

Remedies for Abuse

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There are various remedies depending on the type of abuse. The specific remedy depends on the type of abuse and the circumstance of the particular case. Not all remedies are appropriate in all cases. Often before taking formal action, efforts to mediate a solution or to resolve a dispute by other than court action may be appropriate to follow. Also, before taking action or informing the abuser that a power of attorney is being revoked or that action is being started for recovery of funds or that the victim is moving or taking steps to put a stop to the personal abuse etc, it may be necessary and prudent to take steps to protect the victim and keep him or her safe or to protect and safeguard property. Any steps taken depend on the specific case and the specific facts of that case.

Along with looking at the options, the person may need assistance to get to a place of safety, to get access to his or her own funds, to seize funds or property in the hands of third parties, to take steps to protect property pending resolution of any action (one example - filing of a notice on title to property that litigation is pending involving the property).

The capable person should have control over what is done in respect to the abuse and should be assisted and supported so that he or she can give this direction and determine what should be done.

In some instances, where a crime has occurred, the police may lay charges against an abuser even if the victim is not in agreement. The police and the Crown need to look at what evidence exists in determining whether a crime has been committed and what action that can be pursued in the Criminal justice system.

One way to think about the various options that may be available to victims of abuse, is to look at the needs of the victims - the need for SAFETY; the need for SHELTER; the need for CONTROL and ACCESS to FINANCES; the need for EMOTIONAL AND PERSONAL SUPPORT; the need for FOOD. In looking at these various needs, various options may need to be pursued at the same to assist the victim. The victim may need help from a variety of resources. The victim may need help more urgently in respect to some needs and less urgently in respect to others. Every situation must be examined individually to determine the appropriate options.

NB - this paper is not a complete list of options. These are only examples of some options. Nothing in these lists of options should be construed as legal advice in a particular matter.

Possible Options

Financial Abuse

1. Of a person mentally capable of financial decision making

TALK to the person - what does he or she want to do? Is he or she even aware that abuse has occurred? Is it actually abuse or does it appear to be abuse when its not (ie money removed from bank account with the agreement of the person with full consent and not with undue influence) ? Person needs information on options open for him or her to pursue before he or she can make decision of whether to take action or not and what action to take. Person may need to speak to a lawyer or others to determine the options available. Who are the best people to provide information on the options available? The person may need help from a variety of sources simultaneously to address the abuse - ie talk to a lawyer to seek legal options, get counselling to assist person in supporting self esteem and in having confidence to pursue remedies, get ongoing assistance from various services to prevent a reoccurrence of the abuse.

Some ideas:

- a) If abuse by an attorney named in the person's continuing power of attorney for property, revoke the continuing power of attorney for property by signing a revocation of the CPOAP, tear up the original CPOAP, get all copies if any of the CPOAP back, send notices of the revocation to all places (ie banks etc) where the attorney may have used the CPOAP and where the person has assets, take action if necessary against the attorney for an accounting and for the return of any assets misappropriated, possibly create a new CPOAP naming another person as attorney that the grantor can trust to properly manage his/her finances; report to police for investigation as to whether criminal offence committed (Abuse of Power of Attorney? Theft? Fraud?)
- b) If abuse of pension cheques (ie theft of cheques) - get direct deposit of pension cheques into the person's own bank account not accessible by the abuser; take action against the abuser to recover misappropriated funds; report to police for possible criminal charges and process in criminal justice system

- c) Return of property placed in name of abuser (ie on promise to provide care etc) - action against the abuser for return of property if undue influence, unjust enrichment, fraudulent transfer etc.

2. Of a person incapable of financial decision making

Can you talk to this person? Although incapable for financial decision making are they still capable to participate in decision making as to a remedy?

Is the substitute the abuser? If not, can you talk with the substitute decision maker as to the possible options? Would the substitute be the person who would need to pursue the options?

Some ideas:

- a) person incapable in respect to property but still capable to revoke a continuing power of attorney for property if the abuse is by the attorney named in the CPOAP - revoke CPOAP - same as in a) above
- b) person incapable and at risk of serious harm or serious harm is occurring to their property - contact OPGT under s. 27 of SDA for investigation (see paper on Elder abuse for more complete description of this remedy) See also Long-term Care Act and rules about confidentiality.
- c) contact to the police - what can you say or not say? issues related to confidentiality and rules of professional conduct. The person contacting the police may want to get legal advice before releasing information as to appropriate action.
- d) substitute decision maker may be able to take action for recovery of funds, take steps to protect property as appropriate to the situation.
- e) if no attorney, someone may apply to become trustee to manage OAS and CPP cheques of the financially incapable person.

3. Personal Abuse of a person mentally capable of personal care decisions

What does the person who has been abused want to do? Does he or she know of the options available? Is the person at personal risk if no steps are taken to address the abuse? Is the person dependent on the abuser for care? Is abuse taking place or is the caregiver not providing good care unintentionally or doesn't know how to provide the care needed? Are there alternative options for the care

and other ways of reducing or eliminating the dependency on the abuser? Does the person live with the abuser? Can the abuser be removed from the household? Does the victim want to move to alternative accommodation? Does the victim have control over his or her own money (This may extend the options available). Who is the abuser? A family member, a service provider, a paid caregiver, a health care professional? There will be different options depending on who is the abuser and the type of abuse committed. Depending on the abuse that was committed, this may change create special obligations on some persons who become aware of the abuse ie obligation on health professionals to report sexual abuse has been committed by another health professional

Some ideas:

- a) assisting the person to make a complaint to a professional College
- b) assisting the person to make a complaint to the Ministry of Health if abuse in a Long-term care facility
- c) action for damages for harm suffered
- d) eviction of abuser who is living with the victim from household by action under the Tenant Protection Act
- e) application to the Criminal Injuries Compensation Fund for compensation for victims of crime
- f) assisting the victim to find alternative care providers (alternative to the abuser), to find alternative accommodation, to get counselling and support
- g) assisting the person to report the abuse to the police if the abuse was a criminal act

4. Of a person mentally incapable of personal care decisions

Can this person still participate in decision making about options to address the abuse? The person may lack some capacity and yet still be capable to give some directions? Is the substitute decision maker the abuser? How much at risk is the person? How quickly does this person need assistance? If the abuser is not the substitute, is the substitute aware of the abuse? Can the substitute take steps to address the abuse? Who does the victim and his/her substitute need to get advice from to address the abuse?

Some ideas:

- a) report to OPGT to do investigation under s. 62 of the SDA - incapable person at risk of serious harm/ experiencing serious harm to his or her person.
- b) report to the police of criminal offence
- c) report to professional College of professional's misconduct
- d) if no Guardian of the Person and no attorney named in a power of attorney for personal care, application to Consent and Capacity Board to be appointed as representative for the Person (the new substitute decision maker) if abuse related to existing substitute's failure to act as appropriate substitute for treatment, admission, or personal assistance services
- e) application by health practitioner (if treatment) or by PCS (if admission) to Consent and Capacity Board to determine compliance of substitute with the legislation if abuse related to substitute's failure to act as an appropriate SDM.
- f) report to the Ministry of Health of harm caused to a resident of a long-term care facility (see *Nursing Homes Act* and Ministry policies)

Why do people refuse help?

1. They may not understand the options available to them.
2. They may think that they are no other options except to put up with the abuse.
3. They may not trust the person who is seeking to help them.
4. The person seeking to help may not know all the options or may be trying to impose a particular option on them that they don't want to pursue.
5. The person seeking to help may be setting up barriers unknowingly that prevents the person from agreeing to the help offered.
6. The person may need time to consider the options and may be willing to take help but at their own pace, a pace that is different than the person offering the help.
7. The person offering the help may have done things that cause the person needing help to distrust them ie. taking direction from an abusing caregiver instead of the victim or disclosing information to the abuser that the victim did not want to be disclosed.

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Section Four