

Alberta	Relevant provisions	Jurisprudence
Powers of Attorney Act, RSA 2000, c P-20	1 (a) “attorney” means a person who is empowered to act on behalf of the donor under a power of attorney	Clapperton Estate v. Davey, 2009 ABQB 63 (CanLII), < http://canlii.ca/t/fqj1v > [33] In Alberta, the terms “legal attorney” and “trustee”, when used in the context of giving a person the power to make decisions on behalf of another, are defined in statute. Section 1 of the Powers of Attorney Act, R.S.A. 2000 c. P-20 provides that an “attorney” is “a person who is empowered to act on behalf of the donor under a power of attorney.”
definitions	(d) “donor” means a person who gives a power of attorney; (e) “enduring power of attorney” means a power of attorney provided for under section 2; (f) “trustee” means a trustee as defined in the Adult Guardianship and Trusteeship Act; (g) “trusteeship order” means a trusteeship order as defined in the Adult Guardianship and Trusteeship Act.	

Alberta	Relevant provisions	Jurisprudence
formal requirements of EPA	<p>2(1) A power of attorney is an enduring power of attorney if</p> <ul style="list-style-type: none"> (a) the donor is an individual who is an adult at the time of executing the power of attorney, and (b) the power of attorney meets at least the following requirements: <ul style="list-style-type: none"> (i) it is in writing, is dated and is signed <ul style="list-style-type: none"> (A) by the donor in the presence of a witness, or (B) if the donor is physically unable to sign an enduring power of attorney, by another person on behalf of the donor, at the donor's direction and in the presence of both the donor and a witness; <ul style="list-style-type: none"> (ii) it is signed by the witness in the presence of the donor; (iii) it contains a statement indicating that it either <ul style="list-style-type: none"> (A) is to continue notwithstanding any mental incapacity or infirmity of the donor that occurs after the execution of the power of attorney, or (B) is to take effect on the mental incapacity or infirmity of the donor. <p>(3) The following persons may not sign an enduring power of attorney on behalf of the donor:</p> <ul style="list-style-type: none"> (a) a person designated in the enduring power of attorney as the attorney; (b) the spouse or adult interdependent partner of a person designated in the enduring power of attorney as the attorney. 	

Alberta	Relevant provisions	Jurisprudence
witness rules EPA	<p>(4) The following persons may not witness the signing of an enduring power of attorney:</p> <ul style="list-style-type: none"> (a) a person designated in the enduring power of attorney as the attorney; (b) the spouse or adult interdependent partner of a person designated in the enduring power of attorney as the attorney; (c) the spouse or adult interdependent partner of the donor; (d) a person who signs the enduring power of attorney on behalf of the donor; (e) the spouse or adult interdependent partner of a person who signs the enduring power of attorney on behalf of the donor. <p>(5) Notwithstanding subsection (1), a power of attorney is an enduring power of attorney if, according to the law of the place where it is executed,</p> <ul style="list-style-type: none"> (a) it is a valid power of attorney, and (b) the attorney's authority under it is not terminated by the mental incapacity or infirmity of the donor that may occur after the execution of the power of attorney. <p>(6) This section applies notwithstanding any agreement or waiver to the contrary.</p>	<p>Re M.M. (Dependent Adult), 2002 ABQB 739 <http://canlii.ca/t/1q8wr> [26] The Public Trustee reminds the court that if Ms. M.M. does not have sufficient capacity to manage her affairs, she would not have the capacity required to appoint an attorney: s. 3 Powers of Attorney Act. Moreover, the Public Trustee notes that the Powers of Attorney Act does not establish the kind of accountability which is established under the Dependent Adults Act. Finally, the Public Trustee acknowledges that it is a trustee of last resort. However, it reminds the court that the court must be satisfied that a proposed trustee is not only able and willing to act, but also free of any conflict with the dependent adult. Without any information on Ms. M.M.'s financial affairs, it is not possible for the court to be satisfied that J.S. has no conflict of interest with his grandmother.</p>
portable;EPA rules not waivable		
Incapacity at execution	<p>3 An enduring power of attorney is void if, at the date of its execution, the donor is mentally incapable of understanding the nature and effect of the enduring power of attorney.</p>	

Alberta	Relevant provisions	Jurisprudence
contingent	<p>5(1) An enduring power of attorney may provide that it comes into effect at a specified future time or on the occurrence of a specified contingency, including, but not limited to, the mental incapacity or infirmity of the donor.</p> <p>(2) An enduring power of attorney referred to in subsection (1) may name one or more persons on whose written declaration the specified contingency is conclusively deemed to have occurred for the purpose of bringing the enduring power of attorney into effect.</p> <p>(3) A person referred to in subsection (2) may be the attorney appointed under the enduring power of attorney.</p> <p>(4) Where the specified contingency referred to in subsection (1) relates to the mental incapacity or infirmity of the donor and</p> <p style="padding-left: 40px;">(a) the enduring power of attorney does not name a person for the purpose of bringing the enduring power of attorney into effect, or</p> <p style="padding-left: 40px;">(b) the person named for the purpose of bringing the power of attorney into effect</p> <p style="padding-left: 80px;">(i) dies before the enduring power of attorney comes into effect, or</p> <p style="padding-left: 80px;">(ii) is unable or is incapable of determining whether the specified contingency has occurred, the specified contingency shall be conclusively deemed to have occurred, for the purpose of bringing the enduring power of attorney into effect, when 2 medical practitioners declare in writing that the specified contingency has occurred.</p>	<p>Taubner Estate (Re), 2010 ABQB 60 (CanLII), <http://canlii.ca/t/27sp3> [3] This case raises issues concerning the duties and standard of care owed by an attorney acting under a power of attorney and the liability of an attorney to beneficiaries of the donor's estate. It also raises issues about unjust enrichment and unconscionable transactions. [246] It is a general rule that all written powers of attorney are to receive a strict interpretation, and the attorney's authority is never extended beyond that which is expressly given, or is absolutely necessary for carrying the authority into effect: Taylor v. Wallbridge 1879 CanLII 1 (SCC), (1879), 2 S.C.R. 616 at para. 112. Under statute law, however, an enduring power of attorney may confer on the attorney the power to do anything on behalf of the donor that the donor may lawfully do by attorney: s. 7 of the Powers of Attorney Act.</p>
Authority of attorney	<p>7 Subject to this Act and any terms contained in an enduring power of attorney, an attorney</p> <p style="padding-left: 40px;">(a) has authority to do anything on behalf of the donor that the donor may lawfully do by an attorney, and</p> <p style="padding-left: 40px;">(b) may exercise the attorney's authority for the maintenance, education, benefit and advancement of the donor's spouse, adult interdependent partner and dependent children, including the attorney if the attorney is the donor's spouse, adult interdependent partner or dependent child.</p>	

Alberta	Relevant provisions	Jurisprudence
Appln of Trustee Act	<p>7.1 Sections 2 to 8 of the Trustee Act apply to an attorney exercising a power of investment under an enduring power of attorney.</p>	<p>Taubner Estate (Re), 2010 ABQB 60, <http://canlii.ca/t/27sp3> [247] Section 7.1 of the Powers of Attorney Act further provides that the powers and duties of a trustee with respect to investment (under the Trustee Act) apply to an attorney exercising a power of investment under an enduring power of attorney. Although a POA may be general or specific, the nature of both types of power is to give the attorney all the authority of the donor to enable the attorney to fully accomplish the ends which the donor had in mind when executing the deed: Royal Bank v. Bauman 1986 CanLII 1728 (AB QB), (1986), 72 A.R. 89 (Q.B.) at para. 26.</p>
Duty to act	<p>8 Where</p> <p>(a) an attorney has acted in pursuance of an enduring power of attorney or has otherwise indicated acceptance of the appointment, and</p> <p>(b) the enduring power of attorney has not been terminated,</p> <p>the attorney has, unless the enduring power of attorney provides otherwise, a duty to exercise the attorney's powers to protect the donor's interests during any period in which the attorney knows, or reasonably ought to know, that the donor is unable to make reasonable judgments in respect of matters relating to all or part of the donor's estate.</p>	

<p>Alberta</p> <p>Application to Court for advice</p>	<p>Relevant provisions</p> <p>9(1) An attorney under an enduring power of attorney may apply for the opinion, advice or direction of the Court on any matter respecting the management or administration of the donor's property.</p> <p>(2) An attorney who is acting on the opinion, advice or direction given by the Court is deemed, so far as regards the attorney's own responsibility, to have discharged the attorney's duty in respect of the matter that was the subject of the opinion, advice or direction.</p> <p>(3) Subsection (2) does not extend to indemnify an attorney in respect of any act done in accordance with the opinion, advice or direction of the Court if the attorney has been guilty of any fraud, wilful concealment or misrepresentation in obtaining the opinion, advice or direction.</p>	<p>Jurisprudence</p> <p>Ericksen Estate (Re), 2008 ABQB 587 (CanLII), <http://canlii.ca/t/20vnj> [43] Based on the foregoing, I am of the view that an attorney in Alberta has no authority under an enduring power of attorney to gift a non-spouse/interdependent partner or non-dependent of the donor, unless the enduring power of attorney specifically grants that authority. No such authority is given in the Enduring Power of Attorney here. Nor do I believe that the Court can or should authorize such a gift. Even if the jurisdiction does lie with the Court to do so, I am not satisfied that the circumstances here justify the type of order sought by Mr. Ellerington.</p>
<p>Accounting</p>	<p>10(1) An application may be made to the Court for an order directing an attorney to bring in and pass accounts in respect of any or all transactions entered into in pursuance of the enduring power of attorney.</p> <p>(2) The application under this section may be made</p> <p style="padding-left: 40px;">(a) by the donor, the donor's personal representative or a trustee of the donor's estate, or</p> <p style="padding-left: 40px;">(b) if the donor is unable to make reasonable judgments in respect of matters relating to all or part of the donor's estate, by any interested person.</p> <p>(3) A copy of the application and any order granted in respect of the application shall, unless the Court provides otherwise, be served on the donor and the attorney.</p> <p>(4) On hearing an application under subsection (1), the Court may grant whatever order for accounting it considers appropriate in the circumstances.</p> <p>(5) This section applies notwithstanding any agreement or waiver to the contrary.</p>	

Alberta	<p>Relevant provisions</p> <p>10(4) On hearing an application under subsection (1), the Court may grant whatever order for accounting it considers appropriate in the circumstances.</p>	<p>Jurisprudence</p> <p>Re Taubner Estate 2010 ABQB 60 <http://canlii.ca/t/27sp3></p> <p>[229] Eric argues, however, that Ms. MacDonald’s remedies are limited to accounting matters, referring to s. 10(4) of the Powers of Attorney Act. Eric distinguishes attorney under powers of attorney from personal representatives in the Surrogate Rules.</p> <p>[230] Re Mittelstadt Estate, 2002 ABQB 656 (CanLII), 2002 ABQB 656, and Re Lefebvre Estate, 2007 ABQB 195 (CanLII), 2007 ABQB 195, are cited by Ms. MacDonald as authority for her argument that attorneys can be ordered to repay money wrongfully taken out of the donor’s estate.</p> <p>[231] In my view, the Courts’ powers under s. 10(4) of the Powers of Attorney Act are not so limited.</p> <p>[232] The duties of attorneys and of personal representatives are similar. Both may be required to account. It makes no sense for the Court to be able to make remedial orders against personal representatives, but not against attorneys. In my view “accounting” remedies under the Powers of Attorney Act should be interpreted liberally. A liberal interpretation includes the power to make remedial orders or judgments that are appropriate having regard to the accounting that has been provided.</p> <p>[233] The Court could also direct the trial of issues, or give advice or directions as it may do under s. 11 of the Trustee Act or Surrogate Rule 113.</p> <p>[234] Whether an estate suffers loss by reason of a trustee’s misappropriation of funds or his breach of fiduciary duty, the result to the estate is the same: there is a financial loss. The attorney has failed to satisfactorily account for his actions, and can be ordered to restore the estate to its position had the misappropriation or breach not occurred.</p> <p>[235] As such, I conclude that the Court has the power in the accounting action to give the same remedies as are sought against Eric in the damage action.</p>
Accounting not waivable	<p>10(5) This section applies notwithstanding any agreement or waiver to the contrary.</p>	

Alberta	Relevant provisions	Jurisprudence
Termination order and formalities	<p data-bbox="618 211 1290 235">Termination order</p> <p data-bbox="618 243 1290 300">11(1) Any interested person may apply to the Court for an order terminating the enduring power of attorney.</p> <p data-bbox="618 308 1290 397">(2) A copy of the application and any order granted in respect of the application shall, unless the Court provides otherwise, be served on the donor and the attorney.</p> <p data-bbox="618 406 1290 527">(3) On hearing an application under subsection (1), the Court may grant an order terminating the enduring power of attorney if the Court considers that this would be in the best interests of the donor.</p> <p data-bbox="618 535 1290 625">(4) On granting an order terminating an enduring power of attorney, the Court shall not appoint a substitute attorney but may do one or both of the following:</p> <ul data-bbox="618 633 1290 824" style="list-style-type: none"><li data-bbox="618 633 1290 722">(a) direct that the applicant bring an application forthwith for a trusteeship order in respect of the donor's estate;<li data-bbox="618 730 1290 824">(b) pending the application referred to in clause (a), appoint an interim trustee of the donor's estate with such powers as the Court considers appropriate.	

Alberta	Relevant provisions	Jurisprudence
Termination of enduring power of attorney	<p>13(1) Except in the case of an irrevocable power of attorney, and notwithstanding any agreement or waiver to the contrary, an enduring power of attorney terminates</p> <p>(a) subject to section 11, if it is revoked in writing by the donor at a time when the donor is mentally capable of understanding the nature and effect of the revocation;</p> <p>(b) subject to section 12, if the attorney renounces the appointment and gives notice of the renunciation to the donor;</p> <p>(c) on the granting of a termination order pursuant to section 11;</p> <p>(d) on the granting of a trusteeship order in respect of the donor;</p> <p>(e) on the death of the donor or the attorney;</p> <p>(f) on the granting of a trusteeship order in respect of the attorney.</p> <p>(2) Where an enduring power of attorney</p> <p>(a) appoints more than one attorney, each with joint and several authority, or</p> <p>(b) provides for alternate attorneys, the appointment of one being conditional on the cessation of the appointment of another, references in subsection (1) to the attorney are deemed to be references to the last remaining attorney.</p>	

Comments: Formalities clear, caselaw and incorporation of Trustee Act establishes no doubt about fiduciary nature of duties.

Duties could be more clearly expressed in PoA itself. Initial safeguards seem stronger than remedial ones.

BC	Relevant provisions	Jurisprudence
Power of Attorney Act, RSBC 1996, c 370		
definitions	1 In this Part: "agent" includes an attorney acting under a power of attorney;	
deeds	<p>7 A deed executed by an attorney under the seal of the attorney on behalf of a donor, whether an individual or corporation,</p> <p>(a) is binding on the donor if it comes within the scope of the attorney's authority, and (b) is of the same effect as if it were under the seal of the donor.</p> <p>"attorney" means a person who (a) is authorized under an enduring power of attorney to act as an attorney, and (b) has signed the enduring power of attorney under section 17;</p> <p>"enduring power of attorney" means a power of attorney (a) in which an adult authorizes an attorney to (i) make decisions on behalf of the adult, or (ii) do certain things in relation to the adult's financial affairs, and (b) that continues to have effect while, or comes into effect when, the adult is incapable;</p> <p>"financial affairs" includes an adult's business and property, and the conduct of the adult's legal affairs;</p>	
Part 2: EPA: definitions		
previously s 8 provided for EPA; 2007 c 34 s 37 repealed this and added the new Parts 2 and 3 (rest of statute to Form) these new provisions. Not in force until until Sep 1 2011 (BC Reg 14/11)		
Adult presumed capable thru 25	<p>11 (1) Until the contrary is demonstrated, an adult is presumed to be capable of (a) making decisions about the adult's financial affairs, and (b) understanding the nature and consequences of making, changing or revoking an enduring power of attorney. (2) An adult's way of communicating with others is not grounds for deciding that the adult is incapable of making the decisions or having the understanding referred to in subsection (1).</p>	<p>Begg v. Begg, 2013 BCSC 84 (CanLII), <http://canlii.ca/t/fvr5t> [49] My conclusion is that I am unable to find the facts necessary to decide the issues of fact and law relating to the issue of whether the plaintiff had become incapable of making decisions independently by December 1, 2011. In addition, I think it would be unjust to some extent, to decide this issue by summary trial. Neither side appears to be in a position to present their best case, there is considerable inadmissible hearsay, and a decision would not necessarily resolve this lawsuit. Consequently, this issue is not suitable for determination by way of summary trial.</p>
Adult may make epa unless incapable	<p>12 (1) An adult may make an enduring power of attorney unless the adult is incapable of understanding the nature and consequences of the proposed enduring power of attorney.</p> <p>(2) An adult is incapable of understanding the nature and consequences of the proposed enduring power of attorney if the adult cannot understand all of the following: (a) the property the adult has and its approximate value; (b) the obligations the adult owes to his or her dependants; (c) that the adult's attorney will be able to do on the adult's behalf anything in respect of the adult's financial affairs that the adult could do if capable, except make a will, subject to the conditions and restrictions set out in the enduring power of attorney; (d) that, unless the attorney manages the adult's business and property prudently, their value may decline; (e) that the attorney might misuse the attorney's authority; (f) that the adult may, if capable, revoke the enduring power of attorney;</p> <p>(f) that the adult may, if capable, revoke the enduring power of attorney; (g) any other prescribed matter.</p>	

BC

Relevant provisions

Jurisprudence

Adult must sign (Detailed formality rules about witnesses, capacity)

:16 (1) Subject to subsections (2) to (6), an enduring power of attorney must be in writing and signed and dated by (a) the adult in the presence of 2 witnesses, and (b) both witnesses in the presence of the adult. (2) Subject to subsection (3), an enduring power of attorney may be signed on behalf of an adult if (a) the adult is physically incapable of signing the enduring power of attorney, (b) the adult is present and directs that the enduring power of attorney be signed, and (c) the signature of the person signing the enduring power of attorney on behalf of the adult is witnessed in accordance with this section, as if that signature were the adult's signature.

(3) The following persons must not sign an enduring power of attorney on behalf of an adult: (a) a witness to the signing of the enduring power of attorney; (b) a person prohibited from acting as a witness under subsection (6). (4) Only one witness is required if the witness is a lawyer or a member in good standing of the Society of Notaries Public of British Columbia. (5) If an enduring power of attorney is to be effective for the purposes of the Land Title Act, the enduring power of attorney must be executed and witnessed in accordance with the Land Title Act.

(6) The following persons must not act as a witness to the signing of an enduring power of attorney: (a) a person named in the enduring power of attorney as an attorney; (b) a spouse, child or parent of a person named in the enduring power of attorney as an attorney; (b.1) an employee or agent of a person named in the enduring power of attorney as an attorney, unless the person named as an attorney is (i) a lawyer, (ii) a member in good standing of the Society of Notaries Public of British Columbia, (iii) the Public Guardian and Trustee, or (iv) a financial institution authorized to carry on trust business under the Financial Institutions Act; (c) a person who is not an adult; (d) a person who does not understand the type of communication used by the adult, unless the person receives interpretive assistance to understand that type of communication.

17 (1) Before a person may exercise the authority of an attorney granted in an enduring power of attorney, the person must sign the enduring power of attorney in the presence of 2 witnesses.

(2) The signing of an enduring power of attorney by an attorney is not required to be in the presence of the adult or any other attorney.

(3) Section 16 (4) and (6) applies to witnesses of an attorney's signature and, for this purpose, the reference in section 16 (6) to the adult is to be read as a reference to the attorney.

(4) A person named as an attorney in an enduring power of attorney who has not signed the enduring power of attorney is not required to give notice of any kind that the person is unwilling or unable to act as an attorney.

(5) If a person named as an attorney does not sign the enduring power of attorney, the authority of any other attorney is not affected, unless the enduring power of attorney states otherwise.

(Similar precautionary/protective rules apply) Attorney must sign

BC

Relevant provisions

Jurisprudence

18 (1) An adult may name one or more of the following persons as an attorney:

- (a) an individual, other than an individual who
 - (i) provides personal care or health care services to the adult for compensation, or
 - (ii) is an employee of a facility in which the adult resides and through which the adult receives personal care or health care services;
- (b) the Public Guardian and Trustee;
- (c) a financial institution authorized to carry on trust business under the Financial Institutions Act.

(2) Despite subsection (1) (a), an individual described in subsection (1) (a) (i) or (ii) who is a child, parent or spouse of the adult may be named as an attorney.

Who may act as attorney

[as expected] 19 (1) An attorney must

- (a) act honestly and in good faith,
- (b) exercise the care, diligence and skill of a reasonably prudent person,
- (c) act within the authority given in the enduring power of attorney and under any enactment, and
- (d) keep prescribed records and produce the prescribed records for inspection and copying at the request of the adult.

Duties of attorney [case: expressed fiduciary]

(2) When managing and making decisions about the adult's financial affairs, an attorney must act in the adult's best interests, taking into account the adult's current wishes, known beliefs and values, and any directions to the attorney set out in the enduring power of attorney.(3) An attorney must do all of the following:

- (a) to the extent reasonable, give priority when managing the adult's financial affairs to meeting the personal care and health care needs of the adult;
- (b) unless the enduring power of attorney states otherwise, invest the adult's property only in accordance with the Trustee Act;
- (c) to the extent reasonable, foster the independence of the adult and encourage the adult's involvement in any decision-making that affects the adult;
- (d) not dispose of property that the attorney knows is subject to a specific testamentary gift in the adult's will, except if the disposition is necessary to comply with the attorney's duties;
- (e) to the extent reasonable, keep the adult's personal effects at the disposal of the adult.

no co-mingling

(4) An attorney must keep the adult's property separate from his or her own property.
21 An attorney must not make or change a will for the adult for whom the attorney is acting, and any will or change that is made for an adult by his or her attorney has no force or effect.

must not make will

Sangha (Re), 2013 BCSC 1965 (CanLII), <<http://canlii.ca/t/g1npr>> [106] In acting unilaterally to pay her legal fees contrary to the terms of the enduring POA, Maya Sangha was in breach of her fiduciary obligation to her father. This breach was further compounded by the fact that she knew that her father opposed both unilateral action and the commencement of any contested legal proceedings. Section 19(2) of the *Power of Attorney Act*, R.S.B.C. 1996, c. 370 indicates that the attorney "must act in the adult's best interests, taking into account the adult's current wishes, known beliefs and values, and any directions to the attorney set out in the enduring power of attorney." Her actions in this matter went against her father's stated wishes and as such were in contravention of her duties under the *Act*.

[107] Given this breach of the terms of the enduring POA, I order Maya Sangha to forthwith return to her father the funds she improperly used, being the sum of \$105,474.05, with interest at the rate (if any) such funds were earning in the patient's account.

BC	Relevant provisions	Jurisprudence
Liability	<p>22 An attorney who acts in the course of the attorney's duties is not liable for any loss or damage to the adult's financial affairs if the attorney complies with</p> <p>(a) the duties of the attorney as set out in section 19 and the enduring power of attorney,</p> <p>(b) any directions of the court given under section 36 (1) (a), and</p> <p>(c) any other duty that may be imposed by law.</p>	
No delegation except per Trustee Act to to PT	<p>23 (1) Unless the enduring power of attorney states otherwise, an attorney must not delegate any decision-making authority given to the attorney in an enduring power of attorney.</p> <p>(2) Despite subsection (1), unless the enduring power of attorney states otherwise, an attorney may delegate all or part of the attorney's authority in relation to investment matters to a qualified investment specialist, including a mutual fund manager, if done in accordance with,</p> <p>(a) if the attorney is the Public Guardian and Trustee, the Public Guardian and Trustee Act, or</p> <p>(b) in any other case, section 15.5 of the Trustee Act.</p>	
Compensaton permitted if specifics provided	<p>24 (1) An attorney must not be compensated for acting as an adult's attorney unless the enduring power of attorney expressly authorizes the compensation and sets the amount or rate.</p> <p>(2) An attorney may be reimbursed from an adult's property for reasonable expenses properly incurred in acting as the adult's attorney.</p>	
When EPA effective (in plaing language provides for springing, medical declaration incapable) EPA doesn't prefont capable adult from acting	<p>26</p> <p>27</p>	
Reporting to PGT for abuse, neglect	<p>[34 (2), (4) any person can report to PGT and uness malicious, no exposure to damages]</p> <p>(3) If a person makes a report, the Public Guardian and Trustee must promptly review the report and may do one or more of the following:</p> <p>(a) conduct an investigation to determine the validity of the report, and, if an investigation is conducted, the Public Guardian and Trustee may advise the person who made the report of the outcome;</p> <p>(b) apply to the court for an order described in section 36;</p> <p>(c) advise the person who made the report that the person may apply to the court for an order described in section 36;</p> <p>(d) make a report under section 46 of the Adult Guardianship Act;</p> <p>(e) take steps under the Patients Property Act to become a committee;</p> <p>(f) take no action, or take any action that the Public Guardian and Trustee considers necessary.</p>	
On report PGT must do one or more of these	<p>35 (1) If the Public Guardian and Trustee has reason to believe that any of the circumstances set out in section 34 (2) exist, the Public Guardian and Trustee may conduct an investigation, regardless of whether a report has been made under that section. (2) After conducting an investigation, the Public Guardian and Trustee may do anything set out in section 34 (3) (b) to (f).</p>	
PGT can investigate on own motion		

BC

Relevant provisions

Jurisprudence

Court can make various directions and orders on applicaton by attorney, a person,
PGT

36 (1) On application by an attorney, the court may

- (a) give directions respecting the scope of an attorney's powers and duties, and
- (b) make an order directing a person to release information to the attorney for the purpose of allowing the attorney to exercise the attorney's authority under this Act.

(2) On application by a person, the court may make an order that another person release information to the applicant if the court considers that the information is necessary to determine the incapability of an adult who is making, or who has made, an enduring power of attorney.

(3) On application by the Public Guardian and Trustee or an attorney, the court may make an order that an enduring power of attorney is valid despite a defect in the signing of the enduring power of attorney.

(4) On application by the Public Guardian and Trustee, the court may make any order that the court considers necessary to assist the Public Guardian and Trustee in carrying out the Public Guardian and Trustee's duties and powers under this Act, including an order directing a person to release information to the Public Guardian and Trustee for the purposes of an investigation.

(5) On application by the Public Guardian and Trustee or a person who made a report to the Public Guardian and Trustee under section 34, the court may make any order that the court considers necessary, including an order

- (a) to confirm a change to, or the revocation of, an enduring power of attorney,
- (b) to terminate all or part of an enduring power of attorney, or
- (c) that, if the application concerns a matter described in section 34 (2) (a) or (b),
 - (i) the enduring power of attorney and all actions done under it are void, or
 - (ii) the enduring power of attorney is terminated, but any action done under it before it was terminated is not void.

(6) When making an order under subsection (5), the court must consider the wishes, instructions, beliefs and values of the adult who made the enduring power of attorney, and must not make a contrary order unless

- (a) the adult is incapable, and
- (b) the order is in the best interests of the adult.

(7) The costs of an application to the court are at the discretion of the court, and the court may order that all or part of those costs be paid from the property of the adult who made the enduring power of attorney.

s 37

Parens patriae jurisdiction affirmed

extrajurisdictional powers of attorney included

38 Subject to any limitation or condition set out in the regulations, a power of attorney that

- (a) applies or continues to apply when an adult is incapable,
- (b) was made in a jurisdiction outside British Columbia, and
- (c) complies with any prescribed requirements

is deemed to be an enduring power of attorney made under this Act.

BC

Relevant provisions

Jurisprudence

Transitional — enduring powers of attorney made before Parts 2 and 3 enacted—gave retroactive effect to these Parts in respect of active EPAs

42 (1) An enduring power of attorney that was validly made under section 8, before the repeal, on September 1, 2011, of that section by the Adult Guardianship and Planning Statutes Amendment Act, 2007, is deemed to be an enduring power of attorney made under Part 2.

Comments: Extensive, thorough—reflective of WCLRA earlier recommendations. Clear, plain language definitions and duties. Formalities clear and not too onerous. Involvement of PGT throughout, and as an option as attorney, is appealing.

Protect assets in urgent cases

[Public Guardian and Trustee Act, RSBC 1996, c 383 s 19](#)

Manitoba	Relevant provisions	Jurisprudence
Powers of Attorney Act, CCSM c P97		
Definitions: attorney, donor, nearest relative, EPA, SPA	1 "nearest relative" means, with respect to a donor, (b) where no person qualifies under clause (a), the Public Guardian and Trustee; (« plus proche parent »)	
retroactive application despite any waiver	2(1) Subject to subsection (2), this Act applies to a power of attorney executed before or after this Act comes into force, despite any agreement or waiver to the contrary.	
Exceptions to above (presumably to prevent invalidation)	2(2) Sections 11 (persons who may witness donor's signature) and 16 (individuals eligible to be an attorney) do not apply to an enduring power of attorney executed before this Act comes into force.	
provides for how contingency event for SPA determined to occur: declarant appointment, application to court by various	6 and 7	
Specifies various public officials as potential witnesses	11(1) Subject to subsection (2), a witness to the execution of an enduring power of attorney must be (a) an individual registered, or qualified to be registered, under section 3 of The Marriage Act to solemnize marriages; (b) a judge of a superior court of the province; (c) a justice of the peace or provincial judge; (d) a duly qualified medical practitioner; (e) a notary public appointed for the province; (f) a lawyer entitled to practice in the province; (g) a member of the Royal Canadian Mounted Police; or (h) a police officer with a police service established or continued under The Police Services Act.	
May file EPA with PGT	12 A donor or attorney may file a copy of the enduring power of attorney with the Public Guardian and Trustee.	
When EP attorney authority terminates or is suspended	13, 14 (including substitute decision maker or emergency substitute decision maker appointed under The Vulnerable Persons Living with a Mental Disability Act < http://www.canlii.org/en/mb/laws/stat/ccsm-c-v90/latest/ccsm-c-v90.html > or PGT takes over under Mental Health Act)	
standards of care differ: Standard if not compensated	An attorney who does not receive compensation for acting as an attorney shall exercise the judgment and care that a person of prudence, discretion and intelligence would exercise in the conduct of his or her own affairs.	
standards of care differ: Standard if compensated	19(3) An attorney who receives compensation for acting as an attorney shall exercise the judgment and care that a person of prudence, discretion and intelligence in the business of managing the property of others is required to exercise.	

Manitoba	Relevant provisions	Jurisprudence
Duty to provide accounting--to person named in EPA as entitled to accounting, or if none, to nearest relative which could be PGT.	<p>22(1) During any period in which an attorney has a duty under subsection 19(1) to act, the attorney shall provide an accounting in respect of the estate</p> <p>(a) upon demand by any person named as a recipient of an accounting by the donor in the enduring power of attorney; or</p> <p>(b) where the donor does not name a recipient in the enduring power of attorney or the named recipient is the attorney or the spouse or common-law partner of the attorney or is deceased or mentally incompetent, annually to the nearest relative of the donor.</p>	
Court jurisdiction for, on application, various remedies including termination, replacement of attorney, accounting	<p>24(1) Upon an application made in respect of an enduring power of attorney, the court may, having regard to the power of attorney and the donor's intentions, make any order the court considers appropriate, which may include the following:</p> <p>(a) an order providing advice or directions on any matter respecting the management of the donor's estate;</p> <p>(b) a declaration that the donor is mentally incompetent;</p> <p>(c) a declaration that a power of attorney is invalid or terminated;</p> <p>(d) an order removing the attorney appointed under the power of attorney;</p> <p>(e) an order requiring the attorney to provide the court with an accounting;</p> <p>(f) subject to the provisions of the enduring power of attorney, an order varying the powers of the attorney;</p> <p>(g) subject to the provisions of the enduring power of attorney, an order appointing a person as an attorney in place of the attorney appointed under the enduring power of attorney.</p>	
Applicant can include PGT or interested persons	<p>24(2) An application under subsection (1) may be made by an attorney, the Public Guardian and Trustee, the nearest relative of the donor, a recipient of an accounting under section 22 or, with the approval of the court, an interested person, at any time after the execution of the enduring power of attorney.</p>	

Comment: s 12 provides "may" file EPA with PGT. Consider whether "must" would be better or too onerous. Intersection with Vulnerable Persons Living with a Mental Disability Act. Explicit that compensation is permitted but not required, and standard of care for attorney will differ. One provision for various remedies (accounting, termination, replacement, etc.)

New Brunswick

Relevant Provisions

[Property Act, RSNB 1973, c P-19 57 \(power of attorney provisions\)](#)

EPA authority when donor incapable terminated when PT or committee appointed (non waivable)

58.3 The authority conferred upon a donee by the provision referred to in paragraph 58.2(1)(a) is terminated
 (a) when a court appoints a committee of the estate of the donor,
 (b) when the Public Trustee becomes committee of the estate of the donor pursuant to subsection 38(1) of the Mental Health Act, or
 (c) when another person is substituted for the donee under section 58.6.

On EPA donee application Court can vary powers in donor best interest (non waivable)

58.4 Where a power of attorney contains the provision referred to in paragraph 58.2(1)(a), the court may, upon application by the donee of the power at a time when the donor suffers from mental incompetence, vary the donee's powers in respect of managing and administering the estate of the donor if it is in the best interests of the estate of the donor.

Court can order accounting on application by named people including PT (non waivable)

58.5(1) Where the donor of a power of attorney containing the provision referred to in paragraph 58.2(1)(a) suffers from mental incompetence,
 (a) any person having an interest in the estate of the donor,
 (b) the Public Trustee, where it appears to be in the best interests of the donor or the estate of the donor, or
 (c) any other person permitted by the court
 may, during the period of incompetence, apply to the court for an order requiring the donee to pass accounts in respect of transactions which involved an exercise of the power during the period of incompetence of the donor, and the court may so order.

Court can order a different decisionmaker on application by named people including PT (non waivable)

58.6 Where the donor of a power of attorney containing the provision referred to in paragraph 58.2(1)(a) suffers from mental incompetence,
 (a) any person having an interest in the estate of the donor,
 (b) the Public Trustee, where it appears to be in the best interests of the donor or the estate of the donor,
 (c) the donee, on giving fifteen days written notice to the Public Trustee and to all persons having an interest in the estate of the donor, or
 (d) any other person permitted by the court
 may, during the period of incompetence, apply to the court for an order substituting another person for the donee named in the power of attorney, and the court may so order

Infirm Persons Act provides for "power of attorney for personal care"

[Infirm Persons Act, RSNB 1973, c I-8 s 40](#)

New Brunswick

Relevant Provisions

This jurisdiction could benefit from a dedicated power of attorney with clear duties and safeguards or enduring power of attorney statute, perhaps addressing both the Property and the Infirm Person matters

Newfoundland and Labrador

[Enduring Powers of Attorney Act, RSNL 1990, c E-11](#)

Sets out witness etc formalities

3. (1) A power of attorney, signed by the donor and witnessed by a person who is not the person named in the enduring power of attorney as the attorney or the spouse or cohabiting partner of that person, which contains a provision expressly or impliedly stating that it may be exercised during the legal incapacity of the donor, is an enduring power of attorney.

(2) A person shall be 19 years of age or older in order to be named as an attorney in an enduring power of attorney.

(3) An attorney shall not appoint another person to perform the attorney's functions or to exercise his or her powers as an attorney.

EPAct expressly not waivable

4. This Act applies to all enduring powers of attorney notwithstanding an agreement or a statement in the enduring power of attorney to the contrary.

Responsibility of attorney in best interests of donor; attorney to compensate for unreasonable, non good faith loss; attorney equivalent to trustee;

6. (1) An attorney shall exercise his or her powers in the manner that protects the best interests of the donor, and where the attorney fails to do so, the attorney shall be liable to compensate the donor for loss occasioned by the attorney's failure.

(2) An attorney shall be considered to be a trustee of the property of the donor.

(3) Notwithstanding subsection (1), where an attorney proves to the satisfaction of the court that he or she has acted honestly, reasonably and in good faith, the court may relieve the attorney from personal liability either wholly or partially.

Burling Estate, Re, 1993 CanLII 8433 (NL SCTD), <<http://canlii.ca/t/g08cl>>

1. Authority to remunerate.

[16] An attorney under an enduring power of attorney is expressly designated by the legislature under s. 6(2) of the Enduring Powers of Attorney Act, as a trustee. In my opinion this brings the attorney under the definition of "trustee" in s. 2(n) of the Trustee Act.

[17] If there was any doubt that the provisions of the Trustee Act apply to an enduring power of attorney, this is removed by s. 14 of the Enduring Powers of Attorney Act, which provides that s. 3 of the Trustee Act does not apply to an enduring power of attorney. A reasonable inference is that all the other provisions of the Trustee Act do apply to an enduring power of attorney.

Newfoundland and Labrador

Responsibility for an accounting on application by specified persons including PT 10. (1) A person with an interest in the estate of the donor, or another person permitted by the court, may, where the donor is legally incapacitated, apply to the court for an order requiring the attorney to submit his or her accounts for a transaction involving the estate of the donor.

(2) Where an order is made under subsection (1), the attorney shall file his or her accounts in the registry of the court and the proceedings and practice upon that filing shall be the same as for the filing of an executor's or administrator's account under the Judicature Act .

(3) For the purpose of subsection (1), the public trustee shall be considered to be a person with an interest in the estate of the donor.

Trustee Act rules on authorizing investment of funds don't apply to EPA donee 14. [Section 3 of the *Trustee Act* doesn't apply unless stated to.]

Comment: Formalities are minimal. Statute is usefully clear in s 6 that duty standard is that of a fiduciary or trustee. Remedial or recourse provisions are minimal, no PGT involvement.

[Powers of Attorney Act, RSNS 1989, c 352](#)

Defines and sets formalities for EPA

3 A power of attorney, signed by the donor and witnessed by a person who is not the attorney or the spouse of the attorney, that contains a provision expressly stating that it may be exercised during any legal incapacity of the donor, is

(a) an enduring power of attorney;

(b) not terminated or invalidated by reason only of legal incapacity that would, but for this Act, terminate or invalidate the power of attorney; and

(c) valid and effectual,

subject to any conditions and restrictions contained therein that are not inconsistent with this Act. R.S., c. 352, s. 3.

5 (1) Where a donor of an enduring power of attorney becomes legally incapacitated, a judge of the Trial Division of the Supreme Court may for cause, on application,

(a) require the attorney to have accounts passed for any transaction involving the exercise of the power during the incapacity of the donor; (b) require the attorney to attend to show cause for the attorney's failure to do anything that the attorney is required to do as attorney or any order made pursuant to this Act; (c) substitute another person for the attorney; (d) allow or disallow all or any part of the remuneration claimed by the attorney; (e) grant such relief as the judge considers appropriate; (f) make such provision respecting costs as the judge considers appropriate.

Powers and duties EPA

(2) Where an attorney is ordered to have accounts passed, the attorney shall submit the accounts for approval to the Court or, where a judge of the Court so orders, to the Public Trustee at such intervals as the judge may order and, when approved, the attorney shall file the accounts with the prothonotary of the Supreme Court for the county where the application is heard.

(3) An attorney may apply to a judge of the Trial Division of the Supreme Court for an order substituting another person as attorney in the same manner as a person interested in the estate of the donor, upon giving notice of the application to the Public Trustee at least ten days before the application is heard.

(4) Nothing in this Section prevents an attorney from submitting accounts to the Public Trustee for approval and the Public Trustee shall consider accounts when submitted by an attorney.

(5) Nothing in this Section prevents a donor from applying for an accounting by the attorney, if the donor has the legal capacity to do so.

B.F.H. v. D.D.H., 2010 NSSC 340, <<http://canlii.ca/t/2d508>>

[27] I am satisfied that the Court has jurisdiction to grant the orders sought [incl restitution]. Subsection 5(1)(c) gives the Court the power to “substitute another person for the attorney” where cause is shown. Subsection 5(1)(e) gives the Court the power to “grant such relief as the judge considers appropriate” where cause is shown. These subsections are not limited by the phrase “during the incapacity of the donor.” When these subsections are read in the context of the whole section, which they must be, it is clear that they are not limited to transactions that took place after the donor was declared incompetent.

[28] When a donor signs a power of attorney, this establishes a fiduciary relationship between the donor and the attorney from the moment of signature. All transactions made by the attorney may be reviewed by the court pursuant to applications under s. 5(1) of the Act. This does not mean that an attorney cannot be given a gift by the donor, but it does mean that the attorney must take precautions to ensure that there is proof of the donor’s intent.

This Act not retrospective before 1988

6 Nothing in this Act affects a power of attorney given before the twenty-fifth day of May, 1988, except that such a power of attorney, if in force on that day, continues in force as if given on or after that day and the provisions of this Act apply to it.

Comment: Duties are not clearly and positively expressed. Formalities are minimal and not positively expressed. Minimal involvement of PT.

Ontario

[Substitute Decisions Act, 1992, SO 1992, c 30](#)

Continuing powers of attorney (EPA) defined and pre-SDA retroactively included; attorney can't make will.

CPA can be PGT; contingent/springing provided for; no form required; prescribed form available.

Provisions re formalities, witnesses; noncompliance not fatal.

Relevant provisions

7. (1) A power of attorney for property is a continuing power of attorney if,
 (a) it states that it is a continuing power of attorney; or
 (b) it expresses the intention that the authority given may be exercised during the grantor's incapacity to manage property. 1996, c. 2, s. 4 (1).(2) The continuing power of attorney may authorize the person named as attorney to do on the grantor's behalf anything in respect of property that the grantor could do if capable, except make a will. 1992, c. 30, s. 7 (2)
 (3) The continuing power of attorney may name the Public Guardian and Trustee as attorney if his or her consent in writing is obtained before the power of attorney is executed. 1996, c. 2, s. 4 (2).)
 (7) The continuing power of attorney may provide that it comes into effect on a specified date or when a specified contingency happens. 1992, c. 30, s. 7 (7). (7.1) The continuing power of attorney need not be in any particular form. 1996, c. 2, s. 4 (4). (8) The continuing power of attorney may be in the prescribed form. 1992, c. 30, s. 7 (8).

10. (1) A continuing power of attorney shall be executed in the presence of two witnesses, each of whom shall sign the power of attorney as witness. 1996, c. 2, s. 6 (1).
 (2) The following persons shall not be witnesses:
 1. The attorney or the attorney's spouse or partner.
 2. The grantor's spouse or partner.
 3. A child of the grantor or a person whom the grantor has demonstrated a settled intention to treat as his or her child.
 4. A person whose property is under guardianship or who has a guardian of the person.
 5. A person who is less than eighteen years old. 1992, c. 30, s. 10 (2).
 (3) Repealed: 1996, c. 2, s. 6 (2).
 (4) A continuing power of attorney that does not comply with subsections (1) and (2) is not effective, but the court may, on any person's application, declare the continuing power of attorney to be effective if the court is satisfied that it is in the interests of the grantor or his or her dependants to do so. 1992, c. 30, s. 10 (4); 1996, c. 2, s. 6 (3).

Ontario

[Substitute Decisions Act, 1992, SO 1992, c 30](#)

Provision for order for passing of accounts

Relevant provisions

- of an attorney or guardian of property be passed. 1992, c. 30, s. 42 (1).
- (2) An attorney, the grantor or any of the persons listed in subsection (4) may apply to pass the attorney's accounts. 1992, c. 30, s. 42 (2).
- (3) A guardian of property, the incapable person or any of the persons listed in subsection (4) may apply to pass the accounts of the guardian of property. 1992, c. 30, s. 42 (3)
- (4) The following persons may also apply: 1. The grantor's or incapable person's guardian of the person or attorney for personal care. 2. A dependant of the grantor or incapable person. 3. The Public Guardian and Trustee. 4. The Children's Lawyer. 5. A judgment creditor of the grantor or incapable person. 6. Any other person, with leave of the court. 1992, c. 30, s. 42 (4); 1994, c. 27, s. 43 (2).
- (5) If the Public Guardian and Trustee is the applicant or the respondent, the court shall grant the application, unless it is satisfied that the application is frivolous or vexatious. 1992, c. 30, s. 42 (5).
- (7) In an application for the passing of an attorney's accounts the court may, on motion or on its own initiative, (a) direct the Public Guardian and Trustee to bring an application for guardianship of property; (b) suspend the power of attorney pending the determination of the application; (c) appoint the Public Guardian and Trustee or another person to act as guardian of property pending the determination of the application; (d) order an assessment of the grantor of the power of attorney under section 79 to determine his or her capacity; or (e) order that the power of attorney be terminated. 1992, c. 30, s. 42 (7).
- (8) In an application for the passing of the accounts of a guardian of property the court may, on motion or on its own initiative, (a) adjust the guardian's compensation in accordance with the value of the services performed; (b) suspend the guardianship pending the determination of the application; (c) appoint the Public Guardian and Trustee or another person to act as guardian of property pending the determination of

Comment: Formalities for validity are minimum except for restrictions on witnesses.

A form is prescribed and is optional. Expressly noted PGT may be attorney. Flexibility in who may seek an accounting, or court's own initiative.

PEI

[Powers of Attorney Act, RSPEI 1988, c P-16](#)

NB difficult language. EPA valid and provision for it not waivable.

Relevant provisions

4. Sections 5 to 10 apply notwithstanding any agreement or waiver to the contrary. 1988,c.51,s.4.

5. A provision in a power of attorney expressly stating that it may be exercised during any subsequent legal incapacity of the donor is valid and effectual, subject to such conditions and restrictions, if any, as are contained therein and not inconsistent with this Act. 1988,c.51,s.5.

Witnesses--only requirement not spouse

6. A power of attorney that contains a provision referred to in section 5 shall be executed in the presence of a witness who is not the attorney or the attorney's spouse. 1988,c.51,s.6.

PEI

[Powers of Attorney Act, RSPEI 1988, c P-16](#)

Application for accounting; available by PGT

Relevant provisions

Passing accounts 9. (1) Where a power of attorney contains a provision referred to in section 5 and the donor subsequently is without legal capacity, any person having an interest in the estate of the donor or any other person permitted by the court may, during such incapacity, apply to the court for an order requiring the attorney to pass his accounts for transactions involving an exercise of the power during the incapacity of the donor, and the court may order the attorney to pass such accounts or such part thereof as is provided in the order.

Procedure and effect (2) Where an order is made under subsection (1), the attorney shall file his accounts in the office of the Prothonotary and the proceedings and practice upon the passing of the accounts shall be the same and of the like effect as the passing of executors' or administrators' accounts.

Application by Public Trustee (3) The Public Trustee may apply under subsection (1) in the same manner as a person interested in the estate of the donor where it appears

PEI

[Powers of Attorney Act, RSPEI 1988, c P-16](#)

Substitution application available; no specific rule re abuse.

Relevant provisions

10. (1) Where a power of attorney contains a provision referred to in section 5 and the donor subsequently is without legal capacity, any person having an interest in the estate of the donor or any other person permitted by the court may, during such incapacity, apply to the court for an order substituting another person for the attorney named in the power of attorney and the court may make the order or such other order as the court considers proper.

(2) The substitution of another person for an attorney under subsection

(1) shall have the like effect as the substitution of another person for a trustee under the Trustee Act R.S.P.E.I. 1988, Cap. T-8.

(3) The Public Trustee may apply under subsection (1) in the same manner as a person interested in the estate of the donor where it appears to him desirable to do so in the best interests of the donor or his estate.

(4) The attorney may apply under subsection (1) in the same manner as a person interested in the estate of the donor, on giving notice to the Public Trustee and to all persons having an interest in the estate of the donor.

Saskatchewan

[Powers of Attorney Act, 2002, SS 2002, c P-20.3](#)

Limitations on acting as attorney

- 6(1) No person shall act as an attorney:
- (a) in the case of an individual:
 - (i) unless the individual is 18 years of age or older and has capacity;
 - (ii) who is appointed to act as a property attorney, if the individual is an undischarged bankrupt; or
 - (iii) subject to subsection (2), if the individual has been convicted within the last 10 years of a criminal offence relating to assault, sexual assault or other acts of violence, intimidation, criminal harassment, uttering threats, theft, fraud or breach of trust; or
 - (b) if the person's occupation or business involves providing personal care or health care services to the grantor for remuneration.

Witnesses to enduring power of attorney; formalities

- 12(1) An enduring power of attorney is not valid unless it meets at least one of the following requirements:
- (a) it is witnessed by a lawyer and accompanied by a legal advice and witness certificate in the prescribed form;
 - (b) it is witnessed by two adults with capacity who are not the attorney or family members of either the grantor or the attorney and accompanied by witness certificates in the prescribed form.
- (2) A person who acts as a witness pursuant to subsection 11(2) may also act as a witness pursuant to subsection (1).

Duty--expressed in fiduciary language

- 15(1) An attorney shall exercise his or her authority:
- (a) honestly;
 - (b) in good faith;
 - (c) in the best interests of the grantor; and
 - (d) with the care that could reasonably be expected of a person of the attorney's experience and expertise.
- (2) Wherever possible, an attorney shall take into consideration the wishes of the grantor in carrying out his or her duties under an enduring power of attorney.

Saskatchewan

[Powers of Attorney Act, 2002, SS 2002, c P-20.3](#)

Accounting required if fee charged

- 17(1) Subject to subsection (3), an attorney may charge a reasonable fee for services rendered by the attorney.
- (2) The fee mentioned in subsection (1) may be paid from time to time out of the grantor's assets.
- (3) If an attorney charges a fee pursuant to subsection (1), the attorney shall provide an annual accounting:
- (a) to the grantor; or
 - (b) if the grantor lacks capacity:
 - (i) to a person named by the grantor in the enduring power of attorney; or
 - (ii) if no person is named pursuant to subclause (i):
 - (A) to the most immediate and available adult family member of the grantor other than the attorney; and
 - (B) to the public guardian and trustee.

Accounting as remedy with recourse to PGT

- 18(1) On the request of the grantor, the attorney shall provide an accounting to the grantor.
- (2) If the grantor lacks capacity, an accounting may be requested:
- (a) of a property attorney by:
 - (i) a person named by the grantor in the enduring power of attorney;
 - (ii) if no person is named pursuant to subclause (i), an adult family member of the grantor; or
 - (iii) a personal attorney, if any; and
 - (b) of a personal attorney by:
 - (i) a person named by the grantor in the enduring power of attorney;
 - (ii) if no person is named pursuant to subclause (i), an adult family member of the grantor; or
 - (iii) a property attorney, if any.
- (3) If the grantor or a person mentioned in subsection (2) has been unable to obtain an accounting from the attorney, he or she may request the public guardian and trustee to direct the attorney to provide an accounting.
- (4) Any interested person may request the public guardian and trustee to direct the attorney to provide an accounting.

Saskatchewan

[Powers of Attorney Act, 2002, SS 2002, c P-20.3](#)

PGT direction

- (5) The public guardian and trustee may direct the attorney to provide an accounting if:
- (a) on receipt of a request pursuant to subsection (3) or (4), the public guardian and trustee considers it appropriate to do so; or
 - (b) the public guardian and trustee considers it to be necessary and in the public interest to do so.
- (6) If the public guardian and trustee does not direct the attorney to provide an accounting pursuant to subsection (5), or the attorney does not provide an accounting as directed by the public guardian and trustee, the court may direct the attorney to provide an accounting to the court or to the public guardian and trustee on application of:
- (a) the grantor;
 - (b) any person mentioned in subsection (2) or (4); or
 - (c) the public guardian and trustee.

Termination order by court if abuse

- 19(1) The authority of an attorney under an enduring power of attorney is terminated:
- (i) in the case mentioned in subsection (2).
 - (2) If the court is satisfied on the application of any interested person that an attorney has abused his or her authority under an enduring power of attorney, the court may direct that the attorney's authority under the enduring power of attorney be terminated.

Comments: clear expression of fiduciary nature of duties. Explicit involvement of PGT as recourse. PGT and court remedies available.
PGT can direct accounting on its own motion.

Public Guardian and Trustee Act, SS 1983, c P-36.3, <<http://canlii.ca/t/lcqp>>

Saskatchewan

[Powers of Attorney Act, 2002, SS 2002, c P-20.3](#)

40.6(1) The public guardian and trustee may require a financial institution to suspend the withdrawal or payment of funds from a person's account for up to 30 days and may require that the financial institution provide the public guardian and trustee with any financial information held by the financial institution respecting that person where:

- (a) the public guardian and trustee has reasonable grounds to believe that the person is a vulnerable adult; and
- (b) the public guardian and trustee receives an allegation that the person:
 - (i) is being subjected to financial abuse by another person, including a person appointed as his or her property decision-maker pursuant to The Adult Guardianship and Co-decision-making Act; or
 - (ii) is unable to make reasonable judgments respecting matters relating to his or her estate and that the estate is likely to suffer serious damage or loss.

(2) Where the withdrawal or payment of funds has been suspended pursuant to subsection (1), the public guardian and trustee may authorize the financial institution to allow certain payments to be made where the public guardian and trustee is of the opinion that it is appropriate to do so.

(3) A financial institution acting pursuant to this section is not in breach of any other Act.

Northwest Territories

[Powers of Attorney Act, SNWT 2001, c 15](#)

Similarities to Manitoba

no judicial consideration

Nunavut

[Powers of Attorney Act, SNu 2005, c 9](#)

Similar to NWT

no judicial consideration

Yukon

[Enduring Power of Attorney Act, RSY 2002, c 73](#)

no judicial consideration

Retrospective application

2 This Act applies to all powers of attorney, whether made before or after the coming into force of this Act.

Minimum formalities--include lawyer, notes in Schedule (plain language explanation).

3(1) A power of attorney is an enduring power of attorney if

(a) the donor is an individual who is an adult at the time of executing the power of attorney; and

(b) the power of attorney meets at least the following requirements

(i) it is in writing and dated and is signed by the donor;

(ii) it contains a statement indicating either that it

(A) is to continue despite any mental incapacity or infirmity of the donor that occurs after the execution of the power of attorney, or

(B) is to take effect on the mental incapacity or infirmity of the donor;

(iii) it incorporates the explanatory notes set out in the Schedule to this Act;

(iv) it is accompanied by a certificate of legal advice signed by a lawyer who is not the attorney or the attorney's spouse; and

(c) the attorney named in the power of attorney acknowledges in writing

(i) their appointment by the donor, and

(ii) that they have been made aware of the responsibilities of acting as an attorney under this Act and have agreed to undertake these responsibilities.

Order for accounting on application of various specified. Not waivable. Any order court considers appropriate. No mention of PGT.

11(1) An application may be made to the Court by way of originating notice for an order directing an attorney to bring in and pass accounts in respect of any or all transactions entered into in pursuance of the enduring power of attorney.

(4) On hearing an application under subsection (1), the Court may grant whatever order for accounting it considers appropriate in the circumstances.

Comments: Initial safeguards extensive; formalities include legal advice. Mandates plain language explanatory notes. Otherwise minimal remedies or PT involvement.

Yukon

[Enduring Power of Attorney Act, RSY 2002, c 73](#)

no judicial consideration

Public Guardian and Trustee Act, SY 2003, c 21, Sch C,
<<http://canlii.ca/t/525fd>>
Purpose of this Part

12(1) The purpose of this Part is to give the
Public Guardian and Trustee the authority

(a) to act temporarily as the guardian with
respect to

(i) the financial affairs of a person where,
under the Care Consent Act, the person is
incapable of giving or refusing consent to
care and is incapable of making reasonable
judgments or decisions regarding their
financial affairs, and

(ii) the property of a missing person, a non-
resident who has a non-Yukon guardian, or a
young person who does not have a Yukon
guardian;

(b) to freeze some financial affairs of young
persons or adults in limited situations where
financial protection is urgently required; and

(c) to protect the property of persons who
appear to be missing persons. Schedule C of

Québec

[Civil Code of Québec, LRQ, c C-1991 BOOK
FIVE CHAPTER IX — MANDATE \[2130. -
2185.\]](#)

Relevant provisions

Nature and scope

2130. Mandate is a contract by which a person, the mandator, confers upon another person, the mandatary, the power to represent him in the performance of a juridical act with a third person, and the mandatary, by his acceptance, binds himself to exercise the power.

That power and, where applicable, the writing evidencing it are called power of attorney.

2131 The object of the mandate may also be the performance of acts intended to ensure the personal protection of the mandator, the administration, in whole or in part, of his patrimony, and generally his moral and material well-being, should he become incapable of taking care of himself or administering his property.

2132 Acceptance of a mandate may be express or tacit. Tacit acceptance may be inferred from the acts and even from the silence of the mandatary.

2135 A mandate may be special, for a particular matter, or general, for all the affairs of the mandator.
A mandate expressed in general terms confers the power to perform acts of simple administration only. The power to perform other acts is conferred only by express mandate, except where, in the case of a mandate given in anticipation of the mandator's incapacity, that mandate confers full administration.

Québec

[Civil Code of Québec, LRQ, c C-1991 BOOK
FIVE CHAPTER IX — MANDATE \[2130. -
2185.\]](#)

Relevant provisions

2136. The powers of a mandatary extend not only to what is expressed in the mandate, but also to anything that may be inferred therefrom. The mandatary may carry out all acts which are incidental to such powers and which are necessary for the performance of the mandate.

2138. A mandatary is bound to fulfill the mandate he has accepted, and he shall act with prudence and diligence in performing it. He shall also act honestly and faithfully in the best interests of the mandator, and shall avoid placing himself in a position where his personal interest is in conflict with that of his mandator.

Duties of mandatary

2144. Where several mandataries are appointed in respect of the same matter, the mandate has effect only if it is accepted by all of them.

The mandataries shall act jointly with respect to all acts contemplated by the mandate, unless otherwise stipulated or implied by the mandate. They are solidarily liable for the performance of their obligations.

Québec

[Civil Code of Québec, LRQ, c C-1991 BOOK
FIVE CHAPTER IX — MANDATE \[2130. -
2185.\]](#)

Relevant provisions

2146. The mandatary may not use for his benefit any information he obtains or any property he is charged with receiving or administering in the performance of his mandate, unless the mandator consents to such use or such use arises from the law or the mandate.

If the mandatary uses the property or information without authorization, he shall indemnify the mandator by paying, in addition to any indemnity for which he may be liable for injury suffered, in the case of information, an amount equal to the enrichment he obtains or, in the case of property, appropriate rent or the interest on the sums used.

Obligation of mandator (donor)

2152. The mandator is bound to discharge the mandatary from the obligations he has contracted towards third persons within the limits of the mandate.

The mandator is not liable to the mandatary for any act which exceeds the limits of the mandate. He is fully liable, however, if he ratifies such act or if the mandatary, at the time he acted, was unaware that the mandate had terminated.

Obligations of the mandatary towards
third persons

2157. A mandatary who binds himself, within the limits of his mandate, in the name and on behalf of the mandator, is not personally liable to the third person with whom he contracts. The mandatary is liable to the third person if he acts in his own name, subject to any rights the third person may have against the mandator.

Québec

[Civil Code of Québec, LRQ, c C-1991 BOOK
FIVE CHAPTER IX — MANDATE \[2130. -
2185.\]](#)

Relevant provisions

2158. A mandatary who exceeds his powers is personally liable to the third person with whom he contracts, unless the third person was sufficiently aware of the mandate, or unless the mandator has ratified the acts performed by the mandatary.

2160. A mandator is liable to third persons for the acts performed by the mandatary in the performance and within the limits of his mandate unless, under the agreement or by virtue of usage, the mandatary alone is liable.

The mandator is also liable for any acts which exceeded the limits of the mandate, if he has ratified them.

2166. A mandate given by a person of full age in anticipation of his incapacity to take care of himself or to administer his property is made by a notarial act en minute or in the presence of witnesses. The performance of the mandate is conditional upon the occurrence of the incapacity and homologation by the court upon application by the mandatary designated in the act.

2167. A mandate made in the presence of witnesses is drawn up by the mandator or by a third person.

The mandator, in the presence of two witnesses who have no interest in the act and who are able to ascertain his capacity to act, declares the nature of the act but need not disclose its contents. The mandator signs the act at the end or, if he has already signed it, acknowledges his signature; he may also cause a third person to sign the writing for him in his presence and according to his instructions. The witnesses sign the mandate forthwith in the presence of the mandator.

Mandate in anticipatin of incapacity:
detailed formalities

Québec

[Civil Code of Québec, LRQ, c C-1991 BOOK
FIVE CHAPTER IX — MANDATE \[2130. -
2185.\]](#)

Relevant provisions

Mandatarary gets any required
authorizations from Public Curator

2168. Where the scope of the mandate is unclear, the mandatary interprets it according to the rules that apply to tutorship to persons of full age.

If as a result any notice, consent or authorization is required pursuant to the rules with respect to the administration of the property of others, the mandatary obtains it from the Public Curator or from the court.

Annual reporting and accounting to
curator where mandate doesn't fully
ensure care

2169. Where the mandate does not fully ensure care of the person or administration of his property, protective supervision may be instituted to complete it; the mandatary then continues to perform the mandate and reports, on request and at least once each year, to the tutor or curator. At the end of the mandate, he renders an account to the tutor or curator.

The mandatary is bound by such obligations only with respect to the tutor or curator to the person. If the protection of the person is assumed by the mandatary himself, the tutor or curator to property is bound by the same obligations towards the mandatary.

Termination and accounting by interested
person including Public Curator

2177. Where the mandator is incapable, any interested person, including the Public Curator, may, if the mandate is not being faithfully performed or for any other serious reason, apply to have the court revoke the mandate, order the rendering of an account by the mandatary and institute protective supervision for the mandator.

Québec

[Civil Code of Québec, LRQ, c C-1991 BOOK
FIVE CHAPTER IX — MANDATE \[2130. -
2185.\]](#)

Relevant provisions

2177. Where the mandator is incapable, any interested person, including the Public Curator, may, if the mandate is not being faithfully performed or for any other serious reason, apply to have the court revoke the mandate, order the rendering of an account by the mandatary and institute protective supervision for the mandator.

[Public Curator Act \(R.S.Q., c. C-81](#)

[Regulation respecting the application of the Public Curator Act, CQLR c C-81, r 1 , \(Public Curator Act\)](#)

Jurisdiction

Alberta

BC

Statute

[Powers of Attorney Act, RSA 2000, c P-20](#)

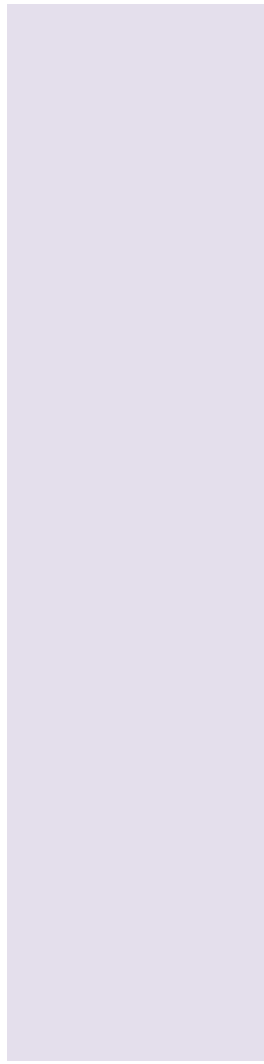
[Power of Attorney Act, RSBC 1996, c 370](#)

definitions

<http://www.canlii.org/en/ab/laws/stat/rsa-2000-c-p-20/latest/rsa-2000-c-p-20.html#sec1> 1 (a) “attorney” means a person who is empowered to act on behalf of the donor under a power of attorney

<http://canlii.ca/t/fqj1v> [33] In Alberta, the terms “legal attorney” and “trustee”, when used in the context of giving a person the power to make decisions on behalf of another, are defined in statute. Section 1 of the Powers of Attorney Act, R.S.A. 2000 c. P-20 provides that an “attorney” is “a person who is empowered to act on behalf of the donor under a power of attorney.”

definitions



(d) "donor" means
a person who gives
a power of attorney;

deeds

(e) “enduring power of attorney” means a power of attorney provided for under section 2;



(f) "trustee"
means a trustee as
defined in the Adult
Guardianship and
Trusteeship Act;

Part 2: EPA: definitions

(g) "trusteeship order" means a trusteeship order as defined in the Adult Guardianship and Trusteeship Act.

<http://www.canlii.org/en/ab/laws/stat/rsa-2000-c-p-20/latest/rsa-2000-c-p-20.html#sec2subsec1>
> 2(1) A power of attorney is an enduring power of attorney if

previously s 8 provided for EPA; 2007 c 34 s 37 repealed this and added the new Parts 2 and 3 (rest of statute to Form) these new provisions. Not in force until until Sep 1 2011 (BC Reg 14/11)

(3) The following persons may not sign an enduring power of attorney on behalf of the donor:



Adult presumed capable thru
25

(a) a person
designated in the
enduring power of
attorney as the
attorney;



Adult may make epa unless
incapable

(b) the spouse or
adult
interdependent
partner of a person
designated in the
enduring power of
attorney as the
attorney.



Manitoba

[Powers of Attorney Act,
CCSM c P97](#)


1 In this Part: "agent" includes an attorney acting under a power of attorney;

Definitions: attorney, donor, nearest relative, EPA, SPA



retroactive application
despite any waiver

7 A deed executed by an attorney under the seal of the attorney on behalf of a donor, whether an individual or corporation,



Exceptions to above
(presumably to prevent
invalidation)

(a) is binding on the donor if it comes within the scope of the attorney's authority, and (b) is of the same effect as if it were under the seal of the donor.

provides for how contingency event for SPA determined to occur: declarant appointment, application to court by various



Specifies various public officials as potential witnesses

"attorney" means a person who (a) is authorized under an enduring power of attorney to act as an attorney, and (b) has signed the enduring power of attorney under section 17;

May file EPA with PGT

"enduring power of attorney" means a power of attorney (a) in which an adult authorizes an attorney to (i) make decisions on behalf of the adult, or (ii) do certain things in relation to the adult's financial affairs, and (b) that continues to have effect while, or comes into effect when, the adult is incapable;

"financial affairs" includes an adult's business and property, and the conduct of the adult's legal affairs;

When EP attorney authority terminates or is suspended


11 (1) Until the contrary is demonstrated, an adult is presumed to be capable of (a) making decisions about the adult's financial affairs, and (b) understanding the nature and consequences of making, changing or revoking an enduring power of attorney. (2) An adult's way of communicating with others is not grounds for deciding that the adult is incapable of making the decisions or having the understanding referred to in subsection (1).

Begg v. Begg, 2013 BCSC 84 (CanLII), <http://canlii.ca/t/fvr5t> [49] My conclusion is that I am unable to find the facts necessary to decide the issues of fact and law relating to the issue of whether the plaintiff had become incapable of making decisions independently by December 1, 2011. In addition, I think it would be unjust to some extent, to decide this issue by summary trial. Neither side appears to be in a position to present their best case, there is considerable inadmissible hearsay, and a decision would not necessarily resolve this lawsuit. Consequently, this issue is not suitable for determination by way of

standards of care differ:
Standard if not compensated

standards of care differ:
Standard if compensated

12 (1) An adult may make an enduring power of attorney unless the adult is incapable of understanding the nature and consequences of the proposed enduring power of attorney.



Duty to provide accounting--
to person named in EPA as
entitled to accounting, or if
none, to nearest relative
which could be PGT.

(2) An adult is incapable of understanding the nature and consequences of the proposed enduring power of attorney if the adult cannot understand all of the following: (a) the property the adult has and its approximate value; (b) the obligations the adult owes to his or her dependants; (c) that the adult's attorney will be able to do on the adult's behalf anything in respect of the adult's financial affairs that the adult could do if capable, except make a will, subject to the conditions and restrictions set out in the enduring power of attorney; (d) that, unless the attorney manages the adult's business and property prudently, their value may decline; (e) that the attorney might misuse the attorney's authority; (f) that the adult may, if capable, revoke the enduring power of attorney;

Court jurisdiction for, on application, various remedies including termination, replacement of attorney, accounting

1 "nearest relative" means, with respect to a donor, (b) where no person qualifies under clause (a), the Public Guardian and Trustee; (« plus proche parent »)



2(1) Subject to subsection (2), this Act applies to a power of attorney executed before or after this Act comes into force, despite any agreement or waiver to the contrary.



2(2) Sections 11 (persons who may witness donor's signature) and 16 (individuals eligible to be an attorney) do not apply to an enduring power of attorney executed before this Act comes into force.





6 and 7

11(1) Subject to subsection (2), a witness to the execution of an enduring power of attorney must be

- (a) an individual registered, or qualified to be registered, under section 3 of The Marriage Act to solemnize marriages;
- (b) a judge of a superior court of the province;
- (c) a justice of the peace or provincial judge;
- (d) a duly qualified medical practitioner;
- (e) a notary public appointed for the province;
- (f) a lawyer entitled to practice in the province;
- (g) a member of the Royal Canadian Mounted Police; or
- (h) a police officer with a police service established or continued under The Police Services Act.

12 A donor or attorney may file a copy of the enduring power of attorney with the Public Guardian and Trustee.

13, 14 (including substitute decision maker or emergency substitute decision maker appointed under The Vulnerable Persons Living with a Mental Disability Act
<<http://www.canlii.org/en/mb/laws/stat/ccsm-c-v90/latest/ccsm-c-v90.html>>
or PGT takes over under Mental Health Act)

An attorney who does not receive compensation for acting as an attorney shall exercise the judgment and care that a person of prudence, discretion and intelligence would exercise in the conduct of his or her own affairs.

19(3) An attorney who receives compensation for acting as an attorney shall exercise the judgment and care that a person of prudence, discretion and intelligence in the business of managing the property of others is required to exercise.



22(1) During any period in which an attorney has a duty under subsection 19(1) to act, the attorney shall provide an accounting in respect of the estate

- (a) upon demand by any person named as a recipient of an accounting by the donor in the enduring power of attorney; or
- (b) where the donor does not name a recipient in the enduring power of attorney or the named recipient is the attorney or the spouse or common-law partner of the attorney or is deceased or mentally incompetent, annually to the nearest relative of the donor.



24(1) Upon an application made in respect of an enduring power of attorney, the court may, having regard to the power of attorney and the donor's intentions, make any order the court considers appropriate, which may include the following:

- (a) an order providing advice or directions on any matter respecting the management of the donor's estate;
- (b) a declaration that the donor is mentally incompetent;
- (c) a declaration that a power of attorney is invalid or terminated;
- (d) an order removing the attorney appointed under the power of attorney;
- (e) an order requiring the attorney to provide the court with an accounting;
- (f) subject to the provisions of the enduring power of attorney, an order varying the powers of the attorney;
- (g) subject to the provisions of the enduring power of attorney, an order appointing a person as an attorney in place of the attorney appointed under the enduring power of attorney.

New Brunswick

[Property Act, RSNB 1973, c P-19](#)
[57 \(power of attorney provisions\)](#)

EPA authority when donor
incapable terminated when PT
or committee appointed (non
waivable)

58.3 The authority conferred upon
a donee by the provision referred
to in paragraph 58.2(1)(a) is
terminated

- (a) when a court appoints a
committee of the estate of the
donor,
- (b) when the Public Trustee
becomes committee of the estate
of the donor pursuant to
subsection 38(1) of the Mental
Health Act, or
- (c) when another person is
substituted for the donee under
section 58.6.

On EPA donee application Court
can vary powers in donor best
interest (non waivable)

58.4 Where a power of attorney
contains the provision referred to
in paragraph 58.2(1)(a), the court
may, upon application by the
donee of the power at a time
when the donor suffers from
mental incompetence, vary the
donee's powers in respect of
managing and administering the
estate of the donor if it is in the
best interests of the estate of the
donor.



Court can order accounting on application by named people including PT (non waivable)

58.5(1)Where the donor of a power of attorney containing the provision referred to in paragraph 58.2(1)(a) suffers from mental incompetence,
(a)any person having an interest in the estate of the donor,
(b)the Public Trustee, where it appears to be in the best interests of the donor or the estate of the donor, or
(c)any other person permitted by the court
may, during the period of incompetence, apply to the court for an order requiring the donee to pass accounts in respect of transactions which involved an exercise of the power during the period of incompetence of the donor, and the court may so order.



Court can order a different decisionmaker on application by named people including PT (non waivable)

58.6 Where the donor of a power of attorney containing the provision referred to in paragraph 58.2(1)(a) suffers from mental incompetence,

- (a) any person having an interest in the estate of the donor,
- (b) the Public Trustee, where it appears to be in the best interests of the donor or the estate of the donor,
- (c) the donee, on giving fifteen days written notice to the Public Trustee and to all persons having an interest in the estate of the donor, or
- (d) any other person permitted by the court

may, during the period of incompetence, apply to the court for an order substituting another person for the donee named in the power of attorney, and the court may so order

Infirm Persons Act provides for
"power of attorney for personal
care"

[Infirm Persons Act, RSNB 1973, c I-
8 s 40](#)











Newfoundland and Labrador

[Enduring Powers of Attorney Act,
RSNL 1990, c E-11](#)

Sets out witness etc formalities

3. (1) A power of attorney, signed by the donor and witnessed by a person who is not the person named in the enduring power of attorney as the attorney or the spouse or cohabiting partner of that person, which contains a provision expressly or impliedly stating that it may be exercised during the legal incapacity of the donor, is an enduring power of attorney.

(2) A person shall be 19 years of age or older in order to be named as an attorney in an enduring power of attorney.

(3) An attorney shall not appoint another person to perform the attorney's functions or to exercise his or her powers as an attorney.

EPAAct expressly not waivable

4. This Act applies to all enduring powers of attorney notwithstanding an agreement or a statement in the enduring power of attorney to the contrary.



Responsibility of attorney in best interests of donor; attorney to compensate for unreasonable, non good faith loss; attorney equivalent to trustee;

6. (1) An attorney shall exercise his or her powers in the manner that protects the best interests of the donor, and where the attorney fails to do so, the attorney shall be liable to compensate the donor for loss occasioned by the attorney's failure.

(2) An attorney shall be considered to be a trustee of the property of the donor.

(3) Notwithstanding subsection (1), where an attorney proves to the satisfaction of the court that he or she has acted honestly, reasonably and in good faith, the court may relieve the attorney from personal liability either wholly or partially.

Burling Estate, Re, 1993 CanLII 8433 (NL SCTD),
<<http://canlii.ca/t/g08cl>>

1. Authority to remunerate.

[16] An attorney under an enduring power of attorney is expressly designated by the legislature under s. 6(2) of the Enduring Powers of Attorney Act, as a trustee. In my opinion this brings the attorney under the definition of "trustee" in s. 2(n) of the Trustee Act.

[17] If there was any doubt that the provisions of the Trustee Act apply to an enduring power of attorney, this is removed by s. 14 of the Enduring Powers of Attorney Act, which provides that s. 3 of the Trustee Act does not apply to an enduring power of attorney. A reasonable inference is that all the other provisions of the Trustee Act do apply to an enduring power of attorney.

Responsibility for an accounting on application by specified persons including PT

10. (1) A person with an interest in the estate of the donor, or another person permitted by the court, may, where the donor is legally incapacitated, apply to the court for an order requiring the attorney to submit his or her accounts for a transaction involving the estate of the donor.

(2) Where an order is made under subsection (1), the attorney shall file his or her accounts in the registry of the court and the proceedings and practice upon that filing shall be the same as for the filing of an executor's or administrator's account under the Judicature Act .

(3) For the purpose of subsection (1), the public trustee shall be considered to be a person with an interest in the estate of the donor.

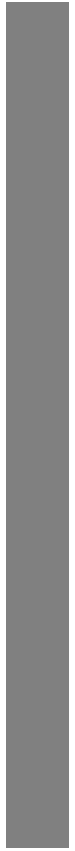


Trustee Act rules on authorizing investment of funds don't apply to EPA donee 14. [Section 3 of the *Trustee Act* doesn't apply unless stated to.]











Nova Scotia

[Powers of Attorney Act,
RSNS 1989, c 352](#)

Defines and sets
formalities for EPA

3 A power of attorney, signed by the donor and witnessed by a person who is not the attorney or the spouse of the attorney, that contains a provision expressly stating that it may be exercised during any legal incapacity of the donor, is

- (a) an enduring power of attorney;
- (b) not terminated or invalidated by reason only of legal incapacity that would, but for this Act, terminate or invalidate the power of attorney; and
- (c) valid and effectual,

subject to any conditions and restrictions contained therein that are not inconsistent with this Act. R.S., c. 352, s. 3.

5 (1) Where a donor of an enduring power of attorney becomes legally incapacitated, a judge of the Trial Division of the Supreme Court may for cause, on application,

- (a) require the attorney to have accounts passed for any transaction involving the exercise of the power during the incapacity of the donor;
- (b) require the attorney to attend to show cause for the attorney's failure to do anything that the attorney is required to do as attorney or any order made pursuant to this Act;
- (c) substitute another person for the attorney;
- (d) allow or disallow all or any part of the remuneration claimed by the attorney;
- (e) grant such relief as the judge considers appropriate;
- (f) make such provision respecting costs as the judge considers appropriate.

Powers and duties EPA

(2) Where an attorney is ordered to have accounts passed, the attorney shall submit the accounts for approval to the Court or, where a judge of the Court so orders, to the Public Trustee at such intervals as the judge may order and, when approved, the attorney shall file the accounts with the prothonotary of the Supreme Court for the county where the application is heard.

(3) An attorney may apply to a judge of the Trial Division of the Supreme Court for an order substituting another person as attorney in the same manner as a person interested in the estate of the donor, upon giving notice of the application to the Public Trustee at least ten days before the application is heard.

(4) Nothing in this Section prevents an attorney from submitting accounts to the Public Trustee for approval and the Public Trustee shall consider accounts when submitted by an attorney.

6 Nothing in this Act affects a power of attorney given before the twenty-fifth day of May, 1988, except that such a power of attorney, if in force on that day, continues in force as if given on or after that day and the provisions of this Act apply to it.

This Act not retroactive
before 1988

Ontario

[Substitute Decisions
Act, 1992, SO 1992, c
30](#)


Continuing powers of
attorney (EPA) defined
and pre-SDA
retroactively included;
attorney can't make
will.

<<http://canlii.ca/t/2d508>>


[27] I am satisfied that the Court has jurisdiction to grant the orders sought [incl restitution]. Subsection 5(1)(c) gives the Court the power to “substitute another person for the attorney” where cause is shown. Subsection 5(1)(e) gives the Court the power to “grant such relief as the judge considers appropriate” where cause is shown. These subsections are not limited by the phrase “during the incapacity of the donor.” When these subsections are read in the context of the whole section, which they must be, it is clear that they are not limited to transactions that took place after the donor was declared incompetent.

[28] When a donor signs a power of attorney, this establishes a fiduciary relationship between the donor and the attorney from the moment of signature. All transactions made by the attorney may be reviewed by the court pursuant to applications under s. 5(1) of the Act. This does not mean that an attorney cannot be given a gift by the donor, but it does mean that the attorney must take precautions to ensure that there is proof of the donor’s intent.

CPA can be PGT;
contingent/springing
provided for; no form
required; prescribed
form available.



Provisions re
formalities, witnesses;
noncompliance not
fatal.



Provision for order for
passing of accounts











7. (1) A power of attorney for property is a continuing power of attorney if,
(a) it states that it is a continuing power of attorney; or
(b) it expresses the intention that the authority given may be exercised during the grantor's incapacity to manage property. 1996, c. 2, s. 4 (1).(2) The continuing power of attorney may authorize the person named as attorney to do on the grantor's behalf anything in respect of property that the grantor could do if capable, except make a will. 1992, c. 30, s. 7 (2)

(3) The continuing power of attorney may name the Public Guardian and Trustee as attorney if his or her consent in writing is obtained before the power of attorney is executed. 1996, c. 2, s. 4 (2).)

(7) The continuing power of attorney may provide that it comes into effect on a specified date or when a specified contingency happens. 1992, c. 30, s. 7 (7).

(7.1) The continuing power of attorney need not be in any particular form.

1996, c. 2, s. 4 (4). (8) The continuing power of attorney may be in the prescribed form. 1992, c. 30, s. 7 (8).

10. (1) A continuing power of attorney shall be executed in the presence of two witnesses, each of whom shall sign the power of attorney as witness. 1996, c. 2, s. 6 (1).

(2) The following persons shall not be witnesses:

1. The attorney or the attorney's spouse or partner.
2. The grantor's spouse or partner.
3. A child of the grantor or a person whom the grantor has demonstrated a settled intention to treat as his or her child.
4. A person whose property is under guardianship or who has a guardian of the person.
5. A person who is less than eighteen years old. 1992, c. 30, s. 10 (2).

(3) Repealed: 1996, c. 2, s. 6 (2).

(4) A continuing power of attorney that does not comply with subsections (1) and (2) is not effective, but the court may, on any person's application, declare the continuing power of attorney to be effective if the court is satisfied that it is in the interests of the grantor or his or her dependants to do so. 1992, c. 30, s. 10 (4); 1996, c. 2, s. 6 (3).

accounts of an attorney or guardian of property be passed. 1992, c. 30, s. 42 (1).

(2) An attorney, the grantor or any of the persons listed in subsection (4) may apply to pass the attorney's accounts. 1992, c. 30, s. 42 (2).

(3) A guardian of property, the incapable person or any of the persons listed in subsection (4) may apply to pass the accounts of the guardian of property. 1992, c. 30, s. 42 (3)

(4) The following persons may also apply: 1. The grantor's or incapable person's guardian of the person or attorney for personal care. 2. A dependant of the grantor or incapable person. 3. The Public Guardian and Trustee. 4. The Children's Lawyer. 5. A judgment creditor of the grantor or incapable person. 6. Any other person, with leave of the court. 1992, c. 30, s. 42 (4); 1994, c. 27, s. 43 (2).

(5) If the Public Guardian and Trustee is the applicant or the respondent, the court shall grant the application, unless it is satisfied that the application is frivolous or vexatious. 1992, c. 30, s. 42 (5).

(7) In an application for the passing of an attorney's accounts the court may, on motion or on its own initiative, (a) direct the Public Guardian and Trustee to bring an application for guardianship of property; (b) suspend the power of attorney pending the determination of the application; (c) appoint the Public Guardian and Trustee or another person to act as guardian of property pending the determination of the application; (d) order an assessment of the grantor of the power of attorney under section 79 to determine his or her capacity; or (e) order that the power of attorney be terminated. 1992, c. 30, s. 42 (7).

(8) In an application for the passing of the accounts of a guardian of property the court may, on motion or on its own initiative, (a) adjust the guardian's compensation in accordance with the value of the services performed; (b)

Quebec *

PEI

Mandate

[Powers of Attorney Act, RSPEI 1988, c P-16](#)

NB difficult language. EPA valid and provision for it not waivable.

4. Sections 5 to 10 apply notwithstanding any agreement or waiver to the contrary. 1988,c.51,s.4.
5. A provision in a power of attorney expressly stating that it may be exercised during any subsequent legal incapacity of the donor is valid and effectual, subject to such conditions and restrictions, if any, as are contained therein and not inconsistent with this Act. 1988,c.51,s.5.

Witnesses--only
requirement not
spouse

6. A power of attorney that contains a provision referred to in section 5 shall be executed in the presence of a witness who is not the attorney or the attorney's spouse. 1988,c.51,s.6.

Application for
accounting; available
by PGT

Passing accounts 9. (1) Where a power of attorney contains a provision referred to in section 5 and the donor subsequently is without legal capacity, any person having an interest in the estate of the donor or any other person permitted by the court may, during such incapacity, apply to the court for an order requiring the attorney to pass his accounts for transactions involving an exercise of the power during the incapacity of the donor, and the court may order the attorney to pass such accounts or such part thereof as is provided in the order.

Procedure and effect (2) Where an order is made under subsection (1), the attorney shall file his accounts in the office of the Prothonotary and the proceedings and practice upon the passing of the accounts shall be the same and of the like effect as the passing of executors' or administrators' accounts.

Application by Public Trustee (3) The Public Trustee may apply under subsection (1) in the same manner as a person interested in the estate of the donor where it appears

Substitution
application available;
no specific rule re
abuse.

10. (1) Where a power of attorney contains a provision referred to in section 5 and the donor subsequently is without legal capacity, any person having an interest in the estate of the donor or any other person permitted by the court may, during such incapacity, apply to the court for an order substituting another person for the attorney named in the power of attorney and the court may make the order or such other order as the court considers proper.

(2) The substitution of another person for an attorney under subsection

(1) shall have the like effect as the substitution of another person for a trustee under the Trustee Act R.S.P.E.I. 1988, Cap. T-8.

(3) The Public Trustee may apply under subsection (1) in the same

manner as a person interested in the estate of the donor where it appears to him desirable to do so in the best interests of the donor or his estate.

(4) The attorney may apply under subsection (1) in the same manner as a person interested in the estate of the donor, on giving notice to the Public Trustee and to all persons having an interest in the estate of the donor.











Saskatchewan

[Powers of Attorney
Act, 2002, SS 2002, c P-
20.3](#)

Limitations on acting
as attorney

6(1) No person shall act as an attorney:

(a) in the case of an individual:

(i) unless the individual is 18 years
of age or older and has capacity;

(ii) who is appointed to act as a
property attorney, if the individual is an
undischarged bankrupt; or

(iii) subject to subsection (2), if the
individual has been convicted within
the last 10 years of a criminal
offence relating to assault, sexual assault
or other acts of violence,
intimidation, criminal harassment, uttering
threats, theft, fraud or breach of
trust; or

(b) if the person's occupation or
business involves providing personal care or
health care services to the grantor for
remuneration.

Witnesses to enduring
power of attorney;
formalities

12(1) An enduring power of attorney is not valid unless it meets at least one of the following requirements:

(a) it is witnessed by a lawyer and accompanied by a legal advice and witness certificate in the prescribed form;

(b) it is witnessed by two adults with capacity who are not the attorney or family members of either the grantor or the attorney and accompanied by witness certificates in the prescribed form.

(2) A person who acts as a witness pursuant to subsection 11(2) may also act as a witness pursuant to subsection (1).

Dut--expressed in
fiduciary language

15(1) An attorney shall exercise his or her
authority:

(a) honestly;

(b) in good faith;

(c) in the best interests of the grantor;

and

(d) with the care that could reasonably
be expected of a person of the
attorney's experience and expertise.

(2) Wherever possible, an attorney shall
take into consideration the wishes of the
grantor in carrying out his or her duties
under an enduring power of attorney.

Accounting required if
fee charged

17(1) Subject to subsection (3), an attorney may charge a reasonable fee for services rendered by the attorney.

(2) The fee mentioned in subsection (1) may be paid from time to time out of the grantor's assets.

(3) If an attorney charges a fee pursuant to subsection (1), the attorney shall provide an annual accounting:

(a) to the grantor; or

(b) if the grantor lacks capacity:

(i) to a person named by the grantor in the enduring power of attorney;
or

(ii) if no person is named pursuant to subclause (i):

(A) to the most immediate and available adult family member of the grantor other than the attorney; and

(B) to the public guardian and trustee.

- Accounting as remedy with recourse to PGT
- 18(1) On the request of the grantor, the attorney shall provide an accounting to the grantor.
- (2) If the grantor lacks capacity, an accounting may be requested:
- (a) of a property attorney by:
- (i) a person named by the grantor in the enduring power of attorney;
- (ii) if no person is named pursuant to subclause (i), an adult family member of the grantor; or
- (iii) a personal attorney, if any; and
- (b) of a personal attorney by:
- (i) a person named by the grantor in the enduring power of attorney;
- (ii) if no person is named pursuant to subclause (i), an adult family member of the grantor; or
- (iii) a property attorney, if any.
- (3) If the grantor or a person mentioned in subsection (2) has been unable to obtain an accounting from the attorney, he or she may request the public guardian and trustee to direct the attorney to provide an accounting.
- (4) Any interested person may request the public guardian and trustee to direct

PGT direction

(5) The public guardian and trustee may direct the attorney to provide an accounting if:

(a) on receipt of a request pursuant to subsection (3) or (4), the public guardian and trustee considers it appropriate to do so; or

(b) the public guardian and trustee considers it to be necessary and in the public interest to do so.

(6) If the public guardian and trustee does not direct the attorney to provide an accounting pursuant to subsection (5), or the attorney does not provide an accounting as directed by the public guardian and trustee, the court may direct the

attorney to provide an accounting to the court or to the public guardian and trustee on application of:

(a) the grantor;

(b) any person mentioned in subsection (2) or (4); or

(c) the public guardian and trustee.

Termination order by court if abuse

19(1) The authority of an attorney under an enduring power of attorney is terminated:

(i) in the case mentioned in subsection (2).

(2) If the court is satisfied on the application of any interested person that an attorney has abused his or her authority under an enduring power of attorney, the court may direct that the attorney's authority under the enduring power of attorney be terminated.







Northwest Territories

[Powers of Attorney Act,
SNWT 2001, c 15](#)

Similarities to Manitoba

















Nunavut

[Powers of Attorney
Act, SNu 2005, c 9](#)

no judicial consideration

Similar to NWT

no judicial
consideration

















Yukon

[Enduring Power of
Attorney Act, RSY 2002, c.
73](#)

Retrospective application 2 This Act applies to all powers of attorney,
whether made before or after the coming into
force of this Act.

Minimum formalities--
include lawyer, notes in
Schedule (plain language
explanation).

3(1) A power of attorney is an enduring power of attorney if

- (a) the donor is an individual who is an adult at the time of executing the power of attorney; and
- (b) the power of attorney meets at least the following requirements
 - (i) it is in writing and dated and is signed by the donor;
 - (ii) it contains a statement indicating either that it
 - (A) is to continue despite any mental incapacity or infirmity of the donor that occurs after the execution of the power of attorney, or
 - (B) is to take effect on the mental incapacity or infirmity of the donor;
 - (iii) it incorporates the explanatory notes set out in the Schedule to this Act;
 - (iv) it is accompanied by a certificate of legal advice signed by a lawyer who is not the attorney or the attorney's spouse;

and

- (c) the attorney named in the power of attorney acknowledges in writing
 - (i) their appointment by the donor, and
 - (ii) that they have been made aware of the responsibilities of acting as an attorney under this

Order for accounting on application of various specified. Not waivable. Any order court considers appropriate. No mention of PGT.

11(1) An application may be made to the Court by way of originating notice for an order directing an attorney to bring in and pass accounts in respect of any or all transactions entered into in pursuance of the enduring power of attorney.

(4) On hearing an application under subsection (1), the Court may grant whatever order for accounting it considers appropriate in the circumstances.

