

Office of the Public Guardian and Trustee Charitable Property Program



When does the Public Guardian and Trustee Intervene with a Charity?

Church and Charity Law, 2021


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Mandate of the Public Guardian and Trustee




- Plays a role in helping to protect charitable assets in Ontario;
- Affords advice and assistance to the courts; and
- Can take steps to ensure that charitable property is used for the charitable purposes intended by the donor.

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Fulfilling Mandate



PGT carries out its mandate by:

1. Protecting charitable property in court proceedings;
2. Acting on complaints regarding misapplication of charitable property or breach of fiduciary duties of directors or trustees; and,
3. In limited circumstances, reviewing Ontario applications for incorporation of charitable organizations and corporate- change documents;

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OPGT & Charities

Charities interact with the OPGT in three circumstances:

1. OPGT is inquiring into the charity on the basis of a complaint (external or self-initiated);
2. Charity is seeking an order under s.13 of the Charities Accounting Act; or,
3. OPGT approval is required for an application under the Ontario Not for Profit Corporations Act.

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Estate Litigation & Fiduciary Duties

- The OPGT also participates in litigation matters when there is a charitable interest that no one else can protect;
- We do not protect named charities as directors of charities have a fiduciary duty to protect the charitable interests in bequests.

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OPGT Areas of Inquiry

The Public Guardian and Trustee can inquire into allegations that:

- charitable property is not being used for the purposes for which it is intended;
- those responsible for the administration of charitable property are in breach of their fiduciary duties;
- Charity is being administered improperly, putting charitable property at risk.



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Charities Accounting Act

- The Legal Framework:
 - Section 2 requires trustees/directors holding charitable property to respond to PGT requests for information;
 - Section 3 allows the PGT to demand the trustees/directors pass their accounts;
 - Section 4 allows the PGT to bring an application against the charity and trustees/directors


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Examples of Inquiries

- Director is employed by the charity without Court authorization;
- Director has contracted with the charity without compliance with Section 2.1 of Ontario Regulation 4/01 or Court order;
- Charity has used funds for (charitable or non-charitable) activities outside of its purposes.
- Charity has 'borrowed' from restricted purpose funds for other uses.


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Responding to the PGT

- It is important to keep the OPGT advised of the charity's actions. An extension of the time maybe granted for valid reasons.
- An organized, comprehensive response that provides context when needed, will help our office to better understand the charity's rationale.
- Silence, vague, defensive answers and inconsistent information will cause closer review and scrutiny.
- The approach of the OPGT in reviewing complaints about charitable organizations is to work with charities to correct errors and to avoid problems in the future.

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Responding to the PGT

- Charities are entitled to obtain professional advice, such as from a lawyer or accountant, before forwarding the information;
- Even if while seeking the assistance of professionals, the charity should continue to gather all relevant information to avoid unnecessary delays in responding;
- The worst response is no response.

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S.13 – Obtaining Court Orders

- Section 13 of the *Charities Accounting Act* provides a simplified procedure to obtain a Court Order without having to go to Court or commencing formal Court proceedings.


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S.13 – Obtaining Court Orders

- Charities do not have to appear in Court or prepare an Application Record or factum to obtain a Court order, which is deemed to be a Court order under s. 13.
- However, charities do have to obtain the written consent of the Public Guardian and Trustee and of every other person who would have been required to be served in a proceeding to obtain the order.


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Examples of s.13 Orders

- A charity seeking to make payments to a director in situations where s. 2.1 of Ontario Regulation 4/01 does not apply, such as;
 - paying a director as an employee;
 - Contracting with a director where the board has 4 or fewer members;
 - Payments to a director for real estate transactions
 - Payments to a director for fundraising expenses


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Example of s.13 Orders

- A charity has a restricted fund that can no longer be used for its charitable purpose and needs Court approval to use the fund for another, similar purpose.
- A charity has failed to reach its Disbursement Quota and requires access to capital from a perpetual fund.


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Process

- The OPGT's procedure manual for s. 13 applications can be found on the OPGT website or OPGT publications site (see last slide)

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Process

- The applicant submits the required documents to the OPGT's office for review;
- OPGT responds with any required changes such as more information within the affidavit or a change to the draft order;
- Once the application is completed, if the OPGT consents, we will obtain the order and forward it to you.

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Please Remember To

- Contact the OPGT first to discuss the order you are seeking. At that point counsel can screen the issue to determine if it is a suitable subject matter for a s.13 order;
- Submit draft documents rather than executed ones, in case the OPGT requires amendments.

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ONCA

- On October 19, 2021, the Not-for-Profit Corporations Act came into force;
- The Ontario Business Registry, an online system for applying for articles of incorporation or a change to corporate articles, also started on October 19, 2021.
- The new system reduces the OPGT's role in incorporation or corporate change applications.

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PGT Involvement under ONCA

- Ontario Regulation 394/21, Names and Filings, stipulates when the OPGT is involved in corporate applications when:
 - A charitable corporation wishes to change its purposes but does not want to use the 'after-acquired clause' (sections 24 & 27);
 - The applicant wishes to use the term 'Foundation', if the word suggests the corporation is a charity, or the word 'Charity' in the name of the corporation (sections 2.7 & 2.8);
 - If the OPGT has requested notification of any application for changes with respect to the corporation (sections 26 & 33).

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The 'After Acquired' clause

- Required for charities who wish to change their purposes;
- Stipulates that charities must use the funds they currently hold for the original purposes;
- Reflects charity law in Ontario which must be followed whether or not the clause is included;

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Restricted Words: Charity and Foundation

- OPGT approval is required:
 - When the term Foundation is used if it suggests the corporation is a charity
 - When the word Charity is used in the name of the corporation;


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Restricted Word: Foundation

- For a corporation to use the term foundation, if it implies the corporation is a charity, it must:
 - Include the OPGT's foundation clause;
 - Comply with the other naming provisions;
 - Have wholly charitable purposes


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Restricted Words: Charity

- In order to receive OPGT approval for the use of the term 'Charity', the corporation's purposes must be wholly charitable;
- The use of the term must also comply with the other naming requirements found in the regulation

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OPGT has notified Service Ontario of concerns

- Sections 26 and 33 stipulate that the approval of the OPGT is necessary when our office has contacted Service Ontario to indicate we have conducted or are conducting an inquiry into the charity into whether:
 - The corporation, an officer director or incorporator has misused charitable property;
 - An officer, director or incorporator has breached their fiduciary duties in relation to charitable property.
 - The OPGT has notified Service Ontario that our approval is necessary to revive the corporation.²⁴



Not-for-Profit Incorporator's Handbook (the Handbook)

- The Handbook has recently been updated to reflect the changes in the legislation and processes.
- You can find a copy or a link at the OPGT Publications page, OPGT webpage, or by emailing us to request a copy. (see final slide)

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Contact Information



**Office of the Public Guardian and Trustee
Charitable Property Program
595 Bay Street, Suite 800
Toronto, ON M5G 2M6
Tel: (416) 326-1963 or in Ontario
toll free at 1-800-366-0335
Email: PGT-Charities@ontario.ca
Internet: www.ontario.ca/OPGT
OPGT Publications:
<https://www.publications.gov.on.ca/the-office-of-the-public-guardian-and-trustee>**

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