




ELDER  
ABUSE  
AND  
KNOWING  
YOUR  
LEGAL  
RIGHTS





This booklet, ***“Elder Abuse and Knowing Your Legal Rights”*** contains legal information, presented in plain language, about some of the tools available to deal with situations of elder abuse:

- Revoking a Continuing Power of Attorney for Property
- Reporting Elder Abuse to the Police
- Guardianship Investigations
- Statutory Guardianships
- Court-Appointed Guardianships
- Representatives Appointed by the Consent and Capacity Board
- Civil Actions for the Recovery of Property
- Important Provincial Resources

***This booklet contains legal information for educational purposes only and is not to be construed as legal advice.***

***For legal advice, speak with a lawyer/legal professional.***



## WHAT IS ELDER ABUSE?

**Financial abuse** is defined as any improper conduct, done with or without the informed consent of the senior, that results in a monetary or personal gain to the abuser and/or a monetary or personal loss to the senior.

**Neglect** is not meeting the basic needs of the older person.

Active (intentional) neglect is the deliberate withholding of care or the basic necessities of life.

Passive (unintentional) neglect is the failure to provide proper care to an older adult, usually due to the lack of knowledge and/or experience.

**Emotional or Psychological abuse** is any action, verbal or non-verbal, that lessens a person's sense of identity, dignity and self-worth.

**Sexual abuse** includes any unwanted sexual touching, remarks or coercing a person through force, trickery or threats into sexual activity without their consent. Sexual abuse includes inducing sexual activity with a person who is not mentally capable of giving active informed consent throughout the entire duration of the sexual activity.

**Physical abuse** is any act of violence or rough handling that may or may not result in physical injury but causes physical discomfort or pain.

# MANDATORY REPORTING



Specific mandatory reporting requirements apply in Ontario's Long-Term Care Homes and Retirement Homes.

Any person, with the exception of a long-term care home or retirement home resident, who has reasonable grounds to suspect that abuse has occurred, or that it may occur, must immediately report the suspicion.

**Long-Term Care Home ACTION Line:**

[www.ontario.ca/page/long-term-care-home-complaint-process](http://www.ontario.ca/page/long-term-care-home-complaint-process)

**1-866-434-0144**

**Retirement Homes Regulatory Authority**

[www.rhra.ca](http://www.rhra.ca)

**1-855-275-7472**



## POWER OF ATTORNEY

# REVOKING POWERS OF ATTORNEY

Powers of Attorney (“PoA’s”) are very powerful documents that are susceptible to misuse.

**A Continuing Power of Attorney for Property** gives someone named by you, your “attorney”, the right to manage your money and property on your behalf.

**A Power of Attorney for Personal Care** gives someone named by you, your “attorney”, the authority and right to make treatment and other personal-care decisions on your behalf if you are incapable.

If you have a PoA and are worried that your attorney is misusing their authority, or if you simply decide that you no longer wish to have a PoA, you can revoke it. This will usually happen automatically if you create a new PoA.

The revocation must be in writing and must be witnessed and signed by two witnesses. There are restrictions on who can witness a revocation, including one that spouses and children cannot be witnesses.

**Revoking a PoA for Property:** You must be mentally capable of understanding what kind of property you have and its value, and the role of the attorney for property.

**Revoking a PoA for Personal Care:** You must be mentally capable of understanding whether your attorney for personal care has a genuine concern for your welfare; and of appreciating that your attorney for personal care may need to make decisions on your behalf. If you included instructions in the PoA, you must also be capable of giving those instructions in order to revoke the document.

If you revoke a PoA for property, you should tell everyone concerned with your property, including your bank, that you have done so. Give them a copy of the revocation.

For more information on PoAs, visit:

[www.aceLaw.ca/powers\\_of\\_attorney\\_-\\_introduction.php](http://www.aceLaw.ca/powers_of_attorney_-_introduction.php)

[www.cleo.on.ca/en/publications/continuing#ful](http://www.cleo.on.ca/en/publications/continuing#ful)




## REPORTING ELDER ABUSE TO THE POLICE

Elder abuse includes crimes such as theft, theft by person holding power of attorney, identity theft, fraud, forgery, uttering threats, assault, sexual assault, interception of communications, failure to provide the necessities of life, forcible confinement and other similar offences under the *Criminal Code*.

Ordinarily, anyone who reasonably believes that a crime has been committed can report this to the police in the community where the suspected crime has occurred. The police can then conduct a criminal investigation and lay charges where they believe that a crime has occurred.

The Crown Attorney has sole discretion to pursue criminal charges if there is enough admissible evidence, even where the victim of crime is mentally incapable, as long as enough admissible evidence to support a criminal conviction is otherwise available.



In cases of domestic violence, Crown Attorneys in Ontario are required to pursue criminal charges where there is evidence that would support a conviction.

## Court-Appointed Guardians

Any person may apply to the courts to become a guardian of property and/or a guardian of the person for someone who is mentally incapable of managing property and/or making personal care decisions. The court-appointed guardian will then be the decision-maker for the incapable person, subject to any limitations imposed by the court.

The court considers a variety of factors in determining who, if anyone, shall be appointed guardian. These factors include the incapable person's wishes (if they can be ascertained) and the relationship between the applicant and the incapable person. Two or more guardians can be appointed jointly. There are certain individuals, for example some professionals who work with the incapable person, who are not permitted to become court-appointed guardians.

Under Section 3 of the *Substitute Decisions Act*, the court may direct that legal representation be arranged for the allegedly incapable person. Where a lawyer is appointed, the person is deemed capable of instructing counsel.

The court will not appoint a guardian if it found that decisions can be made on behalf of the incapable person in a less restrictive manner.

If the court appoints a guardian for an incapable person, the court will make an order naming the guardian(s) and imposing any appropriate conditions on the appointment. Thereafter, the court may vary the terms of the guardianship order on a motion to the court.

Every situation is unique. For more information about guardianship applications, speak with a lawyer.



## Apply to Have a Board Appointed Representative

Every person in Ontario has a Substitute Decision-Maker (SDM), who will automatically have legal authority to make decisions with respect to each of the following, if he or she is incapable:

- o Treatment decisions;
- o Admission to a long-term care home; and
- o Personal-assistance services in a long-term care home or a retirement home.

The *Health Care Consent Act (HCCA)* requires informed consent to treatment, long-term care admission, and personal-assistance service decisions. The *HCCA* also sets out a ranked list or hierarchy of SDMs that can make these decisions on behalf of mentally incapable persons.

If you are unhappy with your SDM's decisions, you or your proposed representative might be able to apply to the Consent and Capacity Board ("the Board") to have a new representative appointed to make these decisions on your behalf.

The Board cannot appoint a representative if you already have an attorney for personal care or a court-appointed guardian of the person with authority to make these decisions.

To apply to the Board, complete a Form B and send it to the Board. For more information, go to [www.ccboard.on.ca](http://www.ccboard.on.ca)

Hearings are held within seven days of the Board's receipt of your application unless all parties consent to an extension.





## Civil Action for Recovery of Property

An older adult could bring a civil legal action against a person who committed financial abuse for claims such as: the recovery of debts owed by the abuser; conversion (theft); fraud; an accounting by an attorney, guardian or trustee; or, for the recovery of real estate or other property.

Civil claims under \$25,000 in value may be brought in the Small Claims Court without a lawyer, or with the representation of a lawyer or paralegal.

Civil claims for the recovery of real estate or claims over \$25,000 in value are normally brought to the Superior Court of Justice. Legal representation by a lawyer is highly recommended because the substantive law, the rules of evidence and the rules of civil procedure are complex and beyond the ability of the ordinary person.

If an older adult is not mentally capable of making financial decisions or of retaining and instructing a lawyer, an attorney or guardian of property may retain a lawyer and bring legal action on behalf of the incapable person as their litigation guardian.

## Statutory Guardians for Property

If a person who does not object is assessed by a designated capacity assessor, and is found incapable of managing their property, the Office of the Public Guardian and Trustee (“the OPGT”) will become that person’s “Statutory Guardian” of property. This process does not involve going to court.

As Statutory Guardian, the OPGT is responsible for managing all of the incapable person's property (such as making bill payments, handling investments, and managing real estate) in the incapable person's best interests.

The OPGT has discretion to delegate its Statutory Guardianship to the person's spouse or partner, relative, attorney for property, or to a trust company. The replacement Statutory Guardian must apply, pay an application fee and provide a management plan for the incapable person's property.



A Statutory Guardianship can be terminated if the incapable person gave a valid Continuing Power of Attorney over all of his or her property before the Statutory Guardianship was created; if a guardian for property is appointed by the court; or if a designated capacity assessor re-assesses the person as capable of managing their own property. A person under Statutory Guardianship may also apply to the Consent and Capacity Board for a review of a finding of incapacity.

For more information about **Statutory Guardianships**, the **OPGT** can be reached at **1-800-366-0335** or by visiting:

[www.attorneygeneral.jus.gov.on.ca/english/family/pgt/propguard.php](http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/propguard.php)

Victims of criminal elder abuse who are asked to testify in court can obtain assistance free-of-charge from the **Victim/Witness Assistance Program**, which can be reached at **1-888-579-2888**.

Police reports can be made at a local police station, or in case of an emergency by telephone at **9-1-1**.

# Guardianship Investigations

In situations where it is believed that a person is mentally incapable and as a result is suffering or is at-risk of suffering “serious adverse effects”, the Office of the Public Guardian and Trustee (“OPGT”) may conduct a guardianship investigation under the *Substitute Decisions Act*. Under Ontario law, “serious adverse effects” include: loss of a significant part of a person’s property; a person’s failure to provide necessities of life for themselves or their dependents; serious illness or injury; or deprivation of liberty or personal security.

A guardianship investigation is a last resort. If other less intrusive options are available, the OPGT will not conduct an investigation.

If the OPGT does conduct a guardianship investigation and finds that the person is incapable and at-risk, the OPGT can then apply to court to be temporarily appointed as the person’s guardian of property and/or guardian of the person.

The **OPGT Investigations and Screening Unit** can be reached at:

Telephone: **416-327-6348**

Toll-Free (Main Line): **1-800-366-0335**

For more information on guardianship investigations, visit:

[www.attorneygeneral.jus.gov.on.ca/english/family/pgt/guardinvestigation.html](http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/guardinvestigation.html)

**Legal Aid** is not normally available for adult guardianship investigations or applications. An attorney or guardian wishing to bring civil action on behalf of a mentally incapable older adult would need to retain a lawyer in private practice and to make payment arrangements for the person’s legal representation.

Referrals to a lawyer or paralegal in private practice can be obtained from the **Law Society of Ontario Law Referral Service** at [www.lsuc.on.ca/lrs](http://www.lsuc.on.ca/lrs) by phone at **1-855-947-5255** or **416-947-5255**, Monday - Friday, between 9 am - 5 pm.



## Provincial Resources

### **LEGAL:**

#### **ADVOCACY CENTRE FOR THE ELDERLY**

[www.ancelaw.ca](http://www.ancelaw.ca)

416-598-2656 / 1-855-598-2656

#### **LAW SOCIETY REFERRAL SERVICE**

[www.lsuc.on.ca/lrs](http://www.lsuc.on.ca/lrs)

1-855-947-5255

#### **CLEO**

[www.cleo.on.ca](http://www.cleo.on.ca)

#### **ONTARIO PROVINCIAL POLICE**

[www.opp.ca](http://www.opp.ca)

1-888-310-1122

#### **LOCAL POLICE SERVICE**

Check your local police service to obtain contact numbers in your community.

**SENIOR CRIME STOPPERS**

[www.ontariocrimestoppers.ca](http://www.ontariocrimestoppers.ca)

1-800-222-TIPS (8477)

**VICTIM SUPPORT LINE**

[www.attorneygeneral.jus.gov.on.ca/english/ovss/programs.php](http://www.attorneygeneral.jus.gov.on.ca/english/ovss/programs.php)

1-888-579-2888

**FINANCIAL:**

**OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE**

[www.attorneygeneral.jus.gov.on.ca/english/family/pgt/](http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/)

1-800-366-0335

**EMOTIONAL SUPPORT:**

**ASSAULTED WOMEN'S HELPLINE**

[www.awhl.org](http://www.awhl.org)

1-866-863-0511

**FEM'AIDE**

[www.femaide.ca](http://www.femaide.ca)

1-877-336-2433



**SUPPORT SERVICES FOR MALE SURVIVORS OF SEXUAL ABUSE**

[www.attorneygeneral.jus.gov.on.ca/english/ovss/](http://www.attorneygeneral.jus.gov.on.ca/english/ovss/male_support_services/)

[male\\_support\\_services/](http://www.attorneygeneral.jus.gov.on.ca/english/ovss/male_support_services/)

1-866-887-0015

**TALK4HEALING**

[www.talk4healing.com](http://www.talk4healing.com)

1-855-554-HEAL (4325)

## **HEALTH:**

### **ALZHEIMER SOCIETY OF ONTARIO**

[www.alzheimer.ca/en/on](http://www.alzheimer.ca/en/on)

1-800-879-4226

### **ONTARIO NETWORK OF SEXUAL ASSAULT/DOMESTIC VIOLENCE TREATMENT CENTRES**

[www.sadvreatmentcentres.ca](http://www.sadvreatmentcentres.ca)

416-323-7327

### **LHIN HOME AND COMMUNITY CARE**

[www.healthcareathome.ca](http://www.healthcareathome.ca)

310-2222 (no area code required)

### **CONSENT AND CAPACITY BOARD**

[www.ccboard.on.ca](http://www.ccboard.on.ca)

1-866-777-7391

## **INFORMATION AND SUPPORT**

### **SENIORS SAFETY LINE (SSL)**

**1-866-299-1011**



The SSL provides contact and referral information for local agencies across the province that can assist in cases of elder abuse. Trained counsellors provide safety planning and supportive counseling for older adults who are being abused or at-risk of abuse. Family members and service providers can call for information about community services. The SSL is available **24/7 in over 200 languages.**

## **TRAINING / EDUCATION**

**To book an educational or training session, please contact :  
Elder Abuse Prevention Ontario at 416-916-6728 or visit  
[www.eapon.ca](http://www.eapon.ca)**



ACE is a community legal clinic for low income seniors. In addition to working on systemic issues which impact many older adults, ACE provides direct services to seniors who live in the Greater Toronto Area.

ACE can be reached at **416-598-2656** or **1-888-598-2656**.

ACE is staffed by experienced lawyers and legal support workers is governed by a volunteer board of directors. ACE can assist older adults with the following kinds of cases:

- Inappropriate use of a power of attorney
- Money or property taken by someone in a position of trust or authority without the older adult's consent
- Poor care in a long-term care home or other older-adults' residence
- Information about the older adult's rights after there has been a finding that he or she is incapable of making decisions, and information about how to challenge this finding
- Denial of government pension benefits or services or problems with other community services
- Problems with hospital admission, detention, or discharge.

ACE does not provide legal advice or representation to persons other than the older adult whose rights are in issue.



Elder Abuse  
Prevention  
Ontario

Prévention de la  
maltraitance envers  
les aînés Ontario

T: 416-916-6728

- [www.eapon.ca](http://www.eapon.ca) -

*EAPO is a provincial, charitable, non-profit organization, funded by the Government of Ontario, to implement the Ontario Strategy to Combat Elder Abuse.*



701-2 Carlton St,  
Toronto, ON M5B 1J3  
T: 416-598-2656

[www.ancelaw.ca](http://www.ancelaw.ca)

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