PGT INVESTIGATIONS

Presentation for Developmental Services Toronto Denise Hannivan, Investigator

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PRESENTATION OVERVIEW

- Role/Mandate of the PGT Investigations Unit
- Criteria for Investigations
- Intake/Investigation Process
- Possible Outcomes





PGT INVESTIGATIONS UNIT

- The PGT covers ALL of Ontario
- PGT Investigations Offices are located in Toronto, Hamilton, London, Ottawa, and Sudbury
- 3,000+ Allegations received each year
- 1,300 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 <u>understand</u> information that is relevant to make a decision
 - Person is not able to <u>appreciate</u> (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)

- <u>Possible</u> 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 selfneglect)
 - 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 (SPIDER, VAST, COTA, COSS, etc.)
- Contacting the bank with concerns, requesting 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 TO APPOINT THE PGT – S.16 CAPACITY ASSESSMENTS

- ANYONE can request a capacity assessment by a designated capacity assessor
- <u>The requester pays for the assessment</u>
- Declaration of incapacity per S.16 appoints the PGT as guardian of property (financial)
 - Must be no Continuing Power of Attorney for Property (CPOA) unless the individual requests the assessment themselves*
 - The individual being assessment must not object to the assessment
- Capacity Assessment Office
 - Provides information, a list of assessors and funding for low income requesters

*Note: A self-requested S.16 capacity assessment by the individual does not revoke an existing CPOA. The PGT's authority may be terminated if the attorney presents the CPOA. See next slide.

WHEN CAN THE PGT REQUEST S.16 CAPACITY ASSESSMENTS?

- The person is not a patient of a psychiatric facility.
- There is no valid Continuing Power of Attorney for Property (CPOA-P).
- The Investigator must determine that the appointment of a CPOA-P is not an option (i.e. the person is incapable and/or unwilling to appoint or there is no appropriate person to appoint).
- There is no one else available to request and pay for a capacity assessment.
- The person cannot request a S.16 for themselves.
- The person must not refuse to undergo the S.16.
- The investigation is substantially complete and the need for the PGT as guardian of last resort has been confirmed.
- The Investigator must prepare and send a recommendation to PGT Investigations Counsel and Team Leader to arrange and fund a S.16.

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



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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 <u>NOT</u> 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 <u>NOT</u> to consent to appointment.

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 <u>incapable of making these decisions</u>



PGT COUNSEL AND THE INVESTIGATIONS UNIT

WHAT DOES PGT COUNSEL DO IN REGARD TO INVESTIGATIONS?

- Counsel is assigned to each investigation to provide advice to the investigators and the PGT on all legal issues that arise. E.g. validity of Powers of Attorney, wills, and contracts; interpretation of title documents; confidentiality and Freedom of Information issues; application of trust law and availability of tracing remedies.
- They provide advice on investigators' requests to arrange/pay for S.16 Capacity Assessments
- If necessary, they communicate with counsel representing outside parties (lawyers for police, hospitals, POA, etc.)
- If the Deputy PGT and/or the PGT approve the investigators recommendation to make a court application, PGT counsel draft the applications and represent the PGT in court.



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 <u>and</u> 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 with Alleged Incapable Person
 - Access to financial and medical information
 - · Access to information from Health Info. 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 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 <u>not</u> 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 \neq Investigation

Abuse/Vulnerable ≠ Incapacity

Mental Illness ≠ Incapacity

Investigation ≠ Guardianship

Incapacity ≠ Guardianship



MORE MISCONCEPTIONS





- 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: <u>http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/</u>
- BROCHURES available (download or request hard copies)
 - 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





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., Ste. 800 Toronto, ON M5G 2M6

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• E-mail: 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

