

# Ontario passes emergency order to let people remotely witness wills amid the pandemic

*Betsy Powell*

The COVID-19 crisis has prompted the Ontario government to quietly pass legislation this past week allowing the virtual witnessing of wills and powers of attorney.

The move responded to a surge of interest among people wanting either to create or update their wills while following government advice to stay at home and practise social distancing, said Toronto estate planning lawyer Jordan Atin.

Never before in his 25 years of drafting wills, Atin said, has he fielded so many inquiries — a trend lawyers all over the world are experiencing. “We’re actually doing triage so the wills that we need get done as quickly as we can,” he said.

The pandemic obviously has more people — particularly front-line health care workers — thinking about their own mortality. “I just had an email from two front-line doctors who need wills right away,” Atin said this week.

For others, the coronavirus threat is simply leaving people more time on their hands. “Wills are one of those things people put off, like cleaning out the garage,” said Atin, an adjunct professor at Osgoode Hall law school.

But how could someone draft a will when we’re all being asked to stay clear of each other and Canadian law requires that it be signed in the presence of two witnesses, who can’t be a beneficiary, a spouse or a minor?

So this past week, Ontario’s Attorney General made an order under the Emergency Management and Civil Protection Act that says the witness requirement can be satisfied by audio and video technology.

While a “revolutionary” move in Ontario, other jurisdictions allow for the video execution of wills, especially in the United States, Atin said.

For the duration of the pandemic, the law now allows for a will to be signed by three people who do not need to be in the same room together.

It works like this: The testator and two witnesses — one of them must be a lawyer or paralegal — connect on video. The two witnesses watch the will maker sign the document.

That document is then sent by courier, not email — digital signatures aren’t allowed — to the first witness, say a lawyer such as Atin, who must then sign it, again on video, before sending it — again by courier — to the other witness. He or she then signs it, watched by the other witnesses, perhaps on a Zoom call.

“Now you’ve got a valid will.” (Handwritten wills, called holographs, are also legally