

The **POWER** of ATTORNEY PROJECT

Last Rights – The Dignity of a Good Death

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’s topic is Last Rights – The Dignity of a Good Death and our guest expert is Mark Handelman. Welcome Mark and thank you for joining us on this podcast.

Mark – Hello Mary. It’s a pleasure to be here. Thank you.

Mary – Mark, could you tell us a little about your career?

Mark – Mary, for the past 15 or so years, I’ve been involved in issues of individuals who may or may not have the capacity to make their own healthcare decisions. I’ve done wills and powers of attorney for people of questionable capacity. I’ve served as a vice chair and senior lawyer on the Consent and Capacity Board and I think I’ve litigated more end of life cases than any other lawyer here in Canada.

Mary – Thank you very much for that. People will take great interest in what you have to say. So when we talk about the dignity of a good death, I think that it’s important that we talk about advanced directives. My first question to you is what is an advanced directive?

Mark – Mary, an advanced directive can also be called a power of attorney for personal care or an expression of wishes. There are other names for it as well but in any event, it is a direction to the people who will be making your health care decisions should you lose the mental ability to make your own. It guides your chosen substitute decision makers in making decisions that reflect your own wishes, values and beliefs so that the death that you have accords to your own perceptions of what a good death could or should be. It can reflect:

- Religious beliefs
- Personal views
- Your own fears and wishes

It's important to have one so that the people who will make those decisions have that guidance.

Mary – Okay then another question for you. Why do I need an advanced directive for personal care?

Mark – Well, if you know who will be making your decisions for you when you can't, and are certain that they will make decisions that reflect your own beliefs, then you really don't need any kind of an advanced directive or as they're known in Ontario, a power of attorney for personal care. The law sets out who makes the decisions not you when you become incapable...you have the chance to do that in advance so it's important to have somebody that you not only trust to make a decision that reflects your wishes, but also somebody who will have the strength of mind to advocate on your behalf when those decisions have to be made.

Mary – What happens, Mark, if I don't have an advanced directive?

Mark – Everywhere in Canada there is a hierarchy of substitute decision makers. This is provincial legislation but each province has one. You might end up with your spouse with whom you are separated as your attorney for personal care. You might end up with all three of your children as your attorneys or your substitute decision makers and if they cannot agree, for example, on who should have the cottage for the Labour Day weekend, how are they going to agree on when to pull the plug for mother? So, it's important to think about making sure you have the right people who reflect your values and beliefs but also people who can work together to make these very emotional and difficult decisions. Also people who will be able to understand what your doctors have to say about your end of life prognosis and be able to ask the important questions to flesh out the information you get from a doctor or from another health practitioner.

Mary – Well then who do I choose to make my end of life decisions?

Mark – Well in my case, for example, I've chosen my spouse but I've also chosen two of my nephews because they're younger than my wife and I so that should she be in the same mental condition I am, I know that there will be other people. I've also spoken to my wife and my nephews to ensure that they understand my end of life wishes and my values and beliefs and won't feel concerned about respecting those values even should they disagree with what I want in terms of wanting something different for them. I think it's mutually important that you choose people that can advocate on your behalf, who will advocate on your behalf, who genuinely care for you and who know what your wishes, values and beliefs are. In other words, it's not enough just to choose the right person; it's vital to choose somebody that you can have this conversation with so that they know how you feel about these things.

Mary – Well that's absolutely true. Another question for you. What's the most important information to put into an advanced directive?

Mark – You know what? It's a funny thing it's not the information in the advanced directive, it's the conversation with the person that you appoint to make that decision for you or the people that you

appoint. Really making an advanced directive can be very simple. For example, I authorize my wife and my nephews to make my decisions for me. If you start to add things to that sometimes people try and read between the lines to figure out what you meant as opposed to having had those conversations with the people that will make the decisions. As a simple example, I had an end of life conversation with my own mother and she said to me, when there's nobody home, you turn out the lights. Now that's not a sophisticated medical response but I knew exactly what she meant by that and I knew what my marching orders would be should I ever have to make the decision for her. Her power of attorney for personal care had no expression of wishes. It was the conversation from which I gained the authority and the moral strength that I would need if I had to make that kind of a decision.

Mary – Those conversations are really hard to do. Most families, I believe, don't like to talk about death and dying. How can people even raise this topic within their families?

Mark – Mary, you're right. It's a very difficult topic to raise and some people are superstitious and don't want to have that conversation. Other people don't want the conversation because it's not a very happy conversation but there are always times to raise it. Coming home from a funeral, coming home from visiting someone in the hospital, when somebody starts talking about who's going to get what after they die, even in television shows death appears and it's not unreasonable to say to someone you care about, "if that was you in that hospital bed and not George Clooney, what decision would you have wanted me to make for you and why?" However difficult the conversation is, it is vital to empower your decision makers with the confidence and authority to make the decisions that reflect how you want your life to end.

Mary – These conversations are so hard and so tricky so what you're saying is people have to have the courage to even start this conversation and I know in our family when our dad had come back from his lawyer with his power of attorney documents and his will, he sat me down and said let's go through this and I said no and I left. Then two days later, he sat me down at the dining room table and he said let's try that again. He was so smart and so persistent to say you need to take the time to listen to me and we went through everything. We went through it line by line so he was comfortable with what he had put down and that I would follow it. It was his persistence that made me step up and when the time came, I was able to follow his instructions because I remembered how hard the first conversation was that we didn't even have and then I remembered that second conversation and there were many days I said thank you Dad for having the guts to bring this up and for sitting with me to walk through those documents. When I took over his care and his financials that gave me great peace of mind that I was doing the right thing for him. These are hard conversations. The families have to find ways to make them happen.

Mark – Mary, your father was a very wise man. As difficult as the conversation was, not having it could well have left you and your family in a very difficult situation wondering what the right thing for your father was. Almost all of the end of life cases that I've been consulted on or litigated, have involved the failure to have those conversations, not only amongst loved ones, but also with your doctors who need to know your values and beliefs so that they can propose treatments that reflect

those things. When I do wills and powers of attorneys for my clients in my view the most important aspect of that is the end of life wishes. Everybody cares what will happen to their estates, to their children to their grandchildren after they pass away but what's important to the client is getting from very old to passing away and so I make my clients promise me that they will have those end of life conversations with their loved ones and with the people that they may name as their attorneys for personal care. It is absolutely vital to everybody's piece of mind to have those conversations; not only with the people whose decisions you'll be making but also with the people who will be making your decisions should that day come as well. The only certain thing these days in life is it does end.

Mary – So true. I would like to take this opportunity to thank Mark Handelman for sharing his wisdom and his experience with this project. Mark, could you please share your contact information with our audience.

Mark – Mary, if somebody wants to contact me it's m.handelman@sympatico.ca

Mary – Thank you Mark for sharing that information

Mark – I was going to thank you, Mary for the opportunity to remind people just how important these conversations are.

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 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