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(Bill No. 48)

Powers of Attorney and Personal Directives Act

Hon. Bloyce Thompson
Minister of Justice and Public Safety and Attorney General

GOVERNMENT BILL

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POWERS OF ATTORNEY AND PERSONAL DIRECTIVES ACT

BILL NO. 48

2022

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

PART 1 – INTERPRETATION AND ADMINISTRATION

1. Definitions

(1) In this Act

- (a) “**adult**” means a person who is 18 years of age or older;
- (b) “**agent**” means a person who is designated in a personal directive to make decisions about personal matters on behalf of the principal;
- (c) “**attorney**” means a person who is designated in a power of attorney to make decisions about financial matters on behalf of the principal;
- (d) “**capacity**” means, in making a decision about a matter, the ability of a person, independently or with assistance, to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of a decision and the failure to make a decision;
- (e) “**court**” means the Supreme Court;
- (f) “**enduring power of attorney**” means a power of attorney that provides
 - (i) the attorney’s authority under the power of attorney is not terminated by the incapacity of the principal in respect of the principal’s financial matters that occurs after the power of attorney has been executed, or
 - (ii) the power of attorney is to take effect on the incapacity of the principal in respect of the principal’s financial matters,but does not include an irrevocable power of attorney granted for valuable consideration or to secure a liability of the principal to the attorney;
- (g) “**family member**” means any of the following in relation to the principal, as the case may be:
 - (i) a spouse or former spouse,
 - (ii) a child,
 - (iii) a parent or former legal guardian of the principal as a child, other than the Director of Child Protection,
 - (iv) a sibling,

- (v) a grandparent,
- (vi) a grandchild,
- (vii) an uncle or aunt,
- (viii) a nephew or niece;
- (h) **“financial matter”** means
 - (i) subject to the regulations, any matter related to the acquisition, disposition, management or protection of property, and
 - (ii) any matter prescribed by the regulations;
- (i) **“health care”** means health care as defined in the *Consent to Treatment and Health Care Directives Act* R.S.P.E.I. 1988, Cap. C-17.2;
- (j) **“immediate family member”** means an adult referred to in subclauses (g)(i) to (iv);
- (k) **“notice of acting”** means a notice of acting given under section 33;
- (l) **“personal directive”** means a valid personal directive made or deemed to have been made under this Act about personal matters;
- (m) **“personal matter”** means, subject to the regulations, any matter, other than a financial matter, relating to a person and includes
 - (i) where, with whom and under what conditions the person is to live, either permanently or temporarily,
 - (ii) with whom the person may associate,
 - (iii) the person’s basic needs, including nutrition, clothing and personal care,
 - (iv) the person’s participation in social activities,
 - (v) the person’s participation in any educational, vocational or other training,
 - (vi) the person’s employment,
 - (vii) legal proceedings that do not relate primarily to the person’s financial matters, and
 - (viii) any other prescribed matter,but does not include a matter of health care or treatment governed by the *Consent to Treatment and Health Care Directives Act*;
- (n) **“personal service”** means a service provided in respect of a personal matter, about which a significant decision is required;
- (o) **“power of attorney”** means a valid power of attorney made or deemed to have been made under this Act, and includes an enduring power of attorney;
- (p) **“principal”** means a person who executes a power of attorney or personal directive, as the case may be;
- (q) **“property”** includes
 - (i) things and rights or interests in things,
 - (ii) anything regarded in law or equity as property or an interest in property,
 - (iii) any right or interest that may be transferred for value from one person to another,
 - (iv) any right, including a contingent or future right, to be paid money or to receive any other kind of property, and
 - (v) any cause of action, to the extent that it relates to property or could result in a judgment requiring a person to pay money;
- (r) **“Prothonotary”** means the Prothonotary appointed under section 27 of the *Judicature Act* R.S.P.E.I. 1988, Cap. J-2.1;

- (s) “**Public Trustee**” means the Public Trustee appointed under the *Public Trustee Act* R.S.P.E.I. 1988, Cap. P-32.2;
- (t) “**service provider**” means a person who carries on a business or profession that provides, or is employed to provide, a financial service or personal service, as the case may be;
- (u) “**spouse**” means a person who, in respect of another person
 - (i) is married to the other person,
 - (ii) has entered into a marriage with the other person that is voidable or void,
 - (iii) is not married to the other person but is cohabitating with the other person in a conjugal relationship and has done so continuously for a period of at least three years, or
 - (iv) is not married to the other person but is cohabitating with the other person in a conjugal relationship and together are the natural or adoptive parents of a child.

Family includes adoptive and step-family

- (2) For the purposes of the definition of “**family member**” and “**immediate family member**” in subsection (1), the relationships listed in subclauses (1)(g)(ii) to (viii) include adoptive and step-family relationships.

2. Application of Act despite agreement or waiver

This Act applies to a power of attorney or a personal directive, as the case may be, despite any agreement or waiver to the contrary.

3. Administration of Act

The Minister of Justice and Public Safety and Attorney General is responsible for the administration of this Act.

4. Presumed capacity

- (1) For the purposes of this Act, every adult is presumed, until the contrary is demonstrated, to have capacity in respect of the person’s financial matters and personal matters.

Deemed capacity to instruct lawyer

- (2) Where the capacity of a person is in issue under this Act, the person shall be deemed to have capacity to instruct a lawyer for the purpose of any legal proceeding under the Act.

Application for determination of capacity

- (3) Where the capacity of a person is in issue under this Act, the following may apply to the court for a determination of the capacity of the person for the purposes of this Act:
 - (a) an attorney, for a determination of the capacity of the principal or another attorney in respect of financial matters;
 - (b) an agent, for a determination of the capacity of the principal or another agent in respect of personal matters;
 - (c) another interested person, with leave of the court.

Determination of capacity by court

- (4) On application under subsection (3), the court may determine whether the person who is the subject of the application has or lacks capacity in respect of financial matters or personal matters, as the case may be, for the purposes of this Act and make an order accordingly.

Review of determination

- (5) The court, on application, may review a determination of the capacity of a person made under subsection (4).

Capacity determined for other purposes

- (6) Where it has been determined that a person is incapable of handling the person's financial affairs for the purposes of the *Public Trustee Act* or incapable of managing the person's personal affairs for the purposes of Part III of the *Mental Health Act*, the person is considered to lack capacity in respect of financial matters or personal matters, as the case may be, for the purposes of this Act.

PART 2 – POWERS OF ATTORNEY

Making Power of Attorney

5. Authority to grant power of attorney

An adult who understands the nature and effect of a power of attorney may make a power of attorney.

6. Written document

- (1) A power of attorney shall be in writing.

Prescribed form not mandatory

- (2) If a form of power of attorney is prescribed, the use of that form is not mandatory.

7. One or more attorneys

- (1) A principal may appoint one or more attorneys in a power of attorney.

Acting together, separately or alternately

- (2) Where more than one attorney is appointed, the attorneys shall act together, separately or alternately in accordance with the direction provided in the power of attorney.

Authority of attorney

- (3) Where a power of attorney is in effect, it is sufficient authority for the attorney or attorneys to make any decision on behalf of the principal in respect of the principal's financial matters that the principal may lawfully make by attorney, subject to any conditions or restrictions contained in the power of attorney or imposed by this Act.

Designation of beneficiary under benefit plan

- (4) Subject to any conditions or restrictions contained in an enduring power of attorney, the authority of an attorney under an enduring power of attorney includes the authority to, on behalf of the principal and in accordance with the *Designation of Beneficiaries Under Benefit Plans Act* R.S.P.E.I. 1988, Cap. D-9,



- (a) make a designation in an instrument, in accordance with the terms of a plan, that renews, replaces or converts a similar instrument made by the principal, if the same beneficiary is designated in both instruments;
- (b) make a designation in an instrument, in accordance with the terms of a plan, that does not renew, replace or convert a similar instrument made by the principal, if the estate of the principal is designated as the beneficiary; and
- (c) make, change or revoke a designation, if the court authorizes the attorney to do so.

8. Contents of power of attorney

For greater clarity, a principal may include or provide for any of the following in a power of attorney:

- (a) information about the principal's values, beliefs and wishes;
- (b) the effective date or circumstances in which the power of attorney becomes effective;
- (c) the continued effectiveness of the power of attorney on the incapacity of the principal;
- (d) instructions on making decisions under the power of attorney;
- (e) the persons who may request an accounting or other information in respect of the principal's financial matters;
- (f) the persons who may not receive an accounting or other information in respect of the principal's financial matters;
- (g) instructions on the resolution of disputes between an attorney appointed under the power of attorney and an agent designated in a personal directive.

9. Execution of power of attorney

- (1) A power of attorney made under this Act shall be executed in accordance with section 32.

Validation by order of court

- (2) Notwithstanding subsection (1), where, on application, the court is satisfied on clear and convincing evidence that a written document embodies the intention of a principal to create a power of attorney, the court may order that the written document is fully effective as the principal's power of attorney, despite that the document was not executed in accordance with section 32.

10. Effective date

A power of attorney is effective on the latest of

- (a) the date on which the power of attorney is signed by the principal;
- (b) the date stated in the power of attorney as being its effective date; and
- (c) the date an event described in the power of attorney as bringing the power of attorney into effect occurs.

Acting as Attorney

11. Qualifications to act as an attorney

- (1) Subject to subsection (2), in the case of an individual, an adult with capacity may act as an attorney.

Prohibition against acting as an attorney

- (2) A person shall not act as an attorney if the person
- (a) in the case of an individual,
 - (i) is an undischarged bankrupt,
 - (ii) is an employee of a facility in which the principal resides and through which the principal receives personal services or health care, or
 - (iii) subject to subsection (3), has been convicted within the last 10 years of a criminal offence as prescribed in the regulations; or
 - (b) provides personal services or health care to the principal for compensation.

Exception

- (3) A person referred to in subclause (2)(a)(iii) may act as an attorney if
- (a) the person has been pardoned;
 - (b) while the principal has capacity, the person discloses the fact of the conviction to the principal and the principal
 - (i) acknowledges the conviction in writing,
 - (ii) consents in writing to the person acting as the principal's attorney, and
 - (iii) obtains independent legal advice about the nature and effect of the power of attorney; or
 - (c) the principal specifies in the power of attorney that the attorney's appointment continues in the event that the attorney is convicted of a criminal offence after the power of attorney is executed.

12. Notice of acting within reasonable time

Except where otherwise provided in an enduring power of attorney, the attorney shall give a notice of acting in accordance with section 33 within a reasonable time after the incapacity of the principal.

13. Duties of attorney

- (1) An attorney shall
- (a) act honestly, in good faith, and in the best interests of the principal;
 - (b) engage the principal in decision-making to the extent possible;
 - (c) take into consideration the known wishes of the principal and, where the principal lacks capacity, the manner in which the principal managed the principal's affairs while capable;
 - (d) use assets for the benefit of the principal;
 - (e) keep the principal's property and funds separate from the attorney's property and funds, except as permitted by an enactment;
 - (f) keep records of financial transactions;
 - (g) where the principal lacks capacity, communicate regularly about the principal's financial matters with persons authorized by the power of attorney or this Act to receive such information; and
 - (h) where the principal lacks capacity, provide details of the principal's financial transactions on the request of a person referred to in clause (g).



Standard of care

- (2) In carrying out the duties of an attorney, the attorney is to be held to the standard of care of a prudent person in comparable circumstances, having comparable experience and expertise.

Remuneration

- (3) An attorney may be remunerated from the principal's property for acting as the attorney
- (a) where the power of attorney expressly authorizes and states the basis for the remuneration; or
 - (b) by order of the Prothonotary, on application by the attorney, having regard to the effort, care and responsibility and amount of time expended by the attorney on behalf of the principal.

Reimbursement for expenses

- (4) An attorney is entitled to be reimbursed from the principal's property for reasonable expenses properly incurred in acting as the attorney.

Personal liability

- (5) An attorney is not personally liable for loss or damage to the principal's financial matters, if the attorney complies with
- (a) the provisions of the power of attorney under which the attorney acts;
 - (b) the attorney's duties, as set out in this Act and any order of the court;
 - (c) any directions of the court given under this Act; and
 - (d) any other duty that may be imposed by law.

14. Termination of authority of attorney

- (1) The authority of an attorney under a power of attorney is terminated
- (a) on a date specified in the power of attorney;
 - (b) on the destruction or written revocation of the power of attorney by the principal, if the principal understands
 - (i) the nature and effect of a power of attorney, and
 - (ii) the effect of destroying or revoking a power of attorney;
 - (c) on the death of the principal;
 - (d) on the incapacity of the principal, unless the power of attorney is an enduring power of attorney;
 - (e) on the death or incapacity of the attorney;
 - (f) on the written resignation of the attorney, given to
 - (i) where the principal has capacity, the principal,
 - (ii) where the principal lacks capacity and two or more attorneys are appointed in an enduring power of attorney, the other attorney or attorneys,
 - (iii) where the principal lacks capacity and there are no other attorneys under an enduring power of attorney, an available adult family member of the principal, or
 - (iv) where the principal lacks capacity and there are no other attorneys or available adult family members of the principal, the Public Trustee;
 - (g) except in the case of a power of attorney made before the coming into force of this Act, on the attorney becoming prohibited to act under subsection 11(2);

- (h) on the appointment of a committee for the attorney pursuant to the *Public Trustee Act*;
- (i) where the principal and attorney are legally married or have cohabited as spouses, on their ceasing to cohabit as spouses as a result of an intention to end their spousal relationship, except where otherwise provided in the power of attorney; and
- (j) on the order of the court pursuant to this Act.

Notice to attorney

- (2) Where the authority of an attorney under a power of attorney is terminated under clause (1)(b), the principal shall give written notice of the termination of authority to the attorney.

Notice to Public Trustee

- (3) Where the authority of an attorney under an enduring power of attorney is terminated under clause (1)(g) and there is no longer an attorney with authority to act on behalf of the principal, the attorney shall give written notice of the termination of authority to the Public Trustee.

Suspension or termination on trusteeship

- (4) Where the court appoints a committee for a principal under the *Public Trustee Act*, the court may, by order, suspend or terminate the authority of the attorney under an enduring power of attorney.

Abuse of power

- (5) Where, on the application of any interested person, the court is satisfied that an attorney has abused the attorney's authority under a power of attorney, the court may, by order, terminate that authority.

Pre-condition to order

- (6) Before making an order under this section terminating the authority of an attorney under an enduring power of attorney, the court shall satisfy itself that, if necessary,
 - (a) suitable arrangements have been or will be made in respect of the principal's financial matters; or
 - (b) an application for the appointment of a committee under the *Public Trustee Act* has been or will be made in respect of the principal.

Accounting

15. Accounting on request of principal

- (1) Subject to subsection (5), on the request of the principal, the attorney shall provide an accounting to the principal.

Accounting on request of others

- (2) Subject to subsection (5), where the principal lacks capacity, on the request of any of the following persons, the attorney shall provide an accounting to that person:
 - (a) a person named by the principal in the power of attorney as a person who may be provided with an accounting;
 - (b) where no person is named as described in clause (a), an immediate family member of the principal who has not been named in the power of attorney as a person who may not be provided with an accounting;



- (c) where two or more attorneys are appointed in the power of attorney, the other attorney or attorneys;
- (d) the Public Trustee.

Accounting on death of principal

- (3) Where the principal has died, on the request of the personal representative of the principal's estate, the attorney shall provide an accounting to the personal representative.

Period of accounting

- (4) An accounting shall cover the period commencing on the latest of the following dates and ending on the date of the request:
 - (a) the date the attorney started acting as attorney;
 - (b) the date the attorney last provided an accounting;
 - (c) the date occurring exactly three years before the request.

Exception

- (5) An attorney may refuse a request for an accounting under subsection (1) or (2), where the attorney has provided an accounting to the person who made the request within the past year.

16. Prothonotary may order compliance

- (1) Where the attorney fails to comply with section 15, on the application of the person who made the request, the Prothonotary may order the attorney to provide an accounting to the person in compliance with section 15 by a specified date.

Prothonotary may order accounting despite right to refuse

- (2) Where an attorney refuses a request pursuant to subsection 15(5), on the application of the person who made the request, the Prothonotary may order the attorney to provide an accounting to the person by a specified date, where the Prothonotary considers the request to be reasonable.

Application for accounting to Prothonotary

- (3) On the application of an interested person, other than a person who may make a request under section 15, the Prothonotary may order the attorney to provide an accounting to the Prothonotary by a specified date, where the Prothonotary considers it to be necessary and in the public interest to do so.

Appeal to court

- (4) An appeal lies to the court from an order of the Prothonotary made under subsection (1), (2) or (3).

Order by court

- (5) Where the Prothonotary does not order the attorney to provide an accounting under subsection (1), (2) or (3) or the attorney does not provide an accounting as ordered by the Prothonotary, on application of the person who made the request, the court may order the attorney to provide an accounting by a specified date to the court or to the Prothonotary.

Order to suspend or terminate appointment

- (6) Where the principal lacks capacity and the attorney does not provide an accounting as ordered by the court, the court may make an order suspending or terminating the authority of the attorney under the power of attorney.

Pre-condition to order

- (7) Before making an order under subsection (6) terminating the authority of an attorney under an enduring power of attorney, the court shall satisfy itself that, if necessary,
- (a) suitable arrangements have been or will be made in respect of the principal's financial matters; or
 - (b) an application for the appointment of a committee under the *Public Trustee Act* has been or will be made in respect of the principal.

17. Form and contents of accounting

- (1) For the purpose of sections 15 and 16, the form and contents of an accounting shall be in accordance with the Rules of Civil Procedure or, where no rule is specified, the regulations.

No liability, good faith

- (2) No action or other proceeding may be brought against a person for anything done or omitted in good faith in relation to a request or order for an accounting under section 15 or 16.

Duties of Service Providers

18. Verification of attorney identity and authority

- (1) Before acting at the direction of another person who claims to be an attorney authorized to make a decision about a principal's financial matters, a service provider shall make a reasonable effort to verify the identity of the person who claims to be an attorney and that person's authority to make the decision.

Reasonable effort

- (2) For the purposes of subsection (1), the reasonable effort required shall be no more onerous than is appropriate to the circumstances and the nature of the decision.

Duty to facilitate exercise of authority

- (3) On verifying the identity and authority of an attorney, a service provider shall make a reasonable effort to facilitate the exercise of the attorney's authority and comply with the directions and decisions of the attorney about the financial matters of the principal that are within the service provider's care and control.

Court order

- (4) Where a service provider fails to comply with subsection (3), on application of the attorney, the court may order the service provider to
- (a) take whatever action is necessary to comply with subsection (3); and
 - (b) compensate the principal for any loss or damage to the principal's financial matters caused by the non-compliance.

PART 3 – PERSONAL DIRECTIVES

19. Authority to make personal directive

An adult who understands the nature and effect of a personal directive may make a personal directive.



20. Written document

- (1) A personal directive shall be in writing.

Prescribed form not mandatory

- (2) If a form of personal directive is prescribed, the use of that form is not mandatory.

21. One or more agents

- (1) A principal may appoint one or more agents in a personal directive.

Acting together, separately or alternately

- (2) Where more than one agent is appointed, the agents shall act together, separately or alternately in accordance with the direction provided in the personal directive.

Authority of agent

- (3) Where a personal directive is in effect, it is sufficient authority for the agent or agents to make any decision in respect of the principal's personal matters on behalf of the principal that the principal may lawfully make by agent, subject to any conditions and restrictions contained in the personal directive or imposed by this Act.

22. Contents of personal directive

For greater clarity, a principal may include or provide for any of the following in a personal directive:

- (a) information about the principal's values, beliefs and wishes;
- (b) instructions on making decisions about the principal's basic needs, including nutrition, clothing and personal care;
- (c) instructions on making decisions about the persons with whom the principal may live and associate;
- (d) instructions on making decisions about the principal's participation in social, educational and employment activities;
- (e) instructions on the resolution of disputes between an agent designated in the personal directive and an attorney appointed under a power of attorney.

23. Execution of personal directive

- (1) A personal directive shall be executed in accordance with section 32.

Validation by order of court

- (2) Notwithstanding subsection (1), where, on application, the court is satisfied on clear and convincing evidence that a written document embodies the intention of a principal to make a personal directive, the court may order that the written document is fully effective as the principal's personal directive, despite that the document was not executed in accordance with section 32.

24. Effective on incapacity

A personal directive is effective in respect of a personal matter specified in the directive only when the principal lacks capacity in respect of that personal matter.

Acting as Agent

25. Qualifications to act as an agent

- (1) Subject to subsection (2), an adult with capacity may act as an agent.

Prohibition against acting as an agent

- (2) A person shall not act as an agent if the person
- (a) is an employee of a facility in which the principal resides and through which the principal receives personal services or health care;
 - (b) subject to subsection (3), provides personal services or health care to the principal for compensation; or
 - (c) subject to subsection (4), has been convicted within the last 10 years of a criminal offence prescribed in the regulations.

Exception, family member

- (3) A person referred to in clause (2)(b) may act as an agent if the person is a family member who resides with the principal.

Exception, criminal offence

- (4) A person referred to in clause (2)(c) may act as an agent if the person
- (a) has been pardoned;
 - (b) while the principal has capacity, discloses the fact of the conviction to the principal and the principal
 - (i) acknowledges the conviction in writing,
 - (ii) consents in writing to the person acting as the principal's agent, and
 - (iii) obtains independent legal advice about the nature and effect of the personal directive; or
 - (c) the principal specifies in the personal directive that the agent's appointment continues in the event that the agent is convicted of a criminal offence after the personal directive is executed.

26. Notice of acting with reasonable time

Except where otherwise provided in a personal directive, an agent shall give notice of acting in accordance with section 33 within a reasonable time after the incapacity of the principal.

27. Duties of agent

- (1) An agent shall
- (a) act honestly, in good faith, and in the best interests of the principal;
 - (b) engage the principal in decision-making to the extent possible;
 - (c) take into consideration the principal's known wishes and the manner in which the principal managed the principal's personal matters while capable;
 - (d) communicate regularly about the principal's personal matters with persons authorized by the personal directive or this Act to receive such information; and
 - (e) provide information about the decisions made by the agent for the principal on the request of a person referred to in clause (d).



Standard of care

- (2) In carrying out the duties of an agent, an agent is to be held to the standard of care of a prudent person in comparable circumstances, including having comparable experience and expertise.

Remuneration

- (3) An agent is not entitled to remuneration, compensation, fees or allowances for acting as the agent.

Reimbursement for expenses

- (4) An agent is entitled to be reimbursed from the principal's property for reasonable expenses properly incurred in acting as the agent.

Personal liability

- (5) An agent is not personally liable for loss or damage to the principal, if the agent complies with
- (a) the provisions of the personal directive under which the agent acts;
 - (b) the agent's duties, as set out in this Act and any order of a court;
 - (c) any directions of a court given under this Act; and
 - (d) any other duty that may be imposed by law.

28. Termination of authority of agent

- (1) The authority of an agent under a personal directive is terminated
- (a) on the date specified in the personal directive;
 - (b) in respect of a particular personal matter, during any period in which the principal regains and has capacity in respect of that personal matter;
 - (c) on the destruction or written revocation of the personal directive by the principal while the principal has the capacity to understand
 - (i) the nature and effect of a personal directive, and
 - (ii) the effect of destroying or revoking a personal directive;
 - (d) on the death of the principal;
 - (e) on the death or incapacity of the agent;
 - (f) on the written resignation of the agent, given to
 - (i) where the principal has capacity, the principal,
 - (ii) where the principal lacks capacity and two or more agents are appointed in the personal directive, the other agent or agents,
 - (iii) where the principal lacks capacity and there are no other agents under the personal directive, an available adult family member of the principal, or
 - (iv) where the principal lacks capacity and there are no other agents or available adult family members of the principal, a public officer charged with the duty of public guardianship or the Public Trustee;
 - (g) except in the case of a personal directive made before the coming into force of this Act, on the agent becoming prohibited to act under subsection 25(2);
 - (h) on the appointment of a guardian for the agent pursuant to the *Mental Health Act*;

- (i) where the principal and agent are legally married or have cohabited as spouses, on their ceasing to cohabit as spouses as a result of an intention to end their spousal relationship, except where otherwise provided in the personal directive; and
- (j) on the order of the court pursuant to this Act.

Notice to agent

- (2) Where the authority of an agent under a personal directive is terminated under clause (1)(c), the principal shall provide written notice of the termination of authority to the agent.

Notice to public officer or Public Trustee

- (3) Where the authority of an agent under a personal directive is terminated under clause (1)(g) and there is no longer an agent with authority to act on behalf of the principal, the agent shall give written notice of the termination of authority to a public officer charged with the duty of public guardianship or the Public Trustee.

Suspension or termination on guardianship

- (4) Where the court appoints a guardian for a principal under the *Mental Health Act*, the court may, by order, suspend or terminate the authority of the agent under the personal directive.

Abuse of power

- (5) Where, on the application of any interested person, the court is satisfied that an agent has abused the agent's authority under a personal directive, the court may, by order, terminate that authority.

Pre-condition to order

- (6) Before making an order under this section terminating the authority of an agent under a personal directive, the court shall satisfy itself that, if necessary,
 - (a) suitable arrangements have been or will be made in respect of the principal's personal matters; or
 - (b) an application for the appointment of a guardian under the *Mental Health Act* has been or will be made in respect of the principal.

Duties of Service Providers

29. Verification of agent identity and authority

- (1) Before providing a personal service to a person at the direction of another person who claims to be the person's agent, the service provider shall make a reasonable effort to verify
 - (a) the identity of the person who claims to be an agent; and
 - (b) the person's authority to make a decision about personal matters relevant to the personal service.

Reasonable effort

- (2) For the purposes of subsection (1), the reasonable effort required shall be no more onerous than is appropriate to the circumstances and the service to be provided.

30. Application of section

- (1) This section applies to a service provider who intends to provide a personal service to a person and is aware that



- (a) the person has made a personal directive; and
- (b) the personal directive is in effect.

Instructions of agent

- (2) A service provider shall make a reasonable effort to follow the instructions of an agent in respect of providing a service to the principal.

Instructions of principal

- (3) Notwithstanding the principal's incapacity, the service provider may act on the principal's decision if the agent designated in respect of the relevant personal matter does not object.

Instructions in personal directive

- (4) A service provider shall make a reasonable effort to follow instructions in the personal directive where
 - (a) the personal directive does not designate an agent in respect of personal matters relevant to the personal service; or
 - (b) the agent designated under the personal directive in respect of personal matters relevant to the personal service cannot be contacted after the service provider has made a reasonable effort to do so.

Duty to contact relative

- (5) Subject to any contrary instructions in the personal directive, a service provider who provides a personal service in the day-to-day care of the principal shall contact an immediate family member of the principal
 - (a) where
 - (i) the service provider believes that the principal has regained capacity to make a decision in respect of the personal service, and
 - (ii) the agent designated under the personal directive in respect of personal matters relevant to the personal service cannot be contacted after the service provider has made a reasonable effort to do so; or
 - (b) where
 - (i) either
 - (A) the personal directive does not designate an agent in respect of personal matters relevant to the personal service, or
 - (B) the agent designated under the personal directive in respect of personal matters relevant to the personal service cannot be contacted after the service provider has made a reasonable effort to do so, and
 - (ii) the directive does not contain instructions for the service provider to follow.

31. Application to court, giving effect to agent's decision

- (1) An agent may apply to the court for an order under this section where the agent has reason to believe that
 - (a) a decision made by the agent under the agent's authority is not being given effect because
 - (i) the principal is failing or refusing to act in accordance with the decision, or
 - (ii) a person is obstructing action necessary to give effect to the decision; and
 - (b) there would be a serious risk to the health or safety of the principal if the decision were not given effect.

Notice of application

- (2) An agent shall give notice of the application under subsection (1) to the principal and to the person referred to in subclause (1)(a)(ii), if any.

Order of court

- (3) Where the court is satisfied that the circumstances referred to in clause (1)(a) and (b) exist, the court may make any order the court considers necessary and appropriate to give effect to the decision of the agent, including an order authorizing a peace officer to assist the agent or another person in doing anything necessary to give effect to the decision.

PART 4 – MATTERS OF COMMON APPLICATION

Execution

32. Execution by principal, with or without witnesses

- (1) Subject to subsections (2) and (3) and the regulations,
- (a) a power of attorney, other than an enduring power of attorney, shall be signed and dated by the principal; and
 - (b) an enduring power of attorney and a personal directive shall be signed and dated by
 - (i) the principal, in the presence of one witness, and
 - (ii) the witness, in the presence of the principal.

Signature on behalf of principal

- (2) Subject to subsection (3), a power of attorney or personal directive may be signed on behalf of a principal where
- (a) the principal is physically incapable of signing the document;
 - (b) the principal is present and directs that the document be signed; and
 - (c) the signature of the person signing the document on behalf of the principal is witnessed in accordance with this section, as if that signature were the principal's signature.

Not eligible to witness or sign on behalf of principal

- (3) The following persons shall not act as a witness to the signing of an enduring power of attorney or a personal directive or sign a power of attorney or personal directive on behalf of a principal:
- (a) a person named in the document as an attorney or agent;
 - (b) a family member of a person named in the document as an attorney or agent;
 - (c) an employee or authorized representative of a person named in the document as an attorney or agent, unless the person named as an attorney or agent is
 - (i) a lawyer authorized to practise law in the province,
 - (ii) a public officer charged with the duty of public guardianship or the Public Trustee, or
 - (iii) a financial institution authorized to carry on trust business in the province;
 - (d) a person under 18 years of age;



- (e) a person who does not understand the type of communication used by the principal, unless the person receives interpretive assistance to understand that type of communication.

Notice of Acting

33. Designation of persons to receive notice of acting

- (1) The principal may designate by name or by class in an enduring power of attorney or a personal directive any person or persons to receive notice of acting.

Notice to designated person and principal

- (2) Notice of acting shall be given to any person designated pursuant to subsection (1) and, where practicable, the principal.

Form and contents of notice

- (3) Notice of acting shall be given in writing and indicate that the attorney or agent, as the case may be, has started acting as the attorney or agent in accordance with the enduring power of attorney or personal directive, as the case may be.

Prescribed form not mandatory

- (4) If a form of notice of acting is prescribed, the use of that form is not mandatory.

Failure to give notice does not affect authority

- (5) A failure to give notice of acting does not
 - (a) invalidate the appointment of the attorney or agent; or
 - (b) affect the authority of the attorney or agent to make decisions on behalf of the principal in accordance with the enduring power of attorney or personal directive, as the case may be.

Other Matters

34. Application to court for opinion, advice or direction

- (1) An attorney, an agent, a principal, a public officer charged with the duty of public guardianship, the Public Trustee or any other interested person may apply to the court for an opinion, advice or direction in respect of any matter associated with a power of attorney or personal directive.

Acting on opinion, advice or direction

- (2) An attorney or agent who acts on the opinion, advice or direction of the court in respect of a matter is considered to have discharged the attorney's or agent's duties, as the case may be, under this Act in respect of that matter.

Fraud, concealment or misrepresentation

- (3) Subsection (2) does not operate to indemnify an attorney or agent where the attorney or agent, as the case may be, obtains the opinion, advice or direction of the court through fraud, willful concealment or misrepresentation.

35. Actions taken valid and binding

- (1) An action taken by an attorney or agent under a power of attorney or personal directive, as the case may be, is valid and binding in favour of a person dealing with the attorney or agent, or receiving any benefit from the attorney or agent, and in favour of another person claiming under the person, where that person does not know of the existence of one or more of the following circumstances:
- (a) the authority under the power of attorney or personal directive is terminated;
 - (b) in the case of an enduring power of attorney or personal directive that has apparently been signed and witnessed in accordance with section 32
 - (i) the principal did not have the capacity to make the enduring power of attorney or personal directive,
 - (ii) the attorney or agent has acted in violation of a requirement of this Act, or
 - (iii) the enduring power of attorney or personal directive does not meet the formal requirements of this Act.

No duty to inquire

- (2) No person is required to inquire into or ascertain the existence of any circumstance referred to in subsection (1) if that person does not know of its existence.

36. No liability of attorney or agent

- (1) An attorney or agent, as the case may be, is not liable to the principal, or to the estate of the principal, for an action taken under a power of attorney or personal directive, where
- (a) any or all of the following circumstances occur:
 - (i) the authority under the power of attorney or personal directive is terminated,
 - (ii) in the case of an enduring power of attorney or personal directive that has apparently been signed and witnessed in accordance with section 32,
 - (A) the principal did not have the capacity to make the power of attorney or personal directive, or
 - (B) the power of attorney or personal directive does not meet the formal requirements of this Act;
 - (b) the attorney or agent did not know of the existence of any of the circumstances referred to in clause (a); and
 - (c) the attorney or agent, with the exercise of reasonable care, could not have known of the existence of any of the circumstances referred to in clause (a).

No liability, contingent appointment

- (2) A person is not liable to the principal, or to the estate of the principal, for failing to act as an attorney or agent, if the person, with the exercise of reasonable care, could not have known that the person's contingent appointment under the power of attorney or personal directive, as the case may be, had come into effect.

No liability, declining appointment

- (3) A person is not liable to the principal, or to the estate of the principal, for declining an appointment as an attorney or agent.

37. Combining power of attorney and personal directive

- (1) A power of attorney and a personal directive may be combined into a single document, and the requirements of this Act apply to the respective parts of the document.

Attorney and agent

- (2) A person may act as both an attorney and an agent for a principal.

38. Health care directive, definitions

- (1) In this section

- (a) “**health care directive**” means a directive as defined in the *Consent to Treatment and Health Care Directives Act*;
- (b) “**proxy**” means a proxy as defined in the *Consent to Treatment and Health Care Directives Act*.

Combining directives

- (2) A health care directive may be combined into a single document with a personal directive, and the requirements of the *Consent to Treatment and Health Care Directives Act* and this Act apply to the respective parts of the document.

Proxy and agent

- (3) For greater clarity, a person may act as both a proxy and an agent for a principal.

PART 5 – GENERAL**39. Access and privacy, definitions**

- (1) In this section,

- (a) “**personal health information**” means personal health information as defined in the *Health Information Act* R.S.P.E.I. 1988, Cap. H-1.41;
- (b) “**personal information**” means personal information as defined in the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F-15.01.

Access to personal information

- (2) Subject to any limitation set out in a power of attorney or personal directive, an attorney or agent, as the case may be, has the right to be provided with personal health information, personal information and records respecting the principal that are relevant to a decision to be made on behalf of the principal or to the determination of the principal’s capacity.

Use of personal information

- (3) An attorney or agent may use the personal health information, personal information and records described in subsection (1) only to perform the functions of the attorney or agent, as the case may be, or to determine the principal’s capacity.

Notwithstanding information and privacy legislation

- (4) This section operates notwithstanding the *Freedom of Information and Protection of Privacy Act* and the *Health Information Act*.

Subject to solicitor-client privilege

- (5) The right to be provided with personal health information or personal information under this section is subject to solicitor-client privilege.

Payment for legal services

- (6) Notwithstanding subsection (5), an attorney is not liable to make payment for legal services provided to the principal unless
- (a) the person who provided the legal services provides sufficient detail of the legal services provided to, and disbursements incurred on behalf of, the principal to enable the attorney to assess the reasonableness of the legal fees and disbursements; or
 - (b) the legal fees and disbursements are taxed by the Prothonotary, subject to appeal from the taxation as in an ordinary proceeding in the court.

Copy of will

- (7) Notwithstanding subsection (5), on the request of an attorney acting under an enduring power of attorney, a person who has a copy of the principal's will, including a lawyer, shall provide a copy of the will to the attorney.

40. Prohibition, concealing or altering document

- (1) No person shall willfully, without the consent of the principal, conceal or alter a power of attorney or personal directive or a document revoking a power of attorney or personal directive.

Prohibition, service or accommodation conditional

- (2) No person shall require another person to grant authority under a power of attorney or personal directive as a condition to
- (a) obtain residential accommodation or continue to reside in residential accommodation; or
 - (b) obtain a service.

Offence and penalty

- (3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

41. Regulations

The Lieutenant Governor in Council may make regulations

- (a) providing, for the purposes of removing a doubt, that a matter is or is not a personal matter;
- (b) respecting designating an attorney or agent by naming an office or position;
- (c) prescribing criminal offences for the purposes of subclause 11(2)(a)(iii) and clause 25(2)(c);
- (d) respecting the form and contents of an accounting of the financial matters of a principal;
- (e) providing for the execution of a power of attorney or personal directive in accordance with section 32, where persons are not at the same physical location;
- (f) limiting the application of regulations made pursuant to clause (e) to a specified time period or set of circumstances;



- (g) respecting establishing a registry for powers of attorney or personal directives;
- (h) respecting registering powers of attorney or personal directives;
- (i) respecting access to, and the collection, use and disclosure of, personal information or other information in the registry;
- (j) prescribing forms for the purposes of this Act; and
- (k) respecting any matter necessary and advisable to carry out effectively the intent and purposes of this Act.

42. Power of attorney under former Act

- (1) A subsisting power of attorney executed in the province in accordance with the formal requirements of the *Powers of Attorney Act* R.S.P.E.I. 1988, Cap. P-16, prior to the date that this Act comes into force is deemed to be a valid power of attorney executed under this Act.

Notice of acting not required

- (2) Notwithstanding subsection (1), sections 12 and 33 do not apply to an enduring power of attorney referred to in subsection (1).

Extra-jurisdictional power of attorney

- (3) A subsisting power of attorney executed in another jurisdiction is valid in this province if it meets the formal requirements of this Act or the laws of the jurisdiction in which it was executed.

43. Personal directive executed prior to this Act

- (1) A subsisting personal directive executed in the province prior to the date that this Act comes into force is deemed to be a valid personal directive executed under this Act if it meets the formal requirements of this Act.

Notice of acting not required

- (2) Notwithstanding subsection (1), sections 26 and 33 do not apply to a personal directive referred to in subsection (1).

Extra-jurisdictional personal directive

- (3) A subsisting personal directive executed in another jurisdiction is valid in this province if it meets the formal requirements of this Act or the laws of the jurisdiction in which it was executed.

44. Repeal

The *Powers of Attorney Act* R.S.P.E.I. 1988, Cap. P-16, is repealed.

45. Commencement

This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

(Bill No. 48)

Powers of Attorney and Personal Directives Act

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	February 22, 2022
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

SIGNATURES:

Honourable Antoinette Perry, Lieutenant Governor

Honourable Colin LaVie, Speaker

Joseph Jeffrey, Clerk

Hon. Bloyce Thompson
Minister of Justice and Public Safety and Attorney General

GOVERNMENT BILL

2022
2nd SESSION, 66th GENERAL ASSEMBLY