

# PGT INVESTIGATIONS

Presentation for Developmental Services Toronto  
Denise Hannivan, Investigator

Date: April 26, 2019

© Public Guardian and Trustee, 2019.



# PRESENTATION OVERVIEW

- Role/Mandate of the PGT Investigations Unit
- Criteria for Investigations
- Intake/Investigation Process
- Possible Outcomes



# PGT INVESTIGATIONS UNIT

- The PGT covers ALL of Ontario
- PGT Investigations Offices are located in Toronto, Hamilton, London, Ottawa, and Sudbury
- 3,000+ Allegations received each year
- 1,300 Investigations for property guardianship clients and estates

# PGT INVESTIGATIONS

## CRITERIA FOR AN INVESTIGATION

- Evidence of Incapacity
- Evidence of Serious Risk
- No other options to mitigate risk
- The appointment of the PGT as guardian will benefit the person



# WHAT IS INCAPACITY?

- Mental incapacity definition:
  - Person is not able to understand information that is relevant to make a decision
  - Person is not able to appreciate (within reason) the consequences of making (or not making) a decision



# INDICATORS OF MENTAL INCAPACITY

(INVESTIGATOR IS NOT A TRAINED ASSESSOR AND DOES NOT CONDUCT A FORMAL ASSESSMENT)

- Possible indicators of incapacity can include:
  - Inability to understand information relevant to making decisions
  - Inability to initiate or complete necessary tasks
  - Changes in lifestyle choices, decisions or behavior (e.g. sudden self-neglect)
  - Changes in hygiene, nutrition, communication
  - Disorientation as to time, place, personal identity, or identity of significant people
  - Impaired thought processes
  - Problems with simple calculations
  - Memory loss
  - Perception difficulties, delusions, or hallucinations

# WHAT IS RISK?

The Investigator evaluates available information about 'serious adverse effects' to determine risk

- Risk must be significant
- Evaluated on a case-by-case basis
- What may be a risk for one person may not for another

Possible examples:

- Unusual and excessive spending
- Theft, loss or mismanagement of significant assets or income
- Self-neglect of finances impacting the necessities of life (e.g. food, shelter, medical care, etc.)
- Failure to pay bills with serious consequences
- Isolation, deprivation of liberty
- Severe loss of weight, impairment of functions
- Risk of eviction





# WHAT OPTIONS COULD MITIGATE RISK?

- Referrals to community agencies (SPIDER, VAST, COTA, COSS, etc.)
- Contacting the bank with concerns, requesting internal investigation/call to PGT if required
- Contact police for a wellness check
- Consider having the person taken to hospital under the Mental Health Act
- Involvement of family members
- Appointment of a Power of Attorney (if the person is capable to do so)
- Appointment of a Trustee (ODSP or CPP/OAS)
- Arranging a S.16 Capacity Assessment (factors: cost & right to refuse)
- LHIN involvement to coordinate in-home services &/or placement at Long-Term Care
- Consent & Capacity Board (Form C) application by involved party to be appointed Board Representative to make decisions
- Consent & Capacity Board (Form G) application by health care provider if HCCA Substitute Decision Maker is NOT making a best interest decision



# FINANCIAL – HOW DOES THE PGT OBTAIN AUTHORITY?

- Physician's Assessment while in hospital (S.15 of the SDA)
- Capacity Assessor's Assessment (S.16 of SDA)
- Court Appointment
- Statutory Trustee (limited authority to manage OAS, CPP, ODSP, OW, etc.)
  - Only if we have investigated
- Continuing Power of Attorney for Property
  - On consent in rare cases

## HOW TO APPOINT THE PGT – S.16 CAPACITY ASSESSMENTS

- ANYONE can request a capacity assessment by a designated capacity assessor
- The requester pays for the assessment
- Declaration of incapacity per S.16 appoints the PGT as guardian of property (financial)
  - Must be no Continuing Power of Attorney for Property (CPOA) – unless the individual requests the assessment themselves\*
  - The individual being assessment must not object to the assessment
- Capacity Assessment Office
  - Provides information, a list of assessors and funding for low income requesters

\*Note: A self-requested S.16 capacity assessment by the individual does not revoke an existing CPOA. The PGT's authority may be terminated if the attorney presents the CPOA. See next slide.

# WHEN CAN THE PGT REQUEST S.16 CAPACITY ASSESSMENTS?

- The person is not a patient of a psychiatric facility.
- There is no valid Continuing Power of Attorney for Property (CPOA-P).
- The Investigator must determine that the appointment of a CPOA-P is not an option (i.e. the person is incapable and/or unwilling to appoint or there is no appropriate person to appoint).
- There is no one else available to request and pay for a capacity assessment.
- The person cannot request a S.16 for themselves.
- The person must not refuse to undergo the S.16.
- The investigation is substantially complete and the need for the PGT as guardian of last resort has been confirmed.
- The Investigator must prepare and send a recommendation to PGT Investigations Counsel and Team Leader to arrange and fund a S.16.

# WHEN DOES THE PGT STOP ACTING AS A GUARDIAN OF PROPERTY?

- Capacity Assessment – reassessed as capable
- No Notice of Continuance issued when individual leaves hospital
- Consent and Capacity Review Board Appeal
- Court Order
- Replaced by attorney under Power of Attorney
- Application to Replace the PGT by family approved
- Death of Individual



©2010 BLOGOGRAPHY.COM

# POWERS OF ATTORNEY FOR PROPERTY

- Powers of Attorney for Property
  - May be made by anyone over 18 and capable
  - Usually takes effect immediately
  - Unless it contains restrictions, gives attorney full authority to make decisions and manage affairs
  - The law does not specify the form
  - The law specifies 'formal requirements' (execution and witnesses)



# WHAT ARE PERSONAL CARE DECISIONS?

- Personal care related to health care, nutrition, shelter, clothing, hygiene, and/or safety.
- Examples:
  - Medication
  - Immunization
  - Surgery
  - Housing (e.g. Admission to Long term care home)
  - Palliative care



## PERSONAL CARE – HOW DOES THE PGT OBTAIN AUTHORITY?

- Court Appointment
  - Very few people need personal care guardianship
  - PGT as guardian makes decisions – third parties propose the plan/decision (e.g. the PGT does not locate housing)
  - A designated Capacity Assessor can assess a person's capacity relating to personal care for court purposes. This assessment does NOT appoint the PGT.
- Treatment Decisions
  - Treatment decisions can be made under the *Health Care Consent Act (HCCA)*
  - However, others (guardian, POA, family) have prior right to make the decision
- Power of Attorney for Personal Care
  - PGT's policy is NOT to consent to appointment.

# POWER OF ATTORNEY FOR PERSONAL CARE

- Power of Attorney for Personal Care
  - Can ONLY be used to deal with personal care issues of:
    - Shelter, Safety, Health Care, Hygiene, Nutrition, and Clothing
  - Cannot be used to make financial decisions
  - Comes into effect only when person is incapable of making these decisions





# PGT COUNSEL AND THE INVESTIGATIONS UNIT

## WHAT DOES PGT COUNSEL DO IN REGARD TO INVESTIGATIONS?

- Counsel is assigned to each investigation to provide advice **to the investigators and the PGT** on all legal issues that arise. E.g. validity of Powers of Attorney, wills, and contracts; interpretation of title documents; confidentiality and Freedom of Information issues; application of trust law and availability of tracing remedies.
- They provide advice on investigators' requests to arrange/pay for S.16 Capacity Assessments
- If necessary, they communicate with counsel representing outside parties (lawyers for police, hospitals, POA, etc.)
- If the Deputy PGT and/or the PGT approve the investigators recommendation to make a court application, PGT counsel draft the applications and represent the PGT in court.



# DUTY TO INVESTIGATE ALLEGATIONS UNDER THE SDA

## DUTY TO INVESTIGATE

*Substitute Decisions Act, 1992 as amended [SDA]*

**\*\*Sections 27 and Section 62:**

The PGT shall investigate any allegation that a person is incapable of managing property or personal care and that serious adverse effects are occurring or may occur as a result. The PGT is not required to take any steps that, in his or her opinion, are unnecessary for the purpose of determining whether an application to the court is required.

**\*\*Sections 22 and Section 55:**

The court shall not appoint a guardian if it is satisfied that the need for decisions to be made will be met by an alternative course of action that,

- (a) does not require the court to find the person to be incapable of managing property; and
- (b) is less restrictive of the person's decision-making rights than the appointment of a guardian.

# MAKING AN ALLEGATION UNDER THE SDA

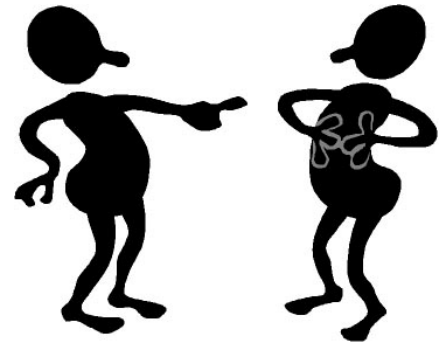
Allegations to the PGT when a person is or alleged to be:

- Incapable of managing property and/or personal care decisions, and;
- At significant risk of personal or financial harm as a result of incapacity, when there are no other known alternatives
  - Financial – at least 18 years of age; and/or
  - Personal Care – at least 16 years of age.



# WHAT HAPPENS WHEN AN ALLEGATION IS RECEIVED BY THE PGT

- Discussion with PGT Investigator to obtain information
  - What evidence is available re: incapacity and risk?
  - What less intrusive alternatives are available?
  - Is guardianship by the PGT required and is the PGT last resort?
- Often, Investigator will provide the caller with suggestions to resolve risk
  - The caller can call back if the matter is not resolved.
- Alternatively, an allegation may be assigned to an investigator.
- If the allegation can't be resolved, it may be promoted to an investigation.



## WHAT PGT MAY CONSIDER IN OPENING AN INVESTIGATION?

- PGT as last resort
- Alternatives to guardianship are often preferable
- Guardianship should not be sought unless effective/beneficial
- Presumption of capacity – unless reasonable grounds to suggest otherwise.
- Incapacity should not be concluded solely as a result of risky behavior or poor decision making.
- Lifestyle choices and cultural diversity should be considered.
- Recognition that guardianship necessarily entails a significant loss of personal autonomy.
- Consider prior capable and current wishes of person.
- Could an application to court be required? (purpose of investigation)

# INVESTIGATION – INFORMATION GATHERING

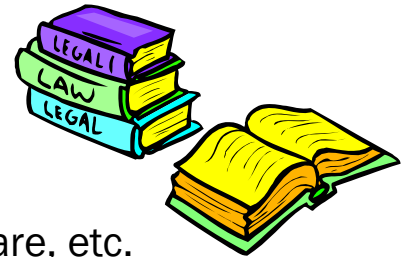
- Interviews – telephone and in-person
- Gathering records
- Authority to obtain information:
  - Access to interview with Alleged Incapable Person
  - Access to financial and medical information
  - Access to information from Health Info. Custodians



PGT has no legal authority to make decisions or provide directions during an investigation

# INVESTIGATION – INFORMATION GATHERING (CONT'D)

- Who can the PGT collect information from (s.83 SDA and s.43 PHIPA)?:
  - Guardian
  - Attorney under a power of attorney
  - Bank, loan/trust company, credit union or financial institution
  - Member of a College of a health profession
    - E.g. Doctors, nurses, dentists, chiropractor, psychologist, psychiatrist etc.
  - Facility or controlled-access residence
    - E.g. a hospital or long term care facility
  - Administrator of a pension fund
  - Real estate broker or agent
  - Health Information Custodians (s.43 PHIPA):
    - E.g. LHIN, pharmacies, LTC, ambulance, homes for special care, etc.



# POSSIBLE OUTCOMES OF AN INVESTIGATION

- Insufficient evidence or guardianship not appropriate
- Informal supports to help with risk
- Treatment decision made under HCCA
- Power of Attorney
  - E.g. Appoint to a new attorney (POA) for property or personal care if person is capable of doing so
- Assessment at a Schedule 1 Facility and issuance of a Certificate of Incapacity – appoints PGT for property





# POSSIBLE OUTCOMES OF AN INVESTIGATION (CONT'D)

- Capacity Assessment by designated capacity assessor and issuance of a Certificate of Incapacity – appoints PGT for property (*SDA s.16*)
- Statutory Trusteeship of pensions by third party or PGT
- Court ordered guardianship by family/friend
- Court ordered guardianship by the PGT as a LAST RESORT
- Other court application (e.g. court directions or passing of accounts)



# PGT DISCLOSURE OF INFORMATION

- The PGT is not able to disclose information obtained during an investigation unless authorized by law (e.g. required to obtain release of information, as part of a court application, court ordered).
- When the PGT is appointed guardian, the guardian may disclose information in accordance with the principles of the SDA.



# MISCONCEPTIONS

Allegation  $\neq$  Investigation

Abuse/Vulnerable  $\neq$  Incapacity

Mental Illness  $\neq$  Incapacity

Investigation  $\neq$  Guardianship

Incapacity  $\neq$  Guardianship

# MORE MISCONCEPTIONS

Getting the PGT appointed as a guardian:



- Cannot jump the person to the front of a waiting list for services or housing
- Cannot force the person to stop behaving in a manner perceived as undesirable or risky (e.g. cannot stop the person from drinking alcohol or hoarding).
- Cannot make the person's family get along
- Cannot create more resources than the person is legally entitled to
- Cannot force those who have spent the person's money to give it back if it is gone
- Cannot punish those who have harmed or taken advantage of the incapable person

# REMEMBER

- The PGT is *NOT* a crisis intervention team
- The role of the PGT is one of a substitute decision-maker of *LAST RESORT*
- The PGT only operates in the civil judicial system not the criminal system, so we cannot lay charges.



# PGT BROCHURES

- For further information and brochures, visit our website at:  
<http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/>
- BROCHURES available (download or request hard copies)
  - Becoming a Guardian of Property
  - Duties and Powers of a Guardian of Property
  - Guide to the *Substitute Decisions Act*
  - Power of Attorney: Questions and Answers
  - Power of Attorney Kit
  - Role of the PGT in Guardianship Investigations
  - Role of the PGT in Providing Property Guardianship Services
  - The Capacity Assessment Office



# MAKING AN ALLEGATION

- *To make an Allegation:*
  - Call: (416) 327-6348 or 1-800-366-0335;
  - Fax: (416) 314-5301
  - Mail:  
Office of the Public Guardian and Trustee, Guardianship Investigations Unit  
595 Bay St., Ste. 800  
Toronto, ON M5G 2M6
  - E-mail: [JUS.G.FJS.PGT.Guardianshipinvestigation@ontario.ca](mailto:JUS.G.FJS.PGT.Guardianshipinvestigation@ontario.ca)
- Provide information about:
  - Alleged incapable person's name, address, and date of birth
  - Alleged incapacity
  - Financial and or personal care risk
  - Alternatives that have been tried

# OTHER PGT PHONE NUMBERS

PGT Toronto - Main Number

- 416-314-2800 or 1-800-366-0335

Capacity Assessment Office

- 416-327-6766 or 1-866-521-1033

Guardianship Register/Intake Unit

- 416-327-6683

Estates Administration

- 416-325-8854