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## EXECUTIVE SUMMARY

Powers of attorney allow individuals to appoint someone that they trust, known as the attorney, to manage their business or personal affairs in the event that they become incompetent and unable to manage their affairs. Often, individuals will contemplate the appointment of successor attorneys if the original attorney is unable to act. *The Powers of Attorney Act*<sup>1</sup> provides the legislative authority for creating enduring powers of attorney in Manitoba. The Act allows the authority given by a donor to an attorney to endure despite the mental incompetence of the donor after the execution of the power of attorney.<sup>2</sup>

*The Powers of Attorney Act* requires that once an attorney has assumed power under a power of attorney he or she can only resign with judicial approval.<sup>3</sup> This is the case even where the donor had expressly named a substitute attorney in contemplation of the possibility that the original attorney could no longer act. In the Commission's view, this provision creates unnecessary cost and expense for people who are prudently engaged in modern estate planning. There is no procedural benefit to court intervention when an attorney wants to resign and a substitute attorney is already identified. Accordingly, the Commission recommends the Act be amended to allow an attorney to renounce without judicial approval in order to carry out the donor's intentions.

This report is limited to reviewing one particular aspect of *The Powers of Attorney Act* which has been identified by legal practitioners as problematic. It forms part of a series of reports entitled *Creating Efficiencies in the Law*, which seek to address discrete, straightforward issues that, in the Commission's view, can be improved with relatively simple legislative amendments.

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<sup>1</sup> CCSM c P97.

<sup>2</sup> *Ibid*, s 10(1).

<sup>3</sup> *Ibid*, s 21.