

Lori Duffy provides comment to the *Canadian Lawyer Magazine* on the challenges of witnessing wills during a pandemic

May 3, 2021

WeirFoulds Partner Lori Duffy was interviewed by Zena Olijnyk of the *Canadian Lawyer Magazine* for an article published on April 27, 2021 on the challenges of witnessing wills during a pandemic.

For lawyers who practise in trusts and estates law, the virtual shift brought on by the pandemic has been complex. First, in this practise area there is still a reliance on paper and witnesses (who are not family members of the client) being physically present. Secondly, many of the clients are often older, frailer and, given COVID-19, more fearful of leaving the safety of their home. Finally, there is the issue of determining someone's capacity or if they are being unduly influenced by a person in the same room as the client.

Lori says, "challenging is the only word I can use to describe what it's been like over the past year." She adds that many of her clients do not understand why they can't just sign their documents, why two independent witnesses are needed and why there is a requirement, at least until relatively recently, for "wet" signatures on paper rather than electronic signatures. One of Duffy's solutions in the early days was to have her daughter filling in as one of the required independent witnesses since she was close at hand.

With most provinces, including Ontario, now allowing for the electronic witnessing of wills, lawyers still feel they must be vigilant if they are not in the same room as the client.

"There is a requirement that lawyers be able to determine the capacity of a person, or whether they are being unduly influenced by someone – that's definitely harder to do when you're doing things online," says Lori. She adds that, "normally, when you're dealing with a client in person, you can watch their face for clues, get a sense of how the family functions." Even if a relative who is a beneficiary brings the client to the office, Lori says she makes sure to talk to them in private, something she cannot ensure through Zoom calls.

There could also be a genuine need to have someone tech-savvy near the client to deal with any troubleshooting that's needed. "Some of my older clients certainly cannot master Zoom on their own," she says.

Lori then goes on to share the story of one of her lawyer colleagues who sent her a video of an online call with a client, wanting her thoughts on his capacity. "He was clearly not well. He was dozing off in between, and he kept looking over to one side on the Zoom call." It is the type of situation, Lori says, when some specific questions might have to be asked, such as "Who is with you? What are you looking at there?"

[Click here](#) to read the full article, "Where there's a will, there's a way: the challenges of witnessing wills during a pandemic" in the *Canadian Lawyer Magazine*.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110

Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110

Fax: 905.829.2035