



WHEN CARING CROSSES THE LINE

Six wills in nearly seven years. That's how many Ms. Kohut had drawn up, dividing her assets in differing portions among three children—two daughters and a son.¹ The new wills generally reflected time spent with each daughter, her apparent preference for one over the other, and her changing views on who should get what. Was Ms. Kohut facing mental capacity issues in her later years? The court said no. You see after she died, a family member challenged the final will. The result: The last four wills were set aside because while there was no proof of lack of capacity, the court said there was undue influence. Had the daughters acted with evil intent and coerced their mother into making the changes? Once again, the court said no. However, the court did decide the wills “were the result of what those around her had in mind” and not Ms. Kohut's independent wishes.²

This specific situation offers a glimpse of the sometimes subtle, sometimes gravely obvious results of undue influence on older people's financial decisions. During my career, I've occasionally seen undue influence at work during the preparation of wills and trusts. However, it's only one facet of financial manipulation independent seniors can encounter. Financial abuse can involve money, property or personal information. Vulnerability increases for people growing older with dementia and Alzheimer's disease. For all the positive family, professional and community relationships that unfold daily in elderly people's lives, it's been estimated that “American seniors lose an estimated \$36.5 billion per year from elder financial abuse and exploitation.”³ A joint 2017 report by the Canadian Foundation for Advancement of Investor Rights and the Canadian Centre for Elder Law says current Canadian estimates track along similar lines.⁴ That figure doesn't capture the emotional and physical costs to individuals and their families. Sometimes the issue makes headlines, such as the infamous 2009 court case that centered on the mistreatment of New York City philanthropist and socialite, Brooke Astor, or the extreme 2011 case that involved actor Mickey Rooney.⁵ However, situations such as undue influence over financial

decisions are a largely unreported, invisible problem. The other hard truth is that financial manipulation such as undue influence often involves a familiar face like a child or grandchild, a caregiver, neighbor or close friend. A victim's emotions—ranging from fear, to embarrassment, heartbreak and shame—all too often keep the matter private. Situations such as:

- Your best friend's daughter, who's been doing everything at your home since your knee surgery, recently had a new power of attorney drawn up. It made sense initially since you live alone, your children are spread across the country and she's right there to help. However, you've recently heard Bonnie telling your investment advisor to make changes to your portfolio.
- You haven't had a chance to speak directly to your advisor or anyone else since Bonnie took over.
- Your youngest son—who always drives you to appointments and helps around the house—is determined to speak to the lawyer on your behalf about your will and power of attorney. It seemed to be innocent at first, but Gordon has changed things, putting himself solely in charge and won't let you have time alone with your lawyer.

- Your grandchild is asking for another loan, even though he hasn't repaid the first one. Bob has always been good company, but these days his every visit is spent convincing you that he'd be better off benefiting from his inheritance now versus later. You don't agree but you also don't want to spoil the special relationship you've had with this grandchild.
- Name a "Trusted Contact Person" that your advisors can contact with concerns about your potentially facing financial manipulation or if they observe changes in your normal patterns.
- Consider having this neutral friend or family member occasionally review your financial, investment statements, etc. for any surprises, errors, or unapproved missteps by your advisors.

Such situations are a sampling of what happens when caring crosses the line. There's a growing effort across Canada to raise awareness about this and the broader issue of elder financial abuse. All too often it's revealed after occurring over a long period of time or once the person has died. Talking about this concern is important now and for the future. Consider that by 2030, nearly one in four Canadians will be 65 years or older.⁶ People are also living longer than ever before, with increasingly complex family lives and responsibilities. Initiatives on various fronts are underway to develop regulations and formal support processes for financial advisory communities. The goal is to establish better ways of reporting and handling elder financial abuse.

Building Checks and Balances

Financial manipulation in its various forms thrives on isolation. We recommend putting some checks and balances in place to help maintain a healthy support network. It doesn't have to be big to be effective. Here are some steps to consider:

- Know the value of "what you own," whether it's property, investments or trusts. If you don't, have your advisor explain.
- Know and understand the estate plans you have in place. Revisit them if you don't recall.
- Ensure you have both a power of attorney (dealing with financial decisions) and a health care directive (dealing with personal decisions) in place in the event of your incapacity.
- Have an experienced estate lawyer prepare your will, power of attorney(s), and health care directive. They're trained to recognize and address signs of financial manipulation.

- Think about obtaining independent legal advice before signing any important documents.
- Use auto-deposit and auto-pay for deposits and bills. This helps prevent someone from diverting cheques and possibly misusing them.
- Keep a central file with your accounts and legal documents. Have a record of financial transactions and changes to legal documents. Keep your PIN and personal information in a safe place and don't share it.
- Know the warning signs of financial manipulation. You'll see some of them in the adjacent column.

Transparency, accountability and respect underpin these considerations—qualities important to both the elderly person and support providers. We encourage clients to think carefully about such things when deciding who they'll appoint as power of attorney. Understanding the full scope of the role, we also suggest people investigate and think carefully before accepting such positions. Ask: How can this work best for all concerned?

There's the saying, "it takes a village to raise a child." In today's world, we believe this sentiment extends throughout life. A few good people, with healthy checks and balances in place will go a long way to decreasing isolation and increasing the defense against financial manipulation, whether it's the latest scam or someone caring too much in the wrong ways.



Thomas Junkin

Senior Vice President
Personal Trust Services
Fiduciary Trust Canada

¹ "Recommended Practices for Wills Practitioners Relating to Potential Undue Influence: A Guide," Prepared for the British Columbia Law Institute by the Members of the Project Committee on Potential Undue Influence: Recommended Practices for Wills Practitioners, BCLI Report no. 61, British Columbia Law Institute, October 2011.

² "Recommended Practices for Wills Practitioners."

³ Marian Passmore and Laura Tamblin Watts, "Report on Vulnerable Investors: Elder Abuse, Financial Exploitation, Undue Influence and Diminished Mental Capacity," Canadian Foundation for the Advancement of Investor Rights (FAIR Canada), Canadian Centre for Elder Law, November 2017.

⁴ Passmore and Tamblin Watts, "Report on Vulnerable Investors: Elder Abuse."

⁵ Constance Gustke, "Financial Schemes Against the Elderly Are Increasing," The New York Times, September 5, 2014.

⁶ "Population projections: Canada, the provinces and territories, 2013 to 2063," The Daily, September 17, 2014, Statistics Canada, <http://www.statcan.gc.ca>

Be Aware

Here are a few signs to watch on your own behalf or for family members or friends:

- Control over your finances is drifting away and there are “surprises” on your bank or credit card statements.
- Though you’re relatively healthy and capable, someone else is trying to convince you to let them be the “one” to manage your bank accounts, change your will or property titles.
- You’ve become increasingly isolated, cut off from family, friends and advisors. Your main support person screens all calls or visits.
- There’s a sudden change in your mental capacity, self-care or appearance.
- Your key caregiver is overwhelmingly helpful and insists on being present at all appointments at all times and controls conversations.
- Your caregiver has given up their job, has no other financial means and manages your life without accountability or transparency.

If you see such signs, talk to a friend, a healthcare provider or a financial advisor or seek assistance through city or provincial agencies such as an Elder Abuse hotline.



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