share any notable updates on our website as they may occur.

Thanks very much, and be safe,

Suzana.