

Aging Your Way:
Creating an
Age-Inclusive
Canada, Together

CanAge.ca/AgingYourWay





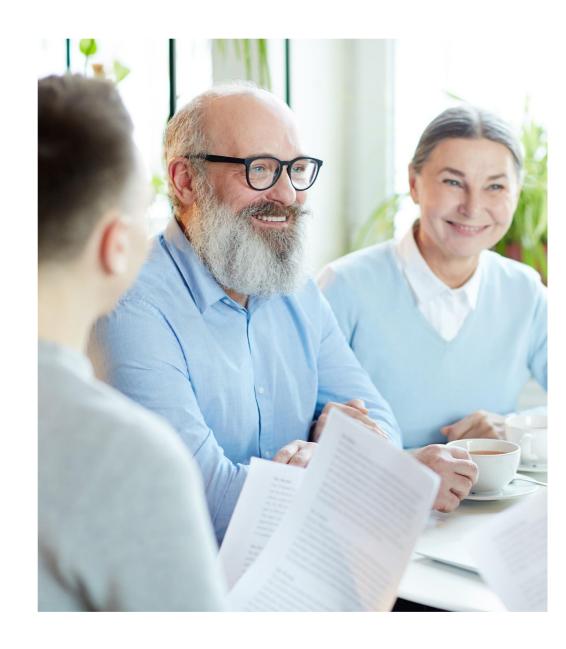
TODAY'S TOPIC

Power of

Attorney 101











HOST



CanAge. Laura Tamblyn Watts CEO, CanAge





LAURA TAMBLYN WATTS, LLB

Laura Tamblyn Watts, president and CEO of CanAge, is a highly sought after expert regarding matters involving older adults in Canada and around the world. She currently teaches at the University of Toronto, where she is also a Fellow of the Institute for Life Course and Aging.

Laura is an Executive Member of the Canadian Bar Association's National Elder Law section and a Board member of the National Initiative for the Care of the Elderly. She is also a board member of the Investment Funds Institute of Canada's (IFIC) committee on Seniors and Vulnerable Investors, PACE Independent Living, Elder Abuse Prevention Ontario, and an incoming member of the Investment Industry Regulators Organizations of Canada (IIROC).





AGENDA

- 1. Welcome & Introduction
- 2. Keynotes:
 - Laura Tamblyn Watts
 - POA 101: Capacity
 - Kimberly A. Whaley
 - POA 101: The Role of an Attorney for Property and Personal Care
- 3. Audience Q & A
- 4. Stay in Touch, Resources & Acknowledgements







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.

Introducing:

of Canada's Seniors.

A Roadmap to an Age-Inclusive Canada





VOICES



The 6 Compass Points of this Roadmap are:

- V Violence and Abuse Prevention
- Optimal Health and Wellness
- Infection Prevention and Disaster Response
- Caregiving, Long-Term Care, Home Care and Housing Resources
- **E** Economic Security
- Social Inclusion

VOICES

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Violence & Abuse Prevention

Issue 1: Awareness

Issue 2: Resources

Issue 3: Responses

Issue 4: Research

Issue 5: Financial Institutions





SPEAKER



Kimberly A. Whaley

Certified Specialist In Estates and Trust Law, Whaley Estate Litigation Partners (WEL Partners)





KIMBERLEY A. WHALEY, CS / LLM / TEP

Kimberly A. Whaley CS, TEP, LLM, is a Founding Partner of Whaley Estate Litigation Partners (WEL PARTNERS) a litigation firm in Toronto. Kimberly is a non-practicing solicitor of the Supreme Court of England and Wales. Kimberly is designated as a Certified Specialist in Estates and Trusts Law by the Law Society of Ontario and is repeatedly recognized as a leading practitioner by Chambers, Lexpert, Lawday, Best Lawyers, Martindale-Hubbell and Canadian Lawyer.

POA 101: Capacity

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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



SUBSTITUTE DECISION-MAKING

2 Domains = 2 Documents (most of the time)

POA - Personal Care	POA - Property
 Where you live Health care decisions How you live in the world The "lead" attorney 	MoneyReal EstateInvestments"Stuff"

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PLANNING FOR FUTURE DECISIONS

Capable

You decide

Incapable

Someone else decides (substitute decision-maker)



TYPES OF POAs

1. "General" POA Capable - Active right away Capable Incapable - Ends at a point of incapability



TYPES OF POAs

2. Continuing POA Capable - Active right away - Continues past point of incapability

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TYPES OF POAs

3. "Springing" POA Capable - NOT active right away - Created, but dormant - STARTS at the point of incapability

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TYPES OF POAs



POAs ACROSS THE COUNTRY



- Laws different in every legal jurisdiction
- Don't use POAs from other provinces!
- Let's use Ontario as an example



DECISION-MAKING

Who Makes Your Personal Care Decisions if Incapable?

Capable Incapable You make decisions Guardian (court)

- 2. POA Personal Care
- 3. (Consent Capacity Board)
- Spouse/Partner
- Children (adult)
- 6. Parents
- 7. Siblings
- 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
- Public Guardian and Trustee they don't want your business!

No Default List

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.

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...

SUPPORTED DECISION MAKING



- You stay in your "own shoes" person does not lose rights
- Article 12 of the UN Convention on the Rights of Persons with Disabilities
- Exists in British Columbia, Yukon and western provinces
- Expanding globally
- A transition from substitute decision-making

Aging Your Way: Creating an Age-Inclusive Canada, Together

The Role of an Attorney for Property and Personal Care



Introduction

- Power of Attorney- POA
- Factors to consider when choosing an attorney
- Duties of an attorney





What is a Power of Attorney

- The Power of Attorney for Property has long been viewed as one way in which a person can protect their financial interests, by planning in advance for when they become ill, infirm or incapable of making decisions.
- It can minimize family conflict during the grantor's lifetime.
- It can prevent unnecessary, expensive and avoidable litigation.
- It can provide a means for Attorneys to provide the physical, emotional and financial care that a vulnerable loved one needs.



Types of POA in Ontario

- Power of Attorney for Personal Care
- A non-continuing Power Of Attorney For Property
- Continuing Power of Attorney for Property



Who can be an Attorney?

- 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 of an Attorney Generally

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



Duties specific to 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 specific to 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



Duties specific to an Attorney for Personal Care Cont'd

- 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



Factors To Consider When Appointing An Attorney For 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?



Factors To Consider When Appointing An Attorney For 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?
- Is this person able to make hard decisions?



Resources

- WEL Partners Resource Centre: http://welpartners.com/resources/
- CBA Elder Law Section: www.cba.org/cba/sections_Elder/main/
- OBA Elder Section Website: https://www.oba.org/Sections/Elder-Law
- Advocacy Centre for the Elderly: www.advocacycentreelderly.org
- National Initiative for the Care of the Elderly (NICE): www.nicenet.ca/
- BC Law Institute's Canadian Centre for Elder Abuse: www.bcli.org
- Law Commission of Ontario, A Framework for the Law as it affects Older Adults: Advancing Substantive Quality of Older Persons through Law, Policy and Practice http://www.lco-cdo.org/en/older-adults-final-report



THANK YOU!



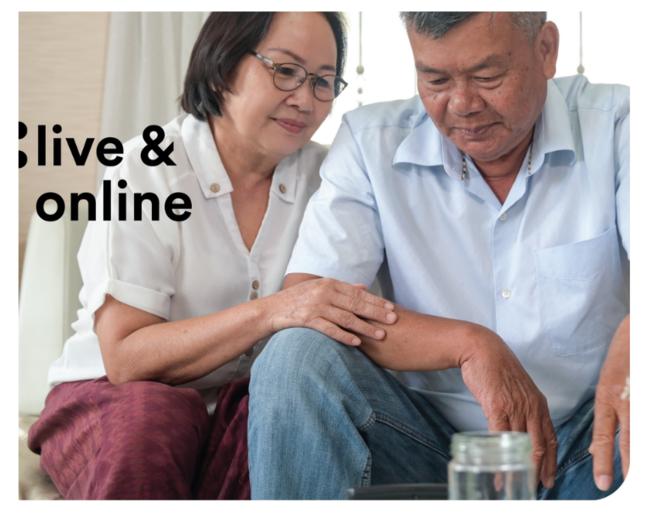




UPCOMING: live & online TALKS

- 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



Educational Speaker Series

Retiring Well: How to Protect Your Savings

June 22, 2021 1-2 pm ET

Free to attend!
Register today:
CanAge.ca/AgingYourWay









RESOURCES

Visit CanAge.ca/AgingYourWay for resources from today's presentation

Download our other resources at CanAge.ca/Resources





WATCH PAST TALKS





Adult Vaccinations: Which ones to get and why?



Using Technology to Stay Connected



Stop the Stigma: Ageism

Available at

CanAge.ca/AgingYourWa

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

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5 Contact us info@canage.ca



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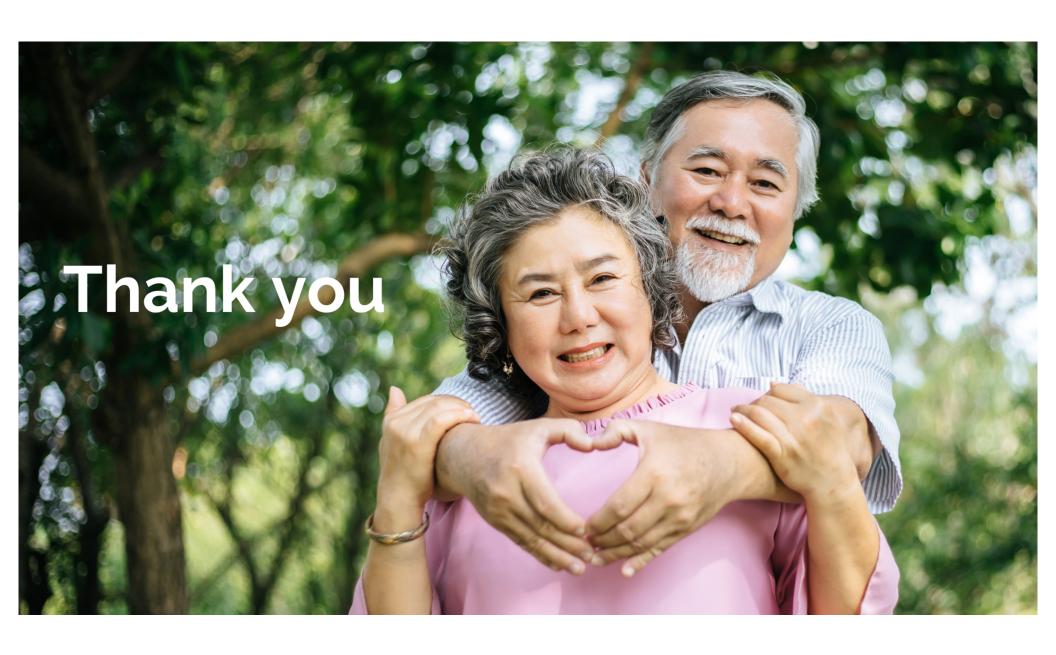
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More live & online talks: tpl.ca/programs-and-classes



POA FOR PROPERTY



When talking about Continuing Powers of Attorney for Property, a person is your "spouse" if any of the following things are true:

- you are married to them,
- you have lived together common-law for at least a year,
- you have a written cohabitation agreement with them, or
- you have a child together.
- And, a person is your "partner" if you have lived together for at least a year and you have a close personal relationship of primary importance to both of you.
- "Spouse" and "partner" can have different meanings in other areas of law.

CHOOSING AN ATTORNEY

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- Suitability
- Availability
- Monitor can be appointed
- Alternate choice is every bit as important!

CHOOSING AN ATTORNEY

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Choose someone who will:

- Understand and respect their duties as a power of attorney
- Understand and respect your wishes
- Make ethical decisions
- Be good with details and record-keeping