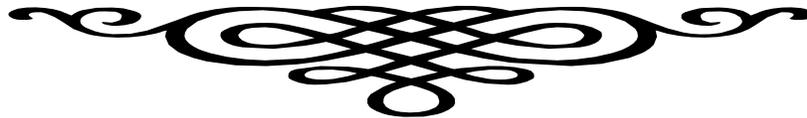




## *DO YOU NEED A WILL?*



We spend a considerable part of our life acquiring and protecting our assets, but some of us spend very little time considering what we would want done with our assets in the event of our untimely death. Some of the disadvantages of dying without a Will are:

- (1) Your children may receive their share of the Estate at too young of an age, and in the absence of a Will they will be entitled to receive their share at age 18. Typically, the Executor should have the ability to use their share for education, transportation, and housing until the balance of funds is turned over to the children, often at age 21, 23 or 25.
- (2) Any assets that you may have wanted to be retained for the family's future security, or heir-looms that you wish to have been retained by a certain individual will likely be sold.
- (3) Without a Will you are not given the opportunity to select Guardians for your minor children. This could result in delays before the Court is able to appoint the appropriate Guardian, and can be very disruptive to the children, in the event that there is a contest over who should be the Guardians.
- (4) Without naming an Executor in your Will, the Court must appoint someone to administer your Estate, and one of your relatives must apply to the Court for permission. This may not be consistent with your wishes, and could lead to a delay in those parties getting involved, and/or being found. If they have no intention of applying for the Administration of your Estate, they must provide the Court with renunciation of their rights. The Administration may be done by someone who has little interest in the administration. They may reluctantly take on the administration because of an imposed duty, with little or no enthusiasm for the work that they have accepted. This can cause delays, frustrations, and perhaps losses.
- (5) Without a Will there is no opportunity to provide for preference of burial or cremation, if desired.



WARNOCK | KRAFT | ANDERSON  
LAWYERS & NOTARIES

### **The Cost of a Will**

Unless very complicated, *Warnock Kraft Anderson* generally charges **\$450.00 (plus GST)** for a single Will, or **\$650.00 (plus GST)** for joint Wills for both husband and wife. If you choose to have our office prepare your Will, Enduring Power of Attorney and/or Personal Directive at the same time, we offer a package price which we can discuss with you when you attend our office.

### **What is the Procedure for having a Will drafted by a Lawyer?**

You should make an appointment to come in and see a lawyer, by telephoning our receptionist and arranging a good time for an interview which will take between half an hour and an hour. It is also a good idea if you fill out our standard Wills Questionnaire (attached) in advance, and bring it with you to your appointment. (It is okay to leave a few blanks where you might need more clarification before you make a final decision).

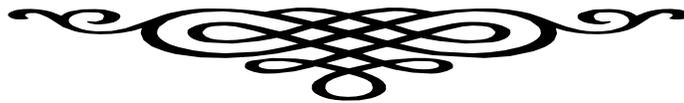
You should also bring your existing Will, if any, to the interview in case the lawyer can simply update your Will with a shorter and cheaper Codicil.

Following your appointment you may wish to take some time to decide on outstanding issues. After all remaining decisions have been made, the lawyer will prepare a Will based on your decisions given during the interview, and the receptionist will telephone you when it is ready for formal signing before two independent witnesses at our offices. Until your Will has been formally signed it has no effect or use.

After signing your Will, you can either take your Will with you for safekeeping in a safety deposit box, or leave it at our office where we store them in a fireproof vault at no charge. If your Will is left with us, it is a good idea to leave a photocopy with your Executors and/or with your other important papers.



## ***DO YOU NEED AN ENDURING POWER OF ATTORNEY OR PERSONAL DIRECTIVE?***



### **ENDURING POWER OF ATTORNEY**

A *Power of Attorney* is a document which gives legal authority to someone (called an "Attorney"), to act on behalf of another individual (called a "Donor"), in dealing with the matters affecting the assets of the Donor. For example: to sign a Transfer of Land, to withdraw money from a bank account, to sign a contract, to negotiate or settle a lawsuit.

*Powers of Attorney* do not give authority to deal with healthcare treatment issues.

Depending upon how it is written, an *Enduring Power of Attorney* can come into effect immediately, and will **not** come to an end if you become mentally incapable of managing your own affairs; or it can "spring" into effect only when, and if, the Donor becomes mentally incapable. Sometimes this is called a "*Springing Power of Attorney*". A common form of *Enduring Power of Attorney* states that it will **not** have any effect, unless or until the Donor has become mentally incapable, as proven by a medical statement of one or more doctors. You can, accordingly, draft an *Enduring Power of Attorney* that may never come into effect because you may never become infirm or mentally incapable of looking after your own affairs. In this way an *Enduring Power of Attorney* is similar to an insurance policy, which will save your family the considerable expense of having to ask the Court to declare you a dependent adult, with someone named to manage your affairs.

Unless there are restrictions placed upon the Attorney by the *Enduring Power of Attorney*, the Attorney has authority to do anything on behalf of the Donor that the Donor would lawfully be able to do without an Attorney. It is sometimes recommended that there be some restrictions placed on the powers given in an *Enduring Power of Attorney*.

Again, an *Enduring Power of Attorney* does not give the Attorney the right to make decisions as to what kind of medical treatment the Donor will receive, or where the Donor will reside. For those kind of issues a *Personal Directive* is required. The cost of an *Enduring Power of Attorney* is usually **\$300.00 (\$450.00 for both husband and wife), plus GST**, unless the document becomes overly complex and several interviews are required. The cost is less if the *Enduring Power of Attorney* is drafted in conjunction with a *Power of Attorney* or *Will*.



### **PERSONAL DIRECTIVE also known as a LIVING WILL**

*Enduring Powers of Attorney* deal with the **estate and assets** of an individual, i.e. handling of money, making of contracts, etc. *Personal Directives* deal with **health care, personal care, and medical treatment issues**.

The *Personal Directive's Act*, which now allows an individual, while they are mentally competent, to give a *Personal Directive (sometimes called a Living Will)*, setting out their wishes about medical and health decisions in the event that they lose mental capacity to make decisions on their own.

Considerable thought and planning should go into a *Personal Directive*, otherwise, this kind of directive can cause potential problems for the agent (person appointed to carry out the personal directive). For example, without planning, there may not be enough money in the maker's bank accounts to honor the requirement for the cost of having a private nurse, or in doing renovations to the house to accommodate this request.

*Personal Directives* can be as general or specific as the maker wishes them to be. The following are such examples, and are not intended to be exhaustive:

1. I do not wish my life to be prolonged by artificial means when I am in a coma or a persistent vegetative state or, when, in the opinion of my physician and other consultants, I have no hope of regaining awareness and higher mental functions.
2. If I am incapacitated within the meaning of Clause 1, I wish only to be kept comfortable and free from pain. This means that I may be given pain medication even though it may dull consciousness and indirectly shorten my life.
3. For the purposes of Clause 1, I refuse consent to extraordinary or heroic techniques that artificially maintain a life-sustaining function of my body and are used only to prolong my life without improving the chances for cure or reversal of my condition.
4. For the purposes of Clause 1, I do not want to prolong life at all costs. I hereby give authorization for the withholding or withdrawal of treatment, except for comfort measures within Clause 2, if my physician and my Agent determines that either my death is imminent, or that I have no reasonable medical expectation of recovering to a point where life sustaining procedures become unnecessary.

The formal requirements of a *Personal Directive* are that they must be: (1) in writing; (2) dated; (3) signed at the end by the maker, in the presence of a witness; (4) be signed by the witness, in the presence of the maker. Neither the agent, nor his spouse, nor the maker's spouse can be witnesses. Consultation between the Donor's doctor and lawyer is often a good idea before a *Personal Directive* is finalized.

The cost of a *Personal Directive* is generally between \$300.00 and \$450.00, plus GST, and depends upon the number of interviews required, and any consultations with your doctor. If a *Personal Directive* is drafted in conjunction with an *Enduring Power of Attorney*, the cost becomes less.