



**What We Heard:
Amendments to the
*Enduring Power of
Attorney Act***

October 2020



Background

An enduring power of attorney is a legal document in which an individual (the “donor”) gives one or more trusted people (the “attorney” or “attorneys”) the authority to manage their money and property on their behalf if they become ill or suffer a disability.

“Attorney” in this case does not mean that the person is a lawyer. It means that they are a trusted person who has been appointed by the individual to act for them if they are unable to:

- manage their property; and,
- make legal decisions on their own.

An enduring power of attorney is an important option for individuals faced with the possibility of becoming incapable of managing their finances. Many people choose to have an enduring power of attorney because it is a private, non-intrusive and inexpensive way to choose a person they know and trust to make decisions and manage their finances.

In Yukon, the *Enduring Power of Attorney Act* (“the Act”) is the piece of legislation that sets out the rules for creating and using enduring powers of attorney. Updates to the Act are being considered in order to make enduring powers of attorney more accessible and to enhance protections against their misuse. The Government of Yukon is also considering measures to clarify the responsibilities of attorneys and provisions that will make it easier for Yukoners to make an enduring power of attorney document. These revisions would reflect changes to similar acts across Canada.

Questions were designed to get input on the following amendments being considered:

- whether Yukoners should be able to make an enduring power of attorney document without assistance from a lawyer;
- whether Yukoners are interested in using a registry for enduring powers of attorney;

- whether forms should be included in the legislation so that people may make their own document if they are not able to hire a lawyer; and,
- whether stronger protections and oversight mechanisms should be required, including:
 - a way to report financial abuse;
 - rules to stop certain people from acting as an attorney;
 - notice requirements for attorneys; and,
 - mandatory accounting measures for attorneys.

Engagement Process

Purpose

We asked Yukoners their thoughts on how the *Enduring Power of Attorney Act* should be updated. Our goal in engaging the public, partners and stakeholders was to learn which options reflect the needs and expectations of Yukoners and Yukon's legal community.

Process

An engagement process was held between March 10 and May 10, 2020. First Nations governments and stakeholders were contacted directly by email and mail with an information package, which included specific questions. A news release was also issued and an online survey was posted on EngageYukon for the public to provide their thoughts.

We will use the information gathered through this engagement to make final decisions about how to update the Act.

What We Heard

During the engagement process, we received a total of 20 responses to the online survey. Respondents answered with the following:

- Do you believe that requiring a person to obtain legal services makes it less likely that they will make an enduring power of attorney? **Yes – 70 per cent No – 10 per cent Not sure 20 – per cent**

- Do you believe there should be a way to authenticate an enduring power of attorney that does not require a person to hire a lawyer? **Yes – 80 per cent, No – 15 per cent, Not sure 5 per cent**

- If a standardized form were available, would you consider using it? **Yes - 95 per cent, Not sure – 5 per cent**

- Do you believe people with the following traits should be excluded from acting as attorneys?
 - A person who is under the age of 18? **Yes – 85 per cent, No – 10 per cent, Not sure 5 per cent**
 - A person who is under a permanent guardianship order? **Yes - 75 per cent, No - 5 per cent, Not sure 20 per cent**
 - A person or corporation that provides personal care to the individual for profit (with the exception of the donor’s family members)? **Yes – 90 per cent, No – 10 per cent**
 - A person who has been convicted within the last 10 years of certain criminal offenses including assault, sexualized assault, theft, fraud or breach of trust (unless the donor states that they are aware of the conviction and would like the person to act as their attorney anyway)? **Yes - 85 per cent, No - 5 per cent, Not sure – 10 per cent**

- Do you believe a voluntary reporting system is needed so that family members or concerned people may report concerns of abuse or neglect by an attorney to an impartial public authority who can review the attorney’s actions? **Yes - 80 per cent, No – 10 per cent, Not sure – 10 per cent**



- Should an attorney have to provide records of their actions upon request in the following situations:
 - To the individual granting the enduring power of attorney, at their request; **Yes – 85 per cent, No – 10 per cent, Not sure – 5 per cent**
 - If the individual is not mentally competent, to a person named in the document at their request; **Yes – 80 per cent, No – 10 per cent, Not sure 10 per cent**
 - If no one is named in the document, to a close family member or close friend upon request; **Yes – 15 per cent, No – 65 per cent, Not sure 25 per cent**
 - To another attorney named in the document, at their request; **Yes – 75 per cent, No – 15 per cent, Not sure 10 per cent**
 - If the attorney’s term ends, to the next person responsible for the individual’s property within 6 months; **Yes – 85 per cent, No – 10 per cent, Not sure 5 per cent.**

- Should attorneys have to provide notice once they begin acting? **Yes – 85 per cent, No – 5 per cent, Not sure 10 per cent**

- If a registry were available would you use it? **Yes – 60 per cent, No – 10 per cent, Not sure 30 per cent**

Stakeholders in the legal community were asked the same questions, and 2 additional questions. The additional questions were:

- Do you agree with the proposed standard of care for attorneys? **Yes – 50 per cent, No – 50 per cent;** and
- Do you agree with the proposed limitations on liability of attorneys; **Yes – 100 per cent. No – 0 per cent**

Analysis

The engagement results demonstrate support for the proposed measures. There was strong support for measures to make enduring powers of attorney more accessible through standardized forms and simpler authentication methods.

A large majority of respondents agreed with proposals to increase protections and oversight. There was strong support for a system that would allow people to report misuse or neglect, and for measures to allow the attorney's actions to be reviewed at any time. Rules to prevent some people from acting as attorneys were also supported. In comments, many respondents cautioned that disclosure of information should be limited and should only happen if the person granting the powers gave specific directions allowing it. A majority agreed that they would use a registry if it were available.

What's next?

A review of similar acts in all parts of Canada, and reviews from expert panels over the previous 20 years, was used to identify gaps in Yukon's Act, setting out options for updating the legislation. Information gathered from the engagement will help to decide which of these options are best suited to Yukon.

Participation

Engagement Methods

- **Online Survey:** A survey was available online at www.engageyukon.ca from March 4 to April 22, 2020. Background information was attached to the survey, describing the purpose of the engagement and providing an overview of the proposed changes. There were a total of 20 responses to the survey.
- **Traditional Media:** A media release was issued on April 3, 2020, at the beginning of the engagement period.
- **A Discussion Document:** A discussion document with information and invitations to engage were sent directly to several stakeholders and partners (First Nations governments, the Law Society and Canadian Bar Association, seniors organizations and others) advising of the engagement period and

inviting comment. Comments were accepted until May 10, 2020.

Participation by the numbers

- 3 completed responses to the discussion document by stakeholders.
- 20 completed surveys.
- 3 emails were received by the department.

Notification

Respondents were informed about the engagement by letters sent directly to them and a news release was sent out to the public.