



ALBERTA

M.O. 39/2020

MINISTERIAL ORDER

WHEREAS the Lieutenant Governor in Council made Order in Council 080/2020 under section 52.1(1) of the *Public Health Act* (PHA) on March 17, 2020 declaring a state of public health emergency in Alberta due to pandemic COVID-19 and the significant likelihood of pandemic influenza;

WHEREAS Order in Council 080/2020 has effect for 90 days following March 17, 2020 under section 52.8(1)(a) of the PHA;

WHEREAS section 52.1(3) of the PHA authorizes the Minister of Justice and Solicitor General, responsible for the *Personal Directives Act* (PDA), *Personal Directives (Ministerial) Regulation* (AR 26/1998), the *Powers of Attorney Act* (PAA) and the *Wills and Succession Act* (WSA) to make an order without consultation, to:

- (a) suspend or modify the application or operation of all or part of an enactment, subject to the terms and conditions the Minister prescribes, or
- (b) specify or set out provisions that apply in addition to, or instead of, any provision of an enactment

if the Minister is satisfied that doing so is in the public interest; and

WHEREAS I am satisfied that it is in the public interest to make such an order in respect of the PDA, AR 26/1998, PAA and WSA because there may be circumstances where it is not possible or medically safe for a maker, donor or testator to physically attend before a lawyer and sign a personal directive or power of attorney in the presence of a witness or a will in the presence of two witnesses, during the COVID-19 pandemic; and

THEREFORE, I, Doug Schweitzer, Q.C., Minister of Justice and Solicitor General responsible for the PDA, AR 26/1998, PAA and WSA, pursuant to section 52.1(2) of the PHA do hereby order that:

Personal Directives

1(1) The PDA is modified by adding the following after section 5(1):

(1.1) Subject to subsection (1.2), for the purposes of subsection (1)(c)(i) and (ii) and (d), persons are deemed to be in each other's presence while connected to each other by an electronic method of communication in which they are able to see, hear and communicate with each other in real time.

(1.2) Subsection (1.1) only applies if a lawyer who is an active member as defined in the *Legal Profession Act* is providing the maker of the personal directive with legal advice and services respecting the making, signing and witnessing of it.

(2) AR 26/1998 is modified

(a) in section 5 by adding the following after subsection (1):

(1.1) For the purposes of the signatures required by section 9 of Schedule 1, persons are deemed to be in each other's presence while connected to each other by an electronic method of communication in which they are able to see, hear and communicate with each other in real time.

(1.2) Subsection (1.1) only applies if a lawyer who is an active member as defined in the *Legal Profession Act* is providing the maker of the personal directive with legal advice and services respecting the making, signing and witnessing of it.

(b) in Schedule 1 by adding the following before section 10:

Note regarding signatures: In certain circumstances, persons are deemed to be in each other's presence while connected to each other by an electronic method of communication in which they are able to see, hear and communicate with each other in real time. See section 5(1.1) and (1.2) of the Regulation.

Powers of Attorney

2 The PAA is modified by adding the following after section 2(1):

(1.1) Subject to subsection (1.2), for the purposes of subsection (1)(b)(i)(A) and (B) and (ii), persons are deemed to be in each other's presence while connected to each other by an electronic method of communication in which they are able to see, hear and communicate with each other in real time.

(1.2) Subsection (1.1) only applies if a lawyer who is an active member as defined in the *Legal Profession Act* is providing the donor of the enduring power of attorney with legal advice and services respecting the making, signing and witnessing of it.

Wills

3 The WSA is modified:

(a) by adding the following after section 15:

Deemed presence

- 15.1(1)** Subject to subsection (2), for the purposes of section 15, persons are deemed to be in each other's presence while connected to each other by an electronic method of communication in which they are able to see, hear and communicate with each other in real time.
- (2)** Subsection (1) only applies if a lawyer who is an active member as defined in the *Legal Profession Act* is providing the testator with legal advice and services respecting the making, signing and witnessing of the will.

(b) by adding the following after section 19:

Deemed presence

- 19.1(1)** Subject to subsection (2), for the purposes of section 19(1), persons are deemed to be in each other's presence while connected to each other by an electronic method of communication in which they are able to see, hear and communicate with each other in real time.
- (2)** Subsection (1) only applies if a lawyer who is an active member as defined in the *Legal Profession Act* is providing the testator with legal advice and services respecting the making, signing and witnessing of the will.

This Order lapses, unless it is sooner continued by an order of the Lieutenant Governor in Council under section 52.811(3) of the PHA, at the earliest of the following:

- (a) 60 days after Order in Council 080/2020 lapses under section 52.8(1) of the PHA;
- (b) when this Order is terminated by the Minister under section 52.811(2) of the PHA because the Minister is satisfied that this Order is no longer in the public interest; or
- (c) when this Order is terminated by the Lieutenant Governor in Council under section 52.811(1)(c) of the PHA.

Dated at the City of Edmonton, in the Province of Alberta, this 15th day of May, 2020.



**MINISTER OF JUSTICE AND SOLICITOR GENERAL
OF THE PROVINCE OF ALBERTA**