



Abuse of power of attorney a growing crisis for seniors

Financial abuse of the elderly is a huge and growing problem as frailty and rising rates of dementia can leave the assets of Canada's aging population to the mercy of their children or other relatives.

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Financial abuse of the elderly is a huge and growing problem as frailty and rising rates of dementia can leave the assets of Canada's aging population to the mercy of their children or other relatives.

Some of those charged with the responsibility of caring for aging relatives can't wait for them to die and abuse power of attorney agreements to spend the seniors' money on themselves, experts say.

"It is a national and international crisis," said Laura Watts, national director of the Canadian Centre for Elder Law. "What we are seeing is increased abuse of power of attorney. It appears to be on the rise and certainly we will have more of it occur as our baby boomers age."

Houses can be sold with the money ending up in the hands of someone other than the senior who owned it. Properties can be encumbered by mortgages that drain what is often the only big asset a pensioner owns.

"There are scenarios where [relatives] might use the money for supplementing their own accounts, or they may use the money to invest in their home," said Watts. "Those are real things happening every day and seniors often have little recourse because they don't have money to hire a lawyer."

The people who carry out financial abuse often are well-meaning adult children who see no reason why Mom's money should be sitting in a bank account or funding high-priced home care when it could be financing their annual cruise, or a new kitchen. Or they are loath to spend their inheritance on perks for their aging parents.

"It is not just the kids, it often is close friends and family members," said Watts.

"There is one group that doesn't understand their role, the innocent misuse of power of attorney because they don't understand what they should be doing and the high level of responsibility they have. Then there is the group that uses power of attorney to ruin someone financially.

"What's different with seniors is that the results are often dramatic and often cause death."

Watts said elder abuse can result from a sense of entitlement on the part of family members or be done by "a new best friend."

"The core issue is where people are unclear or uncertain of their roles or responsibilities and many times see it as 'it's my money anyway, I'm going to inherit it,'" she said.

In the most blatant cases involving a new "best friend" who gains power of attorney to oversee financial affairs, seniors can be targeted, exploited and left penniless and alone, Watts said.

Other cases of financial abuse of the elderly are less obvious: "What if your older mother lives with you and she is mentally incapable and your roof caves in," Watts said. "You may not have ready cash to fix the roof but you have power of attorney over a fund of money and she needs a roof, too."

Watts said many baby boomers -- carrying debt loads among the highest in history -- are looking to their parents' nest eggs for a bailout.

"I think it is going to be one of the most significant issues in the next 10 years," she said. "Probably one in 10 or one in 12 seniors in Canada is subject to some abuse and financial abuse is one of the most common."

Watts is also past-chair of the British Columbia Coalition to Eliminate Abuse of Seniors, which is opening a legal clinic at its headquarters at 411 Dunsmuir St. in downtown Vancouver this summer.

"I think financial abuse is one of the categories where we get the largest number of calls," said Joan Braun, executive director of BCCEAS.

Mary Martin Sharma oversees a team of 20 volunteer counselors who speak to seniors' groups on fraud, covering subjects ranging from identify theft to telemarketing and financial abuse by family and friends.

"It's that false sense of entitlement and a lot of families get into that," said Sharma. She says one of her group's workshop videos tells the story of a daughter who used the power of attorney given to her by her mother to sell her mother's house and put the money towards a better house for herself.

"It's a very common problem," said Sharma. "Mostly it is just taking advantage of an elderly senior and the more frail they get the more they can be taken advantage of. "There is nothing worse than a destitute old person, especially one who has been cheated by their family."

PLANS CAN GO AMISS

Planning can be a powerful tool for seniors. It can also go amiss.

An enduring power of attorney -- which allows the person named as attorney to make financial and legal decisions in case you become mentally incapable -- can be part of the planning. But it is not the only answer and sometimes it's not the best one.

"Enduring power of attorney can be a useful tool when planning for a time in the future when you will be unable to make decisions about your assets," said Jay Chalke, B.C.'s Public Guardian and Trustee. "However it is a very powerful instrument and it can be misused.

"It is important to only appoint somebody who is completely trustworthy and who is up to the job of managing your assets prudently."

Chalke said it is a good idea to obtain advice from a lawyer or notary before drawing up such plans.

The provincial Acts governing powers of attorney, representation agreements and guardianships are being updated. The new legislation is expected to be proclaimed within a year.

Chalke said the new legislation will add safeguards and spell out much clearer rules and duties that power of attorneys must follow.

"It allows more opportunity for concerns to be expressed and where to go with those, and what powers the court has regarding powers of attorney," he said. "I think everyone would like to preserve a good power of attorney where it is possible to do so, but we want to ensure we have effective remedies when things go off the rails."

The Public Guardian and Trustee can step in when there are concerns about how an attorney is acting, but Chalke said it's often not possible to recover lost money or property.

"It is one thing to turn the tap off and stop future abuse, but it is difficult to get money back that has gone down the drain.

"The impact on a senior can last the rest of their lives; it can be quite devastating to people."

People who choose to use a power of attorney can name two people to act jointly, which could help provide a check against abuse. Chalke said people can add a provision requiring the person appointed as power of attorney to provide financial records to family members on a periodic basis.

There is another option available for people who have no one they feel they can trust and that is guardianship. Also covered by legislation that is in the midst of an update, the Patient's Property Act can help people who have no plan or whose plans fall through.

In that case, the court can appoint a guardian. It could be someone the person has nominated or it could be someone else in the family, a friend or the public guardian. The court-appointed power of attorney is held to a higher standard of responsibilities and reporting, which can be an important safeguard. The court can also appoint a guardian if there have been allegations of misconduct or abuse.

"Particularly for people who may not have long-standing supportive family members, that may be a safer result for them," Chalke said.

Under current legislation, power of attorney deals with financial affairs and assets. There is also legislation for representation agreements to cover both financial affairs and personal affairs, such as health and living decisions. The new legislation will step up power of attorney provisions with more safeguards and representation agreements will only cover health and the person.

SENIORS OFTEN INTIMIDATED

Frail seniors can be intimidated by people around them.

"There are lots of abuses of power of attorney," said Valerie MacLean, executive director of the BC Crime Prevention Association. "Not just financial abuse, but physical abuse where seniors are intimidated into signing over power of attorney.

"Power of attorney is a powerful thing and it can be misused and abused and seniors can be intimidated into appointing an abusive daughter or son as power of attorney."

It can be a family's secret, shielded from the scrutiny of lawyers or law enforcement agencies. "They don't know where to turn for help. They are ashamed, embarrassed and often in ill health."

Charmaine Spencer, a lawyer and adjunct professor in Simon Fraser University's gerontology department focuses on abuse of older adults. She said a power of attorney is a good tool, but it comes with pitfalls.

"One of the big things I keep on harping on from a public legal education part is that people who are given the power of attorney aren't told what the responsibilities are," she said.

Often what is forgotten is the overriding rule: A power of attorney is meant to be used on behalf of the person who has given it, not to help the person who holds the power of attorney. And it does not give the attorney the legal right to take any of the assets.

"To not benefit personally, to not mingle your money and the other person's money, to make full disclosure about any potential conflict of interest," said Spencer. "The other part of it is to provide maintenance for the person who has given you the power in the first place. You can't just sort of take off with the money."

Spencer said people holding the power may say they are carrying out the wishes of their elderly relative by helping themselves to the proceeds of the sale of a house or other assets. But their position as power of attorney prohibits them from doing that.

"Let's say you felt it was really necessary for example to sell the house. It is not your asset; it is there for the benefit of the other person," she said.

SON VISITED MOTHER ONLY TO GET MONEY

Peter Silin's company, Diamond Geriatrics (www.DiamondGeriatrics.com), is a geriatric care management, counseling and consulting company. He has seen cases of adult children wanting to use their parents' resources to benefit themselves instead of spending money on things that would improve the quality of life of their parents.

"What I have also seen is a couple of times where a parent will give in because they were afraid they won't see their child anymore," he said.

In one case, a son only visited his 96-year-old mother to ask for money which she was afraid to refuse him in case he wouldn't visit anymore. When her mental state deteriorated to the point that a trustee was looking after her financial affairs and the son could no longer access her money, he simply stopped visiting.

In another case, Silin said a woman's family members moved in with her when she could no longer care for herself.

"She needed more and more care, the daughter didn't feel she could manage any more, so guess who ended up in the nursing home," he said. "The daughter is living in the house.

"I see that one a lot."

Janine A.S. Thomas is a Vancouver lawyer who practices in estate planning and administration. She points to the importance of checks and balances in planning for one's future.

"My experience has been an ounce of prevention is worth a pound of cure," she said.

"We perhaps are not explaining how powerful this power of attorney document is to the person," she said.

"Secondly, we are not necessarily presenting them with options about checks and balances, like how well do your two kids get along. If they don't get along well now, why do you think they'll get along when they have power of attorney."

Power of attorney shouldn't be routinely given, advises Thomas, who points to alternatives that could prevent potential abuse.

"One of the things we sometimes see is 'Mom doesn't need the money, we're going to inherit it anyway, we need the money, have a mortgage and kids -- we will sell the house, mom will be more than

provided for and we are each going to take enough money to pay off our mortgages," she said. "It is not always the kids in their mind are doing anything wrong, they just feel that's what mom would want.

"I have to say maybe that's what mom might have wanted, but she doesn't have the capacity now to make that kind of gift so legally you can't do it."

John Sloan, a physician who cares solely for the frail elderly, is called on to judge the capacity of patients to administer their financial affairs, such as in the case of a senior with a much younger girlfriend or beau who appears to be draining the senior's bank account.

"There is a distinction between somebody who understands what they are doing and is willingly doing it," he said, citing cases such as lavishing money or presents on a new romantic interest. "And somebody [who] because of an illness or a brain illness doesn't have the insight or judgment that they used to have and so are being taken advantage of.

"That is a difficult distinction at times."

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FINANCIAL ABUSE OF SENIORS

- DEFINITION OF FINANCIAL ABUSE: misuse of a person's funds and assets; obtaining property and funds without his/her knowledge and full consent, or in the case of an elderly person who is not competent, not in his/her best interests. Also known as material abuse.

- One in 12 B.C. seniors have been financially abused in amounts that averaged more than \$20,000.

- ABUSES CAN INCLUDE:

- Misusing a power of attorney.

- Persuading, tricking or threatening the adult out of money, property, or possessions (and this includes attempts to do any of these).

- Cashing pension or other cheques without authorization.

- Use of the adult's money for purposes other than what was intended by the adult.

- Unduly pressuring older adults to move from, sell or relinquish their home or other personal property; make or change a will, sign legal documents they do not fully understand, change or keep their marital status; give money to relatives or caregivers; engage in paid work to bring in extra money; care for children or grandchildren.

- Financial abuse against older adults can include family or friends refusing to move out of the adult's home when asked; sharing their home without paying a fair share of expenses; unduly pressuring the older adult to buy alcohol or drugs.

Source: Vancouver Coastal Health/Department of Justice Canada