



**Lancaster, Brooks & Welch LLP**  
BARRISTERS AND SOLICITORS

**It is a matter of trust  
the Importance of the Power of Attorney**

By Robert WP Welch  
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From time to time I am called upon to speak to community groups and gatherings about the importance of wills and powers of attorney. I often say that in our present day and age, when, in many cases, peoples' bodies are outliving their minds, the power of attorney is as important as a will as an estate planning and preservation tool. In a will one establishes what is to happen to one's estate when he or she is no longer living. In a power of attorney one can designate who would be responsible for one's estate or health if the person is alive but incapable.

There are two types of powers of attorney, a power of attorney for property and a power of attorney for personal care. They are documents in which a mentally competent adult can appoint someone to look after certain matters in the event of future incapacity, caused by illness, accident or in some cases absence.

In these documents usually one names a spouse, child or close friend. In a property power of attorney, the attorney must be at least 18 years old. A personal care attorney must be at least 16. In all cases the person must be trustworthy.

The attorney for property has authority to handle one's financial or property matters or specific aspects of one's financial or property matters. One should provide, in the document, that it will survive any period of one's mental incapacity. By doing so, one eliminates the necessity of an application for statutory guardianship.

The attorney's duty is first to the individual who appoints him or her, to be able to account for actions if the individual recovers. The attorney's duty is, secondarily but importantly, also to anyone who would benefit from the individual's estate if the individual does not recover.

The attorney for personal care may be given broad sweeping authority or that authority may be limited to certain aspects of personal care. If the person becomes incapable of making his or her own treatment decisions, the Health Care Consent Act will recognize the authority of the attorney for personal care.

The attorney's duties in this document include acting diligently and in good faith, to, wherever possible foster independence, to consult, where possible, with the incapable person in personal care decisions, along with that person's supportive friends and family, and to attempt to maintain regular personal contact between the incapable person and the supportive friends and family. *These are important responsibilities.*

That's why it is crucial to designate in these documents, trustworthy and dedicated people. It is a matter of trust!

*The foregoing information is provided to you for information purposes only.  
We caution you to obtain legal advice specific to your situation in all circumstances*

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