

EAO Webinar

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The Law Society of Ontario: Who are they and How Can they Help Me

March 8, 2019

Presenter:

**Stephen McClyment,
Senior Investigation Counsel, Investigations
Law Society of Ontario**

Facilitated by:

**Raeann Rideout, CE Regional Consultant,
Elder Abuse Ontario**



Welcome to EAO's Webinar!

- All attendees will be muted during the webinar. This session is being recorded and will be posted on EAO website.
- If you are experiencing issues, please type into the **CHAT/QUESTION BOX** and send message to **Mary Mead//Raeann Rideout**
- There will be 15-20 minutes allocated at the end presentation for **QUESTIONS AND ANSWERS.**
- You will be prompted to fill out an **EVALUATION FORM** once the session has ended. Please fill out the form as your feedback will guide us for our future webinars. You will also receive an email link to the evaluation after the session.
- **Participants will be sent the slides electronically after the webinar**
- Speaker **CONTACT INFORMATION** will be provided at the end of the presentation to connect directly if you have further questions.



Learning Objectives

- Services and supports offered by the Law Society of Ontario.
- The process of submitting a legal complaint to the LSO.
- How LSO investigates lawyers accused of facilitating cases of financial abuse by Power of Attorney for Property.
- What is considered undue influence, and how LSO investigates lawyers who are accused of facilitating undue influence of older adults when preparing Wills and POA documents.
- How LSO investigates and regulates and possibly disciplines lawyers.
- Available claims against Lawyer's Errors and Omissions insurance and/or to the LSO Compensation Fund.
- Approaches to empowering older adults about their legal rights.
- Provincial legal resources/services for older adults



Elder Abuse Ontario (EAO)

Mission:

Create an Ontario where all seniors are free from abuse through awareness, education, training, collaboration, service co-ordination and advocacy.

- Not-for-profit charitable organization
- Implemented Strategy in 2002
- Funded by the Province of Ontario, under the Ministry of Seniors and Accessibility

EAO administers the implementation of Ontario's Strategy to Combat Elder Abuse

Elder Abuse Strategy

Community
Coordination &
Response

Training

Public
Awareness

EAO's Role In
Responding To
Elder Abuse



Elder Abuse Ontario (EAO)

- ✓ **7 Regional Consultants in Ontario**

(Peterborough, Thunder Bay, Woodstock
Sudbury, Ottawa, Toronto, Mississauga)

- ✓ 2 Francophone Consultants

- ✓ Support over 40 local Elder Abuse Committees/Networks

- ✓ Offers organizations customized training and education for staff.

- ✓ Performs outreach/education activities for seniors' groups

- ✓ Participates in furthering the cause of abuse prevention at conferences and events



Elder Abuse & Your Legal Rights



This booklet, "*Elder Abuse and Knowing Your Legal Rights*" contains legal information presented in plain language, about some of the tools available to deal with situations of elder abuse:

- Revoking a Continuing Power of Attorney for Property
- Reporting Elder Abuse to the Police
- Guardianship Investigations
- Statutory Guardianships
- Court Appointed Guardians
- Representatives Appointed by the Consent and Capacity Board
- Civil Actions for the Recovery of Property
- Important Provincial Resources

This booklet contains legal information for educational purposes only and is not to be construed as legal advice. For legal advice, speak with a lawyer/legal professional.



WHAT IS ELDER ABUSE?

Financial abuse is defined as any improper conduct, done with or without the informed consent of the senior that results in a monetary or personal gain to the abuser and/or a monetary or personal loss to the senior.

Neglect is not meeting the basic needs of the older person.

Active (intentional) neglect is the deliberate withholding of care or the basic necessities of life.

Passive (intentional) neglect is the failure to provide proper care to an older adult, usually due to the lack of knowledge and/or experience.

Emotional or Psychological abuse is any action, verbal or non-verbal, that lessens a person's sense of identity, dignity and self-worth.

Sexual abuse includes any unwanted sexual touching, remarks or coercing a person through force, trickery or threats into sexual activity without their consent. Sexual abuse includes inducing sexual activity with a person who is not mentally capable of giving active informed consent throughout the entire duration of the sexual activity.

Physical abuse is any act of violence or rough handling that may or may not result in physical injury but causes physical discomfort or pain.

Acknowledgements -Brochure

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The views and opinions expressed in this publication do not necessarily reflect those of the Hamilton Community Foundation.

Thank You to ACE, and The Law Foundation of Ontario and for supporting the development of this NEW legal brochure.



Presenter

Stephen A. McClyment, *Senior Investigation Counsel* Law Society of Ontario (LSO)

Stephen McClyment was called to the Bar in 1976. He has had many years of legal experience in the practice of commercial and residential real estate, mortgage, and other secured transactions. In September 2000, he joined the Law Society of Upper Canada as Investigation Counsel.

Since 2003 Stephen has been the Senior Investigation Counsel at the Law Society of Upper Canada. Among his other responsibilities, he initiated the Mortgage Fraud Team at the Law Society. He has frequently made presentations on behalf of the Law Society, in connection with many aspects of the investigation process, to stakeholders and various groups, including law enforcement, regulatory bodies, and financial institutions.

He has very frequently presented evidence at Law Society of Ontario, Discipline Hearings, as an acknowledged and accepted expert in the area of real estate fraud and mortgage fraud.

Elder Abuse Ontario

The Law Society of Ontario: Who are they? How can they Help Me?

March 8, 2019

- ▶ **Stephen McClyment, Senior Investigation Counsel, Investigations**

Mandate and Processes of the Law Society

- ▶ Role statement

“The Law Society of Ontario exists to govern the legal profession in the public interest by,

- ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct; and

- upholding the independence, integrity and honour of the legal profession,

For the purpose of advancing the cause of justice and the rule of law.”

- ▶ 53,991 lawyers in Ontario that are entitled to practice
- ▶ Paralegals (regulated since April 2, 2008)
- ▶ We also have 9,048 paralegals licensed to provide legal services.
- ▶ The Law Society is an integrated self-regulatory body responsible for a complete range of regulated activities (sets standards and rules; policy development and implementation; controls admission; mediates, investigates and prosecutes complaints; adjudicates conduct, competence and capacity; imposes and monitors penalties)
- ▶ About 600 staff at Law Society

Professional Regulation Division

Intake and Resolution: screening based on jurisdiction, initial substantiation with complainant, responds to less serious breaches of Rules of Professional Conduct that can be resolved without formal discipline or streaming file to Investigations

Investigation Services: investigates most significant breaches of Rules of Professional Conduct, conduct unbecoming and good character of students seeking to be called to the Ontario Bar, including most allegations of criminal activity. Team of investigators dedicated to mortgage fraud.

Resolution and Compliance: Monitors Orders of the Discipline Panel and Undertakings given by Licencees

Trustee Services: obtains trusteeship of a lawyer's practice where lawyer has abandoned practice, deals with search warrants at law offices

Discipline Services: drafts and prosecutes charges in a public and quasi-judicial forum, before a hearing panel of benchers of the Law Society

Complaints

The Law Society receives complaints from;

- ▶ Clients and former clients of lawyers/paralegals
- ▶ Other regulatory stakeholders-FSCO-RECO-OSC
- ▶ Banks, Trust Companies, other financial institutions
- ▶ Other Lawyers, Paralegals, their office staff
- ▶ Police Agencies
- ▶ Members of the public not clients
- ▶ Judges and court staff
- ▶ Members of the media

Investigative Authority

Delegated legislative authority from the *Law Society Act*.

- Law Society investigative powers are authorized, without a judicial warrant, but we are only able to compel production and information from lawyers and/or paralegals.
- Powers analogous to those of other regulatory bodies, except that information must be produced notwithstanding solicitor client privilege. Therefore, there are strict prohibitions against disclosure to any parties including police and other regulatory agencies.

Complaints

How to make a complaint:

- ▶ Go to Law Society of Ontario website which is www.lso.ca and find the page for Complaints and follow the instructions for How to Make a Complaint or contact:

Complaints

Toll-free: 1-800-268-7568

General line: 416-947-3310

TTY: 416-644-4886

Fax: 416-947-5263

[Complaint Forms](#) should be sent by mail or fax. See [Complaining about a Lawyer or Paralegal](#) for more information.

What kinds of Complaints do we see from elderly persons?

- ▶ Most involve improper use of a Power of Attorney for Property and/or Personal Care made by the grantor of the Power of Attorney and/or a family member or close friend
- ▶ **Improper use of a Power of Attorney usually arises from;**
 - Undue influence brought to bear on an elderly person who becomes intimidated into signing a Power of Attorney by family members, friends, criminal parties seeking to steal property;
 - In addition elderly person may be confused as a result of declining mental capacity and unable to truly understand the circumstances or recognize the danger;
 - Lawyer retained to prepare the Power of Attorney, or to assist in the exercise of the not doing their job properly and thus failing to protect the legal rights of the elderly donor of the Power of Attorney and acting in fact to facilitate the donees of the Power of Attorney who are taking advantage of the elderly donor;
 - Frequent involvement of persons-often called “trolls”- working with lawyer directly or indirectly to procure vulnerable elderly persons as clients of lawyer who seeks to take advantage-

What kinds of Complaints do we see from elderly persons?

- ▶ Lawyers charging exorbitantly high fees for legal work done for the elderly person and then trying to collect those fees through use of Power of Attorney procured to sell or mortgage or otherwise charge land or other assets of the elderly person to pay legal account;
- ▶ Sometimes fees withdrawn from the bank account of elderly person using Power of Attorney to pay legal fees.

Law Society Act: Investigative Authority

49.3 (1) Subject to section 49.5, the Executive Director may require an investigation to be conducted into a Lawyer's and/or Paralegal's conduct if the Executive Director of Professional Regulation receives information suggesting that the Lawyer/Paralegal may have engaged in professional misconduct or conduct unbecoming.

49.3 (2) A person conducting an investigation under subsection (1) may require the person under investigation and people who work with the person to provide information that relates to the matters under investigation, and, if the Executive Director of Professional Regulation is satisfied that there is a reasonable suspicion that the person under investigation may have engaged in professional misconduct or conduct unbecoming, the person conducting the investigation may,

- (a) enter the business premises of the person under investigation between the hours of 9 a.m. and 5p.m. from Monday to Friday or at such other time as may be agreed to by the person under investigation;
- (b) require the production of and examine any documents that relate to the matters under investigation, including client files;
- (c) require the Lawyer/Paralegal and people who work with the Lawyer/Paralegal to provide information that relates to the matters under investigation.

▶ **Privilege**

▶ **Disclosure despite privilege**

- ▶ 49.8 (1) A person who is required under section 42, 49.2, 49.3 or 49.15 to provide information or to produce documents shall comply with the requirement even if the information or documents are privileged or confidential. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 44 (1).

▶ **Disclosure by other person, body**

- ▶ (1.1) The Society or the Complaints Resolution Commissioner, as the case may be, may receive from any person or body information or documents in relation to a review under section 42, an audit under section 49.2, or an investigation under section 49.3 or 49.15, even if the information or documents are privileged or confidential. 2013, c. 17, s. 14 (1).

▶ **Admissibility despite privilege**

- ▶ (2) Despite clause 15 (2) (a) and section 32 of the *Statutory Powers Procedure Act*, information provided and documents produced under section 42, 49.2, 49.3 or 49.15 and information or documents described in subsection (1.1) are admissible in a proceeding under this Act even if the information or documents are privileged or confidential. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 44 (2); 2013, c. 17, s. 14 (2).
- ▶ (2.1) Repealed: 2013, c. 17, s. 14 (3).

▶ **Privilege preserved for other purposes**

- ▶ (3) Subsections (1), (1.1) and (2) do not negate or constitute a waiver of any privilege and, even though information or documents that are privileged must be disclosed under subsection (1) or may be received under subsection (1.1), and are admissible in a proceeding under subsection (2), the privilege continues for all other purposes. 2013, c. 17, s. 14 (4)

49.12 (1) A bencher, officer, employee, agent or representative of the Society shall not disclose any information that comes to his or her knowledge as a result of an audit, investigation, review, search, seizure or proceeding under this Part.

49.12 (2) Subsection (1) does not prohibit,

- (a) disclosure required in connection with the administration of this Act, the regulations, the by-laws or the rules of practice and procedure;
- (b) disclosure required in connection with a proceeding under this Act;
- (c) disclosure of information that is a matter of public record;
- (d) disclosure by a person to his or her counsel; or
- (e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

(f) disclosure, if there are reasonable grounds for believing that,

(i) if the disclosure is not made, there is a significant risk of harm to the person who was the subject of the audit, investigation, review, search, seizure or proceeding or to another person, and

(ii) making the disclosure is likely to reduce the risk.
1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 47.

49.12 (3) Testimony

(a) A person to whom subsection (1) applies shall not be required in any proceeding, except a proceeding under this Act, to give testimony or produce any document with respect to information that the person is prohibited from disclosing under subsection (1). 1998, c. 21, s. 21

Lawyers Involved in Criminal Activity

- ▶ May be professional misconduct (arising out of a lawyer's practice, for example mortgage fraud) or conduct unbecoming (arising out of a lawyer's private life, for example a charge of driving while impaired)
- ▶ Encourage complainants to go to the police, when allegations raise potential criminal activity
- ▶ Lawyers must report other lawyers suspected of involvement in "serious" criminal activity related to the lawyer's practice.
- ▶ Lawyers must self-report when charged with an indictable offence.

Concurrent criminal and regulatory issues

- ▶ May investigate concurrently;
- ▶ May monitor progress of criminal charges, especially for conduct unbecoming, with appropriate risk management to ensure interim public protection, for example, may seek interim suspension based on information provided by the police.
- ▶ Bail conditions
- ▶ The LSO could assist with the drafting of Bail Conditions concerning lawyers subject to criminal charge, subject to statutory confidentiality concerns.

- ▶ Willing to share information with the police and other stakeholders as permitted by the *Law Society Act*
- ▶ Police may get additional information in the hearings process, which will be conducted in public unless the Hearing Panel makes an order to the contrary.
- ▶ Police may also wish to obtain information that is filed in the Law Society Tribunals file for a hearing and that is not “sealed” by Discipline Panel Order.
- ▶ Results of Law Society discipline proceedings are posted on the Law Society website and broadcast through news releases.

- ▶ Lawyer has obligation to notify client and obtain instructions re: privilege
- ▶ Lawyer is “keeper” of the privilege; client is “holder” of the privilege, which means client and not lawyer can waive privilege
- ▶ Privilege is generally communication between lawyer and client, could include accounting records, even name of client – any disagreements are determined by Court
- ▶ But Lawyer can not claim privilege between clients on joint retainer such as purchaser/mortgagor and mortgagee

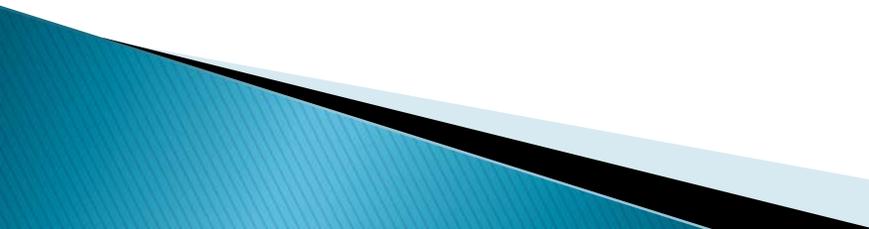
Power of Attorney

- ▶ Most of the complaints received from and on behalf of elderly persons involve issue with respect to the drafting and use of Powers of Attorney, and in particular, Powers of Attorney for Property, recently made or procured on behalf of elderly persons;
- ▶ Legal resources dealing with these issues include the Ontario Public Guardian and Trustee; Police Agencies; Law Society of Ontario and ultimately court applications and orders under the Substitute Decisions Act, Ontario and/or the Health Care Consent Act, Ontario
- ▶ No concept of “Living Will”- authority granted by specifics of these statutes only;

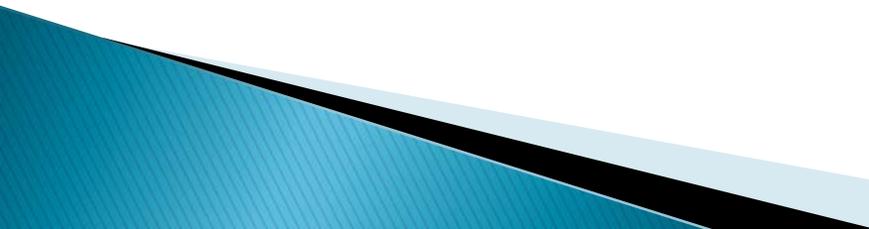
Criminal Code

- ▶ **Theft by person holding power of attorney**
- ▶ **331.** Every one commits theft who, being entrusted, whether solely or jointly with another person, with a power of attorney for the sale, mortgage, pledge or other disposition of real or personal property, fraudulently sells, mortgages, pledges or otherwise disposes of the property or any part of it, or fraudulently converts the proceeds of a sale, mortgage, pledge or other disposition of the property, or any part of the proceeds, to a purpose other than that for which he was entrusted by the power of attorney.
- ▶ R.S., c. C-34, s. 291.

Criminal Code

- ▶ A Power of Attorney properly given and properly executed operates on two levels in accord with its terms.
 - ▶ May be limited in terms of use
 - ▶ May be used on specific direction of the donor where donee/attorney is the hands and feet of the donor
 - ▶ If under the Substitute Decisions Act, Ontario may be used on the subsequent incapacity of the donor.
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Criminal Code

- ▶ If Power of Attorney is used on the subsequent incapacity of the donor how do you decide whether the Power of Attorney is being used or was used for a purpose other than for which the donor entrusted the donee as required by S. 331 of the Criminal Code?
 - ▶ Presumably no probative evidence from an incompetent and incapacitated donor.
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Statutory Authority and Prerequisites for POA

Continuing Power of Attorney for Property –Substitute Decisions Act Ontario Part 1

- ❖ Both Donor and Donee must be over 18 years old
- ❖ A power of attorney for property is a continuing power of attorney if,
- ❖ (a) it states that it is a continuing power of attorney; Or (b) it expresses the intention that the authority given may be exercised during the grantor's incapacity to manage property.
- ❖ The continuing power of attorney may authorize the person named as attorney to do on the grantor's behalf anything in respect of property that the grantor could do if capable, except make a will. 1992, c. 30, s. 7 (2).

Statutory Authority and Prerequisites for POA

- ▶ **Capacity to give continuing power of attorney**
- ▶ A person is capable of giving a continuing power of attorney if he or she,
 - ▶ (a) knows what kind of property he or she has and its approximate value;
 - ▶ (b) is aware of obligations owed to his or her dependants;
 - ▶ (c) knows that the attorney will be able to do on the person's behalf anything in respect of property that the person could do if capable, except make a will, subject to the conditions and restrictions set out in the power of attorney;
 - ▶ (d) knows that the attorney must account for his or her dealings with the person's property;
 - ▶ (e) knows that he or she may, if capable, revoke the continuing power of attorney;
 - ▶ (f) appreciates that unless the attorney manages the property prudently its value may decline; and
 - ▶ (g) appreciates the possibility that the attorney could misuse the authority given to him or her. 1992, c. 30, s. 8 (1).

Statutory Authority and Prerequisites for POA

Capacity to revoke

- ▶ A person is capable of revoking a continuing power of attorney if he or she is capable of giving one.

Validity despite incapacity

- ▶ A continuing power of attorney is valid if the grantor, at the time of executing it, is capable of giving it, even if he or she is incapable of managing property.
- ▶ The continuing power of attorney remains valid even if, after executing it, the grantor becomes incapable of giving a continuing power

Statutory Authority and Prerequisites for POA

Determining incapacity

- ▶ If the continuing power of attorney provides that it comes into effect when the grantor becomes incapable of managing property but does not provide a method for determining whether that situation has arisen, the power of attorney comes into effect when,
 - ▶ (a) the attorney is notified in the prescribed form by an assessor that the assessor has performed an assessment of the grantor's capacity and has found that the grantor is incapable of managing property; or
 - ▶ (b) the attorney is notified that a certificate of incapacity has been issued in respect of the grantor under the *Mental Health Act*. 1996, c. 2, s. 5.

Statutory Authority and Prerequisites for POA

Execution

- ▶ A continuing power of attorney shall be executed in the presence of two witnesses, each of whom shall sign the power of attorney as witness. 1996, c. 2, s. 6 (1).

Persons who shall not be witnesses

- ▶ The following persons shall not be witnesses:
 - ▶ 1. The attorney or the attorney's spouse or partner.
 - ▶ 2. The grantor's spouse or partner.
 - ▶ 3. A child of the grantor or a person whom the grantor has demonstrated a settled intention to treat as his or her child.
 - ▶ 4. A person whose property is under guardianship or who has been a guardian of the person.
 - ▶ 5. A person who is less than eighteen years old.

Non-compliance

- ▶ A continuing power of attorney that does not comply with subsections (1) and (2) is not effective, but the court may, on any person's application, declare the continuing power of attorney to be effective if the court is satisfied that it is in the interests of the grantor or his or her dependants to do so.

Statutory Authority and Prerequisites for POA

Resignation of attorney

- ▶ An attorney under a continuing power of attorney may resign but, if the attorney has acted under the power of attorney, the resignation is not effective until the attorney delivers a copy of the resignation to,
 - ▶ (a) the grantor;
 - ▶ (b) any other attorneys under the power of attorney;
 - ▶ (c) the person named by the power of attorney as a substitute for the attorney who is resigning, if the power of attorney provides for the substitution of another person; and
 - ▶ (d) unless the power of attorney provides otherwise, the grantor's spouse or partner and the relatives of the grantor who are known to the attorney and reside in Ontario, if,
 - ▶ (i) the attorney is of the opinion that the grantor is incapable of managing property, and
 - ▶ (ii) the power of attorney does not provide for the substitution of another person or the substitute is not able and willing to act.

Statutory Authority and Prerequisites for POA

Termination

- ▶ A continuing power of attorney is terminated,
 - ▶ (a) when the attorney dies, becomes incapable of managing property or resigns, unless,
 - ▶ (i) another attorney is authorized to act under subsection 7 (5), or
 - ▶ (ii) the power of attorney provides for the substitution of another person and that person is able and willing to act;
 - ▶ (c) when the court appoints a guardian of property for the grantor
 - ▶ (d) when the grantor executes a new continuing power of attorney, unless the grantor provides that there shall be multiple continuing powers of attorney;
 - ▶ (e) when the power of attorney is revoked;
 - ▶ (f) when the grantor dies.

Statutory Authority and Prerequisites for POA

Exercise after termination or invalidity

- ▶ If a continuing power of attorney is terminated or becomes invalid, any subsequent exercise of the power by the attorney is nevertheless valid as between the grantor or the grantor's estate and any person, including the attorney, who acted in good faith and without knowledge of the termination or invalidity.
 - ▶ If a continuing power of attorney is ineffective because an improper person witnessed its execution it may still be valid in accord with the above with necessary modifications.
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Law Society Guidelines for Powers of Attorney

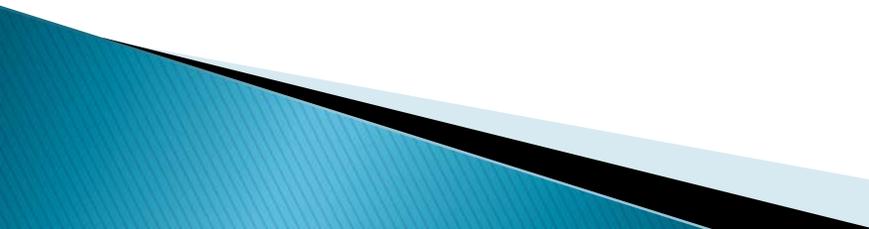
- ▶ *These Guidelines have been prepared to assist lawyers to avoid becoming the tool or dupe of unscrupulous persons when dealing with real estate transactions involving powers of attorney.*
- ▶ *These Guidelines are not intended to replace a lawyer's professional judgment or to establish a rigid approach to the practice of law or the conduct of a real estate transaction. Subject to those provisions of the Guidelines that incorporate legal, by-law or Rules of Professional Conduct requirements, a lawyer should consider the circumstances of the individual transaction and choose and recommend to the client the practice and procedure that best suits the transaction. In appropriate circumstances, the lawyer may deviate from the Guidelines. Whether a lawyer has provided quality service will depend upon the circumstances of each individual transaction.*

- ▶ 1. To the extent that lawyers are able, they should avoid the use of Powers of Attorney. The use of Powers of Attorney should be the exception and not the rule.

- ▶ 2. When a Power of Attorney is required for a transaction and there is no pre-existing Power of Attorney, the lawyer should:
 - ▶ • prepare the Power of Attorney himself or herself,
 - ▶ • meet with the donor to review and sign the Power of Attorney, and
 - ▶ • establish in a diligent manner that the donor is the person he or she claims to be.

Law Society Guidelines for Powers of Attorney

- ▶ 3. Where a Power of Attorney is required for a transaction, lawyers for all parties should:
 - ▶ • review the Power of Attorney to ensure that it was drawn and executed in accordance with the governing legislation, and
 - ▶ • note any restrictions on the powers granted.

 - ▶ 4. If the transaction is title insured, the lawyer should ensure that the title insurer will permit the use of the Power of Attorney. If the transaction includes a charge/mortgage or other encumbrance, the lawyer for the borrower should ensure well before closing that the lender will accept documents signed under the authority of a Power of Attorney.
- 

Law Society Guidelines for Powers of Attorney

- ▶ 8. Absent notice of fraud or other suspicious circumstances, lawyers may rely on Powers of Attorney that have been drawn and executed in accordance with the governing legislation.
- ▶ 9. Absent adverse knowledge, lawyers may rely on the law statements made by another lawyer in any document executed under the authority of a Power of Attorney.
- ▶ 10. Before accepting a retainer or during a retainer, if a lawyer has suspicions or doubts about whether the lawyer would be assisting the client in dishonesty, fraud, crime or illegal conduct, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer, and should make a record of the results of these inquiries. If a lawyer reasonably suspects that he or she would be assisting the client in dishonesty, fraud, crime or illegal conduct, the lawyer must immediately cease to engage in activities that would assist the client in such conduct and, depending on the circumstances, may have to withdraw completely from representing the client.

Electronic Registration Statements-Land Registration Reform Act, Ontario

- ▶ if the document is made by an **attorney** acting under a power of attorney given by a donor that is not a corporation,
- ▶ (i) a statement by the **attorney** that, to the best of the attorney's knowledge and belief,
 - ▶ (A) the donor was at least 18 years old and had the legal capacity to give the power when giving it, and
 - ▶ (B) the power is in full force and effect,
- ▶ (ii) a statement by the **solicitor** submitting the document confirming that the solicitor has reviewed the power with the attorney who has confirmed that,
 - ▶ (A) the attorney is the lawful party named in the power,
 - ▶ (B) the attorney is acting within the scope of the authority granted by the power,
 - ▶ (C) to the best of the **attorney's** knowledge, information and belief, the power was lawfully given and has not been revoked, and
 - ▶ (D) if the attorney is a corporation, the person signing the document at the time the document was made was in the stated position at the corporation and had the authority to bind the attorney, and
- ▶ (iii) the registration number and date of the power;

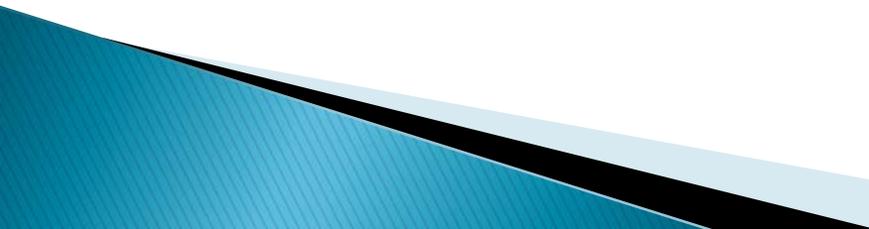
Practical Reality of Power of Attorney for Property

- ▶ Despite all the legislation and the registration statements that appear to be checks and balances, once the Power of Attorney is on its face properly signed and witnessed under the Substitute Decisions Act, Ontario, it becomes a **BEARER INSTRUMENT** in the hands of any party who possesses it.

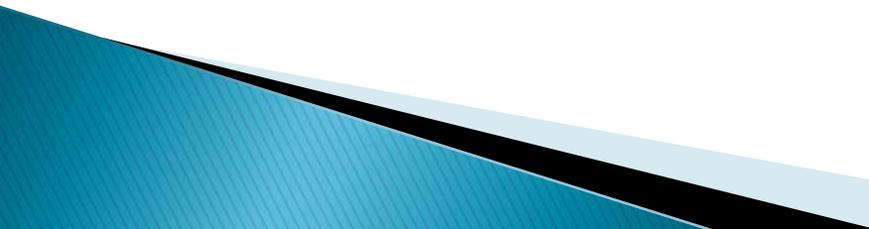
Practical Reality of Power of Attorney for Property

- ▶ Anyone who has the Power of Attorney could purport to be the donee/attorney, whether they are or not as long as they have ID to support them and they are prepared to lie to answer the required registration statements.
- ▶ Would a fraudster lie about those matters?
- ▶ Remember a Lawyer who has asked the donee/attorney the necessary questions and is satisfied with the answers simply has to restate the fact of the questions and answers and the Power of Attorney is deemed valid.
- ▶ Unless a Lawyer or some other party relying on the Power of Attorney and the registration statements has actual notice that the statements are untrue and that the Power of Attorney is not valid or that the donee/attorney is not the party purporting to act on the document it may be relied upon to sell, transfer, mortgage, encumber and otherwise dispose of any of the donor's property.

Practical Reality of Power of Attorney for Property

- ▶ The Law Society is seeing improper use of Power's of Attorney repeatedly in mortgage frauds, transfers of real estate, shares and securities, personal property, bank accounts balances etc.
 - ▶ Some Lawyers take the position that since the Power of Attorney is a BEARER INSTRUMENT that they should ask very few questions other than those required as applicable by the Land Registration Reform Act and the LSUC By-Law 7.1. They say that to do otherwise destroys the purpose of the Substitute Decisions Act.
 - ▶ Other Lawyer's try to make a determination of who their client actually is and to then make inquiries and take instructions from that party only.
- 

Practical Reality of Power of Attorney for Property

- ▶ Many of the examples of improper use of Powers of Attorney for Property and the theft of real property and mortgage fraud take place in the office of either or both the office of the lawyer for the vendor or the purchaser and mortgagee at the very last moment before closing when a party purporting to be the donee/attorney of either the vendor or the purchaser comes to the lawyer's office unannounced, holding the Power of Attorney and claiming the right to sign documents on behalf of the vendor or purchaser.
 - ▶ Does the lawyer decide that the actual donor/vendor or donor/purchaser is their client and refuse to close until they confirm instructions from the donor to allow the use of the Power of Attorney? What if any delay in closing gets the lawyer sued for damages?
 - ▶ Does the lawyer ask only the above self serving questions, confirm ID and then close the transaction relying on the Power of Attorney?
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Practical Reality of Power of Attorney for Property

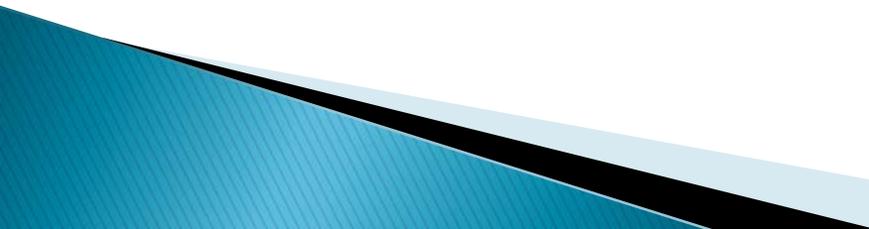
- ▶ Legal experts disagree on the position the lawyer should take.
- ▶ I can say that in practice in almost all cases an owner of property wanting to deal with it by Power of Attorney will have communicated this fact to the lawyer or other relevant parties well before “closing”.
- ▶ It is my view that if property is disposed of or otherwise encumbered at the last minute by a last minute produced Power of Attorney all antennae should be focused and questions should be asked-but that does not necessarily make the use of the Power and the dealings with the property illegal.
- ▶ **Reviczky v. Meleknia, 2007 CanLII 56494 (ON SC)**
[Date: 2007-12-19 (Docket: 07-CV-330124PD3) Parallel citations: 88 OR (3d) 699; 287 DLR (4th) 193 Citation: Reviczky v. Meleknia, 2007 CanLII 56494 (ON SC),]

Lessons from Case Law

- Fully explain the nature of the power of attorney to the person executing it. Make sure that the person giving the power is fully aware of all the consequences. This is even more important when you have had no previous contact with the person involved, and are in fact acting on behalf of another client.
 - Where you are acting on behalf of a client who will benefit from the execution of the power of attorney, because it will be used to grant security to the client for a debt which might otherwise be uncollectible, insist upon independent legal advice for the person being asked to execute the power.
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- Where the power of attorney is given for the purpose of executing documents in an upcoming commercial transaction, consider whether you ought to advise the donor about the consequences of the documents to be executed under the power. This may or may not be practicable, depending on whether you have personal knowledge of the transaction.
 - Consider making the power of attorney time limited, and its terms no broader than absolutely necessary.
 - Be VERY concerned if the donee of the power of attorney proposes to take the donor's property for himself or herself.
 - ▶ Seriously consider confirming the propriety of the transfer with the donor, unless the power of attorney expressly allows for the donee to take the property.
 - ▶ Scrutinize the power of attorney for irregularities on its face.
 - ▶ Was it signed by two witnesses?
 - ▶ Are there any suspicious circumstances, i.e., was the document witnessed overseas, yesterday?
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Proceeds of Crime –Part XII.2 of Criminal Code

- ▶ The acquisition of money, property, securities, real estate or any other asset through the improper use of a POA creates “proceeds of crime” within the meaning of this part of the Criminal Code.
 - ▶ The Forfeiture, Freeze and Seizure provisions of this part would be a quick and effective tool in the case of theft by POA.
 - ▶ Speak to your Crown Attorney about this remedy
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Elder Abuse Ontario

<http://www.elderabuseontario.com/>

(416) 916-6728

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Ontario Network of Sexual Assault/ Domestic Violence Treatment Centres

[http://www.satcontario.com/en/home.
php](http://www.satcontario.com/en/home.php)

(416) 323-7518

Victim Support Line

[http://www.attorneygeneral.jus.gov.on.
ca/english/about/vw/vsl.asp](http://www.attorneygeneral.jus.gov.on.ca/english/about/vw/vsl.asp)

1-888-579-2888

Assaulted Women's Helpline

<http://www.awhl.org/>

1-866-863-0511

Call your local Police Force by Dialing 911

Ontario Provincial Police

<http://www.opp.ca/>

1-800-310-1122

*Various local/ municipal contact information
depending on location*

Provincial Information & Supports

Ontario Coalition of Rape Crisis Centres

<http://www.sexualassaultsupport.ca/>

TALK4HEALING

<http://www.talk4healing.com/>

1-855-554-HEAL (4325)

Rainbow Health Ontario

<http://www.rainbowhealthontario.ca/>

(416) 324-4262

Fem'aide

<http://www.femaide.ca/>

1-877-336-2433

Support Services for Male Survivors of Sexual Abuse

http://www.attorneygeneral.jus.gov.on.ca/english/ovss/male_support_services/

1-866-887-0015

Provincial Information & Supports

Senior Crime Stoppers

<http://ontariocrimestoppers.ca>

1-800-222-TIPS (8477)

Advocacy Centre for the Elderly

<http://www.advocacycentreelderly.org> 1-

855-598-2656

Alzheimer Society of Ontario

<http://www.alzheimer.ca/en/on>

1-800-879-4226

Law Society Referral Service

<https://www.lsuc.on.ca/lrs/> 1-855-

947-5255

Office of the Public Guardian and Trustee

<https://www.attorneygeneral.jus.gov.on.ca>

1-800-366-0335

Provincial Information & Supports

Retirement Homes Regulatory Authority

<http://www.rhra.ca/en/>

1-855-275-7472

Ministry of Health and LTC-Action Line

<https://www.ontario.ca/page/long-term-care-home-complaint-process>

1866-434-0144

LHIN Home and Community Care

<http://healthcareathome.ca/>

Consent and Capacity Board

<http://www.ccboard.on.ca>

1-866-777-7391

Seniors Safety Line

1-866-299-1011

Legal Information & Supports

Legal Aid Ontario, Family Violence Authorization Program [1-800-668-8258](tel:1-800-668-8258) (free) www.legalaid.on.ca

Barbra Schlifer Commemorative Legal Clinic (Toronto) [416-323-9149](tel:416-323-9149) (ext. 278) (legal intake) www.schliferclinic.com

Ontario Women's Justice Network (OWJN) www.owjn.org

Legal information when families break down:

Family Law Education for Women (FLEW) www.onefamilylaw.ca

Femmes ontariennes et droit de la famille (FODF) www.undroitdefamille.ca



Elder Abuse Response:

Building Capacity Through Innovations

Tuesday, March 5, 2019

9:00 am - 3:15 pm

Cardinal Golf Club

2740 Davis Drive West, King ON

Elder Abuse Prevention Muskoka in collaboration with Elder Abuse Ontario, and the Regional Elder Abuse Networks are pleased to invite agencies and organizations to attend an INNOVATIVE Conference showcasing new approaches to respond to elder abuse.

This conference will provide professionals the opportunity to learn about the success of using Simulation Training, a 'new training approach', to enhance decision-making, communication and teamwork skills to respond to elder abuse situations.

<http://www.elderabuseontario.com/training-education/professional-development/>

Questions



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Questions and Answers



Please fill out the EVALUATION FORM as your feedback will guide us for our future webinars.

You will receive an email link to the evaluation after the session.



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