

# Law Offices of Howard S. Dymant

**CAPACITY: "To be, or not to be" that is the question!**



Greetings!

The Test for Capacity differs when applied to the ability to make a Will, a Power of Attorney or to Marry.

To quote Justice Mandhane, in the recent Decision of [Tanti v. Tanti et al, 2020 ONSC 8063](#) the test for capacity"...highlights emerging issues that lie at the intersection of family law, estates law, and elder law."

The Tanti decision opines that Marriages between the very old and the very young raise eyebrows and turn heads. In popular culture, a 'May-December' marriage invariably provokes the ire of adult children who deem the younger spouse a "gold-digger" and plot to protect their inheritance." The Decision is an entertaining read.

COVID-19 has accelerated many changes in the law of this Province not the least of which is Will and Estate Planning. For

example, a marriage will no longer revoke a previously drawn Will. However welcome this may be, it creates new problems in and of itself. A person could have the Capacity to marry which requires a lower standard than that required to prepare a Will. That could leave the new wife, figuratively speaking, out in the cold. This and other recent and coming changes in the law of Wills and Powers of Attorney make it a good time to review your existing Will and Powers of Attorney.

My Office now carries out all Consultations, Will and Estate Planning including execution, by Zoom™, so revising or preparing your Will and Powers of Attorney or simply just consulting with me is a very convenient and comfortable process.

To read an excellent article on this issue written by a colleague of mine, you may click [here](#). If you prefer to read the well written Court Decision as handed down, you may click [here](#).

If I can help you in any other way, please feel free to contact me at:  
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