

The **POWER** of ATTORNEY PROJECT

Podcast title: Who Really Has the “Power?” – A Manitoba Perspective, with Angela G. Gentile, M.S.W., R.S.W.

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: Today we have with us, Angela Gentile, who is a Geriatric Mental Health Clinician who lives in Winnipeg, Manitoba. She is going to talk to us about the concept of Enduring Power of Attorney from a Manitoba perspective. Welcome, Angela.

Angela: Thank you for having me, Mary. I am very honoured to be a part of The Power of Attorney Project. I believe that the concept of POA is very confusing for not only families and older adults themselves, but also for us as professionals who work with the aging population. I will be speaking from a Manitoba perspective today. I am also speaking from my own personal and professional experience.

Mary: That’s great, Angela. It is important to hear what is happening in all provinces across Canada. I am sure a lot of the concepts can be applied to all Canadians in one way or another. Please start by telling me about your understanding of what an Enduring Power of Attorney is and who would need it.

Angela: Yes, although some of the terms and legalities are different in each province, there are many similarities. When I was doing some research on the topic of Power of Attorney (POA), I realized that I would put it in the same category as insurance. It’s something you hope you never have to use, but you are comforted knowing that if something ever happened, and you needed it, you and your family will be better prepared in the event you did need it. Most of us can’t imagine ever needing someone else to make legal and financial decisions for us. However, a POA, in particular, an Enduring POA (ENDURING POWER OF ATTORNEY) is meant for just that. An ENDURING POWER OF ATTORNEY is a legal document that allows you to appoint another person to act as your Attorney in legal and financial matters in the event that you are unable to do so due to mental incapacity or incompetence. It endures or continues even if you should become mentally incapable. This could be as a result of illness or injury. In my line of work, I often see it in the context of dementia. In Manitoba, there is an additional and also important document that is related to this, and it is called the Advanced Health Care Directive. The older term used

for this is a “Living Will”. In Manitoba, you can appoint a Health Care Proxy to make health care decisions on your behalf if you should become unable to do so. Both of these documents are an important part of planning for your future, with the hope that you never have to use them.

Mary: In Ontario, there is a Power of Attorney for Personal Care. So, Manitoba does not have this type of POA?

Angela: No, so that is one example of how provinces differ in the way they handle these kinds of matters. I would also like to point out that neither the ENDURING POWER OF ATTORNEY or the AHCD give the Attorney or Proxy authority to make everyday decisions for you, such as where you will live. In Manitoba, only a Private Committee authorized by the court can make these kinds of decisions. It is often a family member or close friend that applies for Private Committeeship. It can be costly. Alternatively, if there is not anyone willing or able to do this for you, The Public Guardian and Trustee of Manitoba will take on this role for you.

Mary: So, if there is no Committee to look after you, who will make your day-to-day decisions for you if you are incapacitated?

Angela: That’s a good question. Here in Manitoba, the health care professionals often rely on the person who was appointed as ENDURING POWER OF ATTORNEY, or I’ll call it Attorney, for advice on where the person will live, because the Attorney has the authority to pay the rent or monthly fees, or for the moving company for example. So, until that practice stops, that is another good reason to have an ENDURING POWER OF ATTORNEY in place. Once the person agrees to a move, the move goes smoothly because the Attorney can handle all the details. For example, if you are 85 years old, fall, go to hospital, and it is discovered you have dementia and you can no longer live on your own safely, the Attorney can help the health care professionals make the right choice of housing or long term care facility for you. The health care professionals recognize that the Attorney was a person who you trusted with your legal and financial matters so that person can influence the decision that is made. When it gets complicated is when the person who has dementia does not go along with the Attorney or HCPs advice.

Mary: That is interesting. So, don’t most people assume that appointing an Attorney and/or Health Care Proxy means that that person will be able to take care of everything when and if the time comes?

Angela: Yes, and in most cases they do, and can, here in Manitoba. We do not find the contrary until a crisis or a stressful complicated situation presents itself. However, these situations are not very common, thank goodness! The more common issues that I come across in my work, is when there is a diagnosis of dementia and the person is no longer capable of managing some day-to-day tasks. For example, they may be mismanaging their finances, or they may be at risk for financial abuse. This is easily rectified by having the Attorney take over managing the finances. Another reason why it is important to appoint an ENDURING POWER OF ATTORNEY.

Mary: Do you have a case example that may help us understand what some of the issues are in terms of decision-making, and need for ENDURING POWER OF ATTORNEY in the context of dementia? And could you also talk about what limitations or roadblocks families may run into?

Angela: Sure! Dementia can affect not only a person's memory, but also the ability to have the insight and judgement to assess if there is a risk of harm to him or herself, or others. This is when it gets really tough for families. When a person with dementia lives alone, family members often have concerns about the ability of their loved one to manage safely. I have two case examples I'd like to tell you about. And just as a side note, I will change the names and other information in these case examples to protect confidentiality. Charles is 81 years old, and he lives alone in an apartment. He has two sons, Michael and David. He has not appointed a POA of any kind and has no intention to. He has a friend, Pearl, who lives in the block, who comes by with a meal every day. If it wasn't for Pearl, Charles probably wouldn't be eating on a regular basis. Charles has a sister, Dorothy, who lives in another province. Dorothy is concerned about Charles because every time she calls him, he doesn't remember much of anything or tends to make things up. On a couple of occasions, Charles told her that his son, Michael, took him to the bank and he gave his son some money. Dorothy was getting concerned about this son, Michael, so she called him. He didn't return her calls. Dorothy talked to Charles' friend Pearl, and found out that Charles is in fact giving his son Michael a lot of money. Pearl also said that Charles isn't taking his medication. Dorothy fears that his son, Michael, is financially abusing him, so she calls the police. After a visit to Charles' home, the police bring the case to my attention. I go out to do a mental health assessment of Charles, and find that he has symptoms of dementia. I contact Dorothy and advise her that Charles is at risk and an Enduring Power of Attorney is recommended, but Charles refuses. It is not even clear if Charles is capable of appointing an ENDURING POWER OF ATTORNEY as you must be mentally competent to do so. Charles also refuses to have any Home Care help, and is unaware of the danger that he puts himself into. He will not move either. The family knows that if he doesn't accept more help, that he will have to move to a facility that offers 24-hour care and supervision. The sister is also concerned about Charles' safety, as she received a call from the caretaker that Charles had been knocking on doors asking neighbours about his "missing socks". Pearl's health is failing, and she doesn't think she'll be able to help Charles much longer. Dorothy feels that her hands are tied. She is concerned about her brother, but she can't do anything about it. Being in another province makes it even more difficult. I tell Dorothy that the other option is to have Charles put under committee with the Public Guardian and Trustee of Manitoba, but she knows this will be very traumatic for her brother and decides against it. She knows that if the government takes over his affairs, that he will feel less empowered and it will cause more problems in the family. This situation is a crisis waiting to happen, and there isn't an easy answer.

Mary: Didn't anyone in the family want to apply for Private Committee?

Angela: No one in the family wanted to apply to a court to be Private Committee for Charles. They thought this would cause too much conflict between Charles and themselves as he adamantly refused to give up his autonomy and independence. The family did not want to have the Public Guardian and Trustee of Manitoba take over, either as I mentioned before. The compromise was to have his other son, David, assigned joint banking privileges. Charles agreed with this with the support and encouragement of the bank manager.

Mary: So what happened to Charles?

Angela: Eventually it was decided that this man needed to go to a nursing home, but without a Power of Attorney in place, we didn't know if his application would be accepted. It became very clear that taking away Charles' autonomy by having him appointed under the Public Guardian and Trustee would damage the trust and relationships that he had with his sister and son. The application for nursing home was accepted and now Charles awaits a spot. The family knows that they can't "force" Charles to move. Even now they are not sure how they will get Charles into the Home and they seem to be hesitant to push the issue. I am pretty sure they still feel badly about going against Charles' wishes. Time will tell how this situation works out. The case may eventually be taken off of the family's hands if Charles continues to be at risk while he awaits placement.

Mary: So, if there *was* a ENDURING POWER OF ATTORNEY in place, would there be any difference in how this story goes?

Angela: In Charles' case, it would have prevented a lot of stress and grief on the family's part. They even went as far as getting an appointment set up with a lawyer, and he refused to go at the last minute. It may have been more difficult for the son to financially abuse him if a different family member was appointed ENDURING POWER OF ATTORNEY as they would have been able to step in and protect the account. But it may not have made much difference with the fact that Charles didn't want to move, but needed to move. However, there are times when a person can be "forced" to have a medical assessment done, and I will speak more to that in a bit.

Mary: So, when we talk about "power", in regards to POA, we need to be really clear on what those "powers" are.

Angela: I am beginning to think that an ENDURING POWER OF ATTORNEY sometimes gives family members a false sense of security. They are happy to have it done and know that these matters have been dealt with, but I don't think they actually realize how little "power" they have in terms of *getting the person to actually move*. I have had to tell family members that without Private Committeeship, their dad has every right to live the way he is living. He has the ability to decide where and how he wants to live. The Public Guardian and Trustee needs to become involved or a Private Committee needs to be appointed if the family members are truly worried about their loved one's situation when mental incapacity and risk is involved. I've learned that is not an easy thing for families to do, and they would prefer if *I* was the one to "pull the plug" and order the person into a nursing home, or whatever. I don't have any authority to do that, either. The only times I step in is when I assess the person and determine there is a risk of harm to him or herself and he or she does not agree to seek medical attention. I do this in consultation with a psychiatrist. In Manitoba, this process involves a Form 1, or an "Application for an Order for Involuntary Medical Examination". It is initiated by a family member, with my support, or by myself if family is not willing or able to do this. If the application is accepted, the police will escort the person to the hospital for assessment.

Mary: And what is your other case example that can help us understand what can happen if an ENDURING POWER OF ATTORNEY is not appointed?

Angela: I'll tell you about Doreen, who is an 86-year-old widowed woman who lives alone. She is starting to demonstrate signs of memory impairment, and the family have concerns that she may have dementia. The doctor suspended her driver's license pending re-testing because she was in an accident and prior to that had gotten herself lost on two occasions while driving to the doctor's. The family sold her car and she no longer has access to a vehicle. Now, she tries to walk to her appointments, but she gets lost. She is no longer safe to be living alone as the cold winter months cause her to be at risk of hypothermia should she wander out into the cold. Doreen has never appointed an Enduring Power of Attorney, as she adamantly refuses to give up her independence and feels that she isn't ready. Doreen, like most people, wants to remain in control of her own life. Doreen has been declared mentally incompetent, and since she doesn't have an ENDURING POWER OF ATTORNEY in place, and no one in the family wants to pursue Private Committee, her case is being brought to the Public Guardian and Trustee of Manitoba, where a Client Administrative Officer will be assigned to her case. If she had prepared an Enduring Power of Attorney in the past, the Attorney could have helped guide her with decisions as to where the best place for her to live would be. Now, it will be a government-appointed employee who will make the final decisions for her.

Mary: So, having ENDURING POWER OF ATTORNEY could have changed Doreen's outcome?

Angela: Not necessarily. What it does is it gives the person a better chance at feeling a little more in charge of decision-making rather than having the "government" take over. Making decisions with a family member you can trust versus someone you don't know can affect the outcome in terms of how everyone feels about the situation. Having appointed an ENDURING POWER OF ATTORNEY doesn't necessarily mean that the outcome is going to change immensely. If the most appropriate place to live is a nursing home, then that will likely be the final outcome. Which nursing home is selected may be different, however.

Mary: So for someone like Doreen, will she have to move out of her home?

Angela: It is most likely that she will. But this is not the case for everyone. When we consider looking at risks versus autonomy (that is living the life you want and making all your own decisions), we are actually looking at quality of life. What I ask people to do is look at all the scenarios and assess the risk. For example, consider the concept of quality of life. What does the person want? Does the person want to live at home although we know there are risks? What *are* the risks and are we prepared to live with that should something happen? If we feel the risks are too great, and we couldn't live with the fear and guilt should something really bad happen, how would the person's quality of life be if they were "forced" to move to a supervised environment? He or she may be very unhappy there and try to elope or "escape". That's where it takes a team of professionals and family members to make a decision, and the client and person appointed as Attorney in the situation often has the final say.

Mary: Don't we want to make sure that a person with dementia is safe? Doesn't safety come first?

Angela: Yes, safety comes first, but at what cost? I have seen so much grief, worry, arguments, and frustrations between an older person and his or her family members when it comes to "time to move". The loss of independence and decrease in quality of life should be carefully weighed against the risks

and dangers of living alone. Sometimes *harm reduction* is more realistic. For example, instead of forcing someone to move due to a risk of *starting a fire* by burning something on the stove, remove the fuse so that it doesn't work and hire someone to drop off meals. The person should still have the right to live the way he wants, as long he is not putting himself or others in danger and any risks have been reduced. So, if driving a car is dangerous, remove the opportunity to drive.

Mary: Doesn't the Attorney *have* to make sure that the person is safe?

Angela: We all live with risks. I put myself at risk every time I get into my car, or walk across the street. We are all entitled to live with some risk, or else what would our quality of life look like? For someone like Doreen, however, the risks are too great for her to live alone. But in most cases, the "power" to decide to live independently still remains with the person and we are morally obligated as Attorneys and family members to ensure we have done everything we can to reduce harm at the same time abiding by the person's wishes. Think back to Charles' situation. The family appear to be "sitting on the fence", not sure if they should push for nursing home placement, or to let him live alone, although there are risks. It may take a crisis for them to change their mind. It also depends on our own tolerance level for risk.

Mary: So, the person appointed Attorney does not have any legal rights in terms of making someone move?

Angela: As far as I understand, that is correct. Appointing an ENDURING POWER OF ATTORNEY does not give away any rights in terms of having a say regarding where or how a person wants to live. Determining the capacity to make decisions is not within the scope of this talk today, but really it boils down to safe and reasonable decision-making. Once someone has lost the ability to make those decisions, the Attorney is often consulted with to help the older person and the professionals make a decision that is best for the person who is living in a questionable or risky situation. The Attorney is often the voice for the person who needs some assistance, and sometimes they do not see things the same way. Careful examination and assessment of all options, considering quality of life and risks, will help the Attorney advocate for what is in the best interests of the older adult. This is another reason why I would strongly recommend appointing an ENDURING POWER OF ATTORNEY. I would rather have a trusted individual helping make those decisions rather than a government-appointed person.

Mary: So you are saying in situations where there is an ENDURING POWER OF ATTORNEY appointed, he or she can help with *decision-making* as to where the person will live. In cases where there is no ENDURING POWER OF ATTORNEY, the government may take over and the decision may be made by a complete stranger.

Angela: Yes. But I also want to stress that no one can "force" anyone to do anything against their will, unless it is under a court order (a "Form 1", as I mentioned earlier). So although the Attorney may decide that a move to a more safe, secure and suitable environment is required, it may not be agreeable to the older person. That's where the "power" ends. As I said earlier, most people want to maintain their right of freedom to choose where and how they live. Whether that means living in an unhealthy and risky situation (such as a person who hoards and doesn't take prescription medications) or living with the risk of falling and breaking a hip. It's up to the person. It is when the risks become high that

something really needs to be done, and they need protection either from themselves, and/or to prevent harm to others. These situations are not very common. I have seen cases where the person with dementia and the appointed Attorney do not agree that “it’s time to move” , and that’s where other professionals are asked to become involved. It’s also a question of ethics. Doing the right thing.

Mary: That’s a good message to stress, because it is possible that a lot of people think that appointing a ENDURING POWER OF ATTORNEY means they are giving up their independence and autonomy.

Angela: Yes, I see it as something that can help, not hinder, in most cases. It is our hope that the ENDURING POWER OF ATTORNEY will never be needed as no one wants to become mentally incapacitated. However, having prepared an ENDURING POWER OF ATTORNEY, in the context of dementia, certainly has its benefits. By appointing a trustworthy person prior to any mental impairment, you can be reassured that your finances have the best chance of being safeguarded to ensure your needs will be adequately met as you age. There are a number of responsibilities and checks in place to ensure that your legal and financial affairs are well managed. Having an Attorney appointed will help prevent future conflict in the family as it will be clear who the decision-maker is. Health Care Professionals will look to the Attorney for advice regarding long term care placement or other housing dilemmas should they arise.

Mary: Well, you certainly have shed some light on the issues that come up with respect to dementia, ENDURING POWER OF ATTORNEY and “time to move”. I think the case studies helped us understand more about some of the situations that can happen if there is no ENDURING POWER OF ATTORNEY in place.

Angela: I just want to leave you with the message that I recommend ENDURING POWER OF ATTORNEY be prepared sooner rather than later. In middle age is preferable, but any time is okay. However, an ENDURING POWER OF ATTORNEY cannot cover everything, and a Private Committeeship or The Public Guardian and Trustee MAY be required in some cases, especially when it comes to living arrangements. An ENDURING POWER OF ATTORNEY is relatively easy to obtain and must be signed by a qualified witness, such as a lawyer. More information can be found online in the Manitoba publication called, “A Legal Information Guide for Seniors”.

Mary: Thank you.

Angela: Thank you, Mary.

And now, to wrap up this podcast, Chris Kata, one of our Board Directors and I have a few closing comments.

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 Scotiatrust. 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 and our website is www.caregivingmatters.ca