

Office of the Public Guardian and Trustee

THE ROLE OF THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE

Table of Contents

THE ROLE OF THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE.....2

PROTECTING THE RIGHTS AND INTERESTS OF MENTALLY INCAPABLE ADULTS...2

 Conducting Investigations2

 Managing Finances.....3

 Making Decisions About Personal Care.....3

 Appointing Private Guardians of Property.....3

 Maintaining a Register of Guardians.....3

 Arranging Legal Representation in Capacity Proceedings.....4

 Making Decisions About Treatment and About Admission to Long-Term Care.....4

 Reviewing Accounts4

 Acting as Litigation Guardian or Legal Representative.....4

 Administering Estates5

 Operation of the Accountant of the Superior Court of Justice.....5

 Charitable Property.....5

 Maintaining Trust Accounts for Cemeteries.....5

 Capacity Assessment Office.....6

 Outreach and Education6

Contact Us.....6

For More Information.....7

THE ROLE OF THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE

The Office of the Public Guardian and Trustee (“OPGT”) delivers a unique and diverse range of services that safeguard the legal, personal and financial interests of certain private individuals and estates. It also plays an important role in helping to protect charitable property in Ontario. Operating within the Victims and Vulnerable Persons Division of the Ministry of the Attorney General, the OPGT has almost 400 staff located in six offices throughout Ontario. Services are provided by multi-disciplinary teams of dedicated staff with experience in the health care, social work and financial planning fields. They receive professional support from lawyers, accountants and investigators. A brief description of many of the services offered by the OPGT is set out below.

PROTECTING THE RIGHTS AND INTERESTS OF MENTALLY INCAPABLE ADULTS

Conducting Investigations

The OPGT will conduct an investigation when it receives information that an individual may be incapable and at risk of suffering serious financial or personal harm and no alternative solution is available. An investigation may result in the OPGT asking the court for authority to make decisions on the person's behalf on a temporary basis.

Managing Finances

The OPGT manages the financial affairs of incapable people who have no one else who is authorized to do so. In this role, which is called “guardian of property”, the OPGT makes all the financial decisions and conducts transactions that these individuals would otherwise handle themselves. This includes receiving and depositing income, making investments, maintaining and selling property, applying for benefits, filing tax returns, paying bills and acting in legal proceedings if required.

Making Decisions About Personal Care

Very occasionally the court will order the OPGT to make decisions of a personal nature for an incapable person in order to protect them from extreme physical risk. Such cases typically involve the OPGT being given custodial authority in order to remove the individual from a situation of harm or to prevent access by third parties who are abusing the person. In this role the OPGT will usually also be responsible for making decisions about health care, place of residence, nutrition, hygiene and clothing.

Appointing Private Guardians of Property

The OPGT is authorized to appoint a client’s relative to act in its place as statutory guardian of property. The proposed guardian must submit an application which includes a detailed plan to show that the incapable person’s finances will be handled appropriately. The proposed guardian may be required to post a surety bond.

Maintaining a Register of Guardians

The Public Guardian and Trustee is required by law to keep a Register of all guardians of property and guardians of the person. This law is Ontario Regulation 99/96 made under the *Substitute Decisions Act, 1992*. The purpose of the Register is to provide a source of accurate information to persons or organizations who may deal with an incapable person or their guardian, such as names and contact information of both incapable people and their guardians, and other pertinent details.

Arranging Legal Representation in Capacity Proceedings

The OPGT locates lawyers to act for people who are the subject of a proceeding under the *Substitute Decisions Act, 1992* if ordered to do so by the court.

Making Decisions About Treatment and About Admission to Long-Term Care

The OPGT is responsible for making decisions on behalf of incapable people where medical treatment is proposed and there are no other people, such as a relative, who are available, capable and willing to do so. The OPGT provides a similar service when admission to a long-term care facility is proposed and it is not possible to obtain informed consent from another authorized person, such as a relative.

Reviewing Accounts

The OPGT reviews accounts when they are submitted by private guardians of property and estate trustees to the court for approval. The OPGT then informs the guardian, estate trustee and the court of any issues or concerns which may need to be addressed.

Acting as Litigation Guardian or Legal Representative

The OPGT may be appointed by the court to make decisions on behalf of individuals who are involved in lawsuits but who lack sufficient capacity to properly instruct a lawyer or to make decisions about significant issues in the litigation, such as a potential settlement. The OPGT acts in this role – which is referred to as ‘Litigation Guardian’ - only in situations where there are no suitable alternatives.

The OPGT may also be appointed to act as a ‘Legal Representative’ in family law proceedings for a person who lacks capacity. In this role, the OPGT does not make decisions for the individual, but instead acts as an advocate, ensuring that the person's legal rights are protected and that his or her wishes are put before the court.

Administering Estates

The OPGT protects the interests of potential heirs when an Ontario resident dies leaving an estate and there is no one who can administer it. The OPGT will apply to be appointed estate trustee if:

- the deceased was an Ontario resident or owned real estate in Ontario; and
- the deceased did not make a Will, or the deceased did make a Will, but the executor has since died or become incapable; and
- there are no known next-of-kin living in Ontario or the next-of-kin are minors or mentally incapable adults; and
- the estate meets the OPGT's financial criteria after payment of the funeral and all debts owing by the estate.

Operation of the Accountant of the Superior Court of Justice

The OPGT operates the Accountant of the Superior Court of Justice. The Accountant holds trust funds for children under the age of majority and for parties to litigation in the Superior Court of Justice, Small Claims and Family Court, and also serves as a depository for all mortgages and securities paid into, or lodged with, the Superior Court of Justice.

Charitable Property

This program plays a role in helping to protect charitable assets. This includes reviewing applications by organizations who wish to be given charitable status to check that the activities of the organization are, in fact, those which the law defines are "charitable". The program also assists in resolving situations where gifts to charities are left in a Will, but the charity is not named or no longer exists. The program can investigate complaints about alleged mis-use of charitable property and is involved in court cases if necessary to represent the charitable interest.

Maintaining Trust Accounts for Cemeteries

Cemetery owners in Ontario may have the OPGT manage the trust funds which they are required by law to keep for the "perpetual care" and maintenance of the grounds and monuments. Cemetery owners receive the income earned on these trust funds, on an annual basis, to cover these costs.

Capacity Assessment Office

The Capacity Assessment Office (CAO) is responsible for the training of capacity assessors, for the maintenance of a roster of qualified capacity assessors, and for operating a financial assistance program to assist individuals who cannot afford to pay the full cost of an assessment. Capacity assessors are not employees of the CAO -- they are independent professionals who are either doctors, nurses, psychologists, registered social workers, or occupational therapists who have received the training and been designated as capacity assessors. To obtain information on applications for financial assistance or rosters of qualified assessors, call 416-327-6766, TTY: 416-314-2687 or toll free at 1-866-521-1033.

Outreach and Education

Every year, the OPGT conducts numerous outreach sessions to provide public education on issues such as mental incapacity, guardianship processes and powers of attorney. The OPGT also has a wide variety of written material available on these and related topics (see below).

Contact Us

To request an information session with OPGT staff, please contact the Area Manager in the OPGT regional office closest to you. Telephone numbers and addresses are listed below

Greater Toronto

595 Bay Street, Suite #800
Toronto, ON M5G 2M6
Tel: (416) 314-2800
Toll-free: 1-800-366-0335
TTY: (416) 314-2687
Fax: (416) 314-2619

London Region

London Courthouse, 80 Dundas
Street, London, ON N6A 6A3
Tel.: (519) 660-3140
Toll-free: 1-800-891-0504
Fax: (519) 660 -3148

Sudbury Region

199 Larch Street, Suite 602
Sudbury, ON P3E 5P9
Tel: (705) 564-3185
Toll-free: 1-800-891-0503
Fax: (705) 564-3193

Hamilton Region

119 King Street West, 9th Floor
Hamilton, ON L8P 4Y7
Tel: (905) 546-8300
Toll-free: 1-800-891-0502
Fax: (905) 546-8301

Ottawa Region

351 Preston Street, Suite 200
Ottawa, ON K1S 2E6
Tel: (613) 241-1202
Toll-free: 1-800-891-0506
Fax: (613) 241-1567

Thunder Bay Region

189 Red River Road, Suite 101
Thunder Bay, ON P7B 1A2
Tel: 1-800-891-0503
Fax: (807) 343-7223 14

For More Information

For more detailed information about the programs offered by the OPGT please visit our website at: <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/> to view copies of our brochures and publications:

- Power of Attorney Kit
- Guide to the *Substitute Decisions Act*
- The Register of Guardians

- Duty of the Public Guardian and Trustee to arrange legal representation
- Duties and Powers of a Guardian of Property
- When the Office of the Public Guardian and Trustee becomes your Guardian of Property
- Estates Administration
- Role of the OPGT in Guardianship Investigations
- Role of the OPGT in Providing Property Guardianship Services
- Becoming a Guardian of Property
- Role of the OPGT in Making Substitute Health Care Decisions
- Accountant of the Superior Court of Justice
- Powers of Attorney Questions and Answers
- The Capacity Assessment Office - Questions and Answers
- Charitable Properties Program - Bulletins 1 to 8

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

Information about how to apply to the Consent and Capacity Board can be obtained from the Board's website at: <http://www.ccboard.on.ca> or by calling the Ministry of Health Information Line at 416-314-5518 or 1-800-268-1154 Toll Free in Ontario. TTY: 1-800-387-5559.

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 info@justicenet.ca

www.Ontario.ca/OPGT

Alternate formats of this brochure are available upon request. Please contact:

Tel: 416-314-2803

Toll Free: 1-800-366-0335

Ministry of the Attorney General
The Role of the Office of the Public
Guardian and Trustee
ISBN 0-7794-5323-9

© Queen's Printer for Ontario, 2006
Reprinted in 2020
Disponible en français