

# **PREDATORY MARRIAGES AND FINANCIAL ABUSE OF ELDERS**

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# Predatory Marriages

- Where unscrupulous individuals prey upon older adults with diminished reasoning ability for their own financial profit
- Not easily challenged – issue of standing



# Consequences of a Predatory Marriage

- Property rights on spouse's death
- In many Canadian provinces, marriage automatically revokes a Will or other testamentary document.
- Some provinces have now recognized this inequity as an issue and have enacted legislation to prevent revocation of Wills upon marriage

# Predatory Marriages

- Legislation and court processes not well-equipped
- Public policy perspective:
  - balance autonomy & presumption of decisional capacity with protecting the vulnerable

# Capacity in General

- No single legal definition for “capacity”
- No single “test” for capacity, not really a test
- Certain factors are to be considered in an assessment of requisite mental capacity to make a certain decision/undertake a certain task at a particular time



# Capacity is:

- **DECISION** specific
- **TIME** specific
- **SITUATION** specific
- Capacity may **FLUCTUATE**



# Capacity to Marry

- No single complete definition of capacity to marry
- Judicial spectrum:
  - One end - marriage is but a mere simple contract
  - Other end – the requirement to marry is not so simple, must be capable of managing property or one's person or both

# MODERN CASE LAW

## Predatory Marriages





# *Banton v Banton*

- 84 years old and 31 year old waitress
- Terminally ill, married at her apartment
- New power of attorney and wills
- Court: lacked testamentary capacity but had capacity to marry



# *Devore-Thompson v Poulain*

- Niece brought claim after death of aunt
- Predator met her at local mall
- Consistent campaign to access aunt's funds post-marriage
- Marriage set aside as void *ab initio* for lack of requisite capacity to marry

# *Hunt v. Worrod*

- Mr. Hunt suffered a catastrophic brain injury rendering him incapable of managing his property and personal care.
- His estranged ex-girlfriend, Ms. Worrod, picked him up from his house and took him to a remote location and married him.
- Mr. Hunt's sons who were his guardians for property brought an application to set aside the marriage for being *void ab initio*.
- Court found Mr. Hunt did not have the requisite capacity to marry.

# *Chuvalo v. Chuvalo*

- This case examined the issue of the requisite decisional “capacity to reconcile”
- Chuvalo’s children, brought an application on behalf of their father, and alleged that Joanne preyed on George Chuvalo’s vulnerable mental state to “extort cash money”
- Justice Kiteley decided that Chuvalo did not have capacity to decide whether to reconcile

# EQUITABLE & OTHER REMEDIES

# Remedies

- Undue Influence
- Doctrine of Unconscionability
- Statute as an Instrument of Fraud
- No One Shall Profit From Wrongdoing
- Unjust Enrichment
- Civil Fraud / Tort of Deceit
- *Ex Turpi Causa Non Oritur Actio*
- Lack of Independent Advice

# INTERNATIONAL APPROACH

To Predatory Marriages

# International Approach

## United States:

- Few states have retained revocation-upon-marriage provisions
- Some states permit relative to contest validity of marriage of incapacitated elderly family member before death



# *Alhadi v Commissioner of Internal Revenue*

- “Caregiver” defrauded older cognitively impaired man of over \$1 million
- Commissioner: proceeds of undue influence and taxable + fraud penalty
- Caregiver: non-taxable gifts or loans
- “undue influence” as a matter of federal tax law and donative intent

## *Alhadi cont.*

- Told him she loved him 4-5 times a day, cried she could not support her children
- Pressured him to pay her mortgage, build her a pool
- Bank discovered fraud
- Lawyer refused to draft Power of Attorney
- Older adult ***“impossible to imagine how it feels being 90 years old and feeling loved for the first time”***
- Tax court found undue influence

# Next Steps

Absence of clear legislation defining requisite capacity to marry, common law remains unclear

- Until factors to determine requisite capacity to marry are refined (such that it takes into consideration financial implications) those with diminished capacity will remain vulnerable to exploitation through marriage
- Likely increasing problem

# DRAFT PREDATORY MARRIAGES PREVENTION ACT

# FINANCIAL ABUSE OF ELDERS

# Overview of Elder Abuse

- Financial abuse most common
- Under reporting is an issue



# Definition of Elder Financial Abuse

- “Theft or exploitation of a person’s money, property or assets.”
- Some definitions distinguish between two types of elder financial exploitation:
  - Financial abuse, in which a relationship of trust has been violated by family members, friends or others; and
  - Elder fraud, such as investment fraud and scams perpetrated by others

# Examples

- Abuse of power of attorney
- Stealing
- Fraud, forgery, extortion
- Undue pressure on older adult to do something they do not want to do, etc.
- Domestic abuse, physical, mental or sexual
- Predatory marriages
- Withholding access to grandchildren
- Failure to provide necessities of life





# Indicators or “Red Flags”

- Changes in living arrangements
- Unexplained inability to pay bills
- Unexplained withdrawal of \$\$
- Changes in appearance
- Changes in spending
- Being overcharged for services or products, etc.



# Fraudsters target everyone

- No one is shielded from becoming a victim of fraud
- Older adults are more vulnerable to becoming victims and easy targets of financial exploitation due to several factors:
  - their cognitive decline
  - the wealth of older generations, which makes them targets, even though the elderly poor are at even greater risk; and
  - the aging of the Baby Boomer generation and increased life expectancy

# Real life story

- In July of 2018, Ms. Simulik received a spoofed email that impersonated the manager of the City of Ottawa, and tricked her into wire-transferring nearly \$128,000 CAD to an American bank account
- Ms. Simulik only realized that she had been a victim when she received another email from the fraudster acting again as the city manager, requesting a further transfer of \$154,238 USD
- This time, Ms. Simulik was sitting with the city manager in a city council meeting where she enquired about the payment personally, where she was advised that no such payment request was ever sent by him

# POPULAR SCAMS TARGETING THE ELDERLY



# “Charity Scams”

- involve scammers collecting money by pretending to be a real charity. There are different ways in which scammers approach an individual. Often, the scammer will exploit a recent natural disaster or famine that has been in the news
- Scammers can try to pressure an individual to give a donation and refuse to provide details about the charity
- All registered charities in Canada are overseen by the Canada Revenue Agency and listed in its database

# “Emergency Scams”

- The typical scam starts with a grandparent receiving a phone call from someone claiming to be their grandchild
- The "grandchild" goes on to say they're in trouble and they need money immediately. The caller will ask questions, getting the person to reveal personal information. They'll also swear you to secrecy, saying they are embarrassed and don't want other family members to find out what's happened

# “Romance Scams”

- When on a real dating site, a scammer might send a few messages and a good-looking photo of themselves, or of someone they claim to be. Once the individual is charmed, they will start asking you to send money
- According to the Canadian Anti-Fraud Centre, Romance scams cost Canadians more than \$22.5 million in 2018, surpassing all other forms of fraud in terms of money lost

# Real life story

- This senior lady's story is similar to others. She lost her spouse and was feeling lonely
- After she joined an online dating site, the imposter began his aggressive pursuit online, and thereafter, the money requests started
- She lost about \$140,000 in 2018, after becoming a target of a fake suitor who stole her money



# “Prize Scams”

- When people are being contacted, advising they have won, or have a chance at winning, a prize or lottery
- That the "winner" must first purchase something or pay an advance fee such as taxes to receive the prize
- The scammers will usually request that you respond quickly or risk missing out

## Real life story

- In November 2017, CBC news reported about a Norfolk County senior who was scammed out of \$152,000 over a period of time, after being told by an unknown caller that the senior had won an International Sweepstakes Lottery valued at \$24.9 million USD, and needed to send money via wire transfers to cover taxes

# “RED-FLAGS” to detect Scams

- If you haven't entered a competition, you can't win
- If someone asks you to pay money up-front in order to receive a prize or winnings, it's almost always a scam
- Verify the identity of the contact by calling the relevant organisation directly. Do not use the contact details provided in the message sent to you
- Do an internet search, many scams can be identified this way
- Never send money or give credit card or online account details, or copies of important personal documents to anyone you don't know or trust

# Conclusion

- How can we as a society, as professionals, as regulators, and as lawmakers stop this?
- Elder financial abuse has gained increasing attention from financial institutions, firms and professionals
- There is a need to intensify the efforts to raise awareness of elder abuse
- Improve the knowledge transfer and information dissemination
- Educate and train professionals of different disciplines who interact and provide services to seniors in order to detect abuse, to report it in accordance with protocols, and to take appropriate legal action
- Implement action plans based on needs and research;
- Increase the resources for the community responses to elder abuse; and
- Constant review the laws to ensure that adequate protection measures are in place

THANK YOU!  
Questions?

