

## **Power of Attorney 101**

May 27, 2021



### **Power of Attorney in Ontario: Common Myths**

Being an Attorney for Personal Care or for Property is a big responsibility. As an Attorney, you are in essence making critical decisions on behalf of someone who has trusted you with their money, property, medical care – basically everything they own and need. For this reason it is important to know what your role is, but also what it is not.

This document will outline a few myths about Powers of Attorney, ideally helping you steer clear of pitfalls and mistakes during your time as an Attorney. Let's meet Brett and Haley. Brett is Haley's Attorney for Personal Care.

**Myth:** *Brett can pay himself an hourly wage by making withdrawals from Haley's bank account.*

**Fact:** The position of an Attorney should not be viewed as an opportunity for someone to make money. Unless the Power of Attorney document includes direction for Brett to make withdrawals, he is not permitted to pay himself in this manner. Usually, provisions are made in a Power of Attorney document to allow for an Attorney to be compensated, but this requires keeping strict accounting records.

**Myth:** *Brett's sister has prepared a "Living Will" document that she feels will ensure her wishes are followed should she ever become incapacitated. Brett says that's not enough.*

**Fact:** Brett is correct. Living Wills are not recognized in Ontario. Instead, his sister should look into creating an Advance Care Plan.

**Myth:** *Brett is in charge of making every decision when required to, and does not need to take any other information into account.*

**Fact:** Not exactly. Brett, as the appointed decision-maker, will make decisions – but they must take Haley's best interest into account. Brett should ask himself "what would Haley do if she were capable of making this decision?" He cannot make decisions that would benefit him financially, nor can he consent to medical treatment that would restrain Haley, either physically or with the use of chemicals. Often, an Attorney will seek advice from another professional to avoid mistakes.

**Myth:** *Once a professional decides that you are mentally incapacitated, that's it. You are stuck with that diagnosis.*

**Fact:** Quite the opposite. A single mental capacity assessment doesn't last forever. If your mental status is going to change because of illness or anything else, you'll need it reassessed.

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### **Powers of Attorney 101**

Ontario

Find these and more useful tools and information at: [CanAge.ca/AgingYourWay](https://www.CanAge.ca/AgingYourWay)

### **About CanAge**

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.

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