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**Estates&Trusts Newsletters**  
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## — WeirFoulds Estates & Trusts Newsletter

WeirFoulds

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### Digests

Featured in this issue are digests of recent decisions involving powers of attorney.

#### **Power of attorney — Revocation and variation**

H executed continuing and enduring power of attorney appointing husband as attorney until his death and two sons, M and R, as joint and several attorneys thereafter — Two years later, H was forced to move to long term care home due to dementia — H's husband made her financial and health care decisions until his death — M and R then assumed responsibility for H's financial affairs — While M claimed he and R were unable to work cooperatively to manage H's financial affairs, R believed brothers could continue to work together despite some differences — M brought application to be appointed guardian of H's property — Application dismissed — Attorney for property appointed by person who subsequently became incapable could be removed only on basis of strong and compelling evidence of misconduct or neglect — By appointing both M and R as attorneys, H made it clear she wanted both sons involved in managing her financial affairs — There was no evidence of misconduct or neglect warranting their removal — While M and R might have differing views about expenditures that should or should not be made on behalf of H, both had been acting in good faith — Application to terminate subsisting power of attorney had to be dismissed.

*White v. White*, [2017 ONSC 4550](#), [2017 CarswellOnt 11798](#) (Ont. S.C.J.).

#### **Power of attorney — Types — For property — Duty and standard of care of attorney**

Mother and father operated hotel business but father passed away — Mother suffered fall, spent time in hospital, rehabilitation hospital and retirement home, and she now lived with daughter-in-law and grandson — Son had been living in basement of bungalow parents owned but was not addressing mail or other issues that needed to be resolved respecting business, and he did not visit mother in hospital or in retirement home — Mother gave powers of attorney for property to daughter-in-law and bookkeeper — Son claimed attorneys were mismanaging mother's affairs — Son brought application for relief, including suspension of attorneys' authority to act — Application dismissed — There must be strong evidence of misconduct or neglect on part of attorneys before they were removed — There was no evidence that attorneys were improperly managing mother's affairs — Issues raised by son were unsubstantiated or they related to claims he would have against mother or business — Fact

son did not agree with manner in which attorneys were conducting mother's affairs did not mean that they were conducting affairs improperly — There was no basis to suspend attorneys' authority to manage mother's affairs.

*Groh v. Steele*, [2017 ONSC 3625](#), [2017 CarswellOnt 9050](#) (Ont. S.C.J.).

### **Power of attorney — Revocation and variation**

In 2008 applicant executed enduring power of attorney, appointing his three children and his wife as his attorneys — It was "springing" power of attorney, to take effect only when applicant could no longer make reasonable judgments concerning his estate — Applicant separated from wife, and quarrels broke out between applicant and his children, who were concerned about applicant's mental abilities — Named attorneys signed declaration and activated 2008 enduring power of attorney, without advising applicant — Applicant executed revocation of 2008 enduring power of attorney, and on same date executed replacement enduring power of attorney appointing his brother as his attorney, with two alternatives — Applicant sought determination of whether he had mental capacity to revoke 2008 enduring power of attorney and create new one — It was determined that revocation and creation were valid — Person should be able to execute or revoke enduring power of attorney so long as person understands nature and effect of decision, even if person is not capable of minding person's own affairs by virtue of mental infirmity — Court would start down 'slippery slope' if it attempted to determined extent to which decision was rational or appropriate — Opinions of doctors differed as to level of applicant's infirmity — Applicant expressed ample reasons for decision to change his attorney from his estranged wife and children to his brother and two alternates — Revocation and execution of new enduring power of attorney were valid as they were both competently executed and met applicable test — New enduring power of attorney was expressed not as springing power of attorney, but rather to take effect immediately upon execution — Applicant's brother was now applicant's enduring attorney, and no declaration as to applicant's mental status was necessary.

*Pirie v. Pirie*, [2017 ABQB 104](#), [2017 CarswellAlta 635](#), [27 E.T.R. \(4th\) 136](#) (Alta. Q.B.).