

The Powers of Attorney Act, 2002

being

Chapter P-20.3 of the *Statutes of Saskatchewan, 2002* (effective April 1, 2003) as amended by the *Statutes of Saskatchewan, 2004, c.21; 2009, c.4; 2014, c.22; and 2015, c.H-0.002 and c.22.*

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

Table of Contents

PART I		16	Provision for maintenance of grantor's dependants
Short Title, Interpretation and Application		16.1	Gifts
1	Short title	17	Fees and accounting
2	Interpretation	18	Accounting
2.1	Application of act	18.1	Final accounting
PART II		19	Termination of authority under enduring power of attorney
Enduring Powers of Attorney		20	Application to court
3	Enduring power of attorney	PART III	
4	Who may grant an enduring power of attorney	General	
5	Form of enduring power of attorney	21	No liability in certain circumstances
6	Limitations on acting as attorney	22	Regulations
7	Appointment of more than one attorney	PART IV	
8	Appointment of corporate attorney	Repeal, Transitional and Coming into Force	
9	Contingent enduring power of attorney	23	S.S. 1996, c.P-20.2 repealed
10	Effect of declaration	24	Transitional
11	In writing and signed by grantor	25	Coming into force
12	Witnesses to enduring power of attorney		
13	Extrajurisdictional powers of attorney		
14	Authority		
15	Duty of attorney		

CHAPTER P-20.3

An Act respecting the Powers of Attorney

PART I

Short Title, Interpretation and Application

Short title

1 This Act may be cited as *The Powers of Attorney Act, 2002*.

Interpretation

2(1) In this Act:

“**accounting**” means an accounting with respect to the attorney’s management of the grantor’s property and financial affairs or personal affairs, as the case may be; («*reddition de comptes*»)

“**attorney**” means the person who is appointed to act for the grantor under the terms of a power of attorney; («*fondé de pouvoir*»)

“**capacity**” means, other than in section 4, clause 19(1)(b) and section 21, the ability:

- (a) to understand information relevant to making decisions with respect to property and financial affairs or personal affairs, as the case may be; and
- (b) to appreciate the reasonably foreseeable consequences of making or not making a decision referred to in clause (a); («*capacité*»)

“**contingent appointment**” means an appointment described in section 9; («*nomination éventuelle*»)

“**dependant**” means a child of the grantor who:

- (a) is under the age of 18 years; or
- (b) is 18 years or older and who is:
 - (i) under the grantor’s charge; and
 - (ii) unable, by reason of illness, disability, pursuit of reasonable education or other cause to:
 - (A) withdraw from the grantor’s charge; or
 - (B) obtain the necessaries of life; («*personne à charge*»)

“enduring power of attorney” means a power of attorney that is described in section 3 and, in the case of an enduring power of attorney made on or after the coming into force of this Act, complies with the requirements of sections 11 and 12 and:

- (a) includes an extraprovincial power of attorney that complies with the requirements of section 13; but
- (b) does not include an irrevocable power of attorney that is or has been:
 - (i) granted for valuable consideration; or
 - (ii) granted to secure a liability of the grantor to the attorney; (*«procuracion persistente»*)

“family member” means any of the following, with respect to the grantor or attorney, as the case may be:

- (a) the spouse;
- (b) a son or daughter;
- (c) a parent or legal guardian before the grantor or attorney, as the case may be, became an adult, except where the legal guardian was a minister of the Crown;
- (d) a brother or sister;
- (e) a grandparent;
- (f) a grandchild;
- (g) an uncle or aunt;
- (h) a nephew or niece; (*«membre de la famille»*)

“grantor” means the individual who gives the attorney the power to act for him or her under the terms of a power of attorney; (*«auteur»*)

“personal attorney” means a person who is appointed to act for the grantor under the terms of an enduring power of attorney with respect to the grantor’s personal affairs; (*«fondé de pouvoir concernant les affaires personnelles »*)

“prescribed” means prescribed in the regulations; (*«réglementaire»*)

“property attorney” means a person who is appointed to act for the grantor under the terms of an enduring power of attorney with respect to the grantor’s property and financial affairs; (*«fondé de pouvoir concernant les biens »*)

“public guardian and trustee” means the public guardian and trustee continued pursuant to *The Public Guardian and Trustee Act*; (*«tuteur et curateur public »*)

“**spouse**” means:

- (a) the legally married spouse of the grantor; or
- (b) a person who is cohabiting or has cohabited with the grantor as spouses:
 - (i) continuously for a period of not less than two years; or
 - (ii) continuously for a period of not less than one year, if they are parents of a child; (« *conjoint* »)

“**the court**” means the Court of Queen’s Bench. (« *le tribunal* »)

(2) For the purposes of the definition of “**family member**” in subsection (1), the relationships listed in clauses (b) to (h) of that definition include adoptive and step-family relationships.

2002, c.P-20.3, s.2; 2004, c.21, s.3; 2014, c.22, s.3; 2015, c.22, s.12.

Application of Act

2.1 This Act does not apply with respect to health care decisions governed by *The Health Care Directives and Substitute Health Care Decision Makers Act, 2015*.

2004, c.21, s.4; 2015, cH-0.002, s.29.

PART II

Enduring Powers of Attorney

Enduring power of attorney

3 A power of attorney may provide that the attorney’s authority under the power of attorney is not terminated by a lack of capacity of the grantor that occurs after the power of attorney has been executed.

2002, c.P-20.3, s.3.

Who may grant an enduring power of attorney

4 Any adult who has the capacity to understand the nature and effect of an enduring power of attorney may grant an enduring power of attorney.

2002, c.P-20.3, s.4.

Appointment of attorney

4.1(1) A grantor may appoint a personal attorney, a property attorney, or both a personal attorney and property attorney.

(2) If a grantor appoints a personal attorney and a property attorney, the grantor may appoint the same person to act as both attorneys or different people to act as the attorneys.

(3) If an enduring power of attorney is granted on or after the coming into force of this section, unless an enduring power of attorney states otherwise, an attorney appointed pursuant to an enduring power of attorney is both the personal attorney and the property attorney of the grantor.

(4) If an enduring power of attorney has been granted before the coming into force of this section and has not been revoked, the attorney appointed pursuant to the enduring power of attorney is the property attorney, but not the personal attorney, of the grantor.

2004, c.21, s.5.

Form of enduring power of attorney

5 If a form of enduring power of attorney is prescribed, the use of that form is not mandatory.

2002, c.P-20.3, s.5.

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.

(2) An individual mentioned in subclause (1)(a)(iii) may act as an attorney:

(a) if the individual has been pardoned; or

(b) if, while the grantor has capacity, the individual discloses the fact of the conviction to the grantor and the grantor:

(i) acknowledges the conviction in writing; and

(ii) consents in writing to the individual acting.

2002, c.P-20.3, s.6; 2004, c.21, s.6.

Appointment of more than one attorney

7(1) A grantor may appoint more than one personal or property attorney.

(2) A grantor may state either or both of the following in an enduring power of attorney that appoints more than one personal or property attorney:

(a) that each attorney has only those powers specifically granted to that attorney;

(b) that the attorneys are appointed to act jointly, severally or successively.

- (3) If two or more personal or property attorneys are appointed in an enduring power of attorney and the enduring power of attorney does not include a statement mentioned in clause (2)(b), the attorneys are deemed to be appointed to act jointly.
- (4) Unless an enduring power of attorney states otherwise:
- (a) if two or more personal or property attorneys are appointed to act jointly:
 - (i) a decision of the attorneys must be unanimous; and
 - (ii) the remaining attorney or attorneys may continue to act under the enduring power of attorney if one or more of the attorneys:
 - (A) dies;
 - (B) indicates in writing to the other attorney or attorneys that he or she is unwilling or unavailable to act; or
 - (C) is found by a court to lack capacity; and
 - (b) if two or more personal or property attorneys are appointed to act successively and the first available attorney dies, or indicates in writing to the other attorney or attorneys that he or she is unwilling or unavailable to act, or is found by a court to lack capacity, the next named attorney may act under the enduring power of attorney.

2002, c.P-20.3, s.7; 2004, c.21, s.7.

Appointment of corporate attorney

- 8(1)** Subject to the regulations, a grantor may appoint a corporate attorney.
- (2) The fees to be charged by a corporate attorney must be disclosed in writing to the grantor before the grantor signs an enduring power of attorney.

2002, c.P-20.3, s.8.

When appointment of attorney comes into effect

- 8.1** Subject to section 9, the appointment of an attorney under an enduring power of attorney comes into effect on execution of the enduring power of attorney.

2004, c.21, s.8.

Contingent appointment

- 9** An enduring power of attorney may provide that an appointment comes into effect on a specified future date or on the occurrence of a specified contingency, including the lack of capacity of the grantor.

2004, c.21, s.9.

Declaration by nominee

- 9.1(1)** Subject to subsection (2), an enduring power of attorney containing a contingent appointment may name one or more adults, other than the attorney or a family member of the attorney, on whose written declaration the specified contingency, including the lack of capacity of the grantor, is deemed to have occurred for the purpose of bringing the contingent appointment into effect.

(2) If an enduring power of attorney containing a contingent appointment names two or more adults, a written declaration is valid if:

- (a) all of the named adults sign the declaration; or
- (b) one or more of the adults named is unable to make a declaration for any of the reasons set out in subclauses 9.2(1)(b)(i) to (iii) and all of the remaining named adults sign the declaration.

2004, c.21, s.9.

Declaration of incapacity by prescribed professionals

9.2(1) This section applies to a contingent appointment under an enduring power of attorney that comes into effect on the lack of capacity of the grantor if:

- (a) the enduring power of attorney does not name one or more adults pursuant to subsection 9.1(1);
- (b) the grantor has named one adult pursuant to subsection 9.1(1) and:
 - (i) the adult dies;
 - (ii) the adult indicates in writing to the most immediate and available adult family member of the grantor that he or she is unwilling or unavailable to act; or
 - (iii) a court finds that the adult lacks capacity; or
- (c) the grantor has named two or more adults pursuant to subsection 9.1(1) and all of the adults named are unable to act for any of the reasons set out in subclauses (b)(i) to (iii).

(2) In any of the circumstances described in subsection (1), for the purposes of bringing a contingent appointment under an enduring power of attorney into effect on the lack of capacity of the grantor, a grantor is deemed to have a lack of capacity if two members of a prescribed professional group declare in writing that the grantor lacks capacity.

2004, c.21, s.9.

Disclosure

9.3 Notwithstanding any other Act or law, a person authorized by law to provide health care treatment shall disclose personal health care information to a person authorized to make a written declaration pursuant to subsection 9.1(1) or subsection 9.2(2), if it is necessary to enable that person to make an informed declaration.

2004, c.21, s.9.

Declaration by court

9.4 If the specified contingency mentioned in section 9 is not the lack of capacity of the grantor and any of the circumstances mentioned in clauses 9.2(1)(a) to (c) occurs, the public guardian and trustee or any other interested person may apply to the court for a declaration that the specified contingency has occurred for the purpose of bringing a contingent appointment under an enduring power of attorney into effect.

2004, c.21, s.9.

Effect of declaration

10(1) If the attorney or a third party relies in good faith on a declaration pursuant to section 9.1, 9.2 or 9.4 as evidence of the authority of the attorney, the declaration is conclusive proof that the specified contingency has occurred.

(2) An attorney who relies in good faith on a declaration mentioned in subsection (1) is not liable for that reason alone for his or her actions under an enduring power of attorney.

2002, c.P-20.3, s.10; 2004, c.21, s.10.

In writing and signed by grantor

11(1) An enduring power of attorney is not valid unless it is:

- (a) in writing; and
 - (b) dated and signed:
 - (i) by the grantor; or
 - (ii) at the direction of the grantor, by an adult with capacity, other than the attorney or a family member of the grantor or attorney, in the presence of the grantor and a witness mentioned in subsection (2).
- (2) When an enduring power of attorney is signed pursuant to subclause (1)(b)(ii):
- (a) the grantor shall acknowledge the signature in the presence of a witness who:
 - (i) is an adult with capacity; and
 - (ii) is not the attorney or a family member of the grantor or attorney; and
 - (b) the witness shall sign the enduring power of attorney as a witness in the presence of the grantor.

2002, c.P-20.3, s.11.

Witnesses to enduring power of attorney

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).

2002, c.P-20.3, s.12; 2004, c.21, s.11.

Extrajurisdictional powers of attorney

13(1) An extrajurisdictional power of attorney is an enduring power of attorney if:

- (a) it is a valid power of attorney according to the law of the place where it is executed; and
- (b) it provides that the attorney's authority under the power of attorney is not terminated by a lack of capacity of the grantor that occurs after the power of attorney has been executed.

(2) An extrajurisdictional power of attorney is an enduring power of attorney containing a contingent appointment if:

- (a) it is a valid enduring power of attorney according to the law of the place where it is executed; and
- (b) it provides that an appointment comes into effect on a specified future date or on the occurrence of a specified contingency.

2002, c.P-20.3, s.13; 2004, c.21, s.12; 2015, c.22, s.12.

Authority

14(1) An attorney has authority respecting the property and financial affairs or personal affairs of the grantor pursuant to the terms of the enduring power of attorney.

(2) A grantor may give an attorney:

- (a) specific authority respecting certain property or financial matters;
- (b) general authority respecting all of the grantor's property and financial affairs;
- (c) specific authority respecting certain personal matters; or
- (d) general authority respecting all of the grantor's personal affairs.

(3) Unless an enduring power of attorney states otherwise, an attorney may not delegate the authority granted under an enduring power of attorney.

2002, c.P-20.3, s.14; 2004, c.21, s.13.

Duty of attorney

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.

2002, c.P-20.3, s.15.

Dependants and beneficiaries

16(1) Unless the enduring power of attorney that appoints the property attorney states otherwise:

- (a) a property attorney may provide for the maintenance, education or benefit of the grantor's spouse and dependent children, including the property attorney if the property attorney is the grantor's spouse;
- (b) **Repealed.** 2009, c.4, s.2.
- (c) **Repealed.** 2009, c.4, s.2.

(2) A property attorney may not make or change a will in the name of the grantor.

(3) A property attorney who acts pursuant to this section is deemed to be acting in the best interests of the grantor and not to be acting contrary to clause 15(1)(c).

2004, c.21, s.14; 2009, c.4, s.2.

Gifts

16.1(1) Unless the enduring power of attorney that appoints the property attorney specifically permits it, a property attorney shall not make a gift out of the grantor's estate except as provided in this section.

(2) Subject to the regulations and any limitations or conditions in the enduring power of attorney that appoints the property attorney, a property attorney may make a gift out of the grantor's estate if:

- (a) the portion of the estate that constitutes the gift is not required to meet the grantor's needs or the needs of the grantor's spouse or dependants;
- (b) the property attorney has reasonable grounds to believe, based on the actions of the grantor while the grantor had capacity, that the grantor would make the gift if the grantor had capacity; and
- (c) the value of the gift does not exceed the prescribed amount.

(3) The court may authorize a property attorney to make a gift that is not authorized by subsection (2) if the court is satisfied that it would be appropriate for the property attorney to make the gift.

2014, c.22, s.4.

Fees and accounting

17(1) An attorney acting pursuant to an enduring power of attorney shall not charge a fee unless:

- (a) the fee is set out in the enduring power of attorney;
- (b) the court has made an order setting a fee for services rendered by the attorney; or
- (c) if the fee is not set out in the enduring power of attorney and the court has not made an order pursuant to clause (b), but there is a prescribed fee schedule, the fee that the attorney charges for a service is not more than the fee set out in the prescribed fee schedule for that service.

(2) A fee charged in accordance with subsection (1) is to be paid out of the estate of the grantor.

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

- (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.

2002, c.P-20.3, s.17; 2004, c.21, s.15; 2014, c.22, s.5.

Accounting

18(1) On the request of the grantor, the attorney shall provide an accounting in the prescribed form to the grantor.

(2) If the grantor lacks capacity, an accounting in the prescribed form 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.
- (4.1) The public guardian and trustee may carry out an investigation to ensure the accuracy of an accounting.
- (5) The public guardian and trustee may direct the attorney to provide an accounting in the prescribed form 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, or make an order that the attorney's authority under the enduring power of attorney is terminated, on application of:
- (a) the grantor;
 - (b) any person mentioned in subsection (2) or (4); or
 - (c) the public guardian and trustee.

2002, c.P-20.3, s.18; 2004, c.21, s.16; 2014, c.22, s.6.

Final accounting

18.1(1) Subject to subsection (2), every attorney acting pursuant to an enduring power of attorney shall, on the termination of the authority of the attorney:

- (a) provide a final accounting, in the prescribed form, of the decisions made, actions taken and consents given respecting the grantor to:
 - (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;
 - (iii) a decision-maker appointed pursuant to *The Adult Guardianship and Co-decision-making Act*, if any;
 - (iv) a property guardian appointed pursuant to *The Missing Persons and Presumption of Death Act*, if any;
 - (v) if the grantor is deceased, the executor or administrator of the grantor's estate; and
 - (vi) the public guardian and trustee; and
- (b) verify by affidavit the final accounting required pursuant to this subsection.

- (2) If the grantor is deceased:
 - (a) a final accounting is not required when the attorney is the sole beneficiary of the grantor's estate; and
 - (b) a beneficiary of the grantor's estate, other than a person mentioned in subsection (1), may request a final accounting.
- (3) A final accounting required pursuant to this section must be provided within six months after the date on which the attorney's authority terminates.
- (4) The public guardian and trustee may carry out an investigation to ensure the accuracy of the final accounting.
- (5) If an attorney does not provide a final accounting pursuant to subsection (1) or clause (2)(b), any person listed in clause (1)(a) or (2)(b) may apply to the court for an order directing the attorney to provide that final accounting to the persons entitled to it pursuant to this section.

2014, c.22, s.7.

Termination of authority under enduring power of attorney

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

- (a) on the date specified in the enduring power of attorney;
- (b) on the written revocation of the enduring power of attorney by the grantor while the grantor has the capacity to understand:
 - (i) the nature and effect of an enduring power of attorney; and
 - (ii) the effect of terminating an enduring power of attorney;
- (c) on the death of the grantor;
- (d) on the death or lack of capacity of the attorney;
- (e) on the written resignation of the attorney, given to:
 - (i) the grantor;
 - (ii) if the grantor lacks capacity and two or more attorneys are appointed in the enduring power of attorney, the other attorney or attorneys; or
 - (iii) if the grantor lacks capacity and there are no other attorneys under the enduring power of attorney, the most immediate and available adult family member of the grantor;
- (f) except in the case of an enduring power of attorney made before the coming into force of this Act, on the attorney ceasing to meet the conditions set out in subclauses 6(1)(a)(ii) and (iii) and clause 6(1)(b);

- (g) in the case of a personal attorney:
 - (i) if a personal decision-maker is appointed for the grantor or attorney pursuant to *The Adult Guardianship and Co-decision-making Act*; or
 - (ii) if the public guardian and trustee is appointed as personal guardian for the grantor or attorney pursuant to *The Public Guardian and Trustee Act*;
 - (g.1) in the case of a property attorney:
 - (i) if a property decision-maker is appointed for the grantor or attorney pursuant to *The Adult Guardianship and Co-decision-making Act*; or
 - (ii) if the public guardian and trustee is appointed, or executes an acknowledgement to act, as property guardian for the grantor or attorney pursuant to *The Public Guardian and Trustee Act*;
 - (g.2) on the making of an order pursuant to section 15 of *The Missing Persons and Presumption of Death Act* presuming the death of the grantor;
 - (g.3) on the making of an order pursuant to *The Missing Persons and Presumption of Death Act* appointing a property guardian for the estate of a missing person;
 - (h) if the grantor and attorney are spouses, on their ceasing to cohabit as spouses as a result of an intention to end their spousal relationship; and
 - (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.

2002, c.P-20.3, s.19; 2004, c.21, s.17; 2014, c.22, s.8.

Decisions of property attorneys and personal attorneys

- 19.1(1)** This section applies if a grantor has appointed a property attorney and another person as a personal attorney.
- (2) Subject to subsection (3), the property attorney's decision is preferred to the decision of the personal attorney if:
- (a) it is unclear under the terms of an enduring power of attorney whether a decision lies within the authority of the property attorney or the personal attorney;
 - (b) the decision of the property attorney is inconsistent with the decision of the personal attorney; and
 - (c) the expenditure of money is required as a result of the decision.

(3) If the decision of the property attorney is inconsistent with the decision of the personal attorney, an application may be made by the property attorney, the personal attorney or the public guardian and trustee to the court for direction respecting which decision is to be followed.

2004, c.21, s.18.

Application to court

20 The public guardian and trustee or any other interested person may apply to the court for advice or directions with respect to an enduring power of attorney.

2002, c.P-20.3, s.20; 2004, c.21, s.19.

**PART III
General**

No liability in certain circumstances

21(1) An action taken by an attorney under a power of attorney is valid and binding in favour of a person dealing with the attorney or receiving any benefit from the attorney, and in favour of a person claiming under him or her, if that person does not know of the existence of one or more of the following circumstances:

- (a) the authority under the power of attorney is terminated;
 - (b) in the case of an enduring power of attorney that has apparently been signed and witnessed in accordance with sections 11 and 12:
 - (i) the grantor did not have the capacity to grant the enduring power of attorney pursuant to section 4;
 - (ii) the attorney has acted in violation of section 6; or
 - (iii) the enduring power of attorney does not meet the requirements of section 11 or 12.
- (2) No person is required to inquire into or ascertain the existence of one or more of the circumstances mentioned in subsection (1) if that person does not know of its existence.
- (3) The attorney is not liable to the grantor, or to the estate of the grantor, for an action taken under a power of attorney if:

- (a) any or all of the following circumstances occur:
 - (i) the authority under the power of attorney is terminated;
 - (ii) in the case of an enduring power of attorney that has apparently been signed and witnessed in accordance with sections 11 and 12:
 - (A) the grantor did not have the capacity to grant the enduring power of attorney pursuant to section 4; or
 - (B) the enduring power of attorney does not meet the requirements of section 11 or 12;

- (b) the attorney did not know of the existence of one or more of the circumstances mentioned in clause (a); and
 - (c) the attorney, with the exercise of reasonable care, could not have known of the existence of one or more of the circumstances mentioned in clause (a).
- (4) The attorney is not liable to the grantor, or to the estate of the grantor, for failing to act in pursuance of an enduring power of attorney if:
- (a) the attorney's appointment was a contingent appointment; and
 - (b) the attorney:
 - (i) did not know that the contingent appointment under the enduring power of attorney had come into effect; and
 - (ii) with the exercise of reasonable care, could not have known that the contingent appointment under the enduring power of attorney had come into effect.

2002, c.P-20.3, s.21; 2004, c.21, s.20.

Regulations

22 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) respecting any forms for the purposes of this Act;
- (c) respecting the appointment of a corporate attorney pursuant to section 8;
- (d) prescribing professional groups for the purposes of subsection 9.2(2);
 - (d.1) for the purposes of clause 16.1(2)(c), prescribing the maximum value of a gift;
 - (d.2) for the purposes of clause 17(1)(c), prescribing a fee schedule;
 - (d.3) for the purposes of sections 17 to 18.1, prescribing the form of accounting;
- (e) prescribing any other matter or thing required or authorized by this Act to be prescribed in the regulations;
- (f) respecting any other matter or thing the Lieutenant Governor in Council considers necessary or expedient to carry out the intent of this Act.

2002, c.P-20.3, s.22; 2004, c.21, s.21; 2014, c.22, s.9.

PART IV
Repeal, Transitional and Coming into Force

S.S. 1996, c.P-20.2 repealed

23 *The Powers of Attorney Act, 1996* is repealed.

2002, c.P-20.3, s.23.

Transitional

24(1) Subject to subsection (2), a power of attorney that has been executed before the coming into force of this section continues in effect and shall be dealt with pursuant to this Act as if it had been made on or after the coming into force of this Act.

(2) Subclauses 6(1)(a)(ii) and (iii), clause 6(1)(b), and subsection 6(2) do not apply to powers of attorney made before the coming into force of this Act.

2002, c.P-20.3, s.24.

Coming into force

25 This Act comes into force on proclamation.

2002, c.P-20.3, s.25.