



HULL & HULL LLP
Barristers and Solicitors

Execution of Wills and Powers of Attorney in Counterpart

Since last month's Solicitor's Tip was posted, there has been a further update to Ontario's legislation to facilitate the execution of Wills and Powers of Attorney during the COVID-19 crisis.

As of April 22, 2020, Wills and Powers of Attorney can now not only be virtually executed and witnessed, but also executed and witnessed in counterpart. An emergency [Order in Council](#) made under the *Emergency Management and Civil Protection Act*, RSO 1990, c E.9, on April 22, 2020, revoked and replaced the previous Order dated April 7, 2020 to provide that identical copies of these documents may be executed in counterpart, with the copies together constituting the complete "Will" or "Power of Attorney". While physical, "wet" signatures are still required, each signatory can execute a different physical (but identical) copy of the Will or Power of Attorney, avoiding the need to circulate the same copy for execution by multiple people.

This further update eliminates a significant safety concern relating to the delivery of the same document from the client to each witness, with the involvement of one or more couriers and potential exposure to the virus, notwithstanding that an in-person meeting of the drafting solicitor with the client has been avoided.

As with virtual execution and witnessing of the same copy of a Will or Power of Attorney, one of the witnesses must be a licensee of the Law Society of Ontario in order for the document to be executed in counterpart.

Precautions should be exercised to ensure that the correct document is being executed and witnessed, as there may otherwise be some risk that the signed documents are not identical, leading to uncertainty regarding the validity and/or content of the document. Checklists outlining best practices in the virtual execution and witnessing of a Will or Power of Attorney in counterpart are available here: [Will Execution in Counterpart Checklist](#), [Power of Attorney Execution in Counterpart Checklist](#).

In the circumstances of the execution of a document in counterpart, it may be advisable to update the attestation clause to refer to the execution and witnessing of the Will or Power of Attorney in this manner. A precedent attestation clause is available [here](#).

Furthermore, the existence of multiple copies that together form a complete Will necessitates a different form of Affidavit of Execution, with each complete copy attached as an exhibit. A precedent Affidavit of Execution in respect of the virtual execution and witnessing of a Will is available [here](#).

These new developments are intended to remain effective during the current period of emergency. For the time being, these updates are welcome and have significantly enhanced our ability to assist clients with estate and incapacity planning during this period of uncertainty.