

# Your silent partner may not be so silent

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If you don't have a Power of Attorney for property or personal care and you are deemed incapable, the Office of the Public Guardian and Trustee (OPGT) (your silent partner) can and will move in to take over everything. That includes assets, property, investments, bank accounts and more. Originally the concept was for the Ministry of the Attorney General to take control of the assets of individuals needing protection if they were deemed to not have capacity. It is designed to help the vulnerable of our society.

Well things have changed and the Ministry has added significant numbers to their staff according to their web site, in excess of 400 today. They all earn an income and the income is earned from the fees from managing "their client's" assets and tax payer dollars. They charge 3% on capital and income receipts, and 3% on income and capital disbursements payable monthly by the client. Income from care and management fee 3/5 of 1% payable monthly by the client. Client overdrafts, Investigations at \$100/ hour, client's interests in estates, family law, sale and purchase of real estate, discharge of mortgages... and more. Go to [www.attorneygeneral.jus.gov.on.ca/english/family/pgt/fees/section-a.php](http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/fees/section-a.php), to read it for yourself!

The case in point - as we are aging we can at any time lose our ability to cope and may have signs of deteriorating memory or suffer from early signs of dementia. We need to make sure we have appointed someone to care for us and make decisions on our behalf. If you haven't and you end up in the hospital/hospice like my client at 84 and your spouse is deemed incapable by the OPGT assessor, they will take control and swiftly. If you are in the hospital and suffering dementia without family with authority to make decisions, the OPGT appointed assessor is not required to get your permission for an assessment. People are sick, on medication, yet they can do an assessment. You can't even plead with them...

If you are living in the community they require your permission to do an assessment. Once an assessment is made and you are found incapable, it can be reversed but only by application and not likely to happen for some time. Review your power of attorney documents and make sure you have updated them by removing anyone who has died or is incapable and add someone as an alternative.

In 27 years of practice I have witnessed some horror stories first hand. I don't have enough room to go into details here in this article, all I can say is make provisions and see your lawyer. Keep your will updated. Recent studies have shown as many as 74% Canadians do not have an up-to-date will. Similar studies have estimated that 50 % of Canadians have not made a will.

Speak to a professional and don't put off the things that are important. Having a power of attorney and a valid will makes sense. Why don't more people do it? Because it's not urgent... when it is urgent it may be too late.



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