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YOUR UNFAIR ADVANTAGE IN LAW

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Wills and Powers of Attorney-

- Preparing for the disabilities of life, and for your death.
- Wills prepare for your death.
- Powers of attorney prepare for any future disability that you may suffer.
- There is no truth to the fear of many people that as soon as you have your will prepared you are going to die, or it expresses your wish to die.
- Wills and powers of attorney, are like fire insurance policies. We all have fire insurance policies on our homes and apartments and contents, but none of us want to lose all of our possessions in a fire.

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DEFINITIONS

WHAT IS A WILL?

A Will is a written legal document by which

- Your trustees are appointed
 - You specify your funeral arrangements and burial wishes
 - Your debts are paid
 - Your assets are determined and collected
 - Your net assets are distributed in accordance with your wishes
 - You make charitable donations
 - You designate the guardianship of children under the age of majority
 - You establish trusts for infant children and dependent adults
-
- Wills prepare for your death.



Linda H. Kolyn

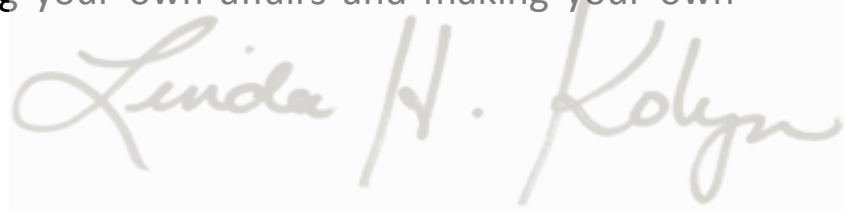
POWERS OF ATTORNEY DEFINED

WHAT IS A POWER OF ATTORNEY?

A Power of Attorney is your written instructions or permission to one or more individual(s) specified in the Power of Attorney, to do certain things for you under certain conditions:

1. loss of your mental capacity;
2. living out of the province for part of the year;
3. extensive travel;
4. extreme arthritis or rheumatism;
5. your inability to write your own cheques;
6. stroke;
7. Alzheimer's;
8. dementia;
9. old age.

A Power of Attorney allows your Attorney to attend to your financial and health care needs while you are physically alive but not capable of conducting your own affairs and making your own decisions.

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IS THERE MORE THAN ONE KIND OF POWER OF ATTORNEY?

Yes.

There are currently two types of Powers of Attorney, a Personal Care Power of Attorney and a Financial Power of Attorney.

Powers of attorney prepare for any future disability that you may suffer.

A handwritten signature in cursive script, reading "Linda H. Kolyn", is displayed in a light gray font.

CONFIDENTIALITY

As your lawyer, any information I **receive from you in the course of** advising on your wills, powers of **attorney and estate planning**, and respecting the inventory of your **assets at the time**, is **confidential**, and must remain confidential.

I may become the first person in Canada to learn of your earlier marriages, or children or family living elsewhere. I will be the last person in Canada to tell any of your friends, relations or the Church community about what I have learnt about you in the course of preparing your will, powers of attorney and estate plan.

The rules of solicitor client privilege that govern me in this situation dictate that these are your “secrets” which I must keep confidential, unless and until you instruct me to the contrary.



Linda H. Kolyn

PROCEDURES FOR WILLS AND ESTATE PLANNING ADVICE

A. WILLS

1. To prepare a Will, I must know something about your family, your assets and what you want your Will to achieve. In my first interview, I assess these things, answer questions and take your instructions.
2. After the initial interview, I will prepare your Will, send it to you for approval, make any changes required, and meet with you to have you sign it.
3. An example of a simple Will is one which leaves everything outright to a surviving spouse, or, alternatively, to surviving adult children, in equal shares.

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ADDITIONAL CHARGES

4. Your Will will be more expensive if your family situation, your assets, or your wishes are not simple and so more of my time and expertise is used. For example, if you need to consider:

- a. beneficiaries with special needs, like children, or the disabled;
- b. an estate plan involving trusts;
- c. a family situation which complicates the Will, like a separation, support obligations, or a second marriage and family;
- d. Guardianship;
- e. assets which require special thought, like cottages, art collections, or a business.

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6. I also charge more if we have to leave the office to meet with you, or if you need a "rush" Will.

Estate planning advice may help you to save money in probate fees, legal fees, executors' fees and taxes. This advice can be very valuable; however, it takes extra time and thought, which also adds to its cost to you.

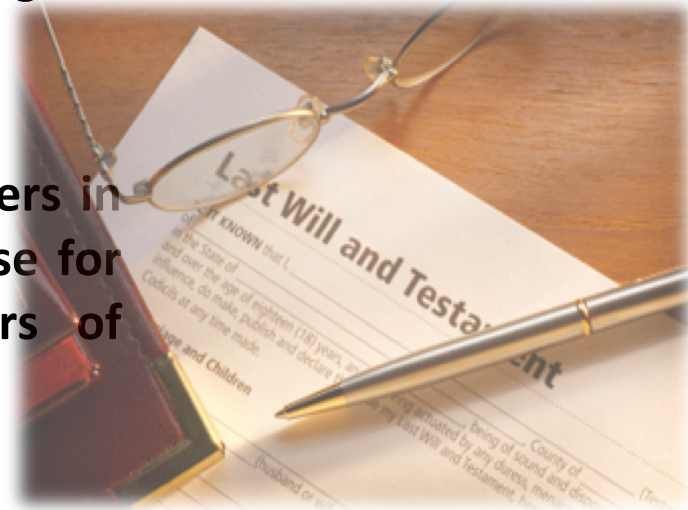
- Unless your assets are numerous;
 - in many jurisdictions;
 - subject to testamentary or inter vivos trusts;
 - and if you fill in my "Personal Data Sheet" which is an inventory of your assets and your liabilities, (which is given or forwarded to you upon request)
-
- the time spent to give you estate planning advice is usually 45 minutes to one and one half hours, if such consultation is both necessary and required.

A handwritten signature in cursive script, reading "Linda H. Kolyn". The signature is written in a dark ink on a light-colored background.

Most people who have a financial planner or accountant may not need estate planning advice.

In these situations, I will bill my fee according to the time and expertise required to advise you and ensure effective implementation of my advice, should you so instruct. My hourly rates for estate planning advice currently range in the vicinity of \$295.00 per hour, plus HST.

My hourly billing rate is generally charged by **lawyers** in the Greater Toronto area who have been in **practise** for as little as five years. I have thirty four **years** of experience.



If you are looking for an assurance of value for money, or value added (to use the internet and e-commerce term), look no farther than my hourly billing rate.

Linda H. Kolyn

CURRENT STYLE OF WILL DRAFTING

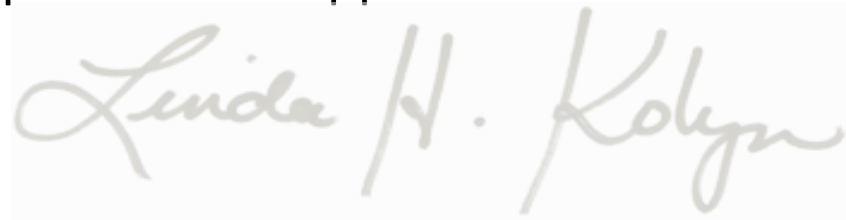
Today wills are drafted to be forward looking, and as all-embracing in their language as possible.

Most of the wills drafted in the province today are trust wills, where your property is given to your trustees, executor[s], and executrices, your designated representatives, upon certain trusts , which in accordance with the law, they must fulfil.

CAVEAT FOR WILLS PREDATING 1985

If your will was signed prior to Jan 1 1985, you should have your will reviewed and probably updated.

On January 1 1985 the province of Ontario enacted both the Family Law Act and the Succession Law Reform Act, changing the laws relating to family property and dependent's support claims on marriage dissolution, and upon death.

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Powers of Attorney

FINANCIAL POWER OF ATTORNEY

A Financial Power of Attorney allows your Attorney to:

- (1) collect all your income;
- (2) pay all your bills;
- (3) rearrange your bank accounts;
- (4) sell your home or your condominium or your other property;
- (5) and make other financial purchases and decisions for you.

Should you need to live in a nursing home, and should you be unable to write your own cheques, your Attorney makes the application for nursing home care and signs cheques on your behalf.

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PERSONAL CARE POWER OF ATTORNEY

A Personal Care Power of Attorney gives your Attorney the right to make decisions respecting your personal care and your health care, and to make arrangements and implement your wishes for your hospitalization, health care and the termination of life procedures.

GENERAL OR SPECIFIC

Both types of Powers of Attorney, can be very general or very specific, depending on what you believe your future needs will be both financially and for personal care and health care.

Your Power of Attorney is **your chance** to make **your arrangements** the way **you want**. Should you become mentally or physically incapable, your attorney will then act in accordance with your wishes.



Linda H. Kolyn

WHY DO I NEED A FINANCIAL POWER OF ATTORNEY?

To allow the person(s) of your choosing to assist you with your care in the event of incapacity or absence from the jurisdiction.

WHY DO I NEED A PERSONAL CARE POWER OF ATTORNEY?

- (1) To let hospitals and their staff know who has power to authorize operations, procedures, medical experimentation, hook up and disconnection of life support systems;
- (2) to specify the type of hospital or nursing home care you wish - private/ semi-private / ward room;
- (3) to designate a specific facility or not, as you prefer, (i.e. Ukrainian / Italian speaking);
- (4) to allow your family doctor to assist your family with your health care decisions.

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SO WHAT?

If one of the nine circumstances that are detailed at the beginning of this article happen to you, a government clerk from the Public Trustee and Guardian's Office will manage your financial affairs and make your decisions.

This will involve the slowness and lack of insight often associated with Government dealings.

This may also mean that your placement in an old age home or a nursing care facility will be convenient to the Provincial Government i.e. - where a spot exists for you at the time it is required. Such a place will likely not be your choice, nor the choice of your children, nor spouse. Your family will have no say in the matter. Such a place will most likely not have any doctors or nurses who speak any languages that you speak, other than English.

Or, if you do not have valid Powers of Attorney, your family will incur large legal bills to have an attorney appointed pursuant to court order.

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WHO SHOULD I GIVE MY POWER OF ATTORNEY TO?

- I recommend that you give your Power of Attorney to a number of people, either jointly or alternatively.
- If your spouse is still alive, designate your spouse as the first Attorney.
- Then designate one of your children, or all of your children jointly or severally, as alternatives.
- If one or more of your family members are good at care giving, make them your personal care attorneys.
- If other members of the family are good money managers, make them your financial attorneys.
- If you have neither a husband nor children, nominate a close friend or relative over 18, whom you know to be a financially responsible individual.
- If you have no one else to nominate as Attorney, consider nominating your lawyer.

Linda H. Kolyn

SHOULD MY ATTORNEY(S) BE THE SAME AS MY TRUSTEE(S) UNDER MY WILL?

While every individual's circumstances should dictate a customized solution for their situation, very often, if your spouse, your other relatives or your close friend(s) are willing to be your Trustees upon your death, they may also be willing to undertake the responsibilities of being your Attorney under a Financial Power of Attorney or a Health Care Power of Attorney or both.

Accordingly, **maybe** your Attorney(s) should be the same people as your trustees under your Will.

SPECIAL RESPONSIBILITY OF YOUR TRUSTEE UNDER YOUR WILL

Your trustee or trustees appointed under your will have the legal right to specify the type of funeral arrangements and the type of burial that you will receive.

It is always much better for you to specify the type of funeral arrangements that you want, the nature and cost of the burial, and any instructions respecting flowers, cremation, and other matters.



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CAN I LIMIT MY POWER OF ATTORNEY?

- Yes.
- You can say that your Power of Attorney can only be used under certain circumstances.
- You can decide whether your property can be used to make gifts or loans to family members, or not.
- You can specify whether your Attorney will receive moneys from your bank accounts as a fee for acting as your Attorney, or not.
- This is **your chance** to be specific about the type of nursing home or hospital accommodation **you want**, if you become incapable in your later years.
- Think about what you want your future financial and health care arrangements to be like.
- Then speak to your lawyer.
- Be clear about your instructions, and any questions you have.
- In my office, you always have the option of speaking to me directly before finalizing your Powers of Attorney.
- I often "custom tailor" documents to your specific needs and your own family situations.

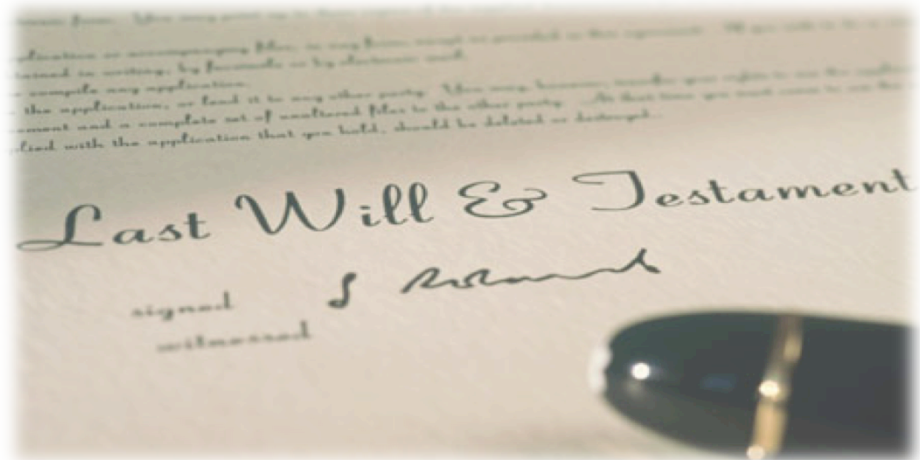
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SIGNING OF POWERS OF ATTORNEY AND WILLS

All my clients read and discuss all of their documents before they sign them.

You are asked to check for accuracy in spelling and content of the Powers of Attorney. Enough time is scheduled so that changes can be made in your documents at the signing meeting, if your instructions change.

Once your Power of Attorney is in finalized form, both the second witness and I watch you sign the Powers of Attorney.



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SAFEKEEPING AND RELEASE OF YOUR POWER(S) OF ATTORNEY AND WILLS

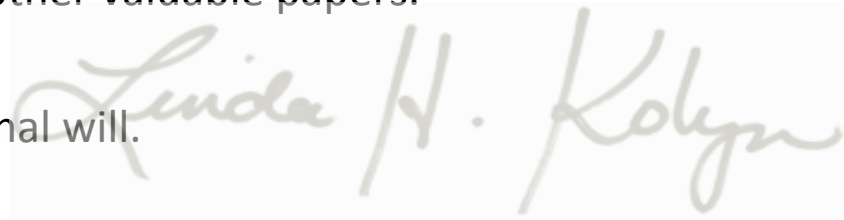
In order to protect my clients, I have you direct me, in writing, not to release your Powers of Attorney until:

- (1) you advise me in writing that you wish the Power of Attorney delivered to someone; or
- (2) your doctor writes me a letter indicating that it is necessary to release the Powers of Attorney because of your medical incapacity.

In my practice, you sign two original Powers of Attorney and all the originals are kept in the office vault.

Should you request, you are provided with a photocopy of the Power(s) of Attorney for filing in your safety deposit box or with your other valuable papers.

You receive a photocopy of your will, or the original will.

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AREN'T POWERS OF ATTORNEY COSTLY?

Most lawyers charge approximately \$75.00 for each standard Power of Attorney drawn and executed. Photocopying charges and HST are also standard additional charges.

Some lawyers offer reduced rates for multiple Powers of Attorney or Powers of Attorney executed at the time of drawing up or revising a Will or Codicil or estate plan.

Should a court application be necessary to have your Attorney appointed pursuant to court order, legal fees, disbursements and HST may equal or exceed 50 to 100 times the cost of having a Power of Attorney drawn and executed.

AREN'T WILLS COSTLY?

The current cost for a will ranges between \$300.00 and \$800.00 plus hst. An estate planning consultation may not be necessary in your situation.

The litigation arising from estate disputes is usually at minimum, 100 times more costly than having a will prepared.

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THERE IS NO EXCUSE NOT TO HAVE A WILL

Exercise responsible stewardship of your assets, and follow the Biblical counsel to be wise and leave an inheritance for your grandchildren; have your wills prepared today.

Do You Know??? Excerpted from the pamphlet that is available for you to download from the Do You Know Series under Videos & Downloads, Wills & Powers of Attorney

Unless your will correctly specifies your upcoming marriage, once you are married, your previous will is subject to successful Court challenge.

The biggest problem with Will Kits and Do it Yourself Wills (that are not holographs) is that these wills are often incorrectly witnessed or improperly executed, leading to expensive, lengthy, and protracted litigation, most often the lawyers' costs of all parties is paid for in this type of estate litigation out of the estate, reducing the payout to beneficiaries.



Linda H. Kolyn

You may need a Financial Power of Attorney to allow your Attorney to

- collect all your income,
- pay all your bills,
- rearrange your bank accounts,
- sell your home or your condominium or your other property,
- make other financial purchases and decisions for you.

You now need a Personal Care Power of Attorney

- To let hospitals and their staff know who has power to authorize operations, procedures, medical experimentation, hook up and disconnect life support systems
- To specify the type of hospital or nursing home care you wish (private/ semi private/ ward room)
- To designate a specific facility ,or not, as you prefer
- To allow your family doctor to assist your family with your health care decisions

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I would be pleased to help you “ plan for the worst and hope for the best” .

If you wish to consult me to have your existing wills reviewed, or wills and/or powers of attorney drafted, I would be pleased to help you “ plan for the worst and hope for the best.”

If I can help you, anyone of your friends, family or work acquaintances “ plan for the worst and hope for the best” in any of my practice areas, which are:

- Prenuptial Agreements
- Wills
- Power of Attorney
- Family Law
- Estate Law
- Civil Litigation
- Employment Law

Please call me. 416.236.8746.

A handwritten signature in cursive script, reading "Linda H. Kolyn". The signature is written in a dark ink on a light background.

LINDA H KOLYN

EMPLOYMENT LAW

FAMILY LAW

BUSINESS LAW

WILLS, ESTATE ADMINISTRATION & LITIGATION

CIVIL LITIGATION

*CONSULTATION, PREVENTATIVE
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- Further information providing some of the information highlighted during this presentation should be available on this website [www. LitigateToWin.ca](http://www.LitigateToWin.ca) under the Video and Downloads section.
- If you would like a complimentary copy of my article on Powers of Attorney, and Wills, please contact me.
- If you know of another group of people who would benefit from this presentation, or a presentation on domestic contracts please have someone from that group contact me or forward this presentation to them

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Thank You

The foregoing is meant as legal information, and does not create a lawyer-client relationship between any reader, and the law firm of Linda H. Kolyn.

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