

GUARDIANSHIP INVESTIGATIONS

**The Role of the Office of the Public
Guardian and Trustee**

Office of the Public Guardian and Trustee
Guardianship Investigations
ISBN 0-7794-3011-5
© Queen's Printer for Ontario, 2006
Reprinted in 2016
Disponible en français

THE ROLE OF THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE IN GUARDIANSHIP INVESTIGATIONS

QUESTIONS AND ANSWERS

1. What is the purpose of the Office of the Public Guardian and Trustee's (OPGT) guardianship investigation service?

This service helps to protect mentally incapable adults who are suffering, or at risk of suffering, serious harm. Severe self-neglect, physical abuse and financial exploitation of incapable people are some of the problems that this service can, in certain circumstances, help to resolve.

2. How does this service work?

People concerned about an adult who may be mentally incapable and at serious risk can contact the OPGT.

If it appears that a person is mentally incapable and at serious risk of harm, the OPGT will conduct an investigation if no alternative solution can be found.

It is important to note that this is not an immediate, emergency crisis response service. The OPGT has no authority to make decisions for the person during an investigation or while the matter is before the courts. The investigation may result in the court appointing the OPGT as the incapable person's guardian on a temporary basis. This allows the office to make important decisions on the person's behalf.

The investigation may result in the court appointing the OPGT as the incapable person's guardian on a temporary basis. This allows the office to make important decisions on the person's behalf.

3. What is the legal basis for this service?

This service is mandated under the *Substitute Decisions Act* which was proclaimed in 1995.

4. How does the OPGT become aware of these situations?

Anyone may contact the OPGT to express concerns about a person who may be incapable and at serious risk by contacting the Guardianship Investigations Unit:

Telephone: 416-327-6348

Toll-Free: 1-800-366-0335

Fax: 416-314-5301

TTY: 416-314-2687.

Address: Guardianship Investigations Unit
The Office of the Public Guardian and Trustee
595 Bay Street, Suite 800
Toronto, ON
M5G 2M6

E-mail: jus.g.fjs.pgt.guardianshipinvestigation@ontario.ca

5. Will the identity of the person making the referral to the OPGT remain confidential?

In accordance with the *Freedom of Information and Privacy Act*, the OPGT tries to safeguard the privacy of people who make referrals. The office cannot guarantee, however, that their identities, or the nature of the concerns, will remain confidential. If the OPGT applies to court to become the guardian then the information given to the court becomes available to the public.

6. Aren't people entitled to choose how they live, even if it involves risk?

Personal autonomy and the right to make individual choices – even “bad” choices — are fundamental values in our society. But some people — due to illness, injury or other causes — lack the mental capacity to make their own choices. As a result, they are extremely vulnerable to neglect, abuse and exploitation.

The key is finding the balance between respecting the rights of capable adults while protecting those who cannot protect themselves.

The law has safeguards, including a court process, to ensure that people's decision-making rights are not altered without careful consideration and due process.

7. When is a person considered to be “mentally incapable”?

A person is mentally incapable of managing property if they cannot understand relevant information or cannot appreciate what may happen as a result of decisions they make, or do not make, about their finances.

A person may be able to make certain types of decisions, but not others. For example, a person may be unable to make decisions about finances, but may still be able to make decisions about personal matters such as where to live.

8. What level of harm must be alleged before an investigation can be initiated?

The law requires the OPGT to investigate if a person is alleged to be incapable and suffering, or at risk of suffering, “serious adverse effects” of a financial or personal nature as a result.

With respect to finances, “serious adverse effects” includes “loss of a significant part of one’s property or failure to provide the necessities of life for oneself or dependents”. Incapacity may, for example, lead a person to give large sums of money away to strangers or to face loss of their home for failure to pay taxes. An incapable person may face starvation or eviction if they cannot look after paying rent or buying food.

With respect to personal welfare, “serious adverse effects” includes “serious illness or injury, or deprivation of liberty and personal security”. Incapacity may, for example, result in a person being unable to remove themselves from a very dangerous situation or to take steps to stop physical or sexual abuse.

9. Is a guardianship investigation and application to court the only solution to these problems?

No. There are often other solutions that are more appropriate in particular situations.

This is especially true if there is an immediate physical crisis. As noted above, an investigation will be of no assistance if a crisis response service is needed in an emergency.

For example, if a person is experiencing an acute and immediate medical crisis, a health professional may be able to provide treatment on an emergency basis, without consent.

If the criteria for involuntary examination at a psychiatric facility are met, a doctor, a Justice of the Peace or a police officer can require an examination.

In some circumstances, the local Community Care Access Centre may be able to arrange a crisis admission to a long-term care facility.

If there are concerns that a guardian or a person handling a power of attorney is mismanaging an incapable person's money, anyone can ask the court to review the matter. This is usually the most appropriate course of action when there is a dispute among family members about how one member is handling a power of attorney for an incapable relative.

If an incapable person needs a guardian of property, this can sometimes be accomplished through a capacity assessment process without the need for an investigation. More information about the process is contained in the information pamphlet entitled "The Capacity Assessment Office" which can be obtained by calling 416-327-6766, TTY: 416-314-2687 or toll-free at 1-800-366-0335.

There are often other solutions available in addition to the ones described above. It always depends on the particular situation.

A guardianship investigation can be an intrusive step and is considered a last resort, after everything else has been attempted.

10. How does the OPGT decide which cases should be investigated?

When the OPGT is contacted, staff will interview the person who made the referral. This is usually done over the telephone and is intended to obtain relevant background information. If the case does not appear to fall within the OPGT's mandate, information about other appropriate resources will be provided, if possible.

If initial inquiries suggest that both incapacity and serious risk may exist, then all the appropriate alternative solutions to the problem will be discussed with the person making the referral.

If no alternative solution exists, the matter will be referred to an OPGT investigator.

11. How is an investigation conducted?

An investigation involves detailed fact gathering. Relevant sources of information are explored.

The investigator will usually try to meet with the alleged incapable person to assess the situation and obtain information directly from them, if this is possible. Investigators have a legal right of entry for this purpose.

Other individuals who may have knowledge of the person's situation — such as family members, health professionals, neighbours, bank staff, caregivers, service providers and landlords — will also be asked for information. Sometimes they are interviewed in person.

The investigator will review applicable records and documents. The OPGT has the legal right to obtain copies of most financial and medical records relating to the person.

The investigator may try to arrange to have the person's capacity assessed by a qualified health practitioner, on a voluntary basis.

Throughout the investigation, the investigator tries to facilitate solutions that will serve to protect the person without the need for a formal court process. Respect for the dignity of the person and objectivity about the circumstances are paramount considerations in every investigation.

Once the investigator has gathered all the available information, the facts are reviewed to decide whether the next step – an application to the court for guardianship – will be taken. This will only happen if there is:

- sufficient and reliable evidence of mental incapacity
- evidence of serious risk
- no less intrusive alternative available
- evidence that guardianship will be able to meet the person's needs

In these cases, the court will then be asked to temporarily appoint the OPGT as the person's "guardian of *property*" or the "guardian of the *person*" or both, depending on the nature of the person's incapacity and decision-making needs.

12. Is the person who made the referral kept informed about the progress of the investigation and the results?

The OPGT will not disclose information that it acquires during an investigation unless it is absolutely necessary to do so.

Once the investigation is completed, the OPGT will usually tell the person who made the referral whether or not the OPGT intends to proceed with a court application for temporary guardianship.

13. How long does an investigation and court application usually take?

This depends entirely on the individual circumstances of the case. If the case is clear and the evidence readily available, the investigation may only take a short time. Preparing the materials for court and obtaining a date for a court hearing usually takes at least a few weeks.

In most cases, however, the situation is more complicated and requires the investigator to contact many people, visit the person who is alleged to be incapable, track down various leads and review different types of records. Sometimes third parties who have essential information are hard to reach or take a long time to respond to the investigator's requests. The person's condition or situation may appear to stabilize for a period during which the investigation will not be active. As a result, an investigation may remain open for a number of months.

14. Can the OPGT make decisions for the person while the situation is being investigated?

No. The OPGT does not have any right to make decisions for the person until a court appoints it as guardian.

15. Is the person who is alleged to be incapable entitled to know about the investigation and the court application?

The OPGT usually informs the person about the process, but there are some exceptions. The person would not be told, for example, if this would put the person at risk by alerting someone who is abusing them.

16. How long does a temporary guardianship last?

Guardianship can be granted, by the court, for up to 90 days. At the end of that time, the OPGT will either allow the guardianship to lapse because the situation has been taken care of, ask for an extension of the guardianship or ask the court to make the guardianship permanent.

17. What powers does the OPGT have when it is guardian?

This depends on the type of guardianship – property or personal care – and the directions that have been given by the court.

If the OPGT is only appointed as the guardian of property, it will be authorized to secure and manage the person's assets and other financial

resources but will not be able to make any personal care decisions. If the OPGT is appointed as the guardian of personal care it will usually be authorized to make decisions about matters such as medical treatment and housing. Guardianship of personal care may also include the right to make custodial decisions that involve the person being taken to a place of safety with the assistance of the police.

18. Does the OPGT provide care services directly to incapable people?

No. The OPGT's role is to be a decision maker and facilitator. Although the office can make arrangements for services to be provided, it does not provide any care services directly to its' clients.

19. How do I get more information?

You can access the OPGT's website at:

www.attorneygeneral.jus.gov.on.ca/english/family/pgt/

You can obtain a copy of the *Substitute Decisions Act, 1992* online at www.ontario.ca/laws

Please be advised that the OPGT cannot give individuals, professionals, facilities or organizations legal advice about specific cases or their own legal obligations. These questions should be directed to a lawyer. The Law Society Referral Service (LSRS) can put you in touch with a lawyer for a half-hour at no charge. Information about how to be referred to a lawyer through the LSRS is available at www.lsrns.info. A request to the LSRS may be made by completing the online request form at www.lawsocietyreferralservice.ca. A crisis line is available Monday to Friday, 9:00 am to 5:00 pm. The crisis line is intended for people who are unable to use the online service, such as those without access to the internet. The phone number for the crisis line is 416-947-5255 (toll free 1-855-947-5255).

Alternatively, you may contact JusticeNet which is a not-for-profit service promoting increased access to justice for low and moderate-income Canadians. The lawyers in the program offer their skills at a reduced fee to clients of limited means, based on a sliding scale that takes into account both income and number of individuals supported. They can be contacted at: Toll Free: 1-866-919-3219 or by e-mail at www.justicenet.ca.

To request an information session from OPGT staff please contact the Investigations Unit at 416-327-6348 or toll-free at 1-800-366-0335 or TTY: 416-314-2687.

This brochure provides a very general overview of the mandate and operation of the OPGT's guardianship investigation services. It does not include all of the details of the law, policies, procedures or exceptions that may apply in a particular case. For information about the law, please refer to the applicable statutes and consult your lawyer.

Alternate formats of this brochure are available upon request. Please contact 416-314-2803 or toll free 1-800-366-0335.

The Office of the Public Guardian and Trustee
Guardianship Investigations
ISBN 0-7794-3011-5
© Queen's Printer for Ontario, 2006
Reprinted in 2016
Disponible en français