



# WILLS & ESTATE PLANNING

Legacy Planning  
for a Relative  
with a Disability

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WEBCAST+  
**WORKBOOK**

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the  
**fundamentals**  
of **future planning**

A 6-PART P4P **WEBCAST+** SERIES



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## PART ONE: INTRODUCTION

Less than 50% of Canadians have a will. Of that, only 35% say that it is up to date.

We know that having an up to date legal plan is a smart decision for anyone. Yet many of us put it off. We fall into the trap of thinking that a will is something we'll have to create 'someday', but not today.

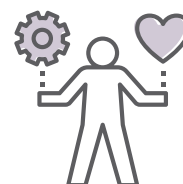
Not having a will and estate plan in place can result in legal, financial and emotional stress for other family members and loved ones.

### THE IMPORTANCE OF LEGAL PLANNING FOR A LOVED ONE WITH A DISABILITY

The absence of a will has implications for anyone, but for families who are caring for a person with a disability, the repercussions of not creating a will are significant. Apart from the emotional toll of losing a loved one, the absence of a will could:

- Jeopardize your loved one's eligibility to receive disability support payments
- Result in a longer wait time to settle your estate
- Reduce the value of your estate
- Limit access to funds during the settlement
- Add extra costs and taxes to an already expensive process.

Keep in mind that you won't be around to settle these affairs. If you haven't yet made a plan to appoint a trusted person, or group of people to oversee your estate, you risk exposing your loved one to financial hardship that could take a long time to settle.



The good news is that many of these issues can be avoided with careful and strategic legal planning. Taking the time to create a will is a critical step in ensuring your loved one has a safe and secure future.

## WHAT IS A WILL

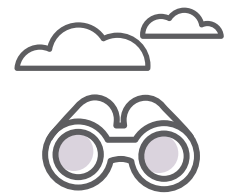


A will is a legal document that stipulates how you wish your estate (property, assets, etc.) to be distributed. If your financial holdings are relatively simple and in order, it's not that difficult or expensive to create one. You'll want to work with a lawyer to set one up, preferably one who specializes in assisting individuals with a disability.

In addition to setting up your will, your lawyer can assist you with setting up a Continuing Power of Attorney for Property and Power of Attorney for Personal Care, discuss a variety of trusts you may want to include in your will and advise you on appointing trustees and an executor for your estate.

## START TODAY

After you've watched the webcast, take the next step by looking over the Wills and Estate Planning checklist on page 9. You can also visit the Planning Network's Professional Services Directory to find a lawyer with disability expertise.



Remember, if you're supporting a family member with a disability, creating a will and estate plan is one of the most important steps you can take to help secure their future.

We've compiled a list of frequently used legal terms below. You may want to familiarize yourself with these before the webcast.

**Will:** A will is a legal document with instructions dictating how your estate will be divided, and who will be responsible for administering your estate.

**Estate:** An estate is everything you own and/or owe upon your death - your house, car, investments, debts, personal belongings, etc.

**Beneficiary:** A person entitled to receive a gift or inheritance from an estate.

**Trust:** A trust is an agreement that allows an individual to leave behind assets (e.g: investments or real estate) for the benefit of their loved ones to be administered by others (trustees) with instructions on how those assets are used. There are many types of trusts that serve different functions.

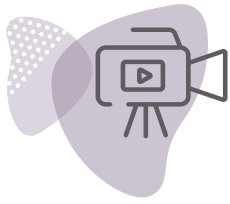
**Discretionary Trust:** A Henson Trust is a discretionary trust that is typically used to leave an inheritance to a person receiving social assistance like ODSP. A trustee of a discretionary trust has absolute and complete discretion on how funds from the trust are spent. Choose your trustees carefully.

**Trustee:** A trustee is a person named in a will responsible for managing the assets left to a beneficiary that are left in a trust.

**Executor or estate trustee:** An executor or estate trustee is a person named in a will responsible for carrying out the decisions on behalf of the deceased in the will.

**Probate:** The legal process of a will being reviewed to determine its validity. Probate can also refer to the administering of a deceased person's will or the estate of a deceased person without a will.

**Power of Attorney:** A legal document that gives an individual the power to act on behalf of another individual (the "Grantor") It applies when the Grantor is alive.



## PART TWO: **WATCH THE WEBCAST**

Tuesday Oct. 27, 2020 - 7:00 PM

The Wills and Estates Webcast will start at 7PM and will run for approximately one hour. The webcast will be available to watch again for one month after the original air date.

If you would like to test your computer setup check out the [TEST LINK](#). If the test video plays smoothly and the sound is good, you should be fine.

On Tuesday October 27, [LAUNCH WEBCAST PLAYER](#) before 7:00PM

### **OUR PRESENTERS**



**Brendon D. Pooran**, Principal Lawyer, PooranLaw

Brendon D. Pooran is involved in all areas of his firm's practice and regularly provides advice to individuals, families, organizations and government in the areas of wills & estates planning; disability law; and corporate law for not-for-profit and charitable organizations. He holds a Bachelor of Commerce (Honours) degree from Queen's University and a Bachelor of Laws Degree from Osgoode Hall Law School at York University.

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**Saquiba Rahman**, Associate, Principal Lawyer, PooranLaw

Saquiba Rahman is an Associate at PooranLaw in the areas of wills & estates planning; disability law; and corporate law for not-for-profit and charitable organizations. She holds a Bachelors of Social Sciences from the University of Ottawa, a Master's Degree from the London School of Economics, and a Bachelor of Laws Degree from Osgoode Hall Law School at York University.



**Elisa Mangina**, Associate, PooranLaw

Elisa Mangina's practice focuses on the needs of individuals, families, not-for-profits and charities. She has a particular interest in the unique legal issues that confront individuals with disabilities and their families. She holds a Bachelor of Arts from Yale University, a Master's and PhD from Cornell University and a Juris Doctor from the University of Toronto.

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**Stephanie Dickson**, Associate, PooranLaw

Stephanie Dickson is a passionate social justice lawyer who advocates for the rights of people with disabilities. She has years of experience working on disability and poverty-related legal issues. She holds a Bachelor of Arts from the University of Windsor and a Bachelor of Laws from McGill University.

## WHAT YOU WILL LEARN

- An understanding of the fundamental elements of an estate plan.
- An awareness of estate planning considerations families caring for a family member with a disability must be aware of.
- An overview of what's involved in setting up a will, with steps you can take to get started.
- A breakdown of different types of trusts people typically include in a will.
- An overview of the two types of Powers of Attorney.
- An opportunity to connect with other families in our Virtual Discussion Groups.



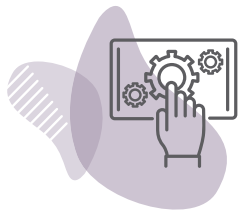


## PART THREE: **JOIN OUR ZOOM DISCUSSION GROUPS**

Wednesday, November 4, 2020 - 7:00 PM

Brendon and lawyers from his firm will facilitate Discussion Groups focused on the webcast content for those interested in an informal conversation on the topic. We will have an opportunity to meet online in smaller breakout rooms so you will have an opportunity to chat with our panelists and other families.

During the webcast we will provide you with a link to register for the Discussion Groups. Space for the groups is limited to the first sixty families.



## PART FOUR: **TAKE ACTION**

Setting up a will and estate plan will take some time and effort. But once it's done, it requires little time to manage or update. We encourage you to approach legal planning by taking small, manageable actions that will move you and your loved one towards a good life and secure future.

Before we dive in, we want to take a minute to acknowledge that it can be challenging to design a future for your child or dependent with a disability. Be aware that these exercises might bring up certain emotions and feelings and not all will be positive (but many will).

The following Action Steps will support you in getting started to create your will and estate plan and will help you to make better informed decisions.

### → **ACTION STEP ONE:**

#### **Check out the Wills and Estate Planning “Getting Started” Checklist**

If you haven't given much thought to wills and estate planning and/or don't yet have a lawyer to guide you through the process, the following checklist is a great place to start. You'll find a common list of documents you'll need for your lawyer, as well as tips and advice on how to find a suitable legal professional.



*Please note that the following checklist does not constitute legal advice and completion of it is not a replacement for a will. To draft a will, you will need to seek out a qualified lawyer.*

## Wills and Estate Planning “Getting Started” Checklist

### Documentation and Question Checklist



No matter who you choose, all lawyers require certain personal and financial documents in order to set up your will. It's a good idea to start collecting this information beforehand, as it could take some time.

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#### Personal Information

- ☐ Names, Birthdates and Martial Status of Spouse, Children and Dependents.
  - ☐ Details of Guardianship if your child is under 18
- 

#### Financial Documents

##### ***Summary of Assets:***

This could include, but is not limited to:

- ☐ Savings and investment accounts (RRSP, Pensions, Insurance, RRIF, joint bank accounts, stocks and bonds, etc.)
- ☐ Information on any real estate holdings, including mortgage balance, ownership and tenant information
- ☐ Personal holdings (jewelry, boats, automobiles etc.)
- ☐ Information regarding any accounts your loved one with a disability may have (ODSP, RDSP, etc.)
- ☐ Any other holdings you may have outside Ontario

##### ***Summary of Debts:***

- ☐ Make a list of any creditors and amount owed. (As you've already addressed mortgages above, you don't need to do add that here.)
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## Questions to Consider:



### Executors

When you set up a will, you must appoint at least one individual to manage your affairs and execute your will and estate plan.

### Executors

If you are leaving assets in a trust as is common for many parents of a child with a disability, there is the added question of who will manage your loved one's assets once you are no longer able to? This is the role of a trustee or trustees.

You can appoint anyone as a trustee (spouse, child, relative, close friend, etc.) You also have the option of appointing a group of trustees, who can manage the trust together. Because a trustee is responsible for managing the long-term affairs of a vulnerable person, you will want to take some time to think about who is best suited to this role.

We encourage you to start thinking about who you'd like to appoint as a trustee of your estate now.

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### ***There are a number of critical questions you can consider when selecting a trustee.***

- ☐ Do they know the person well?

They will be making spending decisions in support of your loved one and should be aware of their preferences and lifestyle.

- ☐ Are they honest and trustworthy?

They may have total discretion on how the money in the trust are spent.

- ☐ Is the trustee expected to outlive you and live as long as the beneficiary?

Trustees the same age as parents are usually not good candidates for trustees

- ☐ Do they live in close proximity of the beneficiary?

Again, they will be making decisions that will affect the person and should have a sense of the beneficiaries day-to-day needs.

- ☐ Would appointing a trustee cause a conflict of interest?

We discuss this in the webcast, but it is advisable to consider naming 2 or 3 trustees who together would make spending decisions. This can reduce the risk of a trustee making poor decisions.

## Wills and Estate Planning “Getting Started” Checklist *continued*

### How to find a lawyer:



The [Law Society of Ontario \(LSO\) website](#) is a good place to find lawyers. Their online directory allows you to search by name, address, city, postal code, type of law practiced, language(s) spoken, or by a combination of these factors.

You may also want to consider the [Law Society Referral Service](#). Run by the LSO, it allows you to request a lawyer referral online. You will then be given the name of a lawyer who will provide a free consultation of up to 30 minutes, as long as there is an available professional to meet your needs.

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### Checking qualifications:

Although the LSO is the regulatory body for lawyers in the province of Ontario, they cannot assist you if you run into problems with unlicensed practitioners. That is why it's important to check the qualifications and history of whomever you're thinking of working with in advance of hiring them. There are a few ways to do this:

- ☐ Search the online directory – the directory lists a lawyer's status and history of any disciplinary action taken against them, if applicable.
  - ☐ Call the LSO – you can phone the LSO office toll-free at 1-800-668-7380 ext. 3315 or 416-947-3315 to find out a lawyer's status, any license restrictions, and if they have a history of disciplinary action.
  - ☐ Check the list of illegal practitioners – The LSO provides an online list of people who have been found by the Court to be illegal practitioners.
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**Questions to ask a lawyer prior to working with them:**

Before making the decision to hire a lawyer, you can schedule an initial consultation and can ask questions to assess their experience with creating a will & estate plan that consider the needs of a person with a disability. For example:

- ☐ Do they have prior experience setting up wills and estate plans involving a person with a disability?
- ☐ Do they have knowledge of common supports and services available to a person with a disability (e.g DTC, RDSP), and how they impact the creation of a will and estate plan?
- ☐ If you choose to work with a lawyer, will most of your dealings be with them, their assistant, another lawyer, or some combination? If another lawyer is assigned to work with you, you may want to ask about their background and fields of expertise.
- ☐ How much do they charge? (Lawyers set their own fees, so costs will vary).
- ☐ Will you have to pay extra for anything beyond their fees? For example, if you chose to amend a will at a later date, how much would that cost?
- ☐ Once you've decided to work with a lawyer, ask for a contract outlining the services they will provide and their associated costs.

## → ACTION STEP TWO:

### Get Support with Legal Matters

In addition to searching the directory on the Law Society of Ontario website, you can also visit the [Planning Network Professional Services Directory](#) to find Legal Professionals who may be able to help you. With Covid-19, many of these supports are available remotely.

## → ACTION STEP THREE:

### Order Safe & Secure (2020 Edition)

Available in hard copy and a digital version, [\*Safe & Secure - Seven Steps on the Path to a Good Life for People with a Disability\*](#) is a book that provides a comprehensive overview of critical planning objectives for families, including a section on Wills, Trusts and Estates. The book is free and can be downloaded as an e-book on the Planning Network. There is a nominal cost for shipping the hard copy.



## → ACTION STEP FOUR: Keep Learning

We've compiled a variety of resources that will deepen your understanding of legal planning and keep you on track.



- ▶ **The Henson Trust:** Learn more about the Henson Trust, an important financial planning tool for families caring for a loved one with a disability.
- ▶ **Action Guide - Understanding the Roles and Responsibilities of Trustees:**  
A practical guide to understanding the roles and responsibilities involved in being a trustee to an individual with a developmental disability.
- ▶ **Action Guide - Understanding Legal Capacity and Decision Making:** A practical guide that looks at ways of supporting people who are vulnerable to maintain the power, choice and control over the decisions that impact their life.
- ▶ **Microboards: Sustaining Your Future:** Learn how microboards can be a powerful strategy to ensuring the future well-being of your loved one.
- ▶ **Legal Tips - Beyond the Basics:** Information on when to consult a lawyer, guardianship, legal capacity and more.
- ▶ **Inspiring Possibilities Estate Planning Guide:** Produced by Community Living Ontario and PooranLaw, this free e-book provides a comprehensive look at wills, taxes, trusts and estates. The book has been updated in 2020.

## → ACTION STEP FIVE: Wrapping Up

Before we finish, we would like to ask for your help. The Fundamentals of Future Planning Series is a new free resource we've created for families supporting a child or adult with a disability.



We have incorporated a number of new approaches for online education and engagement and we need your feedback. Please take 2 minutes to complete our [SURVEY](#). We've kept it short and wish to thank you in advance.





Now if you're ready, register for other webcasts in our

## **The Fundamentals of Future Planning Webcast+ Series**

**Creating Financial Security** - Tues Nov 10, 2020

**My Life, My Choice, My Community** - Tues Nov 24, 2020

**Nurturing Supportive Relationships** - Tues Jan 5, 2021

**Creative Options for Home** - Tues Jan 19, 2021

### ***Congratulations!***

You've completed the Wills & Estates Workbook.

The P4P Planning Network offers **FREE resources** designed to empower people with a disability and their families to create meaningful lives and secure futures, firmly rooted in community.

**smart strategies | creative tools | sustainable solutions**



**PLANNING  
NETWORK**