

The **POWER** of ATTORNEY PROJECT

Podcast title: Working With A Bank

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 about working with a bank and our guest expert is Gord McNeice and he is with Scotiabank in Port Carling, Ontario. Welcome Mr. McNeice.

Gord – Thank you, Mary and please call me Gord. I really welcome the opportunity to participate today.

Mary – Well thank you so much. Working with the bank is clearly an important topic that everyone who has a POA or substitute decision maker has to deal with at some point. Please tell us just a bit about yourself.

Gord – Thanks Mary. I've been with Scotiabank for 26 years. I'm currently inside of our Orillia branch. I'm a personal financial planner as well as a registered estate planner with the Society of Trust and Estate Practitioners.

Mary – That's wonderful and thanks you for that. I think people will really appreciate your comments that you are going to share today. I'd like to get started with a couple of questions. First of all, what should a person expect when walking into an Ontario bank as a POA?

Gord – The appointed POA will present themselves to the bank with either a general power of attorney document or a copy of a bank power of attorney document with which the bank holds the original. The difference between the two is that the general power of attorney document gives the POA the power to transact on a great many transactions with a great number of institutions. It may also have limiting conditions such as a clause to transact but not sell certain property, however, for a bank power of attorney document is limited in the scope of transactions to only those accounts held by that bank. For a general power of attorney document, the bank will request identification from the power of attorney, their signature and will also confirm that the donor signed the document either directly with the donor or with the lawyer who witnessed the donor's signature. That document will then be sent to the bank's legal department for review and acceptance and once accepted, the power of attorney may then begin transacting on the accounts held in that bank. For a bank power of attorney document these are signed

by the donor and the power of attorney before the donor has lost capacity to do so. The bank will ask for identification from both parties and will hold the original document in their files. Generally, a copy of the document is provided to both the donor and the POA for future reference. When the POA advises the bank that they must now act under the bank power of attorney document, the bank may request collaborating evidence such as the donor's written permission to proceed if they're capable or a physician's note indicating the donor is no longer capable of managing their financial affairs.

Mary – That's very interesting. You know I bet general people who are powers of attorney don't know that there are two types of documents so that's very important what you just shared with us. Another question for you. What can a power of attorney do?

Gord – The power of attorney can open accounts, make investment decisions, do transactions, borrow funds via fixed term loans, withdraw funds, write cheques, make deposits, pretty well anything that the donor themselves could do if they were still capable. Where there is a bank power of attorney document in place the power is limited to transactions solely on bank products which in some circumstances may not include the bank's own mutual funds or broker accounts. In those cases, a separate document needs to have been created beforehand for the power of attorney to be able to perform transactions with mutual funds or broker accounts.

Mary – Okay and just the opposite now, what can a power of attorney not do?

Gord – They cannot change or appoint beneficiaries of property or products such as rsp's, rff's, tfsa's and life insurance policies. They cannot change the ownership of the assets and this is important to note because very often we have requests from power of attorneys to change the ownership of assets to what will be the beneficiaries of the donor's estate. I must underscore the fact that the power of attorney has the duty to act in the best interest of the donor, not the donor's estate and not the estate beneficiaries. They cannot make large transactions or cheques which appear to be for the attorney's benefit and the bank will stop the transactions if those are found out. They cannot act after the donor has passed. The power of attorney document and the power it provides lives only as long as the donor does.

Mary – That's very interesting. Could you share with our audience a real life example of the kinds of situations that you see?

Gord – Absolutely. I had a situation not very long ago where a lady who was the power of attorney for her mother called me (for clarity, let's call the mother Alma and the daughter, Jane). The actual estate will be allocated to Jane and her brother. The mother Alma was not well and Jane's request was to make Alma's accounts joint with her and Alma to avoid probate. The brother was even on side with that type of a transaction. When we spoke I pointed out a few pitfalls to doing that. The first was that it was not proper given Jane's fiduciary obligation to her mother rather than to her mother's estate. She has the duty to look after her mother's assets. It could also be subject to court challenge by Jane's brother, his power of attorney or his eventual lawyers as well. If Jane herself was sued either in a civil or family court it could potentially drag those joint assets into the proceedings. If Jane ever became

incapacitated, her power of attorney would have to administer those joint holdings and that would not provide any guarantee that the assets would be administered as estate but rather as an asset of Jane's.

Mary – That's so complicated for people to understand and those are the kinds of things that this project is all about. To educate people on things that you take for granted because you work in the business but the average family needs to learn the importance of what we've just said. That's a very important comment you just made. Thank you so much.

One final question Gord for you, for people who are concerned about their POA documents, being in place what should they do?

Gord – That's an excellent question. We encourage people to review the power of attorney document that they have with their bank as well as their general power of attorney document to ensure that the powers of attorney that they have appointed are still appropriate. Peoples' circumstances change and so can the circumstances of those trusted friends or family which they have appointed as their powers of attorney. For business owners they should consider a specialized power of attorney document that will appoint a key person or professional to handle their business interests if they are unable to do so and if their power of attorney document is older than five years, we would recommend a review of it and their estate plan with their lawyer or estate planner to ensure that their wishes haven't changed and to ensure that any wishes can be carried out in a most tax and administratively efficient manner given current legislation and case law.

Mary – You know that's just a really good point. You know people that I know often get their wills and power of attorney done and they leave them. They leave them somewhere in their desk or safety deposit box but they don't keep thinking about them or making changes as life changes. The idea of going every five years to review that I think is absolutely critical and going to a lawyer to reflect what's actually happening today and how that matches up with their current will I think people really need to do that. Every year we change our clocks twice and keep that going, I think every year we get our taxes done so an interesting thing to say would be every five years we go and look at what our documents are and are they true to our lives today. That's a wonderful point. Thank you Gord for that.

Gord – Absolutely. You're welcome.

Mary- I'd like to finalize by saying thank you to Gord for sharing his information and expertise with our audience today. Gord, could you share your contact information for our audience in case they would like to chat with you more about what you've talked about?

Gord – Sure. My email address is gord.mcneice@scotiabank.com . I can also be reached on my office line at: 705-765-6236 x4000. I have recently moved to a new branch. It is:

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Mary – Wonderful. Thank you so much 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 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