



Ministry of the Attorney General

The Office of the Public Guardian and Trustee

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OPGT Guiding Principles



- The OPGT mission is to protect and promote the quality of life and value of property of persons found to be mentally incapable and be in need of guardianship.
- The main principles that guide our work are that the OPGT:
 - Is the last resort
 - Takes the least intrusive measures
 - Considers prior capable wishes in decision making
 - Respects and maintains privacy
 - Involves supportive family and friends
 - Encourages family to apply to replace us when appropriate
 - Provides accessible, timely and responsive service

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Role of the OPGT



- **Provides services that safeguard the legal, personal & financial interests of certain private individuals & estates, including:**
 - Managing Finances – Guardian of Property
 - Making Decisions about Personal Care, Treatment & Admission to Long Term Care
 - Appointing Private Guardians of Property – screening Applications to Replace
 - Administering Estates of people who die without will or family
 - Conducting Investigations based on allegations of incapacity and risk

reference www.attorneygeneral.jus.gov.on.ca

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Governing Legislation



- **Substitute Decisions Act, 1992**
- **Mental Health Act**
- **Health Care Consent Act**
- **Public Guardian and Trustee Act**

Reference www.e-laws.gov.on.ca

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OPGT Property Guardianship



- What does it mean to be found incapable to manage finances/property?
 - Not able to understand information that is relevant to making a decision in the management of his or her property;
 - Not able to appreciate the reasonably foreseeable consequences of a decision or lack thereof.

Reference: Substitute Decisions Act, Section 6

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OPGT Jurisdiction



- **How is the OPGT appointed?**
 - Psychiatric facility - Dr's assessment
 - Capacity assessment
 - Appointed by Court order
 - Trusteeship – appointed by ODSP, WSIB, CICB
- **How can an assessment of incapacity be contested?**
 - Consent & Capacity Board
 - Court application
- **How can someone replace the OPGT?**
 - Provide a valid Continuing Power of Attorney for Property
 - Certain people may make an administrative application to replace the OPGT
 - Apply to court

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OPGT Jurisdiction



Certificate of Incapacity under the Mental Health Act

- Section 54 of the *Mental Health Act* (MHA) requires that every person who is admitted as a patient of a psychiatric facility be assessed by a physician to determine the patient's capacity to manage property.
- If the patient is assessed as incapable of managing property, a **Certificate of Incapacity (COI) in the form prescribed by the MHA (Form 21)** must be issued forthwith and transmitted to the PGT. This does not apply if the patient already has a guardian of property under the *Substitute Decisions Act* (SDA) (MHA, s.54(5)).
- Section 15 of the SDA requires that if a COI (Form 21) is issued under the MHA certifying that a person who is a patient of a psychiatric facility is incapable of managing property, the PGT is the person's statutory guardian of property. The PGT has no discretion to decline authority upon receipt of a COI unless it has been invalidly issued or is incomplete.

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OPGT Jurisdiction continued



- **A financial statement in the prescribed form (Form 22)** must be provided by the issuing psychiatric facility forthwith following the issuance of the certificate (MHA, s.55).
- The MHA requires that, within 21 days prior to discharge, an in-patient under a COI shall be examined to determine if the patient remains incapable and if so, a **Notice of Continuance (NOC) (Form 24)** must be issued before or upon discharge (MHA, s. 57).
- If a patient is discharged without an NOC then the OPGT loses jurisdiction effective the date of discharge.

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Powers of Guardian of Property



- **What Guardians of Property can do:**
 - Anything a client could do to manage finances
 - Right to receive information about client's property
- **What Guardians of Property cannot do:**
 - Make a will
 - Make decisions on personal matters
- **Obligations of OPGT as Guardian of Property:**
 - Make decisions in the client's best interests
 - Promote client's personal comfort
 - Encourage participation of client, family, friends
 - Be responsible and accountable

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What do we do as Guardians of Property?



- **Activities that we carry out on behalf of clients include:**
 - Gather information on client
 - Secure and make decisions about assets
 - Determine liabilities and ensure all financial benefits
 - Establish financial management plan, monthly budget & pay bills
 - Interact with family, friends and community support workers
- **The OPGT uses specialized services as needed, such as:**
 - Investments, financial planning, filing tax returns
 - Real estate and property management
- **Working with community agencies and support services**

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How Our Authority Ends



- **The Authority of the OPGT ends when:**
 - Valid power of attorney presented
 - A new guardian is appointed
 - Client reassessed & found capable
 - Finding of incapacity overturned
 - Client dies

- **When a client dies:**
 - OPGT authority ends
 - Administration of estate – Responsibility falls to the executor. If no executor, to next-of-kin. If no executor or next-of-kin, OPGT may administer the estate in certain circumstances

Making Decisions about Personal Care, Treatment and Admission to Long Term Care: THE OPGT AS DECISION MAKER FOR TREATMENT



The OPGT acts when:

The person is incapable of making treatment or admission decision

AND

There is no other higher ranked substitute capable, available and willing

OR

The OPGT has been appointed Guardian for Personal care

OR

Two equally ranked substitutes disagree

Decisions for Treatment Made Under the Health Care Consent Act Requires That:



- Health Practitioner or LHIN need informed consent
- Capacity is specific to the proposal (e.g. treatment, admission to LTC)
- “Capacity assessor” not needed under HCCA
- Health practitioner determines capacity for treatment
- Evaluators determine capacity for LTC admission

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Capacity Under the Health Care Consent Act



- Understand information that is relevant to making a decision (about treatment/LTC); and,
- Able to appreciate reasonable foreseeable consequences of decision or lack of decision
- Health Practitioner must provide rights information to the incapable person. Generally that: they have been found incapable - they can challenge the finding on incapacity (How to apply to the CCB) - SDM will make their decision.
- Guidelines available from health practitioner’s regulatory college

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Capacity Can Change



- A person may be incapable with respect to some treatments and capable with respect to others and their capacity may change from time to time.
- Factors that may impact upon capacity include: a decreased level of consciousness, trauma, sedation, delirium, psychosis and dementia.

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Information to Consider While Capable



- What are your wishes about treatment? (i.e. intubation, CPR, feeding tube, surgery, blood transfusions, or other potential proposals depending upon the circumstances)
- Who is your substitute decision maker (SDM)?
- Do you have a Power of Attorney for personal care? If not, a representative appointed by the CCB – usually a non-relative (i.e. friend)
 - family – spouse – married or common-law for at least 1 year or parents of a child
 - parent(s) or children over the age of 16
 - parent who has only right of access
 - brother or sister
 - any other relative
- SDMs cannot consent on behalf of a capable patient even if:
 - they are named in a Power of Attorney; or
 - the patient wants them to

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Substitute Decision Makers (HCCA)



- Personal care guardian
- Attorney for personal care
- Board appointed representative (CONSENT and CAPACITY BOARD)
- Spouse or partner
- In order to act as an SDM an individual must be willing, available and capable.
- Child or parent
- Parent with right of access
- Brother or sister
- Any other relative
- Public Guardian & Trustee



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Principles for Giving or Refusing Consent



- Any substitute decision maker must make decisions based on either:
 - The individual's prior capable wishes; or
 - The individual's best interests, if prior capable wishes are not known
 - SDMs are responsible for interpreting wishes.
 - Health Practitioners have an obligation to explain these principles to all SDMs.
 - SDMs do not have a general authority to control what family, friends, lawyers can visit a resident.

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Information for Informed Consent (What the SDM Will Need to Know)



- The nature of the treatment
- The expected benefits of the treatment
- The material risks of the treatment
- The material side effects of the treatment
- Alternative courses of action
- The likely consequences of not having treatment
- Consents can be to one treatment or multiple (i.e. plan of care)
- Consents can deal with one or more health problems
- Provide for administration of various treatments or withholding /withdrawing treatment in light of current health condition

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What Happens If...



- **The SDM is *not capable*?**
 - HCCA says the SDM must be capable, available and willing to make the decisions
 - Document/communicate
 - Approach next person on the list
- **The SDM is *not following the rules* for making decision in accordance with prior capable wishes or in incapable person's best interests?**
 - Document/communicate
 - LHIN applies to the Consent and Capacity Board re: LTC decision; Health practitioner applies re: treatment or plan of treatment/care

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Documents



- Documents such as Living Wills or Level of Care are not consents
- Only an expression of wishes
- Cannot be completed by an SDM
- May provide direction for a health practitioner in an emergency situation only

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Office of the Public Guardian and Trustee



Hamilton	Tel: 905-546-8300 Toll free: 1-800-891-0502
London	Tel: 519-660-3140 Toll free: 1-800-891-0504
Ottawa	Tel: 613-241-1202 Toll free: 1-800-891-0506
Sudbury	Tel: 705-564-3185 Toll free: 1-800-891-0503
Thunder Bay	Tel: 807-343-7230 Toll free: 1-800-891-0503
Toronto	Tel: 416-314-2788 Toll free: 1-800-387-2127

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Important Websites



- Office of the Public Guardian Trustee
- POA Kits and Information booklets:
 - www.attorneygeneral.jus.gov.on.ca/
 - www.attorneygeneral.jus.gov.on.ca/french/
- Consent and Capacity Board:
 - www.ccboard.on.ca
 - www.ccboard.on.ca/scripts/french/index.asp
- Canadian Legal Information Institute:
 - www.canlii.org/en/index.html
 - www.canlii.org/fr/index.html
- E-Laws (Substitute Decisions Act & Health Care Consent Act)
 - www.ontario.ca/laws
 - www.ontario.ca/fr/lois