

Abuse of Powers of Attorney

Presented by:



Elder Abuse Prevention (ON)
Stop Abuse - Restore Respect
Maltraitance des personnes âgées Ontario
Maltraitance des personnes âgées Ontario



Ministry of the
Attorney General

A close-up photograph of two hands clasped together. The hands are weathered and aged. The person is wearing traditional jewelry, including several necklaces with red, blue, and green beads, and a bracelet with orange, green, and white beads. They are also wearing a light-colored, fringed garment. The background is dark and out of focus.

LAND ACKNOWLEDGEMENT



WEBINAR HOUSEKEEPING

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All attendees will be muted during the webinar.

ASL Interpreter:

Image and name of Interpreters will be visible during the webinar.

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Recording

A recorded version of this webinar will be available on EAPO's website: www.eapon.ca.

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Will be visible while presenting and for the Question/Answer session. You can change your view by clicking Gallery view OR Speaker view at top righthand corner

Evaluation

After the session, a pop-up screen will appear to complete survey. Your feedback and suggestions for future webinars is appreciated.

Questions

Type your questions in Question / Answer (Q & A) box.

Chat Box:

Post comments (not questions) during the session.



Respecting Privacy and Confidentiality

EAPO appreciates that there may be personal circumstances or issues which participants may wish to address. However, in keeping with our commitment to maintaining your privacy and confidentiality, today we will be answering general questions posed through the Q&A.

If someone wishes to discuss specific circumstances, we invite you to contact EAPO following this webinar to arrange for a confidential conversation so that we may further assist you.



Elder Abuse Prevention Ontario (EAPO)

MISSION

EAPO envisions an Ontario where ALL seniors are free from abuse, have a strong voice, feel safe and respected.

ACTION

Raising awareness, delivering education and training, working collaboratively with like-minded organizations and assisting with service coordination and advocacy.

Webinar Flow

ABUSE OF POWERS OF ATTORNEY

PROPERTY AND PERSONAL CARE



Speakers' presentations:

Office of the Public Guardian and Trustee (OPGT)

Kimberly Whaley

- **Open Discussion:**
Scenario - POA Abuse

Office of the Public Guardian & Trustee



**Denise Hannivan,
Investigator**

Denise joined the Office of the Public Guardian and Trustee as an Investigator in 2013 and has conducted many intensive, complicated investigations to help protect incapable people. Prior to that, she worked with victims of crime for more than 25 years in various roles, including in a women's shelter, on crisis lines, through the police, and in the criminal courts.



**Rebecca Redmond,
Investigator**

Rebecca joined the Office of the Public Guardian and Trustee in 2006, working in the Toronto Region in various roles. In 2010 Rebecca joined the London OPGT office as permanent Investigator for the Southwest Region Guardianship Investigations Unit. Rebecca draws on her experience conducting client property/estate investigations and complex guardianship investigations to promote, advocate, and serve Ontario's most vulnerable population.

Kimberly Whaley

CS, TEP, LLM,

Founding Partner, Whaley Estate Litigation Partners (WEL PARTNERS)



Kimberly is Founding Partner, Whaley Estate Litigation Partners (WEL PARTNERS) a litigation firm in Toronto, practicing throughout Ontario and repeatedly ranked by Canadian Lawyer as **one of Canada's Top 5 & 10 Boutique Trusts & Estates Firms.**

Kimberly is a non-practicing solicitor of the Supreme Court of England and Wales and designated as a Certified Specialist in Estates and Trusts Law by the Law Society of Ontario. Kim is a TEP with the Society of Estate and Trust Practitioners (STEP) worldwide.

Kimberly regularly presents and chairs programs with the LSO, OBA/CBA and other organizations. Kimberly is a leader in the community in her elder law initiatives serving as Civilian Co-chair on a Toronto Police Services Consultative Committee and on SEAC (Seniors Expert Advisory Committee), as well as consulting on policy and reform.

POA (Powers of Attorney) Abuse Scenario

Susan is an older adult living with dementia, she resides in her own home in the community.

Her son lives with her. He is also her sole Power of Attorney for both Property and Personal Care.

She has two other adult children who contact her from time to time.

One of the siblings has expressed concern that their brother is not giving them any information about their mother's health and wellbeing, or information about how he spends his mother's money as Attorney.

He does not allow them to visit her, and neighbours have noticed that the son has bought new cars recently. They overhear him frequently shouting loudly at and having arguments with his mother. No one visits the house, and he rarely takes the mother out, which raises suspicion of financial and emotional abuse as well as neglect.

What can be done about this situation from the OPGT and legal viewpoints?

PGT INVESTIGATIONS & POA ABUSE

Elder Abuse Prevention Ontario
Rebecca Redmond & Denise Hannivan,
Investigators

June 9, 2021

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THE OPGT INVESTIGATIONS UNIT

- The PGT Investigations Unit covers ALL of Ontario
- PGT Investigations Offices are located in Toronto, Hamilton, London, Ottawa, and Sudbury
- 3,000+ inquiries received each year
- Approximately 20% meet the legislated mandate for an investigation



PGT INVESTIGATIONS

CRITERIA FOR AN INVESTIGATION

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



PGT INVESTIGATIONS



TYPES

- PROPERTY – Managing finances (income/expenses), real estate, investments, inheritance, income tax, etc.
- PERSONAL CARE – Health care, Nutrition, Shelter, Clothing, Hygiene, &/or Safety. Examples: medication, immunizations, surgery, housing (e.g. Admission to Long term care home), etc.

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

(AN 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 (e.g. sudden self-neglect)
 - Changes in hygiene, nutrition, communication
 - Disorientation as to time, place, identity
 - 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

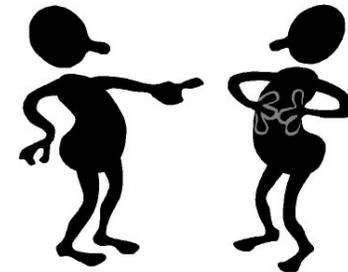


POSSIBLE EXAMPLES OF RISK:

- 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 HAPPENS WHEN A CALL 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.
- If the allegation can't be resolved, it may be promoted to an investigation.





WHAT OPTIONS ARE AVAILABLE TO MITIGATE RISK?

- Referrals to community agencies (Mental Health agencies, Situation Tables, etc.)
- Involvement of family members
- Contact the bank with concerns & request 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
- LHIN involvement to coordinate in-home services &/or placement at Long-Term Care



OPTIONS – MITIGATE RISK

- 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)
- 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

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/PGT OBTAINS AUTHORITY:

- **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)



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

MISCONCEPTIONS

Allegation ≠ Investigation

Abuse/Vulnerable ≠ Incapacity

Mental Illness ≠ Incapacity

Investigation ≠ Guardianship

Incapacity ≠ Guardianship

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.



MAKING AN ALLEGATION/CALLING THE INVESTIGATION SCREENING LINE FOR INFO:

- 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., Suite 800
Toronto, ON M5G 2M6
- E-mail: JUS.G.FJS.PGT.Guardianshipinvestigation@ontario.ca
 - Provide the following details regarding the individual you are calling about:
 - First and Last Name, DOB, Address, Summary of Incapacity and Risk

PGT BROCHURES

- For further info on OPGT, visit:
www.attorneygeneral.jus.gov.on.ca/english/family/pgt/
- For further information and brochures, visit:
www.publications.gov.on.ca/the-office-of-the-public-guardian-and-trustee
- The Capacity Assessment Office -
www.attorneygeneral.jus.gov.on.ca/english/family/pgt/capacityoffice.php#list



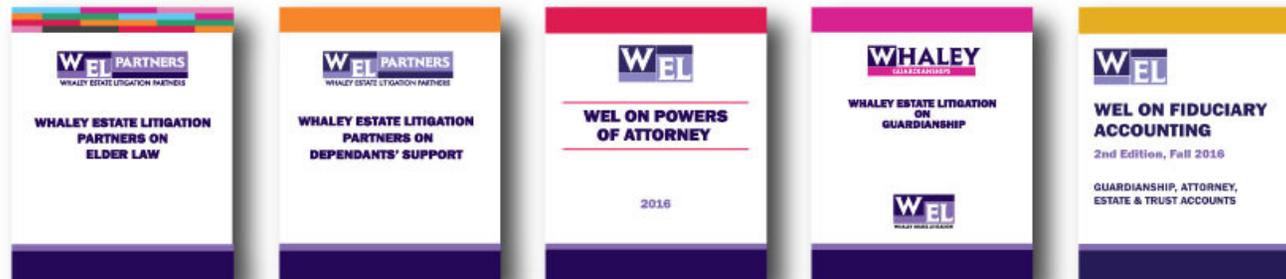
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June 9th, 2021
Kimberly Whaley



WEL Partners Resources

WEL resource books are available to download in PDF format.



Fiduciary Accounting: <http://welpartners.com/resources/WEL-on-fiduciary-accounting.pdf>

Guardianship: <http://welpartners.com/resources/WEL-on-guardianship.pdf>

Powers of Attorney: <http://welpartners.com/resources/WEL-on-powers-of-attorney.pdf>

Dependants' Support: <http://welpartners.com/resources/WEL-on-dependants-support.pdf>

Elder Law: <http://welpartners.com/resources/WEL-on-elder-law.pdf>

Contact Information

45 St. Clair Ave. West, Suite 600
Toronto, Ontario, M4V 1K9

Main Telephone: (416) 925-7400
Facsimile: (416) 925-7464

<https://welpartners.com>







Support for Seniors

Support Information Referral

SENIORS
SAFETY LINE



1-866-299-1011



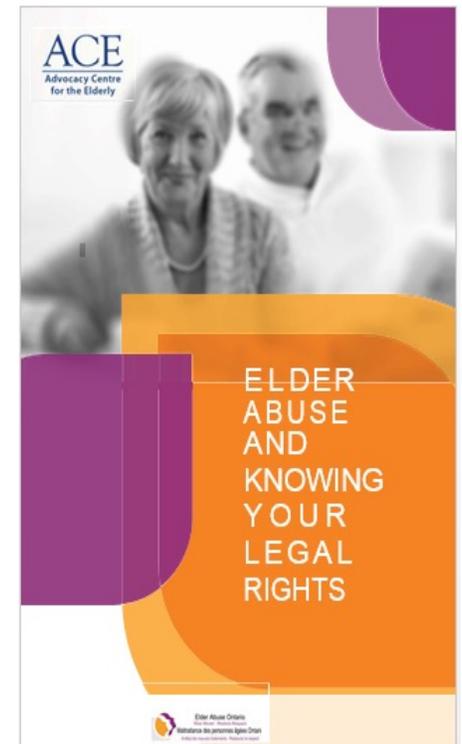
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awhl.org/seniors





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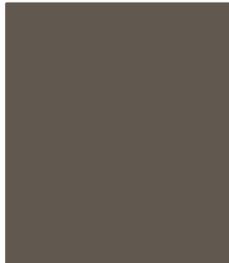
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Please take a few minutes to complete our survey!



**Keep
Connected**

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