

AdvocateDaily.com
Canada's Legal Wire Service

HAVE A SERIOUSLY INJURED CLIENT?

MCLEISH ORLANDO
LAWYERS

Toronto Lawyers 

Get Informed. Get Involved. Make an Impact.

Increase your productivity by collecting CPD hours cost effectively and efficiently.

LEARN MORE

Estates & Wills & Trusts

Preventing financial abuse under powers of attorney



By [Charles Ticker](#)

Recently, I attended the [Canadian Bar Association](#) National Elder Law Conference. The conference was an opportunity to meet colleagues from across Canada and to exchange ideas and discuss developments in the growing area of elder law.

One of the topics discussed was the increasing problem of elder abuse including financial, physical, psychological, emotional and sexual abuse.

Financial abuse is considered the most prevalent form of elder abuse. One of the most common causes of financial abuse is financial loss caused by mismanagement or theft under a power of attorney document ("POA").

In my estate litigation practice, I have seen a tremendous increase in the frequency of disputes involving POA's as opposed to litigation involving wills or administration of estates after the person has died.

In the coming weeks, I plan to blog about POA's. In this blog, I offer some suggestions as to how to choose an attorney for management of property and finances.

Under a POA, the person signing the POA (the "donor") grants an individual(s) (the "attorney") power to make management decisions concerning the donor's property. The wrong choice of attorney can lead to a depletion of assets due to mismanagement or outright theft by the attorney.

In my estate litigation practice, I see many problems caused by the improper choice of attorney or substitute decision maker.

If the donor is naming one or more of his children, the following matters need to be considered: who is the best choice regardless of age, the ability of the children to work together, and the ability of the attorney(s) chosen to handle the duties of an attorney. This of course would include keeping proper accounts and records and dealing with professionals such as lawyers and accountants. The records that must be kept by an attorney acting for an incapable person in Ontario are governed by the [Substitute Decisions Act](#) ("SDA") and the [regulations](#) thereunder.

In choosing an attorney, consideration must be given to the circumstances of the proposed attorney. Does the attorney have any financial problems? Does the attorney have marital problems? Has the attorney ever filed for bankruptcy? Is there any reason to think the attorney could be untrustworthy? Quite often, the donor will not know the answers to some or all of these questions. The donor should ask their prospective choice of attorney these difficult questions, as the wrong choice of attorney can have disastrous results. Statistics show that family members are most often the perpetrators of elder financial abuse.

In my view, it is advisable to have more than one attorney when anyone other than the other spouse is acting. It is



ScanSnap

White or black?

FUJITSU

ScanSnap iX1500
Now available in 2 colours



**ANYWHERE
ANYTIME
ANYDEVICE**

DIVORCEMATE CLOUD



DRL
DATA RESCUE LABS

**COMPUTER &
CELL PHONE
FORENSICS**

UFED

not unusual for a client to propose that all of his or her children act as attorneys or substitute attorneys. If there are more than three children involved, I would recommend that the client narrow their choice or provide for alternate choices. Clients often want to appoint all their children as attorneys as they wish to avoid family squabbles. Having more than three attorneys can lead to problems where the attorneys cannot agree or cannot get together to make decisions. The SDA provides that if the POA has two or more persons as attorneys, the attorneys shall act jointly (unanimously) unless the power of attorney provides otherwise. While a majority clause could be drafted, there is still the possibility of resentment on the part of the attorney who is not part of the majority.

If a decision is made to appoint multiple attorneys either at first instance or as substitute attorneys, a decision has to be made as to whether the appointments should be joint or joint and several. That is, must the attorneys act together, or can they act independently of one another?

I am no longer drafting POA's. When I was drafting, I usually recommended to my clients that if they appointed two or more attorneys that the attorneys act jointly, notwithstanding the potential for a deadlock if they could not agree on how to exercise their authority. Forcing the attorneys to act together provides some checks and balances to protect the donor's property.

If the estate is large or complex, the appointment of a corporate or professional trustee should be considered to act as sole attorney or co-attorney with a family member or friend.

In a future blog, I will be discussing the duties of an attorney in more detail.

[Read Sibling Fight Blog](#)

[To Read More Charles Ticker Posts Click Here](#)

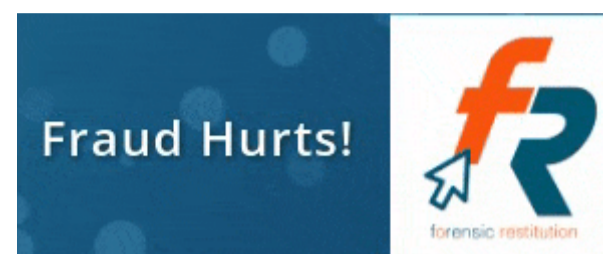
AdvocatePlus >

- [The Fund Library publishes Samantha Prasad's "Year-end tax tips"](#)
- [Human Rights Tribunal of Ontario awards \\$120,000 award for discrimination in hiring process](#)
- [IIROC mandatory cybersecurity breach reporting](#)
- [Join Littler LLP for its 2019 Canada Conference](#)

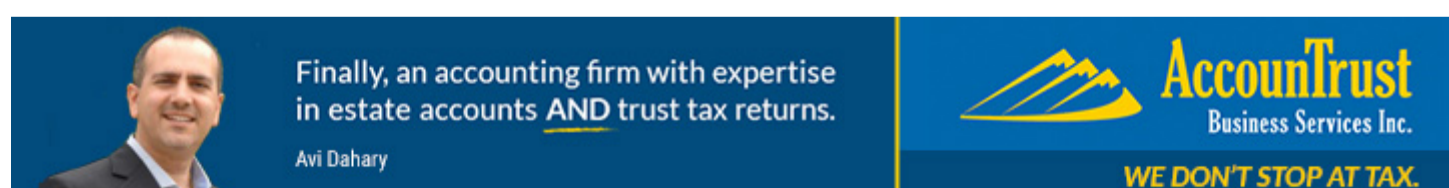
[View more AdvocatePlus posts](#)



www.cflaw.ca (416) 924-5969



Fraud Hurts!



[HOME](#) [POSTS](#) [OPINION](#) [EVENTS/RELEASES](#) [TV](#) [PLUS](#) [ABOUT](#) [CONTACT](#)  [@ADVOCATEDAILY](#)

 [ADVOCATEDAILY](#)