step five

achieving financial security

wills, trusts, and the RDSP

Then, when he had flown a while longer,
something brightened toward the north.
It caught his eye, they say.
And then he flew right up against it.

He pushed his mind through
and pulled his body after.

SKAAY, HAIDA POET AND STORYTELLER

george's story

What the heck, it can't hurt me… and it might even help

"A LOT OF PEOPLE my age have thought about this problem for most of their adult life. They hope their plans are adequate. Maybe they made a Will 30 years ago. Or maybe they hope that, magically, new plans will come together at the last minute. I don't think that's good enough.

"When you have a child with a disability you get lots of advice. But usually nothing ever materializes. So you get kind of negative. However, you have to remember that every once in a while something comes along and it does work.

"I knew if I was going to make progress I had to take chances. What the heck, I said, it can't hurt me…and it might even help."

George's involvement with other parents associated with PLAN encouraged him to think about where he was going and what he wanted to achieve. "I call it putting your house in order. They got me moving but you have to be willing to do it. It means getting organized—getting all your necessary papers together.

"My original Will is long gone. We made a new one just before my wife died. I changed it a year later to include some clauses I heard about from other families. Then I decided to change my trustee and to include a role for PLAN after I died. So I got another lawyer and she drafted a new Will. It's never really over, you know. If I find out about something better and I'm still around I'll make changes again. Actually, altering your Will is easy and not that expensive. Things are evolving and you are bound to get new ideas.

"My first goal was to make sure there were sufficient funds to look after Rick. I got advice on prescribed insured annuities and how to use life insurance to increase the size of my estate. There were things about life insurance I never knew. I just about doubled the size of my estate by buying a policy outright. Fortunately I'm in good health. And the money would be available for Rick right away after I died. It wouldn't be tied up in probate and it wouldn't be taxable.

"These were the sorts of things I knew nothing about. The fact that other parents were exploring the same things gave me confidence."

George also decided to change trust companies because he heard through the parent grapevine about a company that went the extra mile.

"I didn't figure I could take my previous trust officer out to lunch. Or for that matter that he would ever be interested in taking Rick out to lunch. I wanted a more personal approach and I got it."

For George getting to know other families helped get him moving. Looking back on it now he realizes how easy it really was. The time spent actually doing his planning was negligible compared to the time he had spent worrying.

step five

Achieving financial security: wills, trusts, and the RDSP

This step will provide you with an overview of how to plan for and protect the financial well-being of your family member with a disability both now and in the future. While we are around, we can help them out in many ways, although we must keep rules imposed by the Ontario Disability Support Program (ODSP) in mind.

NOTE ODSP is the financial assistance that our relatives receive from the provincial government. ODSP also provides supplementary benefits such as medical, dental, and special diet allowances. See Resources, page 185 for contact information.

We worry most about what the future will hold. We want to put enough money aside to handle emergencies and unforeseen circumstances. Many people with disabilities live at or below the poverty line. We don't want our relatives to just get by. Simply existing is not enough; we also want our family members to have a good life.

Most of us are not sufficiently wealthy to leave enough money in our estate to cover the costs of everything that our family members might possibly need. Until recently, there were limited options or tools we could use to deal with this challenge. If our family members relied on government benefits, there was little we could do to supplement their income without it being clawed back by the provincial government.

Step five highlights

This chapter highlights the key tools at your disposal to plan for the financial security of your relative. These include:

- will and estate planning
- discretionary trusts (also referred to as Henson Trusts)
- the RDSP.

This information will help with your preparation but is no substitute for legal advice.

Having children makes you aware of your mortality; having grandchildren gives you a sense of immortality.

THE RIGHT HONOURABLE ADRIENNE CLARKSON

Fortunately this is changing, particularly in Ontario where the government is not only committed to assisting people with disabilities to receive financial help from their families but is also committed to assisting individuals build up savings. Penalties and disincentives are being eliminated. For example, the money received from the RDSP will NOT be clawed back (see detailed discussion on the RDSP in Section Two below, and for ongoing updates, please visit www.rdsp.com).

These changes signify that we are approaching a new partnership between families and government: a partnership based on shared responsibility which acknowledges the commitment that families have always made to the safety and well-being of their relatives with disabilities.

This chapter is divided into two main sections:

SECTION ONE: Wills, Discretionary Trusts, and Estate Planning

SECTION TWO: The Registered Disability Savings Plan (RDSP).

The information contained in these two sections will:

- provide you with general information on drafting a Will and planning your estate
- highlight the importance of trusts, particularly discretionary trusts
- introduce you to the Registered Disability Savings Plan (RDSP)
- discuss the relationship among government benefits, the RDSP, and discretionary trusts
- overall, help you plan for the financial security of your relative.

Assuming financial security for your relative need not be complicated, particularly if you have thought through the issues raised in the preceding steps. Sure it's technical but Worksheet 9 on page 153 will help. Once you have completed it, there are plenty of good lawyers, accountants, financial and estate planners, and wealth management specialists to help you finalize your plans.

This chapter won't replace the need to make some tough choices. The professionals you will choose are highly skilled but they rely on the clarity of your vision, your plans, and your details in order to make the right plan for your family.

Fortunately you are not alone. You can use PLAN as a back-up resource. Our advice has been sifted through the experiences of thousands of individuals and families we have supported over the past 20 years. We've learned from them all! Even those of us with little disposable income or limited assets can still leave something to help our relatives.

We pass on this accumulated wisdom knowing that being better prepared will:

- save you time and money
- assist you in selecting the right course for your relative
- make it easier to complete your Will
- leave you with peace of mind.

You can't believe how relieved you'll feel when you've finally done it!

section one

Wills, discretionary trusts, and estate planning

Do not be intimidated by legal language. All professions have their jargon. Some of the key words and phrases you'll encounter in this section are summarized in Demystifying Definitions on page 151.

In praise of the imperfect Will

You've heard the facts before. Over 50 per cent of Canadians die without a Will. Many others die with a Will that's out-of-date. You want to avoid joining their ranks. But you don't have all the answers. You still need to work out a few more details. You're just about there... maybe after reading this chapter.

Well, we're sorry to disappoint you. This chapter will not help you create the perfect Will. Neither will any other book, or person for that matter. So don't make the same mistake too many others have made. Don't wait for something that will never happen.

Now is the time to develop and execute the "imperfect" Will. It is one of the biggest gifts you can give to your family and to yourself. We feel so strongly about this we might call our next book, "In Praise of Imperfection."

What's so great about perfection anyway? Where did we get the grandiose illusion that we humans can either be perfect or get things perfect? The perfect meal or the perfect day? Maybe. But the perfect body, perfect looks, and the perfect job while living in the perfect house? Not likely. Perfection is an illusion which adds unnecessary pressure and can make us feel guilty for never measuring up. Surely, absolute perfection is the job of divine personalities, beyond the scope of mere mortals. Few, if any of us, ever attain these standards. Yet we still manage to get on with our lives.

And that's precisely what we want you to do with your Will. Get on with it! Preparing and completing the imperfect Will is not the least you can do, it's the best you can do.

Beginning to create your Will and estate plan

> Surely the true definition of courage is to do the thing you are afraid to do.
>
> GEORGIA BINNIE CLARK

Before you create your Will, you must be clear about the details. Every family situation is unique. You are going to rely on your family after you are gone, so it's a good idea to discuss things with them now. If the person you want to be your executor is intimidated by lawyers or has never invested money, now is the time to find out.

There are other valuable resource people you might consider talking to: extended family, friends, members of your relative's Personal Network, other families in similar circumstances, and so on.

In our experience, it helps families clarify their objectives by talking to others in similar circumstances. The more open and forthright your discussions are, the clearer your objectives will be. This will make for a more meaningful and more efficient relationship with your lawyer, accountant, and estate planning specialist. When seeking advice on estate planning, tax planning, or wealth management strategies, see Questions to ask an Advisor on page 129.

Nine key objectives

Most people want their Will and estate plan to:

1. pay their debts, taxes, and other liabilities
2. provide a separate independent income for their spouse
3. distribute their assets according to their wishes
4. maximize the size of their estate for their children
5. protect the financial security of their relative with a disability
   NOTE The RDSP and discretionary trusts are your basic tools for this.
6. ensure that the appropriate estate and disability trustees are in place
7. ensure that there is a guardian for their children under the age of 18.

Tips from Jack Collins for securing the future

Jack Collins—one of PLAN's co-founders and a co-author of this book—knows much about the legal and financial elements of securing the future. After he retired, he dedicated his time to learning everything possible about the technical aspects of will and estate planning and how they can be coordinated with government benefits. Although he is a lay person, lawyers, financial and estate planners rely on his insights and advice.

His credibility among families is legendary. They like his plain speaking, no nonsense style. They trust him because he is one of them. Culled from his vault of expertise and its application to thousands of families, here are tips from the master!

- Get a basic Will as quickly as possible. I have seen what happens when a parent dies without a Will.
- Review your Will every two years and update it when something in your life changes. Additions and amendments (called codicils) are not costly.
- Life insurance is a good way to finance a discretionary trust. For a small monthly premium you can finance a policy. After you die the proceeds can be placed tax free—and without probate costs—into your family member's discretionary trust.
- Appoint executors and trustees who will outlive you—in other words, appoint someone younger than you—and appoint alternates just in case.
- The year of your death will likely be your highest income year because most investments are deemed sold on the day of your death and any remaining RRSPs or RRIFs get added to your income. Tax and estate planning—including donations to charity—will reduce the tax bite.
- Most of us want the trust capital as well as income to go entirely to our relative. To do so, your trust document must specifically exclude the "even handed rule" so the trustee(s) do not have to consider the rights of residual beneficiaries. If such permission is granted within the trust document, then the trustees will be encouraged to spend down the capital as well as income. Please consult your lawyer on this technical point.
- Grandparents often look for ways to help secure the future of their grandchildren. Suggest they create a discretionary trust—or contribute to an RDSP—for their grandchild with a disability.

8. avoid delays, family strife, needless taxation, costly legal challenges, probate fees, and government involvement
9. allocate a portion of their estate to the charities and causes they are passionate about.

Basic questions about Wills, trusts, estates, and the RDSP

Family is not an important thing, it's everything.

MICHAEL J. FOX

Once you've added your own personalized objectives to the nine general objectives described above and you are comfortable—well, reasonably comfortable—with your answers, you are ready for the technical solutions. Here are some questions and answers to start you on your way.

NOTE For a complete list of legal terms, see "Demystifying definitions that could definitely derail you" on page 151.

WHAT IS A WILL? A Will is the legal document that tells people what to do with your estate. It helps makes life easier for those left behind by providing a plan for them to follow and by naming who is in charge.

WHAT IS ESTATE PLANNING? Estate planning is quite a broad term. It includes such things as:

- preparing your Will
- preparing powers of attorney, advance medical directives and Living Wills or personal declarations about end of life decisions
- deciding upon issues such as executor and trustee appointment, and finding ways to minimize probate fees
- calculating your estate needs and determining the amount of life insurance needed to meet those needs
- looking at strategies to reduce income taxes at death
- advising about a trust for you or a trust for your relative with a disability.

WHAT ARE THE BASIC THINGS I NEED TO THINK ABOUT? During the course of designing your Will and planning your estate you will need to:

- appoint an executor to ensure that the instructions in your Will are carried out

- divide your estate among family (spouse and children), charities, and others. A person who inherits or receives part of your estate is called a beneficiary
- create a trust—usually a discretionary trust—for your relative with a disability and identify a trustee and perhaps co-trustee(s) to manage the trust
- appoint a guardian for your children who are under the age of 18 years.

WHAT HAPPENS IF I DIE WITHOUT A WILL? If you die without a Will, provincial laws set out how your estate will be distributed. Under the *Estates Act* (Ontario), the court will appoint an administrator who will divide your estate. This means you will have no control over how your estate is divided. You will not be able to protect the inheritance you want to leave to your relative with a disability.

If you die without a Will, you have no control over how your estate is divided.

The funds for your relative may be held in trust by the Accountant of the Superior Court of Justice until they turn 18 years, at which time they will receive their total inheritance outright.

NOTE This situation may disqualify the beneficiary from receiving ODSP assistance.

If you die without a Will and you have children who are under the age of 18—and there is no surviving parent who is the legal guardian—then the government will become guardian of those children (see Is your child under the age of 18? on page 150).

HOW MUCH WILL MY CHILDREN GET IF I DIE WITHOUT A WILL? If you die without a Will, the *Succession Law Reform Act* and the *Family Law Act* impact the distribution of your estate. Your spouse can either elect an equalization payment of net family property under the *Family Law Act* or allow the *Succession Law Reform Act* to apply to the entire distribution of your assets. The *Succession Law Reform Act* directs that:

- the first $200,000 of your property goes to your spouse
- if you die leaving one child, one-half of the remainder of your estate goes to your spouse and one-half goes to your child

- if you die leaving more than one child, one-third of the remainder of your estate goes to your spouse and the remaining two-thirds is divided equally among your children
- your next-of-kin will have to go to court to be allowed to deal with your estate.

NOTE The *Succession Law Reform Act* requires that your Will provide adequately for your dependents, which could include your spouse, your parents, your children or your siblings. **NOTE** The definition of "spouse" in the *Succession Law Reform Act* includes:

a) an individual of either gender who has lived with and cohabitated with you for at least three years in a marriage-like relationship; or

b) an individual of either gender who has lived with and cohabitated with you in a relationship of some permanence and is the parent of your child.

If a spouse or child feels you have not provided adequately for them in your Will, then they can ask the court to change your Will to get a larger share of the estate. This must be done within six months of probate.

NOTE The funds for your children may be held in trust by the Accountant of the Superior Court of Justice until your children reach the age of majority unless that amount is less than $10,000 and is not payable under a court order, or a guardianship application is made by the surviving spouse to manage the child's property.

> The mind is not a vessel to be filled, but a hearth to be lighted.
>
> IRENE PARLBY

WHO IS THE OFFICE OF THE CHILDREN'S LAWYER? The Office of the Children's Lawyer is responsible for protecting the interests of children who are under the age of 18 years. Your executor is required to provide estate and trust accounts that are presented for court approval to the Children's Lawyer whenever a minor or unborn person has a vested or future interest in an estate.

ODSP ASSISTANCE: ODSP is a provincial government program that provides financial assistance as well as supplements such as medical, dental, optical, pharmaceutical and special diet benefits to people with disabilities. To be eligible, a person must meet the required definition of disability and financial criteria. For contact information, see Resources on page 185.

At the time of writing, a single person on ODSP receives up to $454 per month for shelter and $566 for basic needs. People on ODSP can also apply for a special diet amount of up to $250 per month.

> We don't have to choose; we have to talk to each other about what concerns us deeply.
>
> HAROLD RHENISCH

Once people are 18 years of age, they are entitled to ODSP if:

- they qualify as a person with a disability under the *Ontario Disability Support Program Act*
- they have less than $5,000 in non-exempt assets; that is, things a person owns including money, property, and investments.

If an individual on ODSP has assets of more than $5,000, then they may be cut off until their assets are worth less than $5,000. There are, however, a number of exempt assets including a:

- principal residence
- vehicle
- Registered Disability Savings Plan (RDSP)
- Registered Education Savings Plan (RESP)
- discretionary trust (also called a Henson Trust)
- non-discretionary trust (also referred to as a government-regulated trust, an inheritance trust, or a shelter trust).

Individuals on ODSP are entitled to be the beneficiary of a discretionary trust of any amount of money, an RDSP of any amount, or of a non-discretionary trust of up to $100,000, without being cut off.

Individuals on ODSP are also entitled to own certain exempt assets which don't count as part of the $5,000 limit. This includes a home they live in, a car they use, and their RDSP as noted above. These are substantial benefits.

The *Ontario Disability Support Program Act*, Regulations, and Directives change from time to time. Check the Resources section on page 185 for contact information or check the Ministry of Community and Social Services website for regular updates by visiting www.mcss.gov.on.ca/mcss/english/pillars/social/odsp/.

HOW ODSP IS AFFECTED BY INCOME

EARNED INCOME

Persons on ODSP are able to work and earn income. ODSP claws back an amount equal to 50% of net income (after deductions for income tax, Canada Pension Plan, Employment Insurance, mandatory pension contributions and union dues) minus any disability-related employment expenses. Note that individuals may be eligible for a $100 work-related benefit to assist with expenses such as transportation or clothing.

> I wear my shadows where they are harder to see, but they follow me everywhere. I guess that should tell me I'm traveling toward light.
>
> BRUCE COCKBURN

OTHER INCOME

Other sources of income are also taken in account when determining both eligibility and the amount of income support to be provided to the individual. Examples of such income include:

- compensation awards in excess of $100,000
- child support payments, and
- Canada Pension Plan Disability payments.

There are several income exemptions, most notably: payments from any source used for disability related Items or services; and an amount of up to $6,000 per 12 month period in voluntary gifts or payments from any source. For a complete list of income inclusions and exemptions, please visit www.mcss.gov.on/ca and search for *ODSP Directive 5.1. Definition and Treatment of Income*.

HOW ODSP IS AFFECTED BY INCOME SUCH AS AN INHERITANCE

If people on ODSP receive income from an inheritance, a life insurance payout, or other financial windfall, then their amount of assistance may be reduced or suspended until they have only $5,000 left. If the person on ODSP has the capacity to enter into a contract, then they can place up to $100,000 in a non-discretionary trust and up to $200,000 in an RDSP without affecting their ODSP eligibility.

NOTE While there is a ceiling of $100,000 for non-discretionary trusts, there is no ceiling for discretionary trusts. That is why we strongly recommend you set up a discretionary trust. The non-discretionary trust can only protect $100,000 of the assets from an inheritance or settlement. Any trust can be set up during your lifetime or after your death; however, different income tax rules may apply. See below for the discussion on discretionary trusts.

> Grandmothers should be ruling the world. I say this without a hint of a joke. Grandmothers see the future in a way others do not. As the world of the flesh decays, the life of the spirit flowers. Grandmothers are a field of wildly blooming exquisite and riotous flowers.
>
> JOY KOGAWA

WHAT BENEFITS DO MY RELATIVES QUALIFY FOR ONCE THEY TURN 65? When your relative reaches the age of 65, they will move from provincial income assistance to federal seniors benefits: Old Age Security (OAS) and Guaranteed Income Supplement (GIS). Together, these two benefits provide approximately the same amount as ODSP income.

Old Age Security is not asset or income tested. This means that all senior Canadians receive a monthly amount whether or not they have assets or income.

The Guaranteed Income Supplement is the federal government program that helps low-income seniors. It is not asset-tested; it is, however, income-tested. Any income that seniors receive is clawed back at 50 per cent including income from a discretionary trust.

The good news for holders of RDSPs is that the Guaranteed Income Supplement will not be affected by income received from a RDSP. In other words, RDSP income is exempt.

CAN I SET UP AN RDSP AND A DISCRETIONARY TRUST? Yes you can. There are benefits to each and you may want to do both. See page 145 for a comparison. In general, the RDSP is designed to build savings and can be used while parents are still alive. Discretionary trusts are typically designed to manage the inheritance you leave for your relative. A discretionary trust in your Will becomes operational only after you die. Discretionary trusts can also be created as *inter-vivos trusts* that take effect while you are still alive. **NOTE** If a grandparent sets up a discretionary trust, then the money may become available before the parent dies.

WHY SHOULD I SET UP A DISCRETIONARY TRUST? A trust may be advisable for many reasons:

- to ensure the availability of ongoing government benefits such as ODSP

- to help your relative with a disability during their lifetime and then to pass on funds that remain to another generation or a chosen charity
- to protect a vulnerable relative from being taken advantage of by those with bad motives and also those with good intentions but limited skills or judgment
- to provide ongoing financial management of assets
- to take advantage of special tax treatment
- to give some protection of assets if a relative goes through a marriage breakdown or has creditors.

WHAT PROVISIONS SHOULD I ADD TO MY WILL TO BENEFIT MY RELATIVE WITH A DISABILITY? You can set up a trust in your Will for the person with a disability. The best course of action is to talk to a lawyer who has expertise in providing wills and estate advice to families of people with disabilities.

There are two common trusts used by families of people with disabilities: non-discretionary trusts (also called government-regulated trusts, inheritance trusts or shelter trusts) and discretionary trusts (also called Henson Trusts).

Lost and Found

Man finds gold.
Man loses gold.
Man finds time.
Man loses hair.
Man finds dream.
Man loses dream.
Man finds laughter.
Man loses time.
Man finds
meaning to life.
Man loses life.

TOM KONYVES

NON-DISCRETIONARY TRUSTS

A non-discretionary trust can be set up in two ways. One way is by a friend or relative of the individual with a disability. The other way is by the individual with a disability, as long as the person has the capacity to manage property.

Regardless of who sets up the trust, as long as the amount of money in the non-discretionary trust is under $100,000 it will not be treated as an asset for individuals on ODSP. It's important to note that these trusts are reviewed by the provincial government and need to be designed properly in order to be approved. For example, there must be at least one trustee in addition to the beneficiary.

If the total of the capital contribution and income generated by the non-discretionary trust exceeds $100,000, then the individual may no longer be eligible for ODSP. Funds from the trust can be spent on disability-related costs without affecting the individual's entitlement to ODSP.

A non-discretionary trust means that the beneficiary of the trust can request payment of funds out of the trust and the trustee has no discretion. The trustee must pay out the requested fund.

DISCRETIONARY TRUSTS

Most families of people with disabilities choose to set up a discretionary trust in their Will. To do this, you appoint a trustee—and possibly co-trustee(s)—as the person(s) who will be in charge of the trust. You give the trustee(s) the discretion—or power—to decide when and how much of the trust fund will be used from time to time for the beneficiary, in this case your relative with a disability. Your trustee(s) can then gauge your relative's changing needs over time and adjust disbursements accordingly.

HOW DOES A DISCRETIONARY TRUST AFFECT MY RELATIVE?

Most important, a discretionary trust allows the beneficiary to continue to receive ODSP benefits. The trustee(s) will buy your relative what is needed. The trustee(s)—not your relative—will decide how to spend money in the trust. That is why it is not considered your relative's asset. Decisions are made in someone else's discretion.

Under ODSP, discretionary trusts are recognized as an exempt asset. There is no ceiling on the amount that can be placed in a discretionary trust. The trustee can use the trust for anything, but certain payments will be exempt from the unearned income rules including up to $6,000 in any 12 month period and payments for disability-related expenses.

We are hopeful that these restrictions will be reduced to make them compatible with the RDSP. Check with PLAN to make sure you and your advisors have current information about these rules or check the Ministry of Community and Social Services website for regular updates by visiting www.mcss.gov.on.ca/mcss/english/pillars/social/odsp.

WHAT HAPPENS TO THE MONEY LEFT IN THE TRUST WHEN THE BENEFICIARY DIES? When you set up a trust, you must also identify who will get what is left in the trust when the beneficiary dies. This could be the beneficiary's spouse, children, siblings, other family members, charities or anyone else.

You should be careful to avoid a potential conflict of interest when you choose the trustees of the trust you establish for your family member.

Who inherits the remainder of the trust? If the person inheriting the residual amount of the trust (the residual beneficiary) is the only person responsible for making spending decisions when the primary beneficiary dies, then there is a potential conflict of interest. One solution is to appoint co-trustees. We suggest you discuss this matter with your lawyer to avoid the Office of the Public Guardian and Trustee trying to vary the Will.

WHAT DOES A TRUSTEE DO? The trustee:

- manages or looks after the trust assets
- makes sure your relative receives trust benefits according to your wishes.

If you decide to set up a trust for your relative, you will need to name the trustee in your Will. Choosing a trustee is one of the most crucial decisions you will make about future planning. The person you choose may have responsibilities as a trustee for 40 years or more.

It is a good idea to have more than one trustee. For example, you may want to have two trustees and two alternates in case the original trustees cannot act or cannot agree. It's also a good idea to choose a trustee who is much younger than you in age. You want them to live as long as your relative does!

WHO SHOULD BE A TRUSTEE? You may want to have one trustee with financial skills and a co-trustee who has a personal relationship with your relative. Their skill sets may be different and may complement each other. One trustee might make investment decisions, keep accounts, manage tax returns, and so on. The other trustee—a sibling or friend—would be in a better position to advise on how to spend trust funds.

You may consider using a respected trust company as one of the trustees. Some families use a trust company as one trustee and a relative or family friend as the other trustee. The trust company can make sure there is experienced financial help to invest and manage the trust assets. The relative, friend or Personal Network member makes sure the funds are spent in the best interests of your relative.

If you name a person as a trustee, then you should also name a successor in case the first person dies, moves or is otherwise not willing or able to continue. It is best if the trustees are people your relative knows and likes. The trustees and your relative will likely be involved with one another for a long time. A good relationship between them will benefit everyone.

Choosing a trustee is one of the most crucial decisions you will make about future planning.

At least one of the trustees should live close to your relative. If a trustee has close contact with your relative, they will understand the needs of your relative better.

WHAT ARE THE DUTIES OF A TRUSTEE? The duties of a trustee include:

- deciding how and when to spend funds
- making payments to or for the beneficiary
- managing investments and safekeeping assets
- coordinating any maintenance/repairs of real estate
- preparing trust tax returns
- maintaining records of the trust
- reporting to the beneficiary or Representative about the trust.

NOTE you can direct your trustees to consider certain expenditures, for example to purchase a home for your relative.

IN ONTARIO, DO EXECUTORS AND TRUSTEES GET PAID? You can state in your Will or in a contract (that is incorporated by reference in your Will) how much your executor is to be compensated. If you don't say how much they should be paid, then court recognized guidelines may be applied. The fees that trustees charge are influenced by the magnitude of the estate and the amount of time, effort, and skill that has been required of them while acting as your trustee.

NOTE If your executor is also administering a trust, then they may be entitled to additional compensation.

> Somehow, the painting soothed him. It verified his fears. But it also informed him that fear was wonderful.
>
> TIMOTHY FINDLAY

WHAT INVESTMENT POWERS SHOULD I GIVE MY TRUSTEE? Trustees are limited by law to investments that a prudent person would make. You may give them greater investment powers but you must specify it in your Will. Be sure to discuss this with your lawyer.

CAN I APPOINT A GUARDIAN FOR MY CHILD IN MY WILL? If you have children under the age of 18, you should appoint a guardian for them in your Will. You should also appoint alternates in case the first is not able to accept. **NOTE** An appointment only lasts for 90 days unless the Guardian applies to the Court to have the guardianship extended.

You cannot appoint a guardian for an adult child even if they have a severe disability; however, you can express a wish in your Will that supports an individual to be a guardian of your adult child should this become necessary.

WHO SHOULD BE THE EXECUTOR OF MY WILL? The executor is the person who makes sure that the instructions in your Will are carried out after you die. Often people appoint their spouse as their executor, but you may need to appoint someone else or someone jointly with your spouse. You should also appoint alternates in the event the original executor is unable to fulfill the responsibilities of executor.

If you have set up a trust in your Will, usually the executor and alternate executor will be the same as your trustees and alternate trustees. However, in some cases—for example where there is business to be managed—you may wish to have different executors and trustees. Talk to your lawyer about this.

WHICH OF MY ASSETS DO NOT FORM PART OF MY ESTATE AND PASS OUTSIDE THE WILL? Any assets held in joint tenancy with another person pass directly to that person on your death and are not governed by your Will. For example, a home and bank accounts held in joint tenancy with your spouse go directly to your spouse on your death.

Life insurance policies with a designated beneficiary pass outside the will directly to that beneficiary.

RRSPs and RRIFs with a designated beneficiary pass directly to that beneficiary.

Where there's
a Will, there's
a way.

Quite often when a spouse dies, most of the family assets are held in one of these ways and pass directly to the surviving spouse. Assets which pass outside your Will save estate administration tax (probate fees).

Assets held in trusts that have been established prior to your death are also not part of your estate.

Be sure to consult your lawyer about putting assets in joint tenancy with your children or anyone else as there are dangers as well as benefits in so doing.

SHOULD I MAKE A GIFT TO A CHARITY THROUGH MY WILL? Estates often have a lot of taxes to pay. This is because any funds in RRSPs and RRIFs are considered income in the year of a person's death. Other assets are deemed to be sold in the year of the death. Tax is payable by the estate on this income and any earned capital gains.

When you make a gift to a registered charity through your Will, your estate receives a charitable tax receipt which can be used to reduce the income tax that has to be paid.

If you have supported charities while you are alive, you may wish to consider supporting charities through your Will. You should discuss these wishes with your estate planning professionals. Most charities have planned giving programs set up to be able to respond to inquiries about leaving a charity a gift through your Will. You are also able to leave charities gifts of life insurance, property, RRSPs or RRIFs, as well as through many other innovative vehicles. When you have decided on your charity—or charities—of choice, you should consider contacting them to discuss the gift.

CAN I MAKE A GIFT TO PLAN IN MY WILL? Many families appreciate the work that PLAN does and support its continued financial independence by making a charitable gift or by leaving a bequest through their Will.

Please contact PLAN to discuss specific programs that you would like to support through your estate. Any request for anonymity will, of course, be respected.

CAN I LEAVE MY RRSP AND RRIFS TO A RELATIVE WITH A DISABILITY? If you have a lot of assets in RRSPs or RRIFs, you may want to consider leaving them specifically for a son or daughter or grandchild with a disability when you die. If you do leave these assets to a child or grandchild with a disability, then the federal government provides a tax deduction equal to the total amount of the RRSP or RRIF going to that beneficiary. This means your estate wouldn't have to pay any taxes on these assets. It is also important to consider directing the proceeds of your RRSP or RRIF to a trust in order to ensure that your relative's ODSP benefits are not affected.

The federal government has indicated that they plan to permit funds from the RRSP or RIFF to be passed on to a trust but the legislation is not yet in force.

We recommend you discuss this option with your lawyer or check with PLAN for the most current information.

WHAT IS PROBATE? Probate is the name of the legal process that confirms your last Will. Normally it is the job of your executor to file your Will for probate with the provincial court and pay estate administration tax (or probate fees). This process can be up to six months. Until your executor receives the grant of probate, assets of your estate cannot be released.

Probate fees in Ontario are currently as follows:

- Under \$50,000 — \$ 5 for each \$1,000
- Over \$50,000 — \$15 for each \$1,000

UNDER WHAT CIRCUMSTANCES SHOULD A PERSON WITH A DISABILITY SET UP A TRUST OR MAKE A WILL? Many individuals with disabilities do establish trusts and make Wills. This will become even more important for people with RDSPs. The law has legal tests which all individuals—with or without a disability—must meet in order to place their assets in a trust or execute a Will. For example, in order to create a Will, an individual must know what a Will is and know and understand what their assets and liabilities are and their value. If an individual cannot meet the legal tests required, then they would not be able to settle a trust or make a Will at that time.

An individual's capacity, however, is not a static thing. An individual without the legal capacity to execute a Will may, six months later, have the requisite capacity. Furthermore, lawyers vary in their understanding and appreciation of capacity of people with disabilities. You may find it useful to consult with legal professionals who have familiarity and experience working with individuals with disabilities. Your local PLAN office—or a trusted community organization—will have a list of experienced legal professionals.

The professionals you choose will be highly skilled but they still need the clarity of your vision to make the right plan for your family.

In some circumstances an individual on ODSP may need to put part of their assets into a non-discretionary trust to remain eligible for ODSP benefits. If the individual does not have capacity to create a trust, then a lawyer or advocate may be able to assist in finding another way to assist the individual to remain on ODSP.

Seeking advice from professionals

There are a variety of experienced professionals in the future planning business. There is no substitute for good professional help. There are lawyers, financial planners, accountants, and trust companies that have special expertise in helping plan for the needs of children and relatives with disabilities. They can help you maximize the size of your estate, save you money, and ensure that your instructions are written in proper legal language. They are guided by principles of confidentiality, prudent administration, and sound judgment.

As with all professional services, be a cautious consumer. Always ask the professional their estimated fee before hiring them. You can also ask other parents or check with your local PLAN affiliate.

Questions to ask an advisor

When seeking advice on estate planning, tax planning, or wealth management strategies ask:

1. What is your experience, knowledge, and training?
2. How long have you been doing this?
3. How are you compensated for your advice?
4. Have you worked with other families who have a child with a disability?

Life changes

No matter how exhaustive your preparation and thorough your study, your Will may never be complete and will never be perfect. While preparing for this chapter, we were consulting with one of the most prestigious estate planners in the country. He interrupted our interview to visit his lawyer. After over 35 years in the business he is still revising his Will!

Expect to revise your Will as life changes. The act of revision is relatively painless and inexpensive. And the peace of mind is incalculable.

Eight tips in making your Will if you have a relative with a disability

1. Complete the Will Planning Worksheet beginning on page 153. This will give you an idea of your assets and help you make decisions.

2. Decide how you want your estate distributed. For example: all to spouse and when spouse dies, split among children in equal shares.

3. Appoint an executor and alternate executor.

4. Decide if you want to set up a discretionary trust for your family member with a disability. Ensure there is no conflict of interest. If you do, decide who will be:

- the trustee of the discretionary trust
- the beneficiary of the trust when your relative dies.

5. Be aware that the following pass outside the Will:

- life insurance with a designated beneficiary
- RRSPs and RRIFs with a designated beneficiary
- assets held in joint tenancy.

6. If you have children under 18 years of age, decide whom you will appoint as their guardian.

7. Take all this information to a lawyer who has experience in wills and estates for families and individuals with disabilities. Ask the lawyer to explain the tax and legal implications of your decisions.

8. Discuss your draft Will with your trustees.

section two

The registered disability savings plan (RDSP)

> What a blessing it is that we can so dream into life the things we desire!
>
> LUCY MAUD MONTGOMERY

Following more than eight years of federal advocacy by PLAN, Canada is the first country in the world to implement an RDSP. As a result, both the Government of Canada and the Government of Ontario have now made it easier for families to secure the financial future of their relatives.

Canadian families now have a new resource to assist them in securing the financial well-being of their relative with a disability: the RDSP. Anyone can contribute to an RDSP. And the funds grow tax-free. In most situations, the federal government will assist by generously matching your contributions (see discussion on Grant and Bond below). **The RDSP will NOT affect provincial disability benefits.**

The RDSP is a tax-deferred savings plan for which as many as 500,000 Canadians with disabilities will be eligible. The RDSP is a financial product that can be purchased from most financial institutions in Canada. Visit www.rdsp.com for a current list of financial institutions offering an RDSP.

Maximum lifetime contributions to an RDSP are $200,000. This does not include the matching Grants and Bonds received from the federal government or any income earned from investments.

Anyone can make a contribution: parents, grandparents, other family members, friends, agencies, foundations, and so on. The contributions are not tax-deductible and once contributed into the RDSP, they become the asset of the beneficiary of the RDSP.

When a contribution is made, the Canada Disability Savings Grant will add as much as three times the contribution to your relative's plan. How much, however, depends on your income, or your relative's income if they are 18 years or older. If annual income is below $78,130, the matching is better (as much as three to one) than if annual income is over $78,130. Either way, the Canada Disability Savings Grant allows you to multiply a contribution and it will grow tax-free.

How to maximize your RDSP grants

With the combined benefits of tax-free growth and compounded income, the RDSP is a powerful planning tool for parents. For example, a family has a nine year old daughter named Erica, and their annual income is under $78,130. If $1,500 is contributed annually for 20 years ($1,500 x 20 = $30,000), then Erica will have nearly $350,000 in savings by the time she turns 40. At that time, a life annuity could be purchased providing her with an estimated $1,500 per month in income. For detailed examples of how the RDSP can work for your family, please refer to the scenarios on page 141.

In addition, if annual income is under $21,947, then the beneficiary is eligible for the full amount of Canada Disability Savings Bond. If income is between $21,947 and $39,065, then a pro-rated portion will be received. The Bond has a lifetime maximum of $20,000. When payments are made from the RDSP, the portion of the RDSP that is the Grant or the Bond—plus the accumulated interest—is taxable in the beneficiary's hands, not in the hands of the contributor.

An RDSP is considered an exempt asset by the Ontario Disability Support Program (ODSP). In other words, having an RDSP will not affect your relative's ODSP benefits. In fact, RDSP funds can be used at any time for any purpose without affecting ODSP benefits.

Income from an RDSP is also exempt from claw backs against the Guaranteed Income Supplement. This is important because once your family member turns 65 years of age, they move from ODSP to Old Age Security and Guaranteed Income Supplement. Currently, any income—except payments from an RDSP— is clawed back from the Guaranteed Income Supplement at a rate of 50 per cent.

Both levels of government have sent a clear message to families: they trust people with disabilities and their families and there is no need to interfere with how families spend their money and how they live their lives.

Basic Elements of the RDSP

If your relative is under age 60 and eligible for the Disability Tax Credit, then they are eligible to open an RDSP. Qualification for the Disability Tax Credit requires a "severe and prolonged impairment."
For details, see Income Tax Form T2201. To obtain a copy, please visit www.cra-arc.gc.ca/E/pbg/tf/t2201/ or call Canada Revenue Agency at 1-800-959-2221. **NOTE** Tax deductions are NOT available for contributors.

In addition to the RDSP, there is a companion Canada Disability Savings Grant and Canada Disability Savings Bond provided by the federal government. These are detailed below.

When we focus on our standard expectations for behaviour and communication in our fast-paced, super technological world, we may miss opportunities to know and understand people who are likely among the most patient and best listeners on the planet.

MARTHA LEARY

Features of the RDSP

Features of the RDSP include:

- friends, family, and others can contribute up to $200,000 over the lifetime of the beneficiary
- through the Grant and Bond (see discussion below), your relative may be eligible to receive up to $90,000
- the RDSP grows tax-free
- a beneficiary can have only one RDSP
- contributions can be made by anyone or any organization including, for example, but not limited to: the beneficiary or any family member, friend, or a foundation
- contributions to an RDSP can be made until the end of the year in which your relative turns 59. Payments from the RDSP must begin once your relative reaches the age of 60, but may begin before at the holder's discretion
- the portion of the RDSP made up of government contributions (that is, the Grant and Bond) and interest is taxed in the hands of the your relative when withdrawn; any personal contributions (including those made by friends and family) will not be taxed
- payments from the RDSP can begin at any time but if the plan has received the Grant or the Bond—to avoid penalties—

payments should not begin until 10 years after the last Grant and Bond were received (see discussion on the Grant and the Bond below)
- lump-sum payments are permitted when family contributions exceed government contributions
- an RDSP can be opened at most financial institutions
- an RDSP can be moved from one financial institution to another
- an RDSP can be invested in most financial instruments; for example, T-bills, GICs, bonds, stocks, or mutual funds.

The Canada Disability Savings Grant

Your relative can receive the Grant until December 31 of the year in which he or she turns 49 years old. The maximum annual Grant is $3,500. Contributions may leverage matching federal Grants to a lifetime maximum of $70,000.

Having an RDSP will not affect your relative's government benefits.

Features of the Canada Disability Savings Grant

Features of the Canada Disability Savings Grant include:

- the amount of matching Grant or Bond your relative is eligible for depends on your family's annual income until your relative reaches the age of 18 years, after which it depends on their personal income
- if your or your family member's annual income is under $78,130, then the Grant is equal to three times the contribution for first $500; for example, a $500 contribution is matched by a $1,500 Grant. The Grant on the next $1,000 is two times the contribution; for example, a $1,000 contribution is matched by a $2,000 Grant (see chart on page 137)
- if annual income is over $78,130, then the first $1,000 is matched one to one; for example, a $1,000 contribution is matched by a $1,000 Grant
- The maximum Grant that can be received in a year is $3,500. To avoid penalties, no payments should be made from the RDSP for 10 years after the last Grant or Bond is received. For

example, if you make 20 years of contributions to your relative's RDSP and it receives matching Grants and Bonds, then payments should not begin for 10 more years. This would be 30 years from the date the plan was opened.

If payments from an RDSP are made within 10 years of receiving the Canada Disability Savings Grant or Bond, then any Grant or Bond received within the preceding ten years must be repaid.

If you set up an RDSP for your relative and choose NOT to receive the Canada Disability Savings Grant and the Canada Disability Savings Bond, then the 10-year rule referred to above does NOT apply. If only family and friends' contributions are received into the plan, then there are no restrictions on when payments can be made from the plan.

NOTE When your relative is under the age of 18, **your** family net-adjusted income determines your eligibility for the matching Grant and Bond. Once your relative turns 18, it is **their** personal net-adjusted income that determines the size of the matching Grant and Bond.

Canada Disability Savings Bond

The Canada Disability Savings Bond is a federal government contribution that is received when the beneficiary or the family of a child has a low income. Contributions are not required to receive the Bond.

Features of the Canada Disability Savings Bond

Features of the Canada Disability Savings Bond include:

- the Canada Disability Savings Bond will provide up to $1,000 per year to an RDSP for an adult whose annual income is under $21,947 per year
- children under the age of 18 whose family's annual income is under $21,947 per year are also eligible for the $1,000 Bond
- if the adult or family income is between $21,947 and $39,065, then they will be eligible for a Bond of a lesser amount
- the Bond is available to a lifetime total of $20,000

- a beneficiary may receive both the Grant and the Bond for a lifetime total of $90,000
- a beneficiary can receive the Bond until December 31 of the year in which they turn 49
- no contributions are necessary to receive the Bond.

NOTE The income thresholds of $78,130 for the Disability Savings Grant and $21,947 and $39,065 for the Disability Savings Bond, respectively, are indexed and will change over time. Please visit www.rdsp.com for updated information.

Types of Payments

Two types of payments can be made from an RDSP: Disability Assistance Payments and Lifetime Disability Assistance Payments.

Disability Assistance Payments can be of any amount at any time but are only permitted if personal contributions exceed government contributions.

Lifetime Disability Assistance Payments are determined by a formula, which is approximately the amount in the RDSP divided by the beneficiary's life expectancy. It is possible to purchase an annuity with any amount of the RDSP. The annuity payments become part of the Lifetime Disability Assistance payments. These payments may begin any time but, once they begin, they must continue. Lifetime Disability Assistance Payments must begin in the year that the person turns 60.

Qualifying for the Canada Disability Savings Grant

This chart illustrates how annual RDSP contributions qualify for a matching Grant based on the amount contributed and annual income.

Income (2008)	Contributions (2010)	$$ Amount of Grant	$$ Annual Maximum	$$ Lifetime Maximum
$78,130 or less	First **$500** – contributions into the RDSP	$3 for every $1 contributed	$1,500	$70,000
	Next **$1,000** – personal contributions	$2 for every $1 contributed	$2,000	
More than $78,130	First $1,000	$1 for every $1 contributed	$1,000	$70,000

Qualifying for the Canada Disability Savings Bond

This chart illustrates that, regardless of whether RDSP contributions are made or not, lower income families and adults may qualify for government assistance in the form of a Bond.

Your Income (2008)	Contributions Required	$$ Annual Bond (2010)	$$ Lifetime Maximum
$21,947 or less	$0	$1,000	$20,000
Between $21,947 and $39,065	$0	$1,000 is pro-rated based on income	$20,000
Greater than $39,065 (or no income tax return)	$0	$0 – no bond is available	$0

Questions about the RDSP

Why should we open an RDSP if our relative is older?

The RDSP has a couple of advantages no matter how old your relative is. At age 65, people stop receiving ODSP and begin receiving the Guaranteed Income Supplement (GIS). GIS income—including income from a discretionary trust— is clawed back at 50 per cent. Payments from an RDSP, however, are exempt. Further, the RDSP grows tax-free while income in trusts is taxable. Therefore, even though your relative is older and they many not receive much, if any, of the Grant or Bond, it is still to their benefit to have an RDSP. It is important to remember that contributions to an RDSP can be made until December 31 of the year in which your relative turns 59.

Can we use an RDSP as a short-term savings plan?

Yes! As indicated above, an RDSP is beneficial when your relative is older. Families who want the flexibility to allow their relatives to use the RDSP right away should forego the Grant and Bond in order to have the freedom to start receiving payments today. If your relative is older, then you don't have the option of saving over many years. In this situation, the RDSP can be used as a short-term savings plan. See Alex's scenario on page 143 for more details.

What happens to my relative's RDSP when they die?

Assets in a person's RDSP become part of the person's estate and are distributed in accordance with their Will. If they don't have a Will, then their assets are distributed according to the *Succession Law Reform Act.*

If the individual dies after the 10 year waiting period, then the government Grant and Bond do not have to be returned. If the person dies before the 10 year period is over, however, then any Grant or Bond received within the previous 10 years must be returned.

Who oversees my relative's RDSP?

The person who manages an RDSP is the holder. Parents are the holders when their child is a minor. When their child turns 18, they may continue as the holder, or they can pass the responsibilities on to the beneficiary, an adult guardian or a power of attorney. **NOTE** Powers of attorney can only be appointed if the person has legal capacity to make such an agreement. When a plan is opened for a person who is 18 or older, that person must be a holder unless they assign the responsibility to a Continuing Power of Attorney for Property or a Guardian of Property.

NOTE PLAN is currently working with the federal government to create a solution so that guardianship is not the only option available to adults who might not have the ability to manage their own RDSP. Check www.rdsp.com for current information.

What you need to do now!

- establish your relative's eligibility for the Disability Tax Credit (Income Tax Form T2201)
- file your Tax Return until your relative is 18 (and the tax return of your relative if they are 16 years or older) for the current and previous year
- ensure your relative has a Social Insurance Number
- if the beneficiary is a child, make sure you apply for the Canada Child Tax Benefit.

NOTE We estimate that thousands of people in Canada are eligible for the Disability Tax Credit but do not apply because they have no income. Now they have good reason to apply because eligibility for the Disability Tax Credit automatically makes your relative eligible for the Disability Savings Grant and Bond.

Before you buy an RDSP: three questions you might ask your financial institution

RDSPs may vary from one financial institution to another. Make sure your relative's RDSP has the flexibility to meet unforeseen circumstances:

1. Does the RDSP permit Disability Assistance Payments (lump sum payments)?
2. Can the RDSP be transferred to another financial institution without penalty?
3. Are there penalties if you don't meet a contribution schedule?

Tips to get the most out of an RDSP

- start early
- contribute regularly
- maximize Canada Disability Savings Grants
- remember that anyone can contribute to your relative's RDSP
- use PLAN's RDSP calculator to determine your best scenario.

Visit www.plan.ca or www.rdsp.com and click on the RDSP calculator button.

RDSP SCENARIOS

The power of the RDSP

The following scenarios illustrate the potential of the RDSP. We have summarized our assumptions in each situation. Results will vary with different assumptions and your personal circumstances.

The RDSP and young children

Families with young children usually have a list of competing financial priorities. The RDSP represents an economical way for parents, grandparents—and perhaps other family members and friends—to put funds aside for your relative and, and by so doing, have the government contribute as well.

For example, if you have a four year old and are able to put aside $100 a month ($1,200 a year) for 20 years and your family's annual income is below $78,130, then your child will have over a quarter million dollars when they turn 34. In other words, your investment of $24,000 will multiply over ten times!

HERE'S HOW IT WORKS:

Family taxable income: under $78,130
Annual family contribution: $1,200 a year
Total family contributions from age 4 to 24:
$1,200 times 20 = $24,000
Matching Grant: $58,000
Bond: $6,000 (age 19 to 24)
Total Grant and Bond: $64,000
Value at age 34: $250,000 (approx.)
If Annual Lifetime Disability Assistance payments begin at age 34, then the first payment will be $5,200 and increase by 5.5% annually. Over $700,000 would be paid by the time your relative reaches the age of 65.

Alternatively, the funds could be withdrawn at a different age. For example:
Value at age 40: $360,000 (approx.)
Value at age 50: $640,000 (approx.)

There are an infinite number of combinations depending on how much you contribute and when. Please visit PLAN's RDSP calculator at www.rdsp.com.

Teens: Natalie

Natalie's squeals of satisfaction when a teammate scores a run are all the reward that her father, Eric, would ever ask for. "She loves being a part of the team and loves the excitement of the competition," says Eric.

While Natalie, like other teens, may be focused on friends and fun, her mother Karin is aware of the uncertainty of the future. "When I close my eyes, I see us on the calm water above Niagara Falls. What's so frightening is that I don't know what comes next."

"The RDSP is a really concrete way to start preparing for the future today. Financial security allows us to shape the future. We can begin to dream with it," adds Eric.

Karin is not currently working outside the home and Eric's annual income is below

$78,130; therefore, they will qualify for the maximum annual grant of $3,500. At 47 years of age, Natalie will be able to receive payments without any penalties and the plan will be worth about $350,000. It will pay her about $9,700 a year at the beginning and rise to $48,200 per year when she is 77 years old.

Karin and Eric think they can put aside $125 a month for an RDSP for a total of $1,500 per year. They plan to contribute for 20 years.

RDSP SUMMARY:

Natalie's age: 17 years
Family taxable income: under $78,130
Annual family contribution: $125 a month ($1,500 a year)
Family contributions from age 17 to 36: $30,000
Value of Grant: $70,000
Value of Bond: $18,000
Investments: moderate risk (estimated return 5.5%)
Age to begin receiving from the plan: 47 years
Approximate value of the RDSP when beginning payments (age 47): $350,000
Annual Lifetime Disability Assistance payments will approximately begin as follows:
$9,700 at age 47
$16,500 at age 57
$28,200 at age 67 and
$48,200 per year at age 77.

Transition to adulthood: Darren

Even in a crowded room Darren seeks out people standing alone, latches onto their arm, and guides them into a conversation. It seems no one can refuse his broad smile.

"It's his gift," says his mom Janice, who keeps a watchful eye on him. "I'm not sure how he will put it to use after he finishes school in June," she sighs.

"I like the idea of the RDSP," she says, "I'm scared to death about the future. But as a single mom, I don't have much left to contribute after I pay the bills every month."

Janice plans to open an RDSP for Darren to get the Canada Disability Savings Bond. She's been to a PLAN Will and Estate workshop and has counseled her elderly parents to put the share of their estate they plan to leave for Darren into a discretionary trust (Henson trust). If he's still young enough, the trust can make contributions to his RDSP. Otherwise, the trust can be used directly to secure his future.

RDSP SUMMARY:

Darren's age: 19 years
Taxable income: under $21,947 (determined by Darren's income)
Annual family contribution: $0
Value of Bond: $20,000
Investments: moderate risk (estimated return 5.5%)
Age to begin receiving from the plan: 49 years
Approximate value of the RDSP when beginning payments (age 49): $60,000
Annual Lifetime Disability Assistance payments will begin at: $1,750 and will rise by about $170 every year.
NOTE The amount in the RDSP could also

change if Darren's grandparents contribute to his RDSP.

Young adulthood: Maria

"I'm famous! I'm famous!" shouts Maria, surrounded by the cast of the theatre production of Beauty and the Beast. She glows when she is speaking about musicals, the excitement palpable in her voice. If her parents George and Rosa had enough time (and money), this is where she would spend every evening.

Maria's parents are confident that they can provide a good life for her while they are alive and able. The RDSP provides the means for securing the future when they won't be around.

Rosa and George have a big extended family and, at the last gathering, getting an RDSP started for Maria was a main topic of discussion. The family has set a goal of raising $25,000. George has no doubt it will happen. George and Rosa also plan to contribute $1,500 a year for 20 years.

RDSP SUMMARY:

Maria's age: 27 years
Taxable income: under $21,947 (determined by Maria's income)
Annual family contribution: $125 a month ($1,500 a year)
Total family contributions from age 27 to 46: $55,000 (annual contribution plus $25,000 lump sum amount)
Value of Grant: $70,000
Value of Bond: $20,000
Investments: moderate risk (estimated return 5.5%)
Age to begin receiving from the plan: 57 years
Approximate value of the RDSP when beginning payments (age 57): $475,000

If an annuity is bought, annual payments will begin at: $24,000 and will rise by an average of about $500 per year. Some or all of the funds in Maria's RDSP could also be used to help purchase a house or to deal with other requirements that may arise.

The future is here: Alex

Tom is a Lifetime Member of Lifetime Networks Ottawa. Tom is confident that Alex's future is provided for. His Will is current and he directs his executor to establish a discretionary trust for his son, Alex. Alex also has a Personal Network who will look out for him when Tom passes away.

Alex, who just turned 41, has many interests, including photography and volunteering. His extra time is divided between the local seniors centre and the food bank.

Tom knows that if he capitalizes on the Grant and Bond for the next eight years, Alex won't be able to access the plan until he is 59 years old without paying a penalty. Tom wants him to be able to start using it earlier so he is prepared to forgo the government contribution. What Tom likes is that it will earn interest—tax free now—and that Alex can use it for anything he wants without affecting his ODSP eligibility and benefits. Tom also knows that—unlike a discretionary trust—Alex's RDSP will not affect his Guaranteed Income Supplement, which will replace his ODSP benefits once he turns 65.

Tom's plan is to contribute $200,000 as soon as he can and then let it grow for about 10 years.

Tom will still set up a discretionary trust in his Will but the trustee will face more restrictions on spending than the holder of Alex's RDSP. The RDSP and trust combined, however, will provide a good life for Alex.

Tom's plan seems pretty sound. In 10 years, the $200,000 that he contributes will have grown to about $350,000. By purchasing a life annuity that is indexed for inflation at 2%, this will provide Alex with an annual income of about $16,000 per year at age 52, growing to about $29,000 when he is 83 years old, which is pretty good for a $200,000 investment!

RDSP SUMMARY:

Alex's age: 41 years
Taxable income: under $21,947
Family contributions at age 41: $200,000
Value of Grant: $3,500
Value of Bond: $1,000
Investments: moderate risk (estimated return 5.5%)
Age to begin receiving from the plan: 52 years
Approximate value of the RDSP when payments begin (age 52): $350,000
Life annuity: Approximately $16,000 per year, indexed at 2%.

RDSP SUMMARY:

Alex's age: 41 years
Taxable income: under $21, 947
Family contributions at age 41: $200,000
Value of Grant: $3,500
Value of Bond: $1,000
Investments: moderate risk (estimated return 5.5%)
Age to begin receiving from the plan: 52 years
Approximate value of the RDSP when payments begin (age 52): $350,000
Life annuity: Approximately $16,000 per year, indexed at 2%.

Comparison – RDSP and Discretionary Trusts

Appreciating the differences between RDSPs and trusts will help you to determine which option is best for your family member. Some families may want to capitalize on the federal government matching RDSP grants; others may see trusts as a more viable option. Still, others may want to do both. Please visit www.rdsp.com or speak with your qualified professional advisor for further assistance.

TRUST	RDSP
AGE	
You can establish a discretionary trust for a beneficiary of any age. Non-discretionary trusts can also be established at any age. There are no age restrictions on payments from trusts.	You can establish an RDSP for someone until the end of the year in which they turn 59. The Grant and Bond are only available until the end of the year in which the person turns 49. The younger a person is, the more that person can benefit from the RDSP because: • they have more opportunity to use the matching federal Grant and Bond • the power of compounded income is increased • they can access the funds at a younger age without penalties.
CONTRIBUTION LIMITS	
There are no contribution limits on discretionary trusts. ODSP eligibility and benefits are not affected by the size of the discretionary trust. ODSP permits a maximum of $100,000 to be placed in a non-discretionary trust.	The RDSP has a $200,000 lifetime contribution limit. Combined with the maximum lifetime amount of $70,000 from the federal Grant and $20,000 from the federal Bond, the lifetime RDSP contribution maximum is $290,000.

TRUST	RDSP
CONTROL/DIRECTION	
The trustee(s) make decisions about investments and payments from a trust. They have absolute discretion to make these financial decisions if you establish a discretionary trust. Both trustee(s) and alternates can be identified in your Will when you set up the trust. You can also give trustees the power to designate alternates at a later date.	The holder(s) make decisions about investments and payments from an RDSP. Parents or legal guardians must be the holders of an RDSP established for a minor child. Parents can continue in this role once the child becomes an adult. If an RDSP is established for an adult, then the adult must be one of the holders of the RDSP unless there is a Guardian of Property and the Person or a Continuing Power of Attorney for Property.
INCENTIVES	
Setting up a trust for a relative with a disability is done entirely with private funds. Governments make no contributions nor offer any tax deductions.	The Federal government will contribute up to $90,000 through the Canada Disability Savings Grant ($70,000) and Disability Savings Bond ($20,000) to a RDSP.
ELIGIBILITY	
You can set up a discretionary trust to benefit anyone with a disability whether they receive ODSP benefits or not. For people receiving ODSP, discretionary trusts are not considered an asset.	To be able to set up an RDSP, the beneficiary must be: • qualified for the Disability Tax Credit • younger than 60 years • a resident of Canada.
INVESTMENT	
Investment of assets in trusts is limited to prudent investor rules as outlined in the *Trustee Act* unless other investments are permitted in the Will.	RDSPs are limited to investments that qualify for an RRSP. There are few restrictions.

TRUST	RDSP
LIMITATIONS ON USE OF FUNDS	
Other than the general guidance or direction you give to your trustee(s), there are no limitations on how trustees can use funds from a trust to benefit the beneficiary. If the person receives ODSP benefits, then there are some limitations on how funds can be used without affecting ODSP eligibility and benefits. There are no age restrictions on the use of funds from a trust.	There are no limitations on how funds can be used. If the person receives ODSP benefits, then they are free to use funds from the RDSP for any purpose without affecting their ODSP eligibility and benefits. Funds from an RDSP can be used any time but must begin to be paid to the beneficiary at age 60. There are some limitations on the amount that can be used from an RDSP if government contributions exceed family contributions.
TAX ON INCOME EARNED	
Trusts must pay taxes on income earned from investments. Income from a trust set up in your Will pays income tax at your relative with a disability's marginal tax rate. Income from *inter vivos* trusts are taxed at the highest marginal tax rate. There are some exceptions. Consult with your lawyer for more details.	RDSPs are tax sheltered. Tax is not payable on investments while held by the plan.

TRUST	RDSP
TAX ON PAYMENTS	
No tax is payable when funds are spent from the trust.	Tax is payable on the portion of the payments that are made up of government contributions and interest earned in the RDSP. It is payable in the hands of the beneficiary; that is, at their marginal tax rate.
WHAT HAPPENS WHEN THE BENEFICIARY DIES?	
When you set up a trust, you identify who will receive the remaining assets when the beneficiary dies.	When the beneficiary of an RDSP dies, the RDSP becomes part of their estate and is distributed through their Will. If they don't have a Will, distribution is determined by the *Succession Law Reform Act.* **NOTE** If the individual dies after the 10 year waiting period, the government Grant and Bond do not have to be returned. Some or all of the Grant and Bond must be returned, however, if the person dies before the 10 year period is over.

Worksheet 9 – Will planning

This worksheet will help you clarify your objectives in making a Will. The worksheet is located at the back of this section, on page 153. Take a look at it now. It is based on ones that all lawyers use. You can get a head start by filling out this worksheet in detail. This way, you'll be better prepared for your meeting with your lawyer.

Resources

Consult your local PLAN affiliate on upcoming seminars. For information on the RDSP, you can visit www.rdsp.com, where you will find the best—and most current—information in Canada. You will also find our RDSP Calculator and links to RDSP seminars, such as PLAN's free tele-learning courses.

Is your child under the age of 18?

If you have young children and you die without a Will, here's what happens.

ONE Your estate will be divided according to rules outlined on page 116 and summarized as follows:

- the first $200,000 of your property goes to your spouse
- if you die leaving one child, one-half of the remainder of your estate goes to your spouse and one-half goes to your child
- if you die leaving more than one child, one-third of the remainder of your estate goes to your spouse and the remaining two-thirds is divided equally among your children.
- The funds for your children may be held in trust by the Accountant of the Superior Court of Justice until your children reach the age of majority **unless** that amount is less than $10,000 and is not payable under a court order **or** a guardianship application is made by the surviving spouse to manage the child's property.

TWO If there is no surviving parent—that is, you both die—or there is no surviving parent who has legal custody, the Office of the Children's Lawyer becomes the guardian of their personal care. In order for another relative or family friend to become guardian, they will have to apply to the Ontario Superior Court.

To prevent a costly, complicated, and potentially messy and heartbreaking outcome, you must make a Will. If you have children under the age of 18, you must name a legal guardian for those children.

Demystifying definitions that could definitely derail you

Beneficiary (Will) A person to whom you leave things (money, gifts, insurance policy, RRSP, trust).

Bequest A gift of a specific item of personal property or a specific amount of cash identified in your Will.

Codicil A legal document used to amend portions of your original Will and requiring the same formalities of signing and witnessing needed for a Will.

Continuing Power of Attorney for Property The power to conduct and manage your financial affairs even if you become incapable.

Discretionary Trust (or Henson Trust) A trust in which the choice as to how to spend the interest and principal is completely in the hands of the trustee.

Executor The person or professional named in the Will who is responsible for ensuring that the wishes in your Will are carried out.

Grant of Probate A court order which is the executor's proof they can act as your executor.

Guardian of Property and the Person The authority to make financial, health, and personal care decisions on behalf of another person.

Inter Vivos Trust A trust that comes into effect during the lifetime of the person who established the trust. Also known as a Living Trust.

Intestate A person who dies intestate dies without a valid Will.

Life Interest Benefit given to someone in a Will which allows that person to have the use of the property or a certain sum of money only for the lifetime of that person. The remainder goes to someone else when the person with the life interest dies.

Non-Discretionary Trust A trust in which the beneficiary may have some control over the provisions of the trust, including how to spend the principal and interest.

Non-Probatable Assets Assets that pass outside of the Will. For example, joint tenant ownership of real estate and bank accounts, RRSP/RRIF, life insurance, and annuity beneficiaries.

Ontario Disability Support Program Financial and employment support plus medical, dental, pharmaceutical and special diet benefits provided to people with disabilities In Ontario.

Power of Attorney for Personal Care A written document giving someone else the authority to make personal care decisions on your behalf should you not have the capacity to do so.

Probate The procedure by which the Will of the deceased person is legally approved by the court and documented. It also confirms the appointment of your Executor.

Revocation Cancelling parts of or all of an existing Will.

Settlor The individual who establishes a trust.

Substitute Decision-Maker Thie person appointed under the *Health Care Consent Act* to give ore refuse treatment on behalf of another person when a Power of Attorney for Personal Care or guardianship order does not exist.

Testator That's you, the person who makes the Will.

Testamentary Trust A trust set up in a Will that only takes effect after your death.

Trust A legal arrangement in which one person (the settlor) transfers legal title to a Trustee to manage the property for the benefit of a person (the beneficiary).

Trustee The person or company that manages the trust according to the instructions in the trust agreement or Will.

Worksheet 9

Will planning

This worksheet is intended to:

- assist you in compiling information to take to your lawyer when you wish to make your Will
- assist in making you aware of decisions you will need to make and to help you make them.

After completing the worksheet you will be ready to contact a lawyer of your choice to make the Will. This worksheet does not give any legal advice. To draft a Will, you need to see a qualified lawyer.

A. Personal and Family Particulars

Date ____________________

1 Full Name ____

Address ____

Occupation ____

Home Phone ____________________________ Office Phone ____________________________

Date of Birth__________________ Place of Birth ______________________________________

Citizenship ____

Marital Status (including plans to marry) ____

Date of Marriage______________________ Place of Marriage __________________________

Do you have a marriage contract? ____

Have you or your spouse been married or lived in a common law relationship before?________

2 Marriage or Common Law Relationship ____________________________________

Spouse's Full Name ____

Address ____

Occupation ____

Home Phone ____________________ Office Phone ___________________________

Date of Birth____________________ Place of Birth ___________________________

Citizenship ____

3 Children (Please list all children of either spouse. Please note with a * any child of a former marriage of either spouse and with ** any child with a disability. Please include children you have adopted and children of any previous marriages or common law relationships.)

Full Name	Date of Birth
______________________________	________________________
______________________________	________________________
______________________________	________________________
______________________________	________________________
______________________________	________________________

4 Other Dependents

Is there someone who is dependent upon you for financial support for whom you wish to provide, such as an elderly parent? ______________________________________

If yes, please complete the following:

Full Name ____

Address ____

Relationship ____

5 Other Responsibilities

Are you now serving as the legal guardian for an adult who has a disability or lacks capacity?

____

If yes, full name, address and relationship to you:

Full Name ____

Address ____

Relationship ____

Relationship to you ____

B. Will Particulars

1 Appointment of Guardian(s) for Infant Children

Do you have a child under the age of 18?

It is important to note that you CANNOT appoint a guardian for your child with a disability who is older than 18.

Who will be their guardian(s) should you die before they reach age 18?

Name	Address	Relationship to you	Occupation

Who will be their alternate guardian(s) before they reach age 18?

Name	Address	Relationship to you	Occupation

2 Distribution of Your Estate

(a) Do you wish to leave your estate to your spouse if he/she survives you? ________________

(b) Do you wish to share your estate between your spouse and your children? _____________

If so, how? ____

(c) If your spouse dies before you, do you wish to leave your estate to your children? ________

If so, in equal shares? ____

If in unequal shares, what proportion or amount is each child to get?______________________

____

(d) At what age do you wish your children to receive their share?_________________________

(e) If any child fails to survive to that age, do you wish his or her children to receive the share?

____

(f) If one of your children dies before you do, who do you wish to receive his or her share of your estate?____

(g) If your spouse and children all die before you do, who do you want to receive

your estate?____

3 Discretionary Trust for Someone on the Ontario Disability Support Program

(a) Do you have a relative who is in receipt—or likely in the future to be in receipt—of Ontario Disability Support Program benefits assistance? ☐ **Yes** ☐ **No**

(b) Do you wish to set up a trust for this relative? ☐ Yes ☐ No

(c) Do you wish it to be a discretionary trust? ☐ Yes ☐ No

(d) Who do you wish to be trustees of this trust?

Name	Address	Relationship to you	Occupation

NOTE You may have any number of co-trustees. You should discuss with your lawyer whether you want each trustee to be a co-trustee or an alternate trustee. You should also discuss with your lawyer the ability of your named trustees to appoint additional or successor trustees.

(e) Who do you wish to be alternate trustees if any of the ones you have named are unable to serve?

Name	Address	Relationship to you	Occupation

(f) Residual Beneficiary

When you set up a trust you must specify what happens to the assets left in the trust when the person whom the trust was set up for dies.

Who do you want to receive the assets left in the trust when the person for whom the trust was set up for dies?____

Does this cause a conflict of interest? ____

You should make sure you discuss a potential conflict of interest with your lawyer.

(g) Trustee Powers

Do you wish your trustee to be able, if it becomes necessary or desirable, to buy, sell, rent, lease, or mortgage a residence for your relative with a disability?__________________________

If so, make sure you discuss your wishes with your lawyer. They will need to ensure they give the powers you want to your trustees.

Do you wish to give your trustees unrestricted investment powers to allow them to make any investment they think is appropriate? ____

Or

Do you wish them to be restricted in what they can invest? ______________________________

It is important to discuss with your lawyer the powers you wish to give to your trustees.

Do you want to leave a particular asset to a particular person? This includes clothing, jewelry, art, etc. If so, describe below. ____

____

____

Do you want to give a cash gift to anyone? If so, describe below.

____

____

____

Do you want to give cash or another gift to charity? If so, describe below.

____

____

____

You must be aware that some assets can pass outside of your Will.

Have you filed a description of beneficiary with the Plan Issuers for your:

a) RRSP ☐ Yes ☐ No

b) RRIF ☐ Yes ☐ No

c) Pension Plan ☐ Yes ☐ No

d) Life Insurance Policy ☐ Yes ☐ No

If so, these items will pass outside of your Will.

Do you own any other assets, for example property, bank accounts, etc. jointly with another person? ☐ Yes ☐ No

If so, these items will pass outside of your Will.

4 **Additional Support for your relative**

Do you wish PLAN to provide support for your relative when you are no longer able to do so? If so, contact PLAN to discuss incorporating appropriate clauses into your Will that will enable PLAN to assist your relative.

5 Other Comments or Instructions

____

____

____

This is for additional information, which your lawyer might need to consider.

____

____

____

C. Asset and Debt Summary

(please indicate if these assets or debts are not in Ontario)

	Hers	His	Both
a) Cash and Term Deposits	$______	$______	$_______

b) Life Insurance

Insurance Co	Owner of Policy	Designated Beneficiary	Amount
_____________	_____________	_____________	$____________
_____________	_____________	_____________	$____________
_____________	_____________	_____________	$____________

c) RRSPs

RRSP Institution	Owner of RRSP	Designated Beneficiary	Amount
_____________	_____________	_____________	$____________
_____________	_____________	_____________	$____________
_____________	_____________	_____________	$____________

	Her name	His name	Joint Names
d) Stocks and Bonds	$ ____________	$ ____________	$ ____________
e) Pension Plans & Annuities	$ ____________	$ ____________	$ ____________

f) Describe any interests you may have in any proprietorships, partnerships or private companies. ____

g) Real Estate

	No.1	No.2
Address	________________________	________________________
Registered Owner(s)	________________________	________________________
Joint Tenants?	________________________	________________________
Estimated Value	$________________________	$________________________
Mortgage Balance (estimated)	$________________________	$________________________
Mortgage Life Insured?	☐ Yes ☐ No	☐ Yes ☐ No
Approximate equity	$________________________	$________________________

h) Personal Effects

Approximate value of household goods, furniture, jewelry, boats & automobiles: $________

Are any of these articles owned jointly with someone else? ☐ Yes ☐ No

i) Miscellaneous

A) Interest in any existing estate or trusts: ______________________________________

B) Other substantial assets: ____

C) Do you have any real or personal property outside of Ontario? If so, please specify.

____

D. Summary of Debts (other than mortgages previously noted)

Creditor	Life Insurance	Amount
_______________	☐ Yes ☐ No	$__________
_______________	☐ Yes ☐ No	$__________
_______________	☐ Yes ☐ No	$__________

Estimated Net Value of Estate

	Her name	His name	Joint Names
Total Assets	____________	____________	____________
Less Total Debts	____________	____________	____________
Less Estimated Tax	____________	____________	____________
Liability	____________	____________	____________
Total Net Value of Estate	$___________	$___________	$___________