

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE MINISTER OF PUBLIC SAFETY AND
SOLICITOR GENERAL

Emergency Program Act

Ministerial Order No. M162

WHEREAS a declaration of a state of emergency throughout the whole of the Province of British Columbia was declared on March 18, 2020 because of the COVID-19 pandemic;

AND WHEREAS individuals in British Columbia must be able to make enduring powers of attorney and representation agreements in a manner that reduces the threat of COVID-19 to the health and safety of persons;

AND WHEREAS section 10 (1) of the *Emergency Program Act* provides that I may do all acts and implement all procedures that I consider necessary to prevent, respond to or alleviate the effects of any emergency or disaster;

I, Mike Farnworth, Minister of Public Safety and Solicitor General, order that the attached Electronic Witnessing of Enduring Powers of Attorney and Representation Agreements (COVID-19) Order is made.

May 19, 2020

Date



Minister of Public Safety and Solicitor General

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Emergency Program Act*, R.S.B.C. 1996, c. 111, s. 10

Other: MO 73/2020; OIC 241/2020

ELECTRONIC WITNESSING OF ENDURING POWERS OF ATTORNEY AND REPRESENTATION AGREEMENTS (COVID-19) ORDER

Definitions

1 In this order:

“**attorney**” has the same meaning as in section 10 of the *Power of Attorney Act*;

“**communicate**” means communicate using audiovisual communication technology, including assistive technology for individuals who are hearing impaired or visually impaired, that enables individuals to communicate with each other by hearing and seeing each other;

“**electronic presence**” or “**electronically present**” means the circumstances in which 2 or more individuals in different locations communicate simultaneously to an extent that is similar to communication that would occur if all the individuals were physically present in the same location;

“**enduring power of attorney**” has the same meaning as in section 10 of the *Power of Attorney Act*;

“**notary public**” means a member in good standing of the Society of Notaries Public of British Columbia;

“**representation agreement**” has the same meaning as in section 1 of the *Representation Agreement Act*.

Application

2 This order applies during the period that starts on the date this order is made and ends on the date on which the last extension of the declaration of a state of emergency made March 18, 2020 under section 9 (1) of the *Emergency Program Act* expires or is cancelled.

Enduring power of attorney

3 (1) If an enduring power of attorney is signed and witnessed in accordance with this section,

(a) the requirements in section 16 (1) and (2) of the *Power of Attorney Act* in relation to an adult making an enduring power of attorney, the witnesses and, if applicable, the person signing the enduring power of attorney on behalf of the adult making the enduring power of attorney, signing and witnessing the enduring power of attorney in the presence of each other are satisfied, and

(b) the requirements in section 17 (1) of the *Power of Attorney Act* in relation to an attorney and the witnesses signing and witnessing the enduring power of attorney in the presence of each other are satisfied.

(2) When making an enduring power of attorney, the enduring power of attorney may be signed and witnessed while the following are in each other’s electronic presence:

- (a) the adult who makes the enduring power of attorney, and, if applicable, the person signing the enduring power of attorney on behalf of the adult who makes the enduring power of attorney;
 - (b) the witness.
- (3) Before exercising authority granted in an enduring power of attorney, the enduring power of attorney may be signed and witnessed while the attorney and the witness are in each other's electronic presence.
 - (4) For certainty, nothing in this section prevents some of the individuals described in subsections (2) and (3) from being physically present and others from being electronically present when signing and witnessing an enduring power of attorney.
 - (5) The witness referred to in subsections (2) and (3) must be a lawyer or a notary public.
 - (6) An enduring power of attorney may be signed by signing complete and identical copies of the enduring power of attorney in counterpart.
 - (7) Copies of an enduring power of attorney are identical even if there are non-substantive differences in the format between the copies.
 - (8) An enduring power of attorney made in accordance with this order must include a statement that it was signed and witnessed in accordance with this order.

Representation agreement

- 4** (1) If a representation agreement is signed and witnessed in accordance with this section,
 - (a) the requirements in section 13 (3.01) of the *Representation Agreement Act* in relation to the signature of an adult making a representation agreement being witnessed are satisfied, and
 - (b) the requirements in section 13 (4) (b) of the *Representation Agreement Act* in relation to the adult making a representation agreement and the person signing the representation agreement on behalf of the adult being in each other's presence when signing are satisfied.
- (2) When making a representation agreement, the representation agreement may be signed and witnessed while the following are in each other's electronic presence:
 - (a) the adult who makes the representation agreement, and, if applicable, the person signing the representation agreement on behalf of the adult who makes the representation agreement;
 - (b) the witness.
- (3) For certainty, nothing in this section prevents some of the individuals described in subsection (2) from being physically present and others from being electronically present when signing and witnessing a representation agreement.
- (4) The witness referred to in subsection (2) (b) must be a lawyer or a notary public.
- (5) A representation agreement may be signed by signing complete and identical copies of the representation agreement in counterpart.

- (6) Copies of a representation agreement are identical even if there are non-substantive differences in the format between the copies.
- (7) A representation agreement made in accordance with this order must include a statement that it was signed and witnessed in accordance with this order.
- (8) For certainty, for the purposes of the following sections in the Schedule to the Representation Agreement Regulation:
 - (a) section 1 (b) of Part 2 in Form 3 (Certificate of Person Signing for the Adult);
 - (b) section 4 (b) of Part 1 in Form 4 (Certificate of Witnesses)a person may certify that the person was present if the signing of the representation agreement was done in accordance with this section.