

# Power of Attorney Investigations

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OPP



# What Is Elder Abuse

“Any action or inaction by any person that causes harm or threatens to cause harm to an older person”



# Types Of Abuse

- Financial
- Physical
- Psychological
- Neglect



# POWER OF ATTORNEY



# What Is A Power Of Attorney?

- Legal document in which the grantor names a person to act as his or her “attorney”.
- “Attorney” means AGENT not “lawyer”.
- Gives authority to make decisions as agent on behalf of grantor.
- Gives transactional authority - not transfer of ownership.



# What Is A Power Of Attorney?

- Can appoint more than one person as attorney.
- If more than one attorney, can be appointed to act JOINTLY or JOINTLY and SEVERALLY.
- Must have two witnesses.
- Spouse, partner, child, person placed in position of authority or benefit CANNOT be a witness.



# Why are the police interested with Powers of Attorney?

- Abuse of Power of Attorney is growing.
- Cases generally go unreported for long periods of time.
- Usually brought to the attention of the police when situation becomes a crisis or death of the senior.



# Theft by Power of Attorney Section 331 C.C.C.

- **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.**





# Three Types Of Power Of Attorney

- General Power of Attorney.
- Continuing Power of Attorney.
  - Property / Finances.
  - Personal Care.



# When Does A Power Of Attorney Become Effective?

- Date signed if no activation clause included.
- Conditions and Restrictions.
- Activation clause - Date person deemed incapable (Mental Capacity).



# Mental Capacity

- Defined as the ability to “UNDERSTAND” and “APPRECIATE” the foreseeable consequences of any action or inaction.



# Case Study - Mr. H

- Mr. H is 87 years of age.
- Lived with his step-grandson Mr. A and his common-law wife Ms. B. In lieu of paying rent, Mr. H would assist with household expenses.
- In July of 2002, Ms. B angrily approached Mr. H, striking him several times and pushing him down a flight of stairs.



# Case Study - Mr. H

- Police responded with family to investigate.
- Mr. H provided disclosure. Multiple bruises noted.
- Relocated for his own welfare.
- Examined by Doctor with injuries noted and photographed.
- Original statement – KGB. Mr. H seemed confused.



# Case Study - Mr. H

- Ms. B arrested for Assault, Assault CBH with bail opposed.
- Subsequently released with multiple conditions.
- Surety revoked bail. Additional charge of Obstruct Police laid.
- Mr. A agreed to provide an induced statement. Prepared with assistance of Crown's Office.
- Arranged through his lawyer.



# Case Study - Mr. H

- On September 25th, 2001 Mr. H appointed Ms. B as his Continuing Power of Attorney for Property.
- Ms. B applied to the Department of Veterans Affairs on behalf of Mr. H for disability and attendance benefits. The benefits were subsequently granted.
- From November 2001 to July 2002, 11 benefit cheques were mailed to Mr. H.
- Total value was \$23,168.54.



# Case Study - Mr. H

- Ms. B opened a Power of Attorney account at Money Mart to cash the benefit cheques.
- The monies were used for Ms. B and Mr. A's personal gain.
- September 2001 to July 2002, Ms. B made 40 unauthorized withdrawals from Mr. H's bank accounts, by virtue of the Power of Attorney, totaling \$22,020.44.
- Arrested with additional Theft by POA charges laid.





# Obstacles

- Cognitive capacity of Mr. H
  - Re-interview to clarify issues.
- Obtaining of medical and financial records.
  - Consent to release of information.
  - Production Orders.
- Induced statement
  - Consult with Crown.
- Department of Veteran's Affairs
  - Consent to release information.
  - Escalate to upper management if necessary.



# Why obtain a statement of an elderly witness as their evidence at a criminal proceeding?

- Recants (“ What I told out of court was a lie”).
- Forgets (fairly or not).
- Vulnerable.
- Absent-Deceased.
- Present but unable to commence or complete their testimony.



# When to Video Interview the elderly witness

- Health - Vulnerability.
- Age.
- **Seriousness of the Offence.**
- Degree of Co-operation.
- Resources.



# Possible Interventions

- Education
- Safety Plans
- Home visits
- In-depth assessment/Interview
- Contact with other family and friends
- Charges under applicable legislation



# Role of the Police

- Ensure victim's safety
- Investigate
- Charge, arrest, bail conditions
- If insufficient evidence exists, consider alternatives to resolve the problem
- Ensure victim has necessary referral information and support



# Resources Available

- Ontario Community Support Association
  - Referral 1-800-267-6272
- Community Care Access Centre
  - Local 1-800-810-0000
- Office of the Public Guardian and Trustee
  - Intake 1-800-366-0335
- MCCR
  - Intake 1-800-268-1142
- Advocacy Centre for the Elderly
  - Intake 1-416-598-2656



# Quote

*“The prevention of abuse and neglect of older adults is a community challenge which will not be resolved quickly by one person or one approach. It will require a community effort to create an environment which reaffirms the rights of older adults to self determination, respect and dignity...”*

~Teresa Lukawiecki



# OPP Internet Web Page

**[www.opp.ca](http://www.opp.ca)**

(Crime Prevention Section)





# Thank You

