



NOVA SCOTIA
BARRISTERS' SOCIETY

MEMORANDUM TO COUNCIL

From: Professional Standards (Wills, Powers of Attorney and Personal Directives) Committee

Date: February 27, 2026

Subject: Professional Standards (Wills, Powers of Attorney and Personal Directives) Standard – Powers of Attorney

For: Approval Introduction X Information

DATE February 27, 2026	Council	Introduction
	Council	Approval

Recommendation/Motion:

This is the introduction to Council of a proposed new standard – Powers of Attorney - by the Professional Standards (Wills, Powers of Attorney and Personal Directives) Committee. An equity lens was applied while drafting this standard. Moreover, a draft was provided to the equity committees who have advised that they have no comments. Upon being approved for introduction, the proposed standard will be circulated to the membership for comments.

Rationale / Executive Summary:

Though a standalone document, a Power of Attorney is part of estate planning along with a will and a personal directive. Estate planning includes appointing a designate to make decisions while a person is alive by way of a Power of Attorney pursuant to the *Powers of Attorney Act*, RSNS c 352. Moreover, amendments to the Act in SNS 2010 c. 70 and, more recently, SNS 2022, c. 23 create more stringent requirements. Should a person become incapacitated without having a Power of Attorney, it is then too late for that person to appoint one. When drafting a Power of Attorney, it is important to follow the process set out in the Act failing which the document could be invalid in its face.

Exhibit:

Draft Standard – Powers of Attorney.

Existing Standard	Proposed Standard	Rationale
N/A	<p style="text-align: center;">POWERS OF ATTORNEY STANDARD</p> <p>A lawyer must assess the capacity of the client to make a power of attorney [<i>link to the capacity standard</i>] and ensure it is properly executed.¹</p> <p>When taking instructions for a power of attorney, a lawyer should ascertain the extent of the decisions the attorney may make,² when the power of attorney comes into effect, and its duration.³</p> <p>A lawyer should advise the client about the statutory disqualifications for someone acting as the donor’s attorney⁴ and the role of a monitor,⁵ and confirm whether the donor wants to modify statutory requirements, such as:</p> <ul style="list-style-type: none"> • who to exclude from receiving notice when the attorney begins to act⁶ or resigns;⁷ • who to exclude from receiving an accounting;⁸ • in what circumstances the attorney may make a gift from the donor’s estate;⁹ and • whether multiple attorneys may act severally.¹⁰ <p>A lawyer should advise the client how to revoke the power of attorney.¹¹</p> <hr/> <p>APPLICABLE LEGISLATION</p> <p><i>Powers of Attorney Act</i>, RSNS, c. 352, as amended by SNS 2010, c. 70 and SNS 2022, c. 23.</p> <p><i>Hospitals Act</i>, RSNS, c. 208, ss. 59 (2), as amended by SNS 2005, c. 42, s. 86 and SNS 2014, c. 27, s. 8.</p> <p><i>Medical Act</i>, SNS 2011, c. 38, as amended by SNS 2014, c. 32, ss. 143-145.</p> <p><i>Personal Directives Act</i>, SNS 2008, c. 8.</p> <p>ADDITIONAL RESOURCES</p> <p>Law Reform Commission of Nova Scotia, <i>Powers of Attorney Act</i> https://lawreform.ns.ca/wp-content/uploads/2020/04/powers-of-attorney-act-dicussion-paper-2014.pdf</p>	<p>The Committee is of the opinion that lawyers need to make diligent enquiries of clients to meet the more stringent requirements for a valid power of attorney as a result of revisions to the Powers of Attorney Act in 2022</p>

PRACTICE NOTES

Regulations and Case Law

Although sections 21 and 22 of the Act authorize regulations to be made, as of the date of this standard no regulations have been enacted. Also, no cases have been reported that deal with the revised Act.

Capacity

The amended Act codifies a presumption of capacity.¹² However, given the extensive list of items set out in section 2A that the donor must understand to make a valid power of attorney, a lawyer should take and document instructions carefully, even beyond what is typical for taking instructions for a will [*link to the Taking Instructions* standard].

Execution

To be valid, a power of attorney requires two witnesses present at the same time with the donor and they cannot be “the attorney or the spouse, registered domestic partner, common-law partner or a child of the attorney.”¹³

Definitions are included in the Act, including that an “attorney” is a person who has authority “in relation to matters of property and finances....”¹⁴ This suggests that it may not be appropriate to combine a power of attorney with delegation of decisions pursuant to the *Personal Directives Act*.

Authority of Attorney

The attorney’s authority can be “specific” or “general” and cannot be sub-delegated unless specified in the document.¹⁵ Section 11 of the Act prohibits the attorney from making a gift from the donor’s estate, unless expressly provided in the document and it would not “compromise the estate’s ability to provide for the donor’s needs.”

Taking Instructions

A diligent lawyer should ask probing questions of the donor to ensure that the document meets the specific needs of the client. If the client has previously executed one or more powers of attorney for specific purposes (for example, in a shareholders’ agreement or at a bank or for assets in another jurisdiction), the lawyer should confirm whether the client intends to revoke the prior power of attorney document(s) and if it is necessary to give notice of revocation to the previously named attorney(s).¹⁶

Effective Date

Subsection 8 (1) of the Act provides for the immediate exercise of a power of attorney upon its execution. However, the donor can provide for its use only in specified circumstances, including incapacity of the donor.¹⁷ Care should be taken to identify who makes this determination, particularly when many individuals do not have easy access to a primary health care provider. You might consider whether an assessor as defined in the *Adult Capacity and Decision-making Act* would be appropriate.¹⁸ The attorney can be designated to make the determination.¹⁹

Disqualifications to Act as an Attorney

Section 9 disqualifies certain individuals from acting as an attorney:

- 9 (1) A person may not act as an attorney if the person
- (a) lacks capacity;
 - (b) has not reached the age of majority;
 - (c) has been convicted of an offence involving dishonesty;
 - (d) is an undischarged bankrupt;
 - (e) provides health care services or support services to the donor for compensation, unless the person is an immediate family member of the donor.
- (2) A person referred to in clause (1)(c) or (d) may act as an attorney if the person
- (a) has been granted a pardon for a conviction; or
 - (b) discloses the conviction or undischarged bankruptcy to the donor while the donor has capacity and the donor
 - (i) acknowledges the conviction or bankruptcy in writing, and
 - (ii) consents in writing to the person acting.
- (3) The authority of an attorney is suspended if the attorney becomes a person referred to in clause 1 (c) or (d), unless the requirements in clause (2)(b) are met.

Hospitals Act

The Act permits a power of attorney to exclude the operation of subsection 59 (2) of the *Hospitals Act*.²⁰ Care should be taken in drafting the document, so that it does not prevent the Public Trustee from acting if the named attorneys are unable to act.

Multiple Attorneys

Section 14 codifies the nature of authority for multiple attorneys, which can aid in drafting:

14 (1) A donor may appoint multiple attorneys to act jointly, severally or successively.

(2) Unless the power of attorney provides otherwise, the attorneys shall act jointly.

(3) Unless the power of attorney provides otherwise, where attorneys are acting jointly,

(a) a decision of the majority is deemed to be a decision of all; and

(b) where one or more of the attorneys dies, renounces the appointment, is legally incapacitated, is unwilling to act or after reasonable inquiries by another of the attorneys is unable to be found, the remaining attorney or attorneys may continue to act without that attorney or those attorneys.

Monitor

A feature of the Act is its oversight provisions. Section 16 creates the role of a monitor, who is entitled to visit and communicate with the donor, receive notice under several provisions, and receive and request an accounting from the attorney(s); the monitor also has standing to bring an application under the Act. An attorney cannot be the monitor.²¹ A diligent lawyer will review the duties thoroughly with the client to ensure the client understands the duties before naming a monitor or eliminating the position. If no monitor is desired, this should be specified in the document to reinforce that the donor considered this matter.

Notice of Acting/Resigning

Section 15 mandates that the donor and monitor be given notice that the attorney is acting under the document, subject to regulations and any specific clause in the power of attorney document. If there is no monitor, notice must be given to the donor's immediate family members, who include "a spouse, common-law partner, adult child, adult sibling or parent..."²² and a delegate appointed under a personal directive.

The Act requires an attorney who wishes to resign to provide notice to multiple individuals, including the donor's immediate family (or more extended family members in some cases), the monitor, and in certain instances the Public Trustee.²³

The lawyer should ask the client to identify family members who would be included in the statutory list and discuss with the client whether it is appropriate to modify the notice provisions in the document.

Accounting

Section 13 specifies the content of an accounting, but not a specified frequency, although subsection (2) acknowledges that the “donor may require an attorney to account to the donor on demand....” The lawyer should discuss with the client the frequency of reporting the donor expects and needs based on the donor’s assets and personal circumstances.

Revocation

Unless a donor is incapacitated, the donor may vary or revoke a power of attorney. Subsection 17 (3) requires that notice be given to “each attorney and such other persons as prescribed by the regulations.” The lawyer should encourage the client to maintain updated contact information for ease of providing notice if the client later varies or revokes the document. The lawyer should also remind the client to exercise care in dealing with financial institutions to avoid inadvertently revoking the lawyer-prepared power of attorney by signing a pre-printed power of attorney document with a financial institution.

Compensation

Under clause 18(1)(g), the court has authority to allow or disallow “all or any part of the remuneration claimed by an attorney....” Therefore, the lawyer should discuss with the donor the appropriate remuneration for the attorney(s) and include a statement of the donor’s intentions as guidance for the court, in the event an application is made.

Storage

The power of attorney is a powerful document. In keeping with the capacity requirements of section 2A, and specifically clause (2)(e), the lawyer should remind the client that the attorney could misuse the document and the client should exercise caution in storing and releasing the original document.

End Notes

1. *Powers of Attorney Act*, RSNS, c. 352, s.3, as amended.
2. *Ibid.*, s. 2A (2)(c) and s. 7.
3. *Ibid.*, s. 8.
4. *Ibid.*, s. 9.
5. *Ibid.*, s. 16.
6. *Ibid.*, s. 15.
7. *Ibid.*, s. 10.
8. *Ibid.* s. 13 (5).
9. *Ibid.*, s. 11 (1).

	<ol style="list-style-type: none">10. <i>Ibid.</i>, s. 14 (2).11. <i>Ibid.</i>, s. 17.12. <i>Ibid.</i>, s. 2A (1).13. <i>Ibid.</i>, s. 3 (1)(d).14. <i>Ibid.</i>, s. 1A (a).15. <i>Ibid.</i>, s. 7.16. <i>Ibid.</i>, s. 17.17. <i>Ibid.</i>, s. 8 (2).18. <i>Adult Capacity and Decision-making Act</i>, SNS 2017, c. 4, s. 3, as amended by SNS 2019, c. 8, s. 179 and SNS 2023, c. 15, s. 201 (b).19. <i>Powers of Attorney Act</i>, as amended, s. 8(4).20. <i>Ibid.</i>, s. 4.21. <i>Ibid.</i>, s. 16 (2).22. <i>Ibid.</i>, s. 1A (f).23. <i>Ibid.</i>, s. 10.	
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