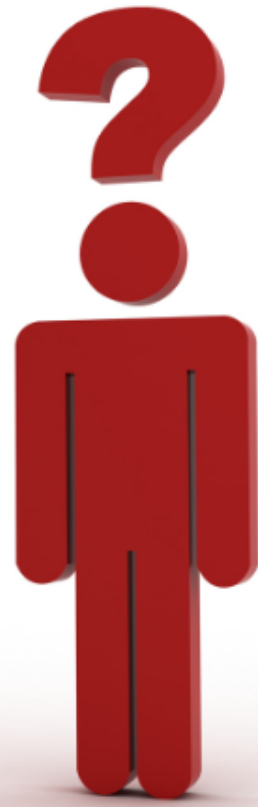




Elder Abuse Prevention (ON)  
Stop Abuse - Restore Respect  
Maltraitance des personnes âgées Ontario



# **PROTECTING THE RIGHTS OF OLDER ADULTS WHO ARE AT-RISK AND LACK CAPACITY**

*Role of the Office of the Public  
Guardian and Trustee - Investigations Unit*

**Wednesday, March 3, 2021**

**1:00 pm – 2:00pm**





# WEBINAR HOUSEKEEPING

## Communication

All attendees will be muted during the webinar.

## ASL Interpreter:

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

## Recording

A recorded version of this webinar will be available on EAPO's website.

## Adjusting Speaker Image Size:

Drag the line between the video frame and slides to the left (adjust at beginning of the webinar).



# WEBINAR HOUSEKEEPING

## Speaker

Will be visible while presenting and for the Question/Answer session.

## Chat Box:

Post comments during the session.

## Questions

Type your questions in **Question/ Answer box.**

A response will be posted during the webinar or asked to speaker after the presentation.

## Evaluation

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



A close-up photograph of two hands, likely belonging to an elderly person, clasped together in a prayerful or reverent gesture. The hands are positioned over a colorful beaded necklace. The necklace features multiple strands of small, round beads in red, blue, green, and yellow, interspersed with larger, flat, circular metal discs. The hands are resting on a light-colored, textured fabric, possibly a rug or a piece of clothing. The lighting is soft, highlighting the texture of the skin and the vibrant colors of the beads.

**LAND ACKNOWLEDGEMENT**



# PROTECTING THE RIGHTS OF OLDER ADULTS WHO ARE AT-RISK AND LACK CAPACITY

Role of the Office of the Public  
Guardian and Trustee  
Investigations Unit

[WWW.EAPON.CA](http://WWW.EAPON.CA)



**Wednesday, March 3, 2021**  
**1:00 pm – 2:00pm**

## Presentation Flow

- Opening Remarks
- Criteria for an investigation
- Areas that can be investigated
- Steps involved during intake and the investigation process
- Possible outcomes of these investigation, and
- Options, other than an OPGT investigation, that could mitigate risks.
- Questions & Answer Period



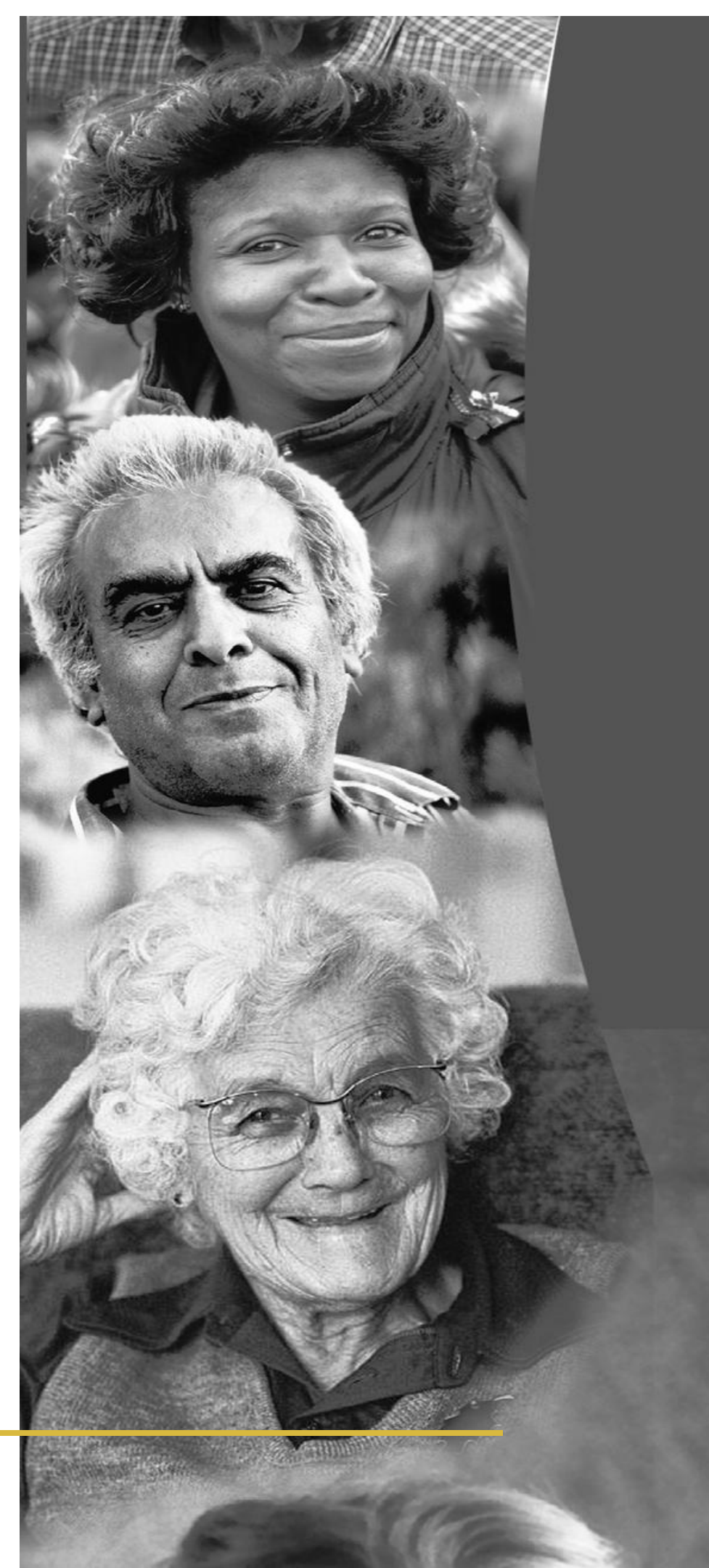
# Elder Abuse Prevention Ontario (EAPO)

## MISSION

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

## ACTION

Building that requires raising awareness, delivering education and training, working collaboratively with like-minded organizations and assisting with service coordination and advocacy.





## **Denise Hannivan**

***Investigator, Office of the Public Guardian  
and Trustee***

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.

**GUEST  
SPEAKER**

# PGT INVESTIGATIONS

Presentation for Elder Abuse Prevention Ontario

Denise Hannivan, Investigator

Date: March 3, 2021

*© Public Guardian and Trustee, 2020.*





# PRESENTATION OVERVIEW

- Role/Mandate of the PGT
- Allegations/investigations about individuals who may be incapable and at risk of serious adverse effects



# ROLES OF THE OPGT

- Guardian of Property
- Guardian of the Person
- Treatment Decisions
- Register of Court Appointed Guardians
- Estate Trustee
- Investigations
  - The PGT covers ALL of Ontario
  - PGT Investigations Offices are located in Toronto, Hamilton, London, Ottawa, and Sudbury
  - 3,000+ Allegations received each year
  - 1,200 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 (Mental Health agencies, Situation Tables, etc.)
- 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
- 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 THE PGT OBTAINS AUTHORITY – S.16 CAPACITY ASSESSMENTS

**ANYONE** can request a capacity assessment by a designated Capacity Assessor (CA)

- The requester pays for the assessment
- Must be no Continuing Power of Attorney for Property (CPOA) – unless assessment requested by the individual BUT a self-requested S.16 assessment does **not** revoke an existing CPOA. The PGT's authority may terminate if the attorney presents a valid CPOA.
- The individual being assessment must not object to the assessment

**Cost** - Capacity Assessors (CAs) set their rates (\$100-\$250/hour) depending on specializations. Other factors influencing cost:

- nature & complexity of the person's condition
- assessor's experience in conducting assessments
- time required to complete the assessment and the related forms
- expenses, including travel, that may be required

**Finding of incapacity per S.16 appoints the PGT as guardian of property (financial) ONLY**

**Capacity Assessment Office** - Visit website for information on Financial Assistance Program, how to reach assessors, & other types of assessments that CAs can conduct -

<https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/capacityoffice.php#caodo>

# 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.

# TREATMENT DECISIONS UNIT

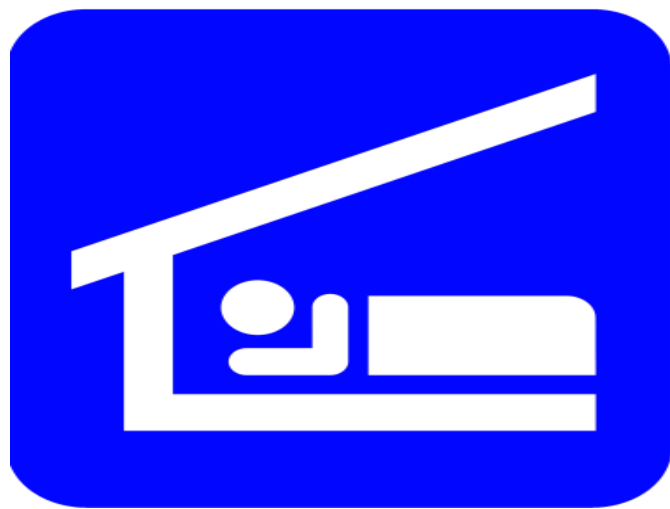
**HEALTH CARE CONSENT ACT (HCCA)** – Consent for treatment required unless emergency;

- Health practitioner proposing treatment forms opinion of the person's capacity for the treatment;
- Hierarchical Substitute Decision Makers (SDMs) for treatment:
  1. Guardian of the person;
  2. POA-PC;
  3. CCB Rep;
  4. Spouse or partner;
  5. Child or parent (with some exceptions);
  6. Parent who has only a right of access
  7. Sibling;
  8. Any other relative.
- SDM CRITERIA: Available, Capable & Willing;
- If all criteria are not met, use the next SDM on the list
- PGT is the last resort.



# 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



# 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:

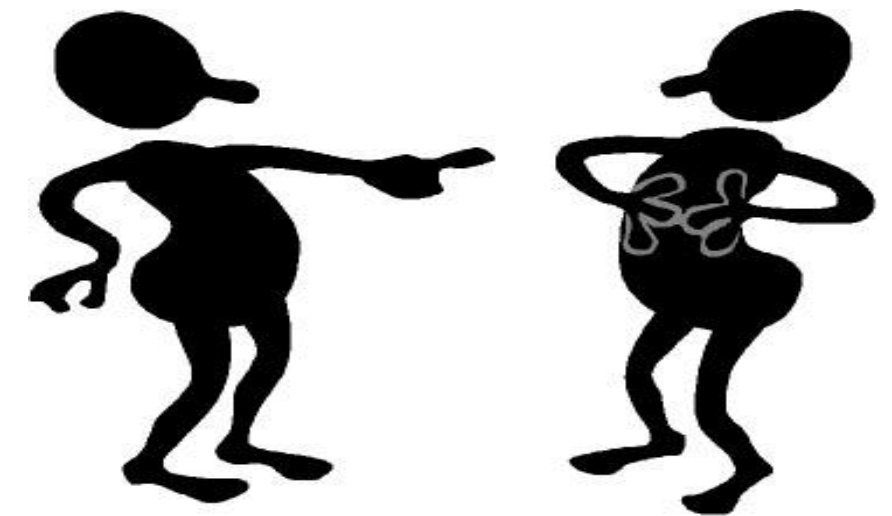
- Incapable of managing property and/or personal care decisions, and;
- At significant risk of personal or financial harm as a result of incapacity, when there are no other known alternatives
  - **Financial** – at least 18 years of age; and/or
  - **Personal Care** – at least 16 years of age.





# 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 an Allegedly Incapable Person
  - Access to financial and medical information
  - Access to information from Health Information Custodians

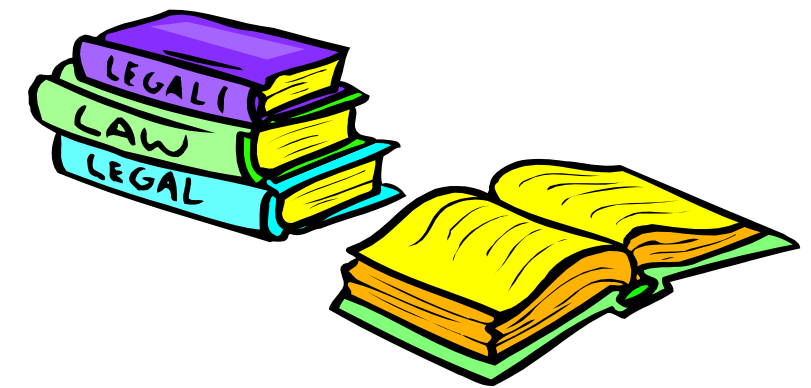


PGT has no legal authority to make decisions or provide directions during an investigation



# 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, social worker, 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 ≠ Investigation

Abuse/Vulnerable ≠ Incapacity

Mental Illness ≠ Incapacity

Investigation ≠ Guardianship

Incapacity ≠ Guardianship

# MORE MISCONCEPTIONS

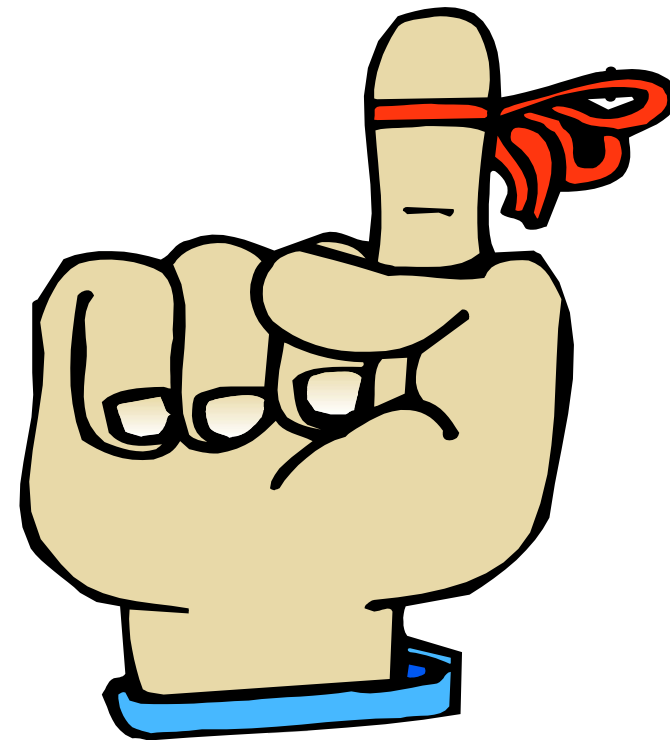
## Getting the PGT appointed as a guardian:



- 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 at**  
[http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/brochures\\_and\\_forms.php](http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/brochures_and_forms.php)
  - 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 -**  
<https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/capacityoffice.php#list>





# 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., Suite 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



**QUESTIONS**



# Provincial Supports POLICE and Services

## Call local Police Service

LEAPS/Seniors Support Officers

## Toronto Police Service

*Vulnerable Persons Coordinator,  
Community Partnerships and Engagement Unit*

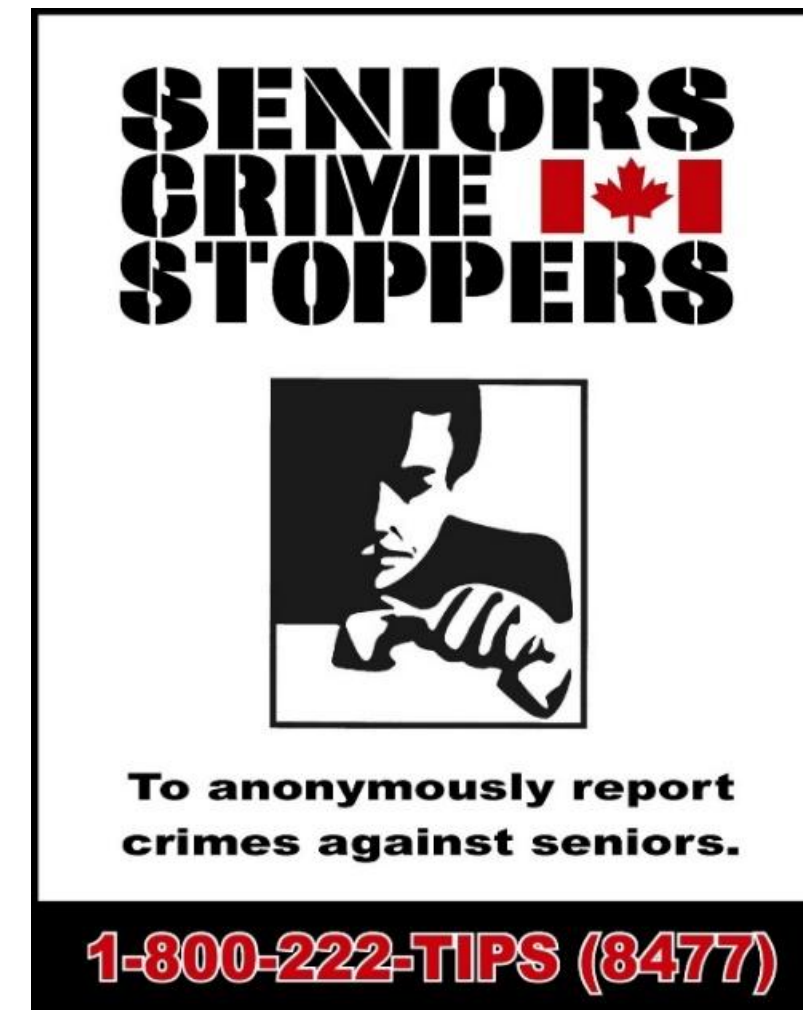
## Ontario Provincial Police

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

## Senior Crime Stoppers

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

1-800-222-TIPS (8477)





# Reporting



MINISTRY MANDATED REPORTING  
**HOW DO I REPORT  
ABUSE?**



## Long-Term Care Homes Act s.24(1)

Any person who has reasonable grounds to suspect that abuse has occurred, or may occur, shall immediately report the suspicion and the information upon which it was based to the Director under the LTCHA.

**Long-Term Care ACTION Line  
1-866-434-0144**

## Retirement Homes Act.67

Anyone who sees or suspects a situation that harms or puts a resident at risk of harm must report it to the RHRA.

**Retirement Homes Regulatory  
Authority (RHRA)  
1-855-275-7472**



# Provincial **LEGAL** Supports and Services

## **Advocacy Centre for the Elderly**

1-855-598-2656

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

## **Law Society Referral Service**

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

## **South Asian Legal Clinic**

416-487-6371

<https://salc.on.ca>

## **Human Rights Tribunal of Ontario**

1 866 598 0322

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

## **Office of the Public Guardian and Trustee**

1-800-366-0335

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

# Supports and Services



## **LHIN Home and Community Care**

<http://healthcareathome.ca/>

## **Alzheimer Society of Ontario**

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

1-800-879-4226

## **Family Services Toronto**

416.595.9618

<https://familyservicetoronto.org/>

## **The 519**

1-416-392-6874

[www.the519.org](http://www.the519.org)





# Stay in Contact with Us



[@EAPreventionON](#)

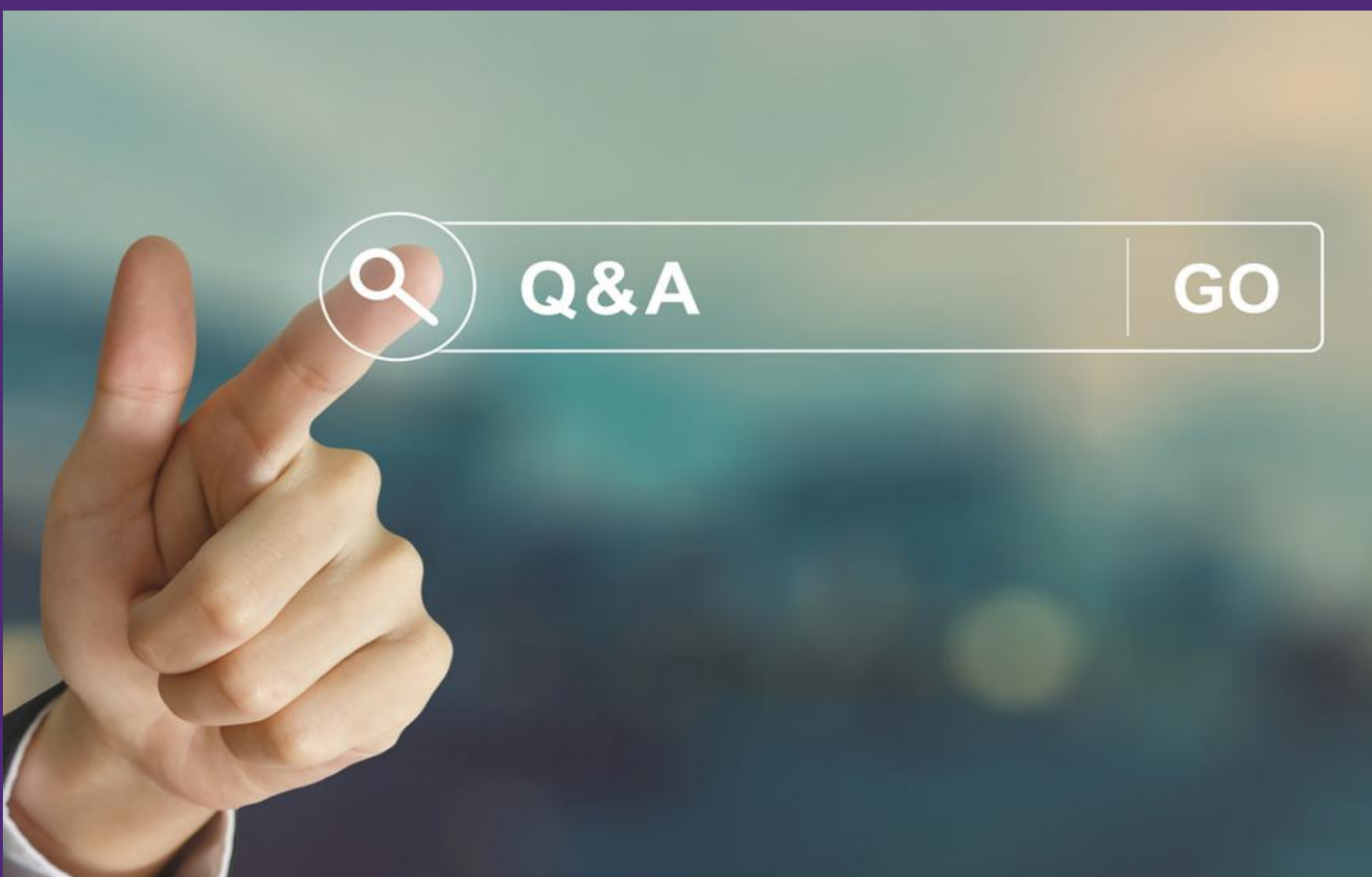






**EVALUATION**

**Please take a few  
minutes to complete  
our survey!**



# Contact Us

**Comments? Questions?  
Keep in Touch**

**Raeann Rideout**

Director of Provincial Partnerships and Outreach

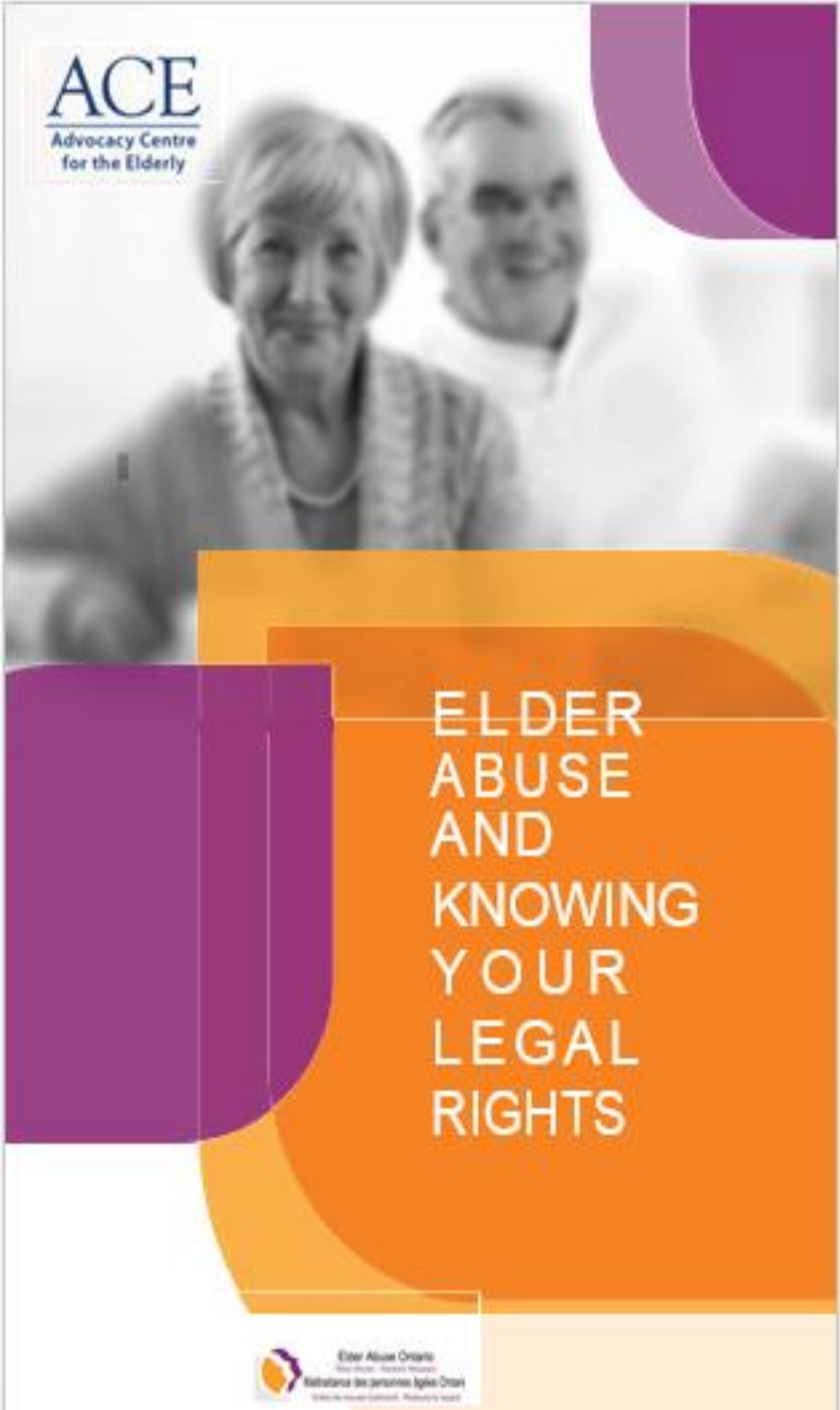
[partnerships@eapon.ca](mailto:partnerships@eapon.ca)

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

**@EApventionON**



# Tools and Resources



### COVID19 Specific Frauds and Scams

Here is a list of the top 10 scams and frauds currently being used to prey on vulnerable seniors during the COVID19 crisis\*

Government Focused	Family, Friends & Community Focused	For More Information
<ul style="list-style-type: none"><li><input type="checkbox"/> Emails, phone calls and text messages encouraging seniors to apply for COVID-related government benefits by clicking on a link.</li><li><input type="checkbox"/> A version of the CRA scam where fraudsters threaten that your "provincial medical benefits" have run out (or are running out) and you need to send money either to reinstate them or to buy private medical insurance.</li><li><input type="checkbox"/> A phone call from someone posing as a representative from the provincial or municipal health authority saying that you have been found to have COVID - or you have been found to have been exposed to COVID - and to give them your credit card to pay for testing or results.</li><li><input type="checkbox"/> Canada Post / UPS - delivery frauds - a telephone call saying that you have an (often international) package which has been attempted to be delivered, but you need to call them to pay duty or shipping first.</li></ul>	<ul style="list-style-type: none"><li><input type="checkbox"/> Deceptive websites asking you to help purchase Personal Protective Equipment for front line health care providers by donating (paying by credit card).</li><li><input type="checkbox"/> Community helping scams where callers say that they are trying to connect with Socially Isolated seniors so that they can "help them". In some instances, these callers are predators who are actually trying to identify vulnerable seniors so that they can get into their house, sell them things, or steal their personal information.</li></ul> <p><b>IMPORTANT NOTE:</b> There are legitimate organizations reaching out to vulnerable seniors during the COVID19 crisis. To ensure that you are speaking with a reputable organization, ask them for their phone number and then call them back before providing any personal information. And NEVER give out financial information.</p> <ul style="list-style-type: none"><li><input type="checkbox"/> Romance Scams through social media and on-line dating sites focused on seniors who may be feeling lonely as a result of being isolated because of COVID, and are spending more time socializing online.</li><li><input type="checkbox"/> A version of the Grandparent Scam - but this time the "grandchild" is stuck overseas and can't get home because of COVID restrictions but with enough money can get a "special flight" - and "don't tell mom or dad".</li></ul>	<p><b>Reporting to Canadian Anti-Fraud Centre</b></p> <p><b>By phone:</b> 1-888-495-8501 (toll free) Calls are answered <b>Mon to Fri, from 10am to 4:45pm EST</b></p> <p><b>Online:</b> <a href="https://www.canadafraudcentre.ca/">bit.ly/CanAge-report-fraud</a></p> <p>Log into the tool using one of the following options:</p> <ul style="list-style-type: none"><li>• GC Key (user ID / password)</li><li>• Sign-In Partners (banking credentials)</li></ul>

**Elder Abuse Prevention (ON)**  
Stop Abuse - Restore Respect  
Prévention de la maltraitance envers les aînés (ON)  
Arrêtez les mauvais traitements - Restaurez le respect

**CanAge.**  
[www.canage.ca](http://www.canage.ca)

\*Information adapted from Canadian Anti-Fraud Centre. Released April 8, 2020.





Thank  
you!