



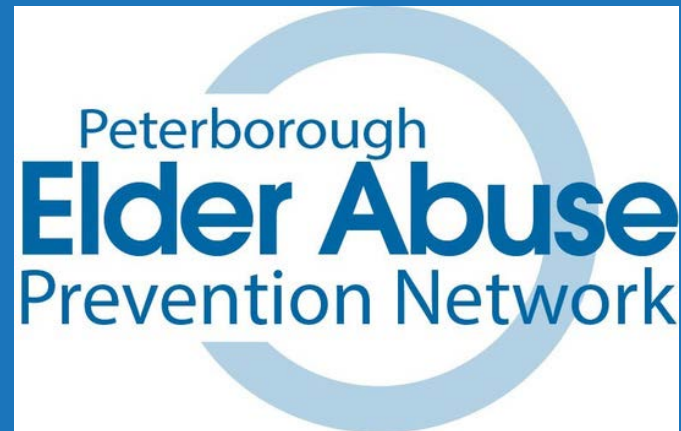
Power of Attorney 101:

The Key Info Everyone
Needs to Know About
Mental Capacity and
POA's



A close-up photograph of two hands, likely belonging to an elderly person, clasped together in a prayerful or reverent gesture. The hands are positioned over a colorful beaded necklace. The necklace features multiple strands of small, round beads in red, blue, green, and yellow, interspersed with larger, flat, circular metal discs. The hands are resting on a light-colored, textured fabric, possibly a rug or a piece of clothing. The lighting is soft, highlighting the texture of the skin and the vibrant colors of the beads.

LAND ACKNOWLEDGEMENT



WEBINAR HOUSEKEEPING

Communication

All attendees will be muted during the webinar.

ASL Interpreters:

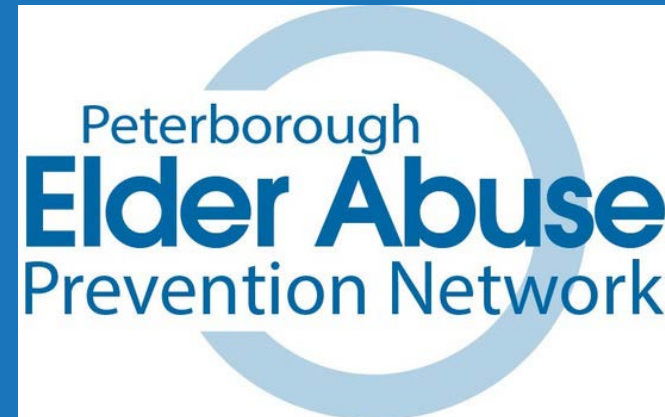
Image and name of Interpreters will be visible during the webinar.

Recording

A recorded version of this webinar will be available on EAPO and PEAPN's websites.

Adjusting Speaker Image Size:

Drag the line between the video frame and slides to the left (adjust at beginning of the webinar).



WEBINAR HOUSEKEEPING

Speakers

Will be visible while presenting and for the Question/Answer session.

Questions

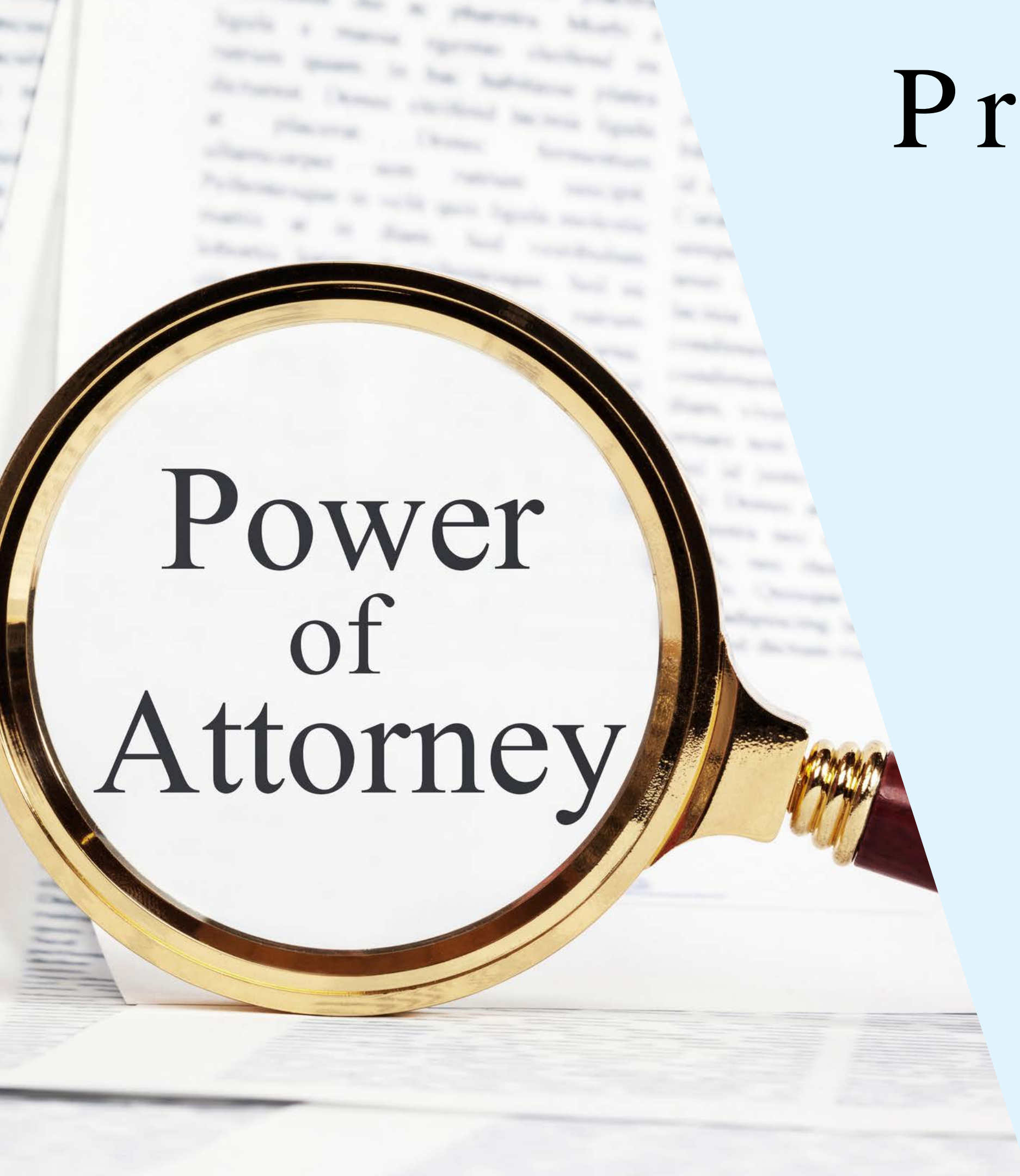
Type your questions in **Question/ Answer box**. A response will be posted during the webinar or asked to speaker after the presentation.

Chat Box:

Post comments during the session.

Evaluation

After the session, a pop-up screen will appear to complete survey. Your feedback and suggestions for future webinars is appreciated.



Presentation Flow

- Opening remarks
- Presentation : CanAge
- Presentation : Peterborough Police Service
- Panel Discussion
- Question and Answers



Laura Tamblyn Watts

CEO, CanAge



GUEST SPEAKER

Laura Tamblyn Watts is the Founder and CEO of CanAge, Canada's national seniors' advocacy organization. Laura is a passionate advocate on a variety of urgent issues affecting older Canadians, including long-term care and home care, financial security, elder abuse, health care, ageism and inclusion of marginalized communities.

Laura previously served as Chief Public Policy Officer at the Canadian Association of Retired Persons before establishing CanAge at the onset of the Covid 19 pandemic. Since then, CanAge has emerged as a go-to media commentator and trusted voice for Canadian seniors, underscored by Laura's more than 20 years' experience defending the rights and dignity of older people as a lawyer and thought-leader.



Raeann Rideout

Director, Provincial Partnerships
& Outreach, EAPO



**Elder Abuse
Prevention
Ontario**

Raeann has for the past 17 years been actively engaged with community stakeholders and service providers, in her role as the Central East, Regional Consultant, and now the Director of Partnerships and Outreach with Elder Abuse Prevention Ontario.

She takes the lead role in the engagement of building collaborative partnerships, whether locally or nationally, with her 23 years of experience, working in the field of elder abuse.

Raeann has been an instructor for the Foundations of Elder and Prevention Course at Trent University and has co-authored/published various research articles on the complexities of elder abuse.

GUEST
SPEAKER



Detective Constable

Jenny Fitzsimmons

Domestic Violence Coordinator,
Elder Abuse Investigator &
Vulnerable Persons
Peterborough Police Service

GUEST
SPEAKER

TODAY'S TOPIC

Mental Capacity, POAs and Red Flags



AGENDA

1. Welcome & Introduction
2. Keynotes:
 - Laura Tamblyn Watts
 - Capacity
 - The Role of an Attorney
 - Red Flags and What to Do About Them
3. Audience Q & A
4. Stay in Touch, Resources & Acknowledgements

The image is a full-page background featuring a scenic landscape of a mountain lake. The left side of the image is covered by a semi-transparent red overlay. A diagonal line separates the red area from the natural color of the landscape on the right. The landscape includes steep, forested mountains, a calm lake reflecting the scenery, and a clear sky with some clouds. In the top left corner, there is a small white horizontal line.

About CanAge

CanAge 

WHO WE ARE

- **CanAge** is Canada's National Seniors' Advocacy organization.
- We are a non-partisan non-profit organization that educates, empowers and mobilizes people on the issues that matter most to older Canadians and their caregivers.
- We work to advance the rights and well-being of Canadians as we age in order to live vibrant and connected lives.

Case Study #1: The New Best Friend

Mrs. Bernstein is an 86-year old woman, living in a suburban neighbourhood. Recent widow. Increasingly confused. Arthritis and a recent fall. New younger friend Brenda. Starts helping with tasks and chores.

Investment reports have too small print. Brenda takes Mrs. Bernstein to a lawyer and has a new POA drawn up allowing Brenda to make decisions right away, and continuing into incapacity (Continuing POA)

Brenda instructs Mr. Sanjay Singh, Mrs. Bernstein's investment advisor, to start selling off significant investments and cashing them out. Mr. Singh wants to confirm the instructions with Mrs. Bernstein, but she doesn't answer her phone or other correspondence.

Brenda insists she has a valid Power of Attorney which is active right away, and that she is acting on Mrs. Bernstein's instructions. Mr. Singh is worried that Mrs. Bernstein might be financially abused, but does not know what to do.

Case Study #2: Unsuccessful Son in the Basement

Mr. Song Li is 78 and his wife, Mrs. Patricia Li is 79 – rural community. Mr. Li is the caregiver for his wife, who has mild-to-moderate dementia. Their son Young Li, aged 47, has remained dependent on them for years. Lives in basement. History of substance abuse.

Young Li - starts a new business - seed money. He takes his mother to her new investment advisor Ms. Clarke, and does most of the talking. Tells advisor his mother wants to significantly invest in his company .

Ms. Clarke talks to Mrs. Li who presents well and agrees with everything her son is saying, and keeps repeating “Young is such a good boy. Of course I believe in him”.

Ms. Clarke is very worried. She does not know Mrs. Li well and there is nothing of note on her file to prevent the transaction. She advises Mrs. Li that start-up businesses have a high failure rate and are therefore high risk, but Ms. Li insists she wants to make the investment.

Case Study #3: The Toothy Charmer Son

Mrs. Maria Farris is a very proud 68-year old woman who uses two canes to help get around. She opened an account with online access to her investments as she figured it would save her having to attend meetings in person.

Her investment dealer, Mr. Chung, met Maria's son Vincenzo on several occasions as he would drive her downtown to the firm's offices. Mr. Chung was always impressed by his sharp professionalism, his charm and his care for his mother.

Mr. Chung started to notice some out of character and worrying trades happening. When he called Mrs. Farris, she seemed very confused and foggy. Mr. Chung is worried about privacy, but even more worried about Mrs. Farris' mental capacity.

Mr. Chung decides to reach out and call her son Vincenzo about his worries about his mother's capacity and about the trades.

The next day, Mrs. Farris comes into the office limping and bruised. She tells Mr. Chung to stay out of things and says she wants to cash out her accounts. Mr. Chung is bewildered.

Preparing the ground

We all know these conversations can be difficult, but you should talk to your clients early and often about their wishes in the event that they start to show signs of cognitive decline or financial abuse – and document the discussions.

- ☒ Share the documentation with your clients to ensure that they understand and agree with it.
- ☒ Make a habit of observing and regularly noting your client's ability to understand financial information, their decision-making style, and their overall investing personality.
- ☒ Understand the relationships your clients have with other professionals, such as a lawyer or accountant, as well as family members. Who are the people your client seeks advice from?
- ☒ Encourage your client to appoint a power of attorney and provide you with a copy of the documentation (preferably notarized) and ensure that it is kept up-to-date.
- ☒ Alternatively, have your client appoint a trusted contact with no power over the account – someone you are authorized to speak with should you become concerned about your client's welfare. Document it and confirm it regularly with your client.
- ☒ If your client has appointed a power of attorney or trusted contact, ask your client to introduce them to you.
- ☒ Ensure you fully understand and are up-to-date on your dealer's procedures for handling these types of client issues. Know who to call and what resources are available to you and your client.

Red Flags – Financial Abuse

Signs to watch for

Here are some signs to watch for:

- Sudden reluctance to discuss financial matters.
- Deference to a previously uninvolved party.
- Sudden appearance of someone previously uninvolved presenting a power of attorney.
- Instructions inconsistent with, and potentially detrimental to, an agreed-upon financial plan.
- Unusual transfers of funds.
- Out-of-character instructions that would result in the generation of one large amount or several small amounts of cash for no apparent reason.
- Sudden lack of response to efforts to contact them.
- Abrupt unexplained changes to a power of attorney, will or trusted contact.
- Increasing isolation from family or friends.
- Signs of physical neglect or abuse.

Red Flags – Mental Capacity Issues

▪ Signs to watch for

Cognitive decline often is gradual and inconsistent, with a client behaving normally some days and erratically on others.

Here are some signs to watch for:

- Persistent or episodic significant memory loss, such as forgetting instructions they have given or repeating orders and questions.
- Taking longer to complete financial tasks, such as completing forms or reviewing *Fund Facts*.
- Decreased understanding of previously understood concepts.
- Increasing difficulty making investment decisions.
- Changes in ability to do everyday math.
- Confusion about time and place – missing appointments.
- Broad mood or behavioural swings – increased passivity, anxiety or aggression.
- Changes in personal appearance, lack of grooming.

What to do

Early intervention will help safeguard your client's assets and ensure that you and your firm meet your regulatory and legal obligations.

- Remember and respect who your client is: the account holder is still the ultimate authority. If you develop concerns, try first to discuss them with your client.
- If you have concerns, ask another staff member sit in on the discussion to take notes so that you can be fully present in the conversation while maintaining good documentation.
- Document your observations, notify your supervisor and follow your firm's internal procedures.
- Regulatory and privacy rules can be complex. If you are uncertain, discuss any question with your supervisor or other expert before contacting a power of attorney or trusted contact or taking any other action.

What About Mental
Capacity?



Image: © V. Yakobchuk/Fotolia

WHAT IS CAPACITY

- Understand and Appreciate = consistent choice
- Anyone can lose capacity at any time due to illness or accident
- Older adults may be at greater risk due to age-associated illnesses – dementia
- Ageism or age discrimination also results in assumptions of incapacity

CAPACITY CONTINUUM

Capable

Incapable



SUBSTITUTE DECISION-MAKING

2 Domains = 2 Documents (most of the time)

POA - Personal Care

- Where you live
- Health care decisions
- How you live in the world
- The "lead" attorney

POA - Property

- Money
- Real Estate
- Investments
- "Stuff"

~~P~~ANNING FOR FUTURE DECISIONS

Capable



You decide

Incapable



Someone else decides
(substitute decision-maker)

TYPES OF POAs

1. "General" POA

Capable

- Active right away

Incapable

- Ends at a point of incapability



TYPES OF POAs

2. Continuing POA

Capable

- Active right away

Incapable

- Continues past point of incapability



TYPES OF POAs

3. "Springing" POA

Capable

- NOT active right away
- Created, but dormant

Incapable

- STARTS at the point of incapability



TYPES OF POAs

4. Limited POA

Capable

Incapable

- For a specific duration and purpose



POAs ACROSS THE COUNTRY

- Laws different in every legal jurisdiction
- Don't use POAs from other provinces!
(Hard and expensive)

Attorney is fiduciary w/ common law duties, including:

- Stay within scope of authority delegated
- Exercise reasonable care & skill
- Must not make secret profits
- Cease to exercise authority if POA revoked
- Must not exercise POA for personal benefit
- Cannot assign or delegate authority to another person
- Cannot make/change/revoke a **Will** on behalf of donor

DECISION-MAKING

Who Makes Your Personal Care Decisions if Incapable?

Capable

You make decisions

Incapable

- 1. Guardian (court)
- 2. POA Personal Care
- 3. (Consent Capacity Board)
- 4. Spouse/Partner
- 5. Children (adult)
- 6. Parents
- 7. Siblings
- 8. Other relative

*Note – the detailed list in the Health Care Consent Act should be relied on

DECISION-MAKING

Who Makes Your Property Decisions If You Are Incapable?

Capable

You make decisions

Incapable

1. Guardian (court)
2. POA Property
3. Public Guardian and Trustee - they don't want your business!

****No Default List****

- An Attorney for property must be at least 18 years old.
- An Attorney for personal care must be at least 16 years old.
- Must be Capable
- Attorney for personal care cannot be your health care provider unless spouse, partner or relative
- If more than one Attorney is appointed, the Attorneys must act jointly, unless the power of Attorney provides otherwise
- If attorney does not meet requirements, POA is invalid

Duties Specifically of an Attorney for Property

- Section 32 of the *Substitute Decisions Act*
- Manage property in a manner consistent with decisions for personal care
- Explain to incapable person the powers & duties
- Encourage incapable person's participation in decisions – consult
- Preserve the property bequeathed in Will
- Make expenditures as reasonably required for incapable person, his or her dependants, support, education & care
- “best interests” of grantor / has discretion
- Detailed records & keep accounts

Duties Specifically for an Attorney for Personal Care

- Section 66 of the *Substitute Decisions Act*
- Tasked with making decisions on behalf of incapable grantor with respect to personal care
- Must make decisions in accordance with incapable grantor's wishes, if known
- If wishes unknown, must make decision based on incapable grantor's best interests
- Duty to explain/consult and foster contact with friend's and family
- Must keep records of all decisions Must also consider whether decision will:
 - Improve quality of life
 - Prevent quality of life from deteriorating
 - Reduce the extent/rate which quality of life is likely to deteriorate
- Also must consider whether benefit of decision will outweigh the risk of harm
- May also be required to make decisions in accordance with *Health Care Consent Act*

REVOCATION

- As long as you are mentally capable of making a Continuing Power of Attorney for Property, you can take it back (cancel or revoke it). To do so, state in writing that you revoke it.
- Two people must witness you signing this statement. Both people must be with you when you sign. The same people who are not allowed to be witnesses for a Power of Attorney are also not allowed to be witnesses for this statement.
- There is no special form for this statement, which is referred to as a "revocation".
- It is a good idea to give a copy of the revocation to anyone who has seen or has a copy of the Power of Attorney. If you can, get the original Power of Attorney back and destroy it.
- If you do revoke it, inform everyone concerned with your income or property, such as your bank manager or pension plan administrator. Give them a copy of the revocation.

Things to Consider: Property and Personal Care

Property:

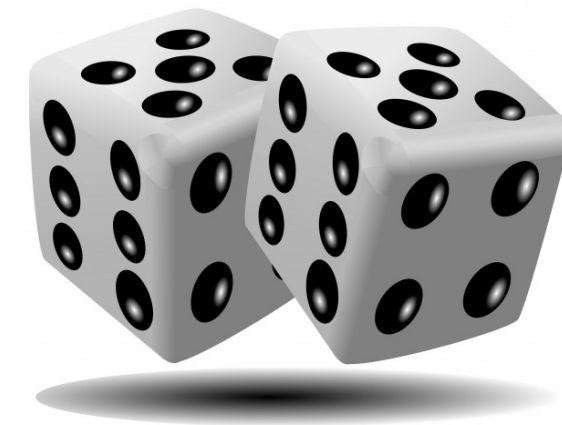
- Is the person willing to act as your attorney?
- Does he/she have any of their own financial troubles?
- Does he/she understand the responsibilities of an attorney?
- Can you trust him/her not to misuse your money and make prudent financial decisions?

Personal Care:

- Is this person willing to talk to you about personal care issues and understand your goals, values, and beliefs?
- Is he/she willing to honour your wishes as much as possible?
- Is this person comfortable and willing to ask questions of your medical care provider and talk to your doctors and healthcare team? Can make hard decisions?

POA 101

How Can Powers of Attorney be Used and Misused?



POA MISUSE: UNDUE INFLUENCE

- Taking over the “will of the person”
- Family members and friends
- Can challenge the decisions based on this
- Can in some cases be considered criminal but usually hard to pin down

POA MISUSE: ABUSE

- Like a marriage – easy, but...
- Significant area of exploitation
- Most common form of elder abuse
- Can literally bankrupt the donor – BE VERY CAREFUL about WHO you appoint

COMMON MYTHS: ATTORNEY

- She isn't using the money anyway...
- It isn't really her money anyway - Dad earned it for **ME**
- I'm just going to inherit it anyway - it's **MY** money she's spending
- I don't care what she says - she gave **ME** the power of attorney and I know what's best for her...
- She's so out of it, she'll never even miss it.

COMMON MYTHS: DONOR

- My daughter knows what I'd want.
- She'd never do anything to hurt me.
- I want to be fair to my kids – appoint all of them equally and this will make it all “even.”
- I can't take it back!
- My power of attorney from Manitoba is just fine. I've already taken care of it all there...

Six Recommendations

1. **Trusted Contact Person:**

Firms should make reasonable efforts to add Trusted Contact Person (TCP) for client files

2. **Holds on Trades and Disbursements:**

Securities Regulators should authorize qualified individuals in a firm to implement a temporary hold on trades and disbursements where good faith belief it is needed

3. **Legal Safe Harbour:**

a) Securities Regulators should implement legal safe harbour from regulatory liability for a disclosure of information if acting on good faith, and according to a regulator-established Conduct Protocol.

b) legislative change to provide civil liability

c) in the meantime, courts should give administrative deference to the regulatory regime

Six Recommendations

4. **Conduct Protocol**

Securities Regulators should publish a “Conduct Protocol” defining key terms and steps to be taken to identify and protect vulnerable clients

5. **Education and Training**

Firms should be required to have representatives and staff have Regulator established competency-based training on elder abuse, undue influence, mental capacity issues, enduring powers of attorney and ageism, and pass the proficiencies.

4. **Firms Become Familiar with Outside Resources and Responders**

Firms should learn how and where to refer cases and learn about resources locally, regionally and nationally



Visit CanAge.ca/AgingYourWay to register




UPCOMING : live & online TALKS


- **June 22, 1-2pm ET**
Talk #5: Retiring Well: Protecting Your Savings
- **July 20, 1-2pm ET**
Talk #6: Fighting Fraud
- **September 21, 1-2pm ET**
Talk #7: Using Technology to Fight Dementia
- **October 26, 1-2pm ET**
Talk #8: Caregiver Survival Guide
- **November 23, 1-2pm ET**
Talk #9: Fake News: Identify and Ignore
- **December 14, 1-2pm ET**
Talk #10: Cannabis and Older Adults


GET IN TOUCH


- 1 Visit our website**
CanAge.ca
- 2 CanAge Connections**
Our monthly newsletter


Sign up today
CanAge.ca/newsletter
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 CanAge
- 4 Become a FREE CanAge member**

Visit **CanAge.ca/join**
for your 1 year free membership!
- 5 Contact us**
info@canage.ca



Thank you



POWER OF ATTORNEY

DETECTIVE JENNIE FITZSIMMONS

DOMESTIC VIOLENCE COORDINATOR, ELDER ABUSE
INVESTIGATOR & VULNERABLE PERSONS

PETERBOROUGH POLICE SERVICE

WHAT IS MY ROLE WITH THE PETERBOROUGH POLICE?

- Review all Domestic Violence Incidents reported
- Investigate Domestic Violence incident of “threshold” capacity (ie. Sexual assaults)
- Investigate high level elder abuse cases (including frauds, assaults, failure to provide the necessities of life, breach of trust)
- Check on the wellbeing of individuals who are considered vulnerable
- Conduct checks to determine if a person meets the Vulnerable Person criteria

POWER OF ATTORNEY CASES

- Civil vs. Criminal
- In Peterborough, we have seen very few cases involving the abuse of a power of attorney's role proceed to criminal court. Majority of our cases proceed through civil court.

POWER OF ATTORNEY CASES

- Issues often arise when:
 - When the person does not have a power of attorney in place before capacity is diminished.
 - Joint Bank Accounts
 - When the person has not been deemed incompetent but others feeling they are making an inappropriate or out of character decisions
 - The Power of Attorney makes an adequate decision regarding how to spend finances, but not necessarily a substantial discrepancy.

TYPES OF CRIMINAL CHARGES LAID

- Majority of Criminal cases deal with the financial aspect of the Power of Attorney
- Most common charges laid are:
 - Fraud
 - Theft
 - Forgery

WHERE CAN I GO FOR HELP?

Call the Peterborough Police Service

24/7/365, advice on the phone, anonymous

705-876-1122

peterboroughpolice.com

Canadian Anti-Fraud Centre

1-888-495-8501

antifraudcentre.ca



Panel Discussion



A pink piggy bank is the central figure, wearing a white surgical mask. It is surrounded by several green, spiky coronavirus particles. The background is a bright blue sky with white clouds. In the bottom left corner, there is a dark purple rectangular box containing white text.

Impact of Covid

Protecting
Yourself and
Finances

Understand Your Financial Affairs





Read before
you sign!



Seek Financial / Legal Advice

Report to Police



Local Law Enforcement (i.e. RCMP, OPP, Regional Police)

Visit : www.rcmp.gc.ca Visit : www.opp.ca

Canadian Anti-Fraud Centre / Le centre antifraude du Canada

CAFC provides valuable assistance to law enforcement agencies by identifying connections among seemingly unrelated cases.

Toll-Free 1-888-495-8501

Online through the Fraud Reporting System (FRS)

Visit : www.antifraudcentre-centreantifraude.ca/index-eng.htm



Legal Services

Law Society Referral Service (LSRS)

The Law Society of Ontario has a directory of all lawyers and paralegals licensed in Ontario. If you don't have a lawyer, the LSRS can give you the name of a lawyer or paralegal in your area who can provide 30 minutes of free legal consultation.

Toll-free : 1-800-268-8326

Visit : www.lso.ca and click on "Find a Lawyer or Paralegal"

Legal Services

Advocacy Centre for the Elderly

1-855-598-2656

www.advocacycentreelderly.org

South Asian Legal Clinic

416-487-6371

<https://salc.on.ca>

Office of the Public Guardian and Trustee

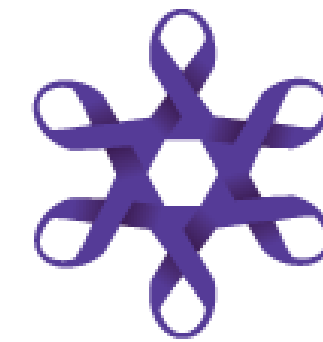
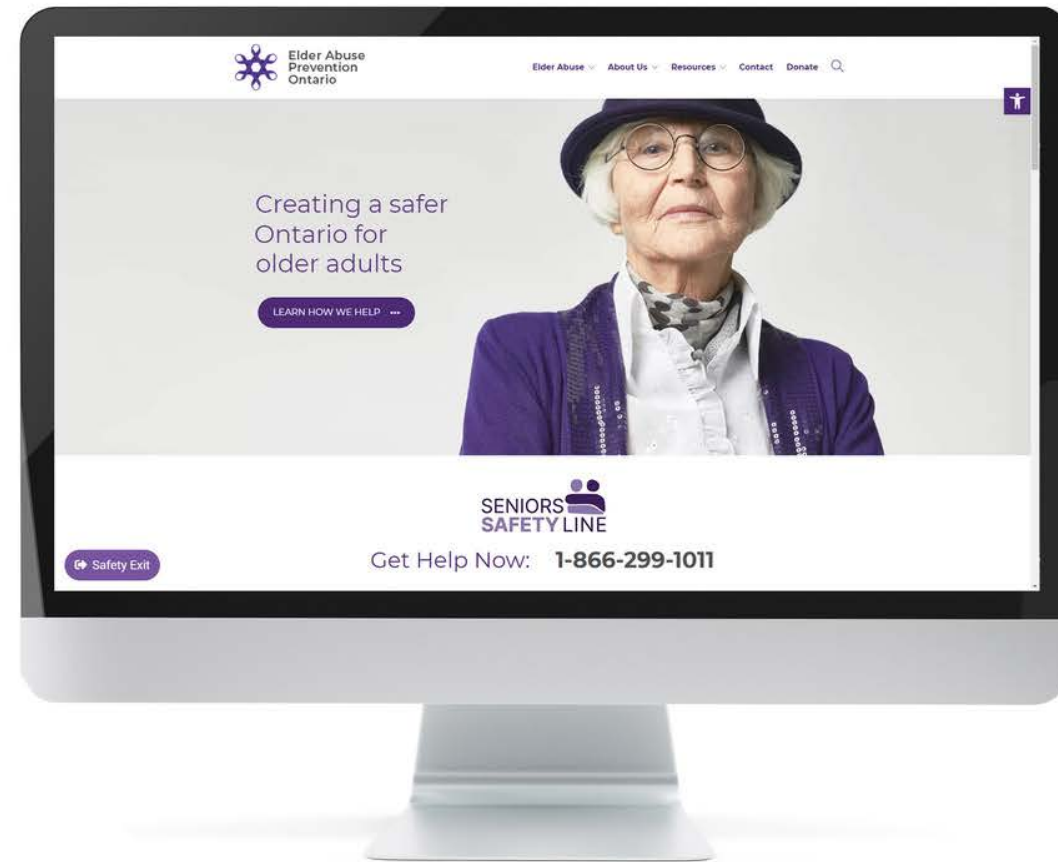
1-800-366-0335

www.attorneygeneral.jus.gov.on.ca

**Elder Abuse
Support and Response Services**



**RESOURCE GUIDE OF
PROVINCIAL ORGANIZATIONS**



**Elder Abuse
Prevention
Ontario**

Meet the New EAPO...

Come join us in our fight to make
Ontario safe for ALL older adults.

www.eapon.ca





KEEP
CONNECTED



It's young money!



Speaker Contacts

Continuing the Conversation

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**Elder Abuse
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www.peterboroughpolice.com



WE WOULD
APPRECIATE
HEARING FROM
YOU.



Thank
you!