

APPENDIX Z
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Ministry of the
Attorney
General of Ontario

18 King St. E.,
Toronto, Ontario.
August 8, 1975.

Mr. Robert Normand, Q.C.,
President, Uniform Law Conference of Canada,
Quebec, P.Q.

Dear Mr. Normand:

*Re: Powers of Attorney and
Legal Incapacity*

Three Canadian law reform bodies have considered and reported on the topic of the law relating to the terminating effect of mental incapacity on powers of attorney: the Ontario Law Reform Commission in its *Report on Powers of Attorney (1972)*; the Law Reform Commission of Manitoba in its *Report on Special Enduring Powers of Attorney (1974)*; and the Law Reform Commission of British Columbia in its Working Paper No. 12, *Powers of Attorney and Mental Incapacity*. All three commissions recommended the creation of a special power of attorney which would survive the subsequent mental incapacity of the donor of the power.

While there is general agreement among the Commissions as to the need for such legislation, there is vast disparity in the recommendations of the Commissions with respect to the safeguards necessary to protect the interests of a donor of an enduring power of attorney. An even greater range of opinion with respect to safeguards exists among law reform bodies when the reports by Law Commission (England), *Powers of Attorney*, Law Com. No. 30, Cmnd. 4473 (1970) and the Law Reform Commission of New South Wales, *Working Paper on Powers of Attorney (1973)*, are considered.

To my knowledge, none of these reports has, as yet, been implemented, although legislation based on the Ontario Report was introduced for first reading in 1973. If one province enacts legislation allowing for the creation of an enduring power of attorney, problems could arise with respect to the effectiveness of the power to deal with property in another province. In addition, there seems to be considerable positive interest within the legal profession in several provinces regarding the creation of this type of power of attorney.

It would appear that this is a propitious time to attempt to arrive at a uniform Power of Attorney Act, or at least a uniform Act with respect to enduring powers of attorney.

I, therefore, respectfully suggest that the matter of a power of attorney which would survive the mental incapacity of its donor be added to the Conference agenda and that a resolution be put forward referring this matter as a joint project to the Ontario, Manitoba and British Columbia Commissioners and that they prepare a report for consideration at the 1976 meeting.

Yours Sincerely
Stephen V. Fram,
Counsel,
Policy Development Division.