

# The **POWER** of ATTORNEY PROJECT

## **How to Choose a Substitute Decision Maker**

Welcome to the Power of Attorney Podcast which is part of our Conversations that Matter Podcasts. My name is Mary Bart, Chair of Caregiving Matters. This podcast is intended to provide general information only and is not intended to be a substitute for seeking personalized legal, financial or other advice. This podcast raises issues that our audience can further explore on their own in their own local communities with their own local experts. This project will help to be a call to action for families to solve their issues, find solutions to their problems, and have greater peace of mind.

Mary- Our topic today is how to choose a power of attorney or substitute decision maker and to help us with this topic I'm pleased to welcome our guest speaker Arthur Dolan and he is with Dolan Estate Settlement Services Incorporated. Welcome Arthur and thank you for joining us on this project.

Arthur- Thank you, Mary. I'm pleased that you've invited me to join you. I look forward to our conversation.

Mary- Thank you, now share a little bit about yourself and your business Dolan Estate Settlement Services.

Arthur- Basically, we take care of settling the estate details after a person has passed away. We do get involved in educating people prior to that point and the necessity of having a properly prepared and up to date will and that includes powers of attorney and that includes health, personal care and property.

Mary- Thank you Arthur for that. Let's get started with our conversation. Are there different types of POA's?

Arthur- There is basically two categories for personal power of attorney and that is:

- Personal care which covers issues that affect health or mental capacity and when the authority should be transferred to someone other than you. For example if you are unconscious such as when you're in an operation or you could be declared incapable for various reasons. The important part is to be sure you have discussed your desires with your power of attorney for personal care.

- Property which may include real property such as your house as well as all your financial affairs and again it is very important that you have discussed the elements of that with your power of attorney who looks after those affairs for you when you're not capable of it but you are still alive of course.

Mary- Okay. Thank you for that. Now how do you choose who should be your power of attorney?

Arthur- That's a process where people we find have not given a lot of care for and traditionally have just appointed one of their offspring or your partner who would act on your behalf. Not that that is a wrong process but with today's life and technical aspects, being more complicated than in previous generations, it's very important that one take into consideration some characteristics or qualities that they should look for in a power of attorney. One of the key elements of course is to make sure that the person is a person that you wish to act on your behalf is both willing and available to act as your power of attorney. Whoever you have in mind, you should ask them if they would like to have that job because there is a fair bit of responsibility that goes with it when acting on your behalf. The person should be reliable and trustworthy. In other words, they will follow YOUR wishes not according to how they see should be done or could be done. Act according to what YOU would do. It's also important to be communicative because usually there are other family members who will be affected by these decisions so it's important to keep them abreast of the progress or changes in the situation. When it comes to your health or medical personal care power of attorney, the person should be fairly empathetic. That is that they can understand how you would feel and want the decision to be made. That is another aspect that is important. Finally, choose a power of attorney that is relatively nearby. You don't want to pick someone who is more than likely out of the country or who lives in another province because of the distances involved in our country of Canada. It's important that they are able to be local and that they can act locally for you so that they can best respond to the demands placed on them at that particular time. That basically covers the five or six characteristics that one should look for in a power of attorney.

Mary- Now that's very interesting. Now you've shared with us that there are two types; one for care and one for property. My next question for you is would you have the same person doing both jobs or have separate people doing the two jobs?

Arthur- It's entirely possible to have the same person do both jobs and often as people get older, there may only be one person that fits the description of a power of attorney to fit your needs. It's very important to ensure that they can act according to YOUR wishes and not necessarily going in a direction that may be counter to your beliefs and desires. Let me put this into context of if a person meets the criteria of your needs and is a good example to have as a power of attorney for personal care. For example, my sister, although she's younger than me and likely to outlive me, was brought up with the same beliefs as myself and we still share most of those beliefs regarding life, medical care and death. We have discussed those beliefs and desires and I have under special conditions and she will be able to respect my choices. Therefore, I would choose her to be my power of attorney for personal care. Alternatively, it could be your spouse who could do the same thing. You could have two people named at the same time and one could take over from the other if for various reasons the first named power of attorney is not able to act then the secondary could step in. That's best to be set out with a lawyer in a

legal document. Another example that you may consider when you are looking at how you choose somebody is I had a client who had a brother who was an accountant and obviously the brother was the first choice for being power of attorney for property. However, when it comes to the health and medical care they had different beliefs in their lives and my client needed someone who could act according to his wishes. His brother had joined a religious group and was not allowed the same choices so it was better to name his doctor as the power of attorney for his personal care. He wanted to be sure that his choices regarding the medical element would definitely fit his desires.

Mary- That's very interesting on that. Another question for you, what kind of issues do you see in your business?

Arthur- Most is very straightforward and uncomplicated. Periodically, one encounters sibling rivalry and or grief at the same time can enter the picture. This can lead to family distress and dissention. In the cases where nobody is named as power of attorney, this can complicate things including having to apply to the attorney general to appoint a power of attorney. This process takes time and if contested can become a very expensive process.

Mary- Not only, I'm guessing, is it expensive but the stress within these families must just be out of this world. People go through their lives and these issues can tear families apart and that's what is so sad. Part of what we are trying to do with this project is to educate people so that they do get these documents and they do talk to their families because nobody ever wants to go to court and you sure don't want to go to court against a sibling or family member.

Arthur- That's very true, Mary. Unfortunately, we are seeing a growth in the litigation rate regarding estates and of course this can create huge family dissention and many times means that you will no longer have a family united in the traditional sense. This can create a lot of problems down the road as well.

Mary- Absolutely, now where can people go to learn more about this topic?

Arthur- Fortunately, there are many resources available to people to be able to learn more about the power of attorney and some of them would include such as following the power of attorney podcasts that you are preparing and that will be available through Caregiving Matters, others are online resources as well such as the council on aging, there are community outreach services for seniors in different communities and those will have resources available to lead people to get the information, and the Ontario government website will be able to give you some information and general advice, but I really do recommend that people talk to their lawyers. It's very important that you have your will up to date and properly prepared because if there are any questions they will usually rely on a legal interpretation and usually people are not properly equipped to do. Usually the law societies in different provinces have their own interpretations and terminology and ways of presenting information. Therefore, your lawyer is a very important partner in this preparation and I highly recommend that you follow that procedure. Just a quick aside on that also is that people usually think a lawyer is an expensive process but you need to look at your overall estate which means everything you own from your house to your car and other toys etc and when you add it all up the cost of a lawyer is a relatively small amount in the

overall picture so it's better to have a lawyer prepare the details according to what you want to have done.

Mary- I'm so glad you mentioned the part about going to a lawyer because they are the experts and they will be experienced to understand situations and to recommend ideas that perhaps lay people would have never thought of. They will give and share their wisdom and one person said to me actually "well I can't afford a lawyer to do my will and my power of attorney" and I looked at them and said if you can't afford that, you've got to find the money somewhere, they're not that expensive and it will save your family years of grief unless you have proper documentation. It's absolutely critical and so you know what, that person went and got a part time job for a short time but just enough so that they get in to meet the lawyer, get the documents done, and get things figured out. At first the lawyer was an obstacle from a financial perspective but it really wasn't that expensive and then I got a phone call and they thanked me so much for encouraging them to go and get this done and now they do have their piece of mind and money was tight but they made it happen so you know it can't be the reason why we don't get these documents done. It is so important for our lives and for our families so I'm so glad that you mentioned that part.

Arthur- Just to add to that and when it comes to cost, and there are people who cannot afford a lawyer, it doesn't hurt to talk with a lawyer about what you may be able to afford. Some can lower their rates because they can pick up the difference themselves or they make enough in that respect. I'm not saying that lawyers are rich but they may have some flexibility. The other area that people may consider, particularly in the large metropolitan areas, where there is a law school, there is a clinic for seniors and those can be very helpful to you in preparing the documentation and they do it within a value of whether you can afford something

Mary- That's a great point and the more you and I have talked about this the more I think they bring great integrity and great compassion for their clients I think that they will do the best to prepare the documents so going to a lawyer has got to be a top priority in everyone's life. I would like to thank you Arthur for joining us on this project. Your insights about how to do a power of attorney. I think they are very important and will help people to say, "You know what, I actually have never thought about this topic and I'd better sit down and think about it" and your comments will lead them in the direction to start to take some positive action around these very important documents. Arthur, could you share your contact information with our audience please?

Arthur- If you wish to reach me to get information you can contact me at [dolaness@kos.net](mailto:dolaness@kos.net) or alternatively 613-770-5911

Mary- Thank you Arthur for that.

**Chris - Mary, who are our initial project supporters?**

Mary – We wish to acknowledge that this project is funded in part by the government of Canada’s New Horizons for Seniors Program. Our other initial supporters include Care Connect, The Care Guide, The Healing Cycle Foundation and Scotiitrust. Caregiving Matters is an internet based registered Canadian Charity dedicated to educating and supporting family caregivers. 90% of our work is done online and by leveraging technologies. 10% is done by producing local educational events. We leverage technologies in everything that we do ensuring greater reach and sustainability. I trust that we have given some of the highlights of our exciting new initiative. If you are interested in speaking with me about the project, please let me know. We look forward to your questions and your ideas.

Chris - **Mary, if listeners have questions, what is the best way for them to contact us?**

Mary Bart- You can contact me directly Mary Bart, Chair of Caregiving Matters at 905-939-2931. My email is [mary@caregivingmatters.ca](mailto:mary@caregivingmatters.ca) and our website is [www.caregivingmatters.ca](http://www.caregivingmatters.ca)