

Police Sgt. R. B. Trainor (Ret.)

Power of Attorney Abuse: Civil or Criminal?



The Story of One Senior

A tiny woman, well into her 80s, trudged down the glistening sidewalk as drizzle covered the downtown area in a fine mist.

Dressed in a yellow plastic poncho and black rubber boots, she clutched a large blue umbrella like a life preserver—not so much to keep dry as to lean against for support.

Her stomach ached and her head pounded. She was heading to the police station, a building she was unaccustomed to visiting.

She didn't want to involve the police. Unsure, she turned to face the hill she had just walked down, wondering if she was doing the right thing. Perhaps it would be better to leave well enough alone. After all, *he only steals my money*, she thought. *He doesn't beat me and I have a nice bedroom.*

Thoughts tumbled through her mind like boulders ricocheting down a mountain, fragmenting into smaller, faster pieces.

Reaching the station door, she shook her umbrella and closed it, then pushed her way through the front door.

A man's voice spoke loudly, clearly, authoritatively. "May I help you?" he asked. A very young police officer stood at the counter. In his face, she saw kindness and hope.

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"My son has been stealing my money," she began, locking her gaze on the gold badge pinned to his chest.

"I see. And how old is your son?" the officer asked.

"Fifty-two," she answered.

Reaching for a report form, the officer began to fill in the details—her name, her address, and her date of birth.

"I live with my son and his wife. He's been stealing my pension money as well as my late husband's pension money since I gave him my Power of Attorney."

The officer's eyebrows leaped. "Power of Attorney? This is a Power of Attorney situation?"

She nodded.

Laying the pen on the report form, the policeman smiled. "I'm afraid I can't be of any help, ma'am. That's entirely a civil matter. Nothing the police would get involved in."

"Civil matter?" she said. "But how do I get him to stop? How do I get my money back?"

"You need to speak to a lawyer."

"But I can't afford a lawyer," she despaired. "He steals all my money."

This past Spring, the Westminster Savings Credit Union invited me to speak about the financial abuse of seniors. During the weeklong series of presentations, I continually heard the same grievance, "We have reported the matter to the police, but they say it's not a criminal matter, but a civil matter. Go see a lawyer."

The police are wrong. The abuse of powers by an appointed attorney acting as Power of Attorney is not civil. It's criminal.

Section 331 of the *Criminal Code of Canada* clearly sets out the offence: Theft by Persons Holding Power of Attorney. This section has been in existence for many decades now, yet very few police officers have heard of it.

One of the reasons may be the fact that this section is not a *charging* section, but what is referred to as a *descriptive* section. When someone

is charged with stealing funds from a senior, the charge is section 336: Theft, not 331 CCC. That causes confusion.

No matter how it's viewed, a theft is a theft and an investigation needs to be undertaken by the police.

My Experience as a Police Officer

In the 5 years I investigated such complaints, I found the victims in most instances suffered from some degree of dementia. They were simply unaware of what was happening to their finances. Thus the victims were not able to report the matter to police.

Many complaints came from people in the banking sector who managed the accounts for their senior clients. They became suspicious, looked into matters further, then reported their findings to me.

The most frequent comment I heard from professionals such as bankers, lawyers, and doctors was, "We can't report anything to the police because of privacy issues."

That is utter nonsense. You have a duty to protect those on whose behalf you act.

The Privacy Act

Privacy Act, Privacy Act, Privacy Act. Everyone grabs hold of that much maligned and often quoted Act as a means of deflecting liability. It doesn't need to be that way.

Setting the record straight is the beginning.

The professions mentioned above—and Notaries Public—are not covered by the *Privacy Act*. The piece of legislation you are governed under is called *Personal Information Protection of Electronic Documents Act*—*PIPEDA*, for short.

PIPEDA provides relief under section 7(3) for the disclosure of client information to the police in the event you suspect criminal activity. This disclosure is voluntary. There is no criminal penalty for not disclosing. By *not* disclosing, however, you may be setting yourself at risk for civil action down the road, should your client's

estate be plundered by the appointed attorney.

Ways to Combat The Abuse

- Know your role in preventing financial abuse of seniors and what can be done to prevent it.
- Use your common sense. Employ due diligence before you dismiss your involvement. What happened to the woman in my story should not happen to anyone who needs help.
- Interagency communications is the first step in protecting our seniors.
- Contact the stakeholders in your community to establish a working group devoted to a clear and honest exchange of ideas based on trust that are designed to eliminate elder abuse. ▲

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Sgt. Brian Trainor was a police officer with the Saskatoon Police for 27 years. For 5 years before his retirement in June 2006, he investigated issues surrounding the financial abuse of seniors. Widely recognized as one of the only police officers to investigate Power of Attorney abuse, he has made a second career from what he calls "Preaching the Word of Fraud."

His book *Stop Fraud* chronicles his experiences in dealing with numerous scams. It will be published in January 2007.

Sgt. Trainor makes presentations across Canada. He is also a Community Resource Consultant providing public financial education for First Sask Credit Union.

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