

Will and Power of Attorney Handbook

An Information Guide about Wills, Powers of Attorney,
Substitute Decision-Making, and Estate Administration
for Indigenous People in Ontario



Elder Law Project



Elder Law Project



Welcome Message

This information guide was written by Grey-Bruce Community Legal Clinic (GBCLC) in October 2025 as part of our elder law project funded by the Law Foundation of Ontario.

We recognize the complexities of the intersection of federal and provincial colonial laws on the Indigenous People of Turtle Island.

We also recognize that Indigenous communities have the right to self-determination. Many communities have chosen to exercise this right and made laws within their own Nation, such as laws about the property of married people and common law partners.

This information guide only discusses Ontario and Canadian colonial laws. When working with Indigenous communities, we encourage you to find out if the communities have made laws that would change how the Canadian and Ontario laws discussed in this information guide apply to Indigenous communities.

This information guide was created to give general legal information and is not legal advice. Talk to a lawyer about what the law means for you.

Call Legal Aid Ontario (LAO) to find out how to get free legal advice. LAO's phone number is 1-800-668-8258. You can also look at LAO's website for information about free legal services in Ontario: www.legalaid.on.ca

Miigwetch: Thank you.



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Table of Contents

Section 1:

Substitute Decision Making in Ontario

Definitions.....	1
Introduction to Substitute Decision Making Law in Ontario.....	2-3
SDMs for Personal Care Decisions.....	4
Decision-Making Ranking under HCCA.....	5
Who Decides If Someone is Not Capable to Make a Personal Care Decision and Needs a SDM?.....	6
Responsibilities of SDMs for Personal Care.....	7-8
Types of SDMs for Property.....	9
Things to Think about when Picking Attorneys for Property and Personal Care.....	10-11
Powers to Give in POAs.....	12
Information to Include in POA for Personal Care.....	13
Payment for POA for Personal Care & Property.....	14
Making POAs for Personal Care & Property.....	15
Flowchart Summary of Substitute Decision-Making Law in Ontario.....	16

Section 2:

Rules for Substitute Decision Making Just On Reserve

Indigenous Service Canada (ISC) Procedures for Guardianship of Property of Indigenous Adults.....	17-19
Checklist for Regaining Property Management from ISC.....	20
ISC Application to Administer Dependent Adult's Property.....	21-32

Table of Contents

Section 3:

Making a Will in Ontario

Definitions.....	33
Overview of Wills in Ontario.....	34-36
Dealing with Personal Items in a Will.....,	37
Looking After Children in a Will.....	38
Taxes When People Die	39-40

Section 4:

Inheritance OFF Reserve

What Happens If There Is No Will?.....	41
What To Do When an Indigenous Person Dies.....	42
Steps to Handle Estate When ISC Not Involved.....	43

Section 5:

Inheritance ON Reserve

Steps to Handle Indigenous Person's Estate Living On Reserve.....	44-45
What Happens If There Is No Will under the Indian Act?.....	46
Inheriting Land and Buildings on Reserve.....	47-48
Matrimonial Property Law and Inheritance	49-52
Dealing with the Deceased Person's Creditors.....	53
Template Notice to Creditors.....	54
Indigenous Services Forms (Overview).....	55-56

Table of Contents

Section 6:

Case Study

Case Study Details.....	57
Mock POA for Personal Care for Eric Red.....	58-59
Mock POA for Property for Eric Red.....	60-62
Mock Will for Eric Red.....	63-67
Completed ISC Forms for Eric Red.....	68-80
Exercise: Administering the Estate.....	81
Answers to Administering Exercise.....	82

Section 7:

Resources

True False Quiz.....	83-84
True False Answers.....	85-93
List of Resources in Handbook.....	94
Sample Advocacy Letter to Minister.....	95



Section 1: Substitute Decision- Making in Ontario

Definitions



The law has definitions for various words that may be different than how we use these words in everyday language. Let's define some key words about substitute decision-making before we get started.

Power of Attorney: Legal papers that give someone you trust the right to make financial or personal care decisions for you.

Attorney: The person you name in power of attorney papers to make decisions about your property or personal care. An attorney is not a lawyer.

Grantor: The person who gives another person the power to make decisions for them through a power of attorney (POA).

Property: Money and all items you own or rent. This is land, buildings, money, and personal items of value, such as jewelry, and anything else you own, such as clothes and pictures.

Personal Care: Decisions about safety, grooming, nutrition, clothing, shelter (place to live) and health care.

Health Care: Includes decisions about treatment, moving to a long term care home and personal assistance services offered in a long term care home or retirement home, such as bathing.

Treatment: Activities related to health.

Long Term Care Home (LTCH): Place where people live. The place gets some government money to give the people who live there personal assistance services.

Retirement Home: Place where people live. The place gets no government money to give the people who live there personal assistance services. People who live there pay for all personal assistance services themselves.

Personal Assistance Services: Help with activities of daily living, such as getting dressed.

Arbitrator: A person hired to make a decision about a disagreement between people.

Ordinarily Resident on Reserve: A First Nations person who usually lives on a reserve. They may still be considered "ordinarily resident on reserve" if they are living off reserve because they need services that are not available on reserve, such as health care or education.

Introduction to Substitute Decision Making Law in Ontario



Ontario law says people **age 16 and older** are capable to make decisions about their **personal care** unless there is proof they are not capable.

Ontario law says people **age 18 and older** are capable to make decisions about their **property** unless there is proof they are not capable.

Capability to make decisions is based on **mental ability**. It is not based on physical ability or medical conditions.

Mental ability is **not always the same**. A person might be mentally able to make decisions some days but not other days. They might be able to make some decisions but not other decisions.

Someone is not mentally able to make their own decisions about personal care or property if they have problems **understanding** the information related to a decision that must be made **or** they do not **appreciate** the possible consequences of the different decisions they could make.

Understanding: Personal Care

Knows information about their personal care

Example: Can say the good and bad things they were told could happen to them if they take a medicine for pain



Appreciation: Personal care

Reasons for taking risks with their personal care make sense based on their **values**

Values are beliefs that are important to the person

Example: Spending time with family is important, and taking medicine to lower the person's pain makes them too tired to visit family, so they take less medicine and risk having more pain to have energy to visit family



Mental ability to make personal care decision

Someone is mentally able to make decisions about their personal care if they have **both understanding and appreciation** of their personal care.



Introduction to Substitute Decision Making Law in Ontario Continued



Understanding: Property

Knows information about their property, such as bills and money in savings. Can add and subtract using a calculator or on paper. Knows how to use their money to meet their needs, such as different ways to pay bills



Appreciation: Property

Reasons for taking risks with their property make sense based on their values.

Values are beliefs that are important to the person

Example: Person believes it is important to help people, so will loan someone money knowing might not get it back. Only loans a little money so can still pay their bills if the loan is not paid back.

Someone is mentally able to make decisions about their property if they have **both understanding and appreciation** of their property.



Mental ability to make property decision

Ontario law allows someone to make a decision for another adult about their personal care and property if that adult is not capable to make their own decisions. The person who makes a decision for someone else is called a substitute decision-maker (SDM).

The laws in Ontario about who can be a SDM for **personal care are the same for all Indigenous people in Ontario** whether they live on or off reserve. The laws about who can be a SDM **for property in Ontario are different for Indigenous people** depending on whether they live on or off reserve.





SDMs for Personal Care Decisions

There are four kinds of SDMs for personal care in Ontario.

1

Guardian of the Person

Someone named by a court to make decisions about another adult's personal care. The guardian can only make the kinds of personal care decisions for the adult that the court said the guardian can make.

Speak to a lawyer about the papers that must be given to the court to become someone's guardian.

2

Attorney for Personal Care

Someone can sign a paper called a power of attorney (POA) to name someone to make personal care decisions for them if they are not mentally able to make their own decisions. The person named in the POA to make decisions is called an attorney for personal care. Attorney **does not mean a lawyer** in Ontario law.

The attorney **cannot** make a personal care decision for the grantor unless the grantor is mentally unable to make the decision themselves. The attorney can only make the kinds of personal care decisions the POA papers let them make.

3

SDM Appointed by the Consent and Capacity Board (CCB)

If an adult does not have either of the two decision-makers listed above, another person can ask an organization called the Consent and Capacity Board (CCB) to name them as the adult's SDM for some health care decisions: treatment, moving to a long term care home (LTCH), and personal assistance services given in a LTCH or retirement home. The CCB can only give someone the right to make **these decisions** for another adult and **not** other kinds of personal care decisions.

Call 1-866-777-7391 or go to www.ccboard.on.ca to get information about the CCB. The CCB is like a court but is less formal than a court.

4

Next of Kin under the Health Care Consent Act (HCCA)

The HCCA is a law in Ontario that allows an adult's next of kin to make decisions about their treatment, if they should live in a LTCH, and what care they should get in a LTCH or retirement home if the adult does not have any of the three SDMs listed above. The SDM under the HCCA only has the right to make these decisions and **not** other types of personal care decisions.

Examples of personal care decisions that are NOT health care decisions:

- Who is allowed to visit the adult
- Moving adult somewhere other than a LTCH, such as apartment
- What food the adult should eat
- What clothes adult should wear

Ranking under HCCA in Ontario



There is a “ranking” system in the HCCA that is used to determine who can be SDM for treatment, moving to a LTCH, and personal assistance services offered in a LTCH or retirement home. This system does not apply to other kinds of personal care decisions. Only a guardian of the person or attorney for personal care can make other kinds of personal care decisions.

The highest ranking people below are the SDM if someone cannot make decisions about treatment, moving to a LTCH, or personal assistance services offered in a LTCH or retirement home. If there are 2 or more people at a level, they all have the same right to decide

1. Court Appointed Guardian(s) of the Person

Guardian(s) may only make kinds of decisions allowed in court Order.

2. Person/People Named in a Power of Attorney (POA) for Personal Care Paper

Person/People named in POA papers may only make the kinds of decisions allowed by POA papers. All people named (except back up decision-makers) must be involved in decisions unless POA says they may act separately or severally

3. Decision-Makers Appointed by the Consent & Capacity Board (CCB)

Decision-makers may only make kinds of decisions allowed by CCB Order.

5. Child or Parent

- If a court Orders a child's adoption, biological parents have no decision-making rights even when the child is an adult
 - Biological parents do not have right to make decisions for their children under age 16 if court gives decision-making power to someone else, such as Children's Aid Society
- Biological parent with only a right to visit their child under age 16 and not decision-making rights may only make decisions for the child if parent with decision-making power is not available

4. Spouse or Partner (these are not the same)

Spouse: married and do not live apart due to marriage breakdown **or** unmarried and living together in a conjugal relationship which is:

- (i) living together for at least one year;
- (ii) living together with their child; **or**,
- (iii) made a cohabitation agreement under *Family Law Act*

- **Partner:** lived together for at least one year and have a close personal relationship of primary importance to both people

6. Siblings (includes half siblings)

7. Any Other Relative by Blood, Marriage or Adoption, including in-laws and step relatives

8. Public Guardian & Trustee

Public Guardian and Trustee must make the decision **if**:

- i) there is no one above who meets criteria to make decisions;

or,

- ii) there are 2 or more people on the same level above who cannot agree on a decision, such as four children or two attorneys for personal care

For Public Guardian & Trustee call:
1-800-387-2127



Who Decides If Someone is Not Capable to Make a Personal Care Decision and Needs a SDM?

Treatment:

- Health care professional suggesting the treatment
- Examples: Physiotherapist determines if person is mentally able to decide to do exercises and doctor determines if person is capable to make decisions about medicines to take

Moving to a Long Term Care Home and Personal Assistance Services Given in a Long Term Care or Retirement Home:

- Audiologist, speech language pathologist, doctor, occupational therapist, nurse, physiotherapist, dietitian, social worker, or psychologist

All Other Personal Care Decisions (clothing, shelter, grooming, safety, nutrition, other health care decisions):

- If SDM is **guardian of the person**, then court determined what kinds of decisions the person is capable to make for themselves and what decisions the guardian should make
- If SDM is **attorney for personal care**, the attorney decides if the grantor is mentally able to make these personal care decisions unless the POA paper says someone else decides grantor's mental ability to make these decisions, such as a doctor
- If an adult does not have a guardian of the person or an attorney for personal care, there is **no one** with the legal right to determine the adult's capability to make these personal care decisions and there is no one with the legal right to be the adult's SDM for these personal care decisions

If **unsure about someone's mental ability** to make personal care decisions, talk to their health care professionals, or hire a capacity assessor to give an opinion. The capacity assessor's report is just an opinion and is **not** a legal decision. Call the Ontario government Office of the Public Guardian and Trustee for information about capacity assessors:

1-800-891-0504.





Responsibilities of SDMs for Personal Care

SDM is a Serious Responsibility

SDMs who do not follow the law can be replaced with another SDM. In extreme situations, SDMs may be sued or charged with a crime for not following the rules for SDMs. SDM's may resign if they do not want SDM responsibilities.

All four types of SDMs for personal care (guardian of the person, attorney for personal care, SDM named by the CCB, and next of kin under the HCCA) must follow the same rules when making decisions for another adult.

They must make the decision based on the adult's **most recent wish spoken or written** while the adult was still mentally able to make their own decisions.

If there is no such wish, or it is impossible to follow the wish, the SDM must make the decision based on the adult's **Best Interests**.

SDMs must think about 5 things to figure out best interests.

1. Adult's **values and beliefs** that the adult would likely follow if the adult were still mentally able to make their own decisions.
2. Adult's wishes when **not mentally able** to make decisions, such as the adult does not like needles
3. SDM's decision should make adult's **condition or quality of life** better, stop it from getting worse, or slow it down from getting worse. Will doing nothing or taking less action make adult's condition/quality of life worse?
4. SDM's decision should give the adult **more benefit than harm**
5. If a decision must be made about a **personal assistance service**, SDM should make the decision that will likely **increase adult's independence**

Responsibilities of SDMs for **Personal Care Continued**

Attorneys and guardians have extra responsibilities

If someone is guardian or attorney for another adult, they have extra responsibilities that SDMs named by the CCB or who are next of kin under the HCCA do not have. Guardians and attorneys must do the following:

- Help adult be as **independent** as possible
- **Involve adult** in decisions as much as possible
- Make decisions that **limit adult's activities** as little as possible
- Restrain adult **only if restraint** will stop serious bodily harm to the adult or others or will give the adult more freedom and happiness
- **Get opinions** from adult's supportive family, friends, and caregivers about the adult's care and help them stay in contact with the adult
- **Keep records** of decisions they make for the adult about shelter, safety, and health care and give records to adult and adult's attorney for property if asked



Types of SDMs for Property

If someone is concerned that an adult is not mentally able to make decisions about their property, they can arrange one of the following four kinds of SDMs for the person if they are **living off reserve**. If the adult is **ordinarily resident on reserve**, not all of these options are available as explained in section 2 of this information guide.

Some kinds of these SDMs might not be possible even for people living off reserve. For example, arranging an attorney for property is not possible if the adult would not understand POA papers.

Trustee of Government Pensions:

Friends or family can ask to be trustee of someone's **government pension**, such as Old Age Security. Trustee can **only handle government pensions** and not other property, such as a work pension, even if the person worked for the government.

Contact the government office that pays the pension to find out how to become trustee of someone's pension.

1

Guardian of Property:

Someone named by a **court** to manage another person's property.

Speak to a lawyer about the papers that must be given to the court to become someone's guardian.

2

Attorney for Property:

Attorney is someone named in a power of attorney (POA) paper to make decisions about the grantor's property. Attorney **does not mean a lawyer** in Ontario law. Grantor is the person who signs POA papers.

A POA paper might say the attorney can make decisions anytime or might say the attorney may only make decisions if the person who signed the POA is not mentally able to make decisions.

3

Statutory Guardian of Property:

The Public Guardian and Trustee (PGT) becomes someone's statutory guardian if a capacity assessor says the person is not mentally able to make decisions about their property.

PGT is a person who works for the Ontario government. PGT's staff make decisions for people not mentally able to make their own decisions about their property.

If the PGT's staff think the person's family or friends would be good SDMs, the family/friends can become statutory guardian instead of the PGT.

Anyone can pay a **capacity assessor** to decide if the PGT should become a person's statutory guardian if the person does not have an attorney or guardian for property. Call the Ontario government Office of the PGT for information about capacity assessors: 1-800-891-0504. Tell the capacity assessor to find a translator if the person who will be assessed speaks other languages better than English.

4

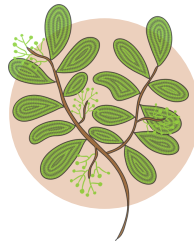
Things to Think about when Picking Attorneys for Personal Care and Property

Picking people to make decisions about your personal care and property is an important choice. Your attorney(s) will have to make decisions for you when you are unable to make decisions for yourself. You should have a lot of trust in them, and they should understand the importance of being named your attorney. **The big question to ask is:** who do you know would do a good job as your attorney for personal care and or property?

Who should I pick to be my Attorney(s) for **Personal Care**?

Consider the following qualities:

Are they calm in a crisis/emergency?
Is this person concerned about your well-being?
Does this person know you well?



Would they be comfortable dealing with the health care system? Do they have experience with the health care system?

Do they know, understand and respect your values, beliefs, and choices?

Can they set aside their own feelings to do what you want and what is best for you?

Who should I pick to be my Attorney(s) for **Property**?

Consider the following qualities:

Is concerned about your well-being & knows you well – knows your values, beliefs, and wishes about money

Knows how to deal with/has experience with banks, insurance companies, financial advisors, and or other financial organizations/professionals



Would not steal your money

Can set aside their own feelings to do what you want and what is best for you

Is good with money – budgets money well, does not waste money, keeps track of money closely

Things to Think about when Picking Attorneys for Personal Care and Property Continued



*Your POA for Personal Care and POA for Property can be different people. You do not have to name the same person(s) in each POA paper



You can name more than one attorney

You can name more than one attorney. If POA papers say attorneys act **separately or severally**, each attorney can sign papers and make decisions alone. If the POA papers do not say the attorneys can act separately or severally, all attorneys must sign all papers and make all decisions together.

You can divide up decisions among different people if you think some people will do a better job of some personal care/property decisions than others.



More than one attorney? you may want to consider...

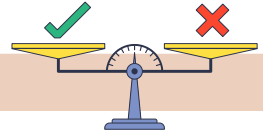
A process to break ties between the attorneys

Some possible options for breaking ties:

- if you name three attorneys, you could say: two out of three of them must agree on a decision.
- naming a different person who is not one of your attorneys to break ties
- attorneys must meet with an arbitrator to break ties between them

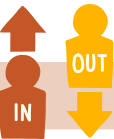
If you don't include a system to break ties, in most situations the attorneys would have to go to court and ask a judge to break the tie. Court is expensive and can make disputes open to the public. In some situations the PGT's office will break the tie between the attorneys.

Pros & Cons?



The advantage of having two or more people sign everything and make all decisions means they can supervise each other and it can stop one person from doing something that is harmful to you.

Disadvantage of having two or more people sign everything and make all decisions is that it is inconvenient to organize two or more people to sign all papers and talk to your health and financial professionals.



Choose a stand in...

If you name only one attorney, it is important to name a substitute attorney. This person would take over as your attorney if the first attorney is not able to be your attorney. For example, your substitute/back up attorney would take over if the first attorney dies, resigns, is removed by the court, or is not mentally capable to be your attorney.

If you say nothing about a process for determining if the first attorney is mentally incapable to be your attorney, it could be hard to figure out if your first attorney is still capable to be your attorney. Saying a doctor can decide if your attorney is capable to make decisions for you is one option to be clear about determining if your attorney is capable to be an attorney.

Powers to Give in POAs for **Personal Care & Property**

If you **divide up** the different kinds of personal care and property decisions among different people, they might have a hard time working together to get some things done for you in the future.

Example for personal care: If you name one person to make decisions about your medicines and a different person to decide your grooming, they might have to work together because your medicines might affect your energy level and in turn affect your grooming needs.

Example for property: You can name one person to take care of your bills and a different one to take care of investments. They might need to work together to decide if investments should be cashed out to help pay the bills.

POA for **Personal Care**

- ★ Your attorney(s) may only make personal care decisions for you if you are not mentally capable of making those decisions yourself.
- ★ Your attorney(s) will determine if you are capable of making decisions about where you live, what you eat, your grooming routine, what is needed to keep you safe, and what you wear.
- ★ If you do not want your attorney(s) to decide if you are mentally capable of making these decisions, you must name someone else in the power of attorney papers to decide if you are capable of making these decisions, such as a doctor or other health care professional.

POA for **Property**

- ★ Your attorney can do anything with your property that you could do yourself with your property except make a Will for you.
- ★ Power of attorney for property comes into effect as soon as it is signed unless you say differently in the power of attorney papers. That means the people you name as attorney(s) can start helping you manage your property as soon as you sign the power of attorney papers.
- ★ You can say that the power of attorney only starts when you are not mentally capable of managing your property. You should then say who will determine that you are not capable of managing your property.
- ★ If you don't name anyone to decide if you are capable of managing your property, then a capacity assessor must be hired to determine if you are capable of managing your property. Assessors are expensive.



Information to Include in POA for Personal Care



Pros & Cons of your attorney for personal care determining your mental ability to make your own personal care decisions

Pros: Attorney(s) can act quickly to get you the help you need and keep you safe. They do not have to wait for someone else to declare you are not capable of making your own decisions.

Example: You suddenly get sick and cannot tell anyone your needs. Your attorney can start making decisions right away to keep you safe.

Cons: Attorney(s) could abuse this power. If you name a doctor or other health care professional to decide your ability to make your own personal care decisions, then the attorney(s) cannot force you to do things based on the attorney's opinion that you are not capable of making your own decisions.

Example: Attorney could try to force you to move out of your house into an apartment because they think you are not capable to make decisions about the risks of staying in your house.

Instructions in POA: **Personal Care** Decision-Making

You can include your **wishes for your future care** in the POA papers. These wishes are considered instructions that your attorney(s) should follow.

Pro: Putting your wishes in the POA papers means anyone who looks at the POA papers to determine who you have named as your attorney will see your wishes.

Con: Putting your wishes in the POA papers mean if you change your mind in future about your wishes for your care as your health changes, you have to do a new POA paper. Two witnesses are needed if you change your POA papers.

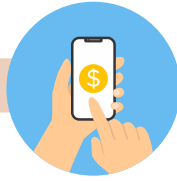
Another way to let people know your wishes is to write your care wishes on a separate piece of paper and keep that paper with the POA papers. No witnesses are needed. You can change your wishes anytime and you do not have to change the POA papers.

Health care professionals should still see your wishes if they are written on a separate piece of paper that you keep with the POA papers. Health care professionals should ask your attorney if you have written wishes and your attorney is supposed to show them your written wishes.

Where you write your wishes does not affect if your attorney(s) has to follow your wishes. Your attorney(s) is supposed to follow your wishes wherever you have written them.

Payment for Attorneys for Personal Care & Property

Payment for POA Duties



Personal care

The law does not give your attorney(s) payment automatically for making your personal care decisions.

However, you can add a section to the POA papers saying that your attorney can get paid and or have their expenses reimbursed for making your personal care decisions.

Property

The law allows your attorney(s) automatically to give themselves some of your money as payment for their work managing your property unless you say otherwise in the POA papers.

You can say one of the following things in the POA papers about payment:

- You do not want your attorney(s) to get paid
- Your attorney will get less payment or more payment than the law allows
- Your attorney cannot get paid but can be reimbursed for expenses
- You can allow payment plus reimbursement of expenses

Your attorney must follow what you have said in the POA papers about payment.

What is the pay standard in the law for attorneys for property?

3% of each payment coming in and out of your funds plus three-fifths of 1% of the annual average value of your assets.

Think about the following issues when trying to decide if you want your attorney(s) to get paid:

Do you need all of your money to pay your bills?
Can you afford to pay your attorney(s) and or reimburse them for their expenses?

If paying an attorney, is it best for you to pay them a flat fee each year or a percentage of your income?

If your attorney(s) for property does something wrong with your money accidentally, the court will be more forgiving with them if they are not getting paid. If attorney(s) are getting paid, they are expected to be as good as a financial professional when handling your property.

Would your attorney(s) take advantage of you allowing them to be reimbursed for their expenses? Would they try to use that opportunity to take a lot of money from you? Should you put a limit on how much money your attorney(s) can be reimbursed for their expenses?



Making POAs for **Personal Care & Property**

Witnesses for POA: Personal Care and Property

Two people must see you sign the POA papers and sign the papers themselves as your witnesses. Your witnesses cannot be your proposed attorney(s) or people with certain relationships to you or your attorney(s). It is best to have your POA papers witnessed by people who are not related to you or your attorney(s).

You will have to find your own witnesses if you do the POA yourself. If a lawyer does the POA with you, the lawyer will find people to be witnesses when you sign the papers.

How to Make a POA

You do not need a lawyer to do a POA unless you want witnessing of your signature to happen over video. You can buy POA kits to create your own POA. The Steps to Justice website has a pathway for creating a POA that is free.

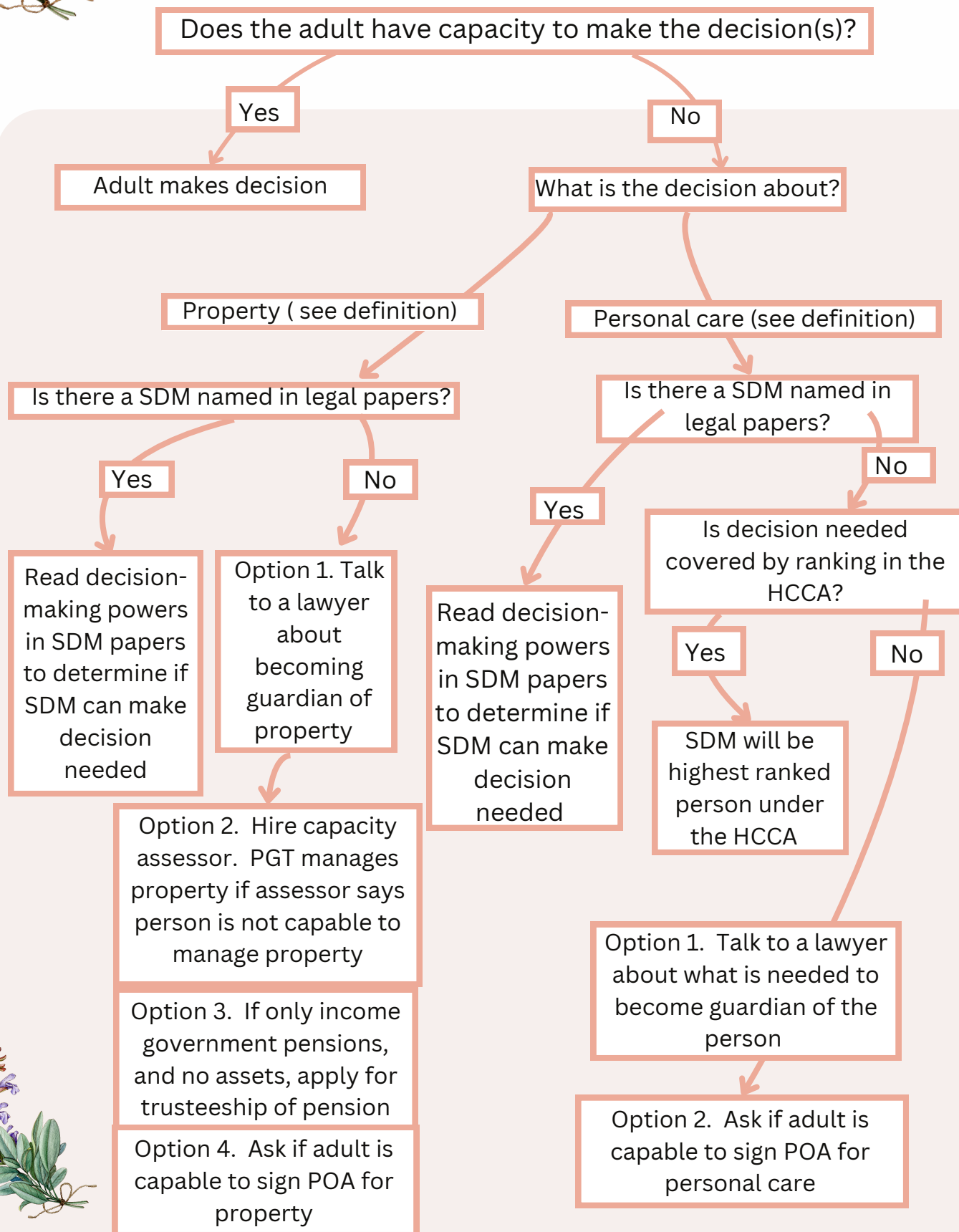


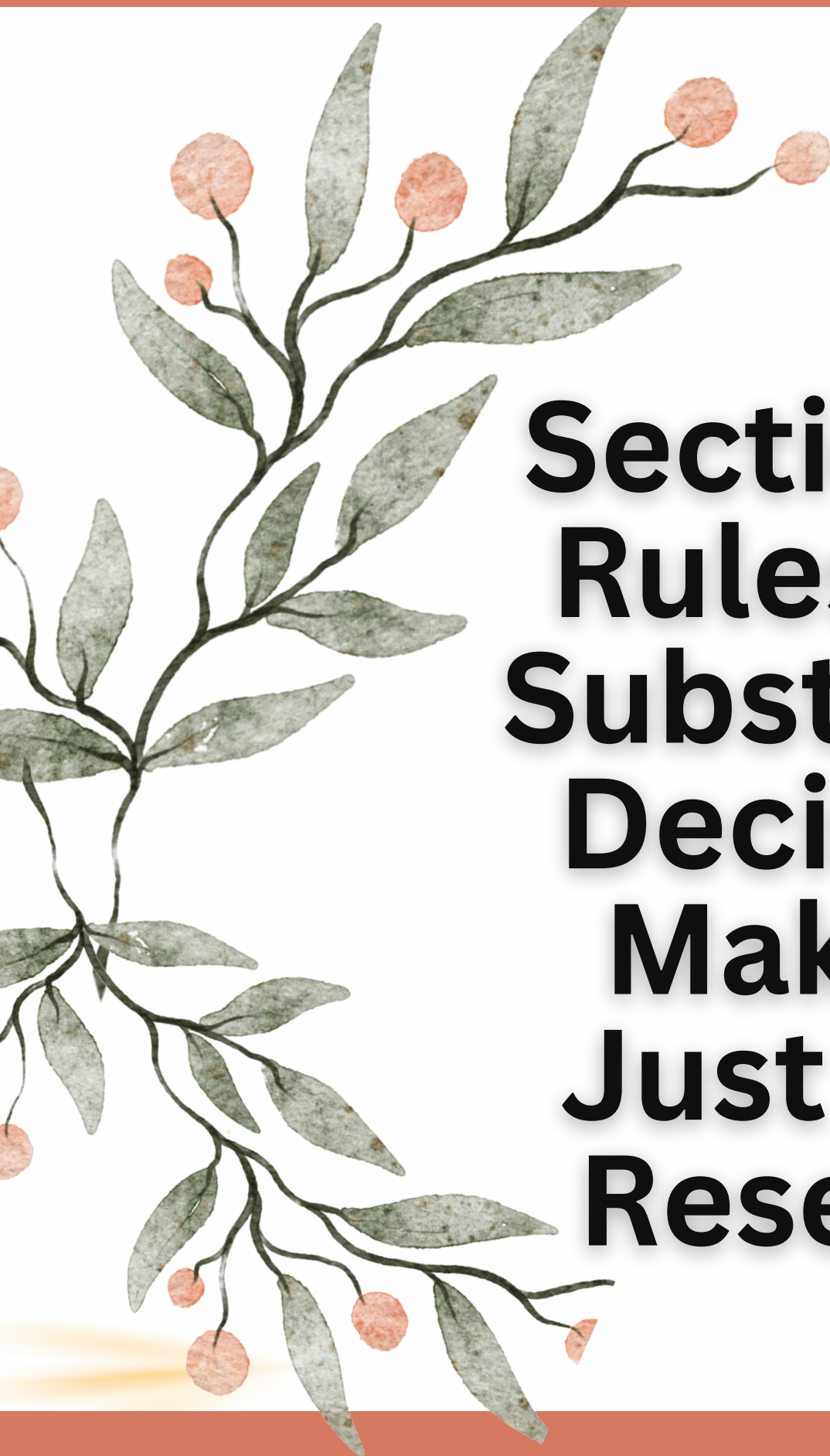
<https://stepstojustice.ca/guided-pathways/wills-and-powers-of-attorney-for-making-a-will/>





Flowchart Summary of Substitute Decision-Making Law in Ontario





Section 2: Rules for Substitute Decision Making Just On Reserve

Indigenous Service Canada (ISC) Procedures For Guardianship of Property of Indigenous Adults



Starting a Guardianship of Property with ISC

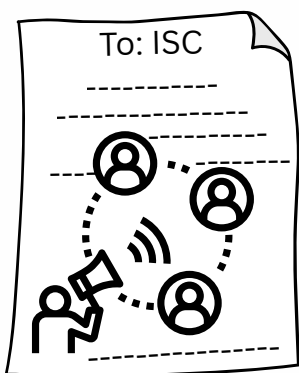
The rules about who will be SDM for an adult not capable of managing their property in Ontario law do not apply the same way to **Indigenous people ordinarily resident** on reserve that the law applies to other people in Ontario.

In accordance with the *Indian Act*, ISC **must** manage the property of an Indigenous adult who is incapable of managing their property if the Indigenous person is ordinarily resident on reserve. ISC **may** manage the property of an Indigenous adult incapable of managing their property if the person is not ordinarily resident on reserve. However, ISC's **usual process** is to manage the property of Indigenous adults incapable of managing their own property only if the Indigenous adult is ordinarily resident on reserve. When ISC manages the property of an Indigenous adult, ISC is considered the Indigenous adult's **guardian of property**.

ISC becomes guardian of property for an Indigenous adult if the Indigenous person is incapable of managing their property according to the **definition of incapability in Ontario law** described earlier. There are a few ways that people can be declared incapable of managing their property under Ontario law. However, ISC only manages the property of Indigenous people when ISC is told that an Indigenous person is incapable of managing their property by the Ontario government **Office of the Public Guardian and Trustee (OPGT)**. This means that there are Indigenous people found to be incapable of managing their property under Ontario law in ways outside the OPGT who are ordinarily resident on reserve whose property ISC is not managing.

Communicating with ISC

ISC does not consistently give Indigenous adults a contact person at ISC to ask questions about their property when ISC is managing their property.



If an Indigenous adult knows that ISC is managing their property and has not gotten any information from ISC about their property, they should:

- Ask their Band office for the contact information for the estates officer at ISC assigned to the Band
- The estates officer will not be the ISC staff managing the Indigenous adult's property but will be able to tell the person who is managing their property

If the Band does not know the estates officer for the Band, contact ISC by email at **ONestateservices-ONservicesdadmindeessuccessions@sac-isc.gc.ca** to ask for the contact information for the estates officer assigned to the Band.

Communication should always be in writing- keep a record!

Indigenous Service Canada (ISC) Procedures For Guardianship of Property of Indigenous Adults- Continued

How to End ISC Guardianship of Property

There are two ways an Indigenous adult can get control of their property away from ISC.

- 1 Get an official paper saying the adult is now capable of managing their property. ISC no longer has the right to manage an Indigenous adult's property if the Indigenous adult gets an official paper saying that the adult is now capable of managing their property. There are two ways to get such an official paper.

A

Arrange and pay for a **capacity assessor** to meet with the Indigenous adult. Any adult can arrange and pay for a capacity assessor to determine if an Indigenous adult is now capable of managing their property.

If the assessor writes a report after meeting with the Indigenous person that says the Indigenous adult is capable of managing their property, the adult can get back control of their property from ISC. If the assessor writes a report saying the Indigenous adult is not capable of managing their property, ISC stays in charge of their property.

Call the Ontario government **Office of the Public Guardian and Trustee for information about capacity assessors: 1-800-891-0504**. The capacity assessor must find a **translator** for their meeting with the Indigenous adult if the adult speaks other languages better than English.



B

If the ISC guardianship of property started because a psychiatrist filled out a form under Ontario's *Mental Health Act* saying the Indigenous adult was not capable of managing their property, the guardianship can be cancelled if a psychiatrist fills out a different form under the *Mental Health Act* saying the Indigenous adult is now capable of managing their property.

A guardianship started under the *Mental Health Act* can also be cancelled by hiring a capacity assessor as described above if the Indigenous adult does not have a psychiatrist who will fill out the form under the *Mental Health Act* saying the Indigenous adult is now capable of managing their property.



How to End ISC Guardianship of Property Continued



Someone asks ISC to make them the Indigenous adult's guardian of property

The Indigenous adult could get control of their property away from ISC by asking another adult to talk to ISC about making the other adult the Indigenous person's guardian of property instead of ISC being guardian of property. Any adult can ask ISC to let them take over from ISC with managing the property of an Indigenous adult not capable of managing their own property.

Someone starts the process of taking over managing an incapable Indigenous adult's property from ISC by filling out an application form and sending it to ISC. If the person is not sure how to fill out the form, they should contact the ISC estates officer assigned to the Indigenous adult's Band. If the Band does not know their estates officer, contact ISC by email at **ONestateservices-ONservicesdadmindsuccessions@sac-isc.gc.ca** to ask for the contact information for the estates officer assigned to the Band.

The application to take over managing an adult's property from ISC is at the end of this section. Contact ISC to confirm the application has not changed since this guide was written.

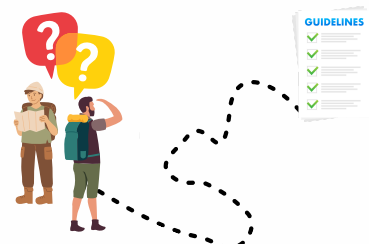
Some Challenges in Process & Advocacy

The *Indian Act* does not create service standards for ISC's guardianship of an Indigenous adult's property. ISC has a manual for providing property guardianship services that is not available to the public. Therefore, any service standards that ISC sets for itself in that manual are not available to the public.

In comparison, Ontario law says guardians and attorneys for property must fulfill certain duties, including keeping the adult whose property they are managing updated about activities with their property. It is reasonable for Indigenous adults to expect ISC to meet the standards of service available to people incapable of managing their property under Ontario law.

Therefore, Indigenous adults may ask ISC for updates about the management of their property. If ISC does not give this information to the indigenous adult, the adult could look for legal help to deal with ISC.

A letter template has been included in section 7 of this guide (the Resources section) that addresses these concerns to the Minister of Indigenous Services.



Check List for Regaining Property Management from ISC

When ISC is told that an Indigenous adult has regained capacity to manage their property, ISC no longer has the legal right to manage the person's property. However, ISC takes no action to end their involvement with the adult's property and gives the Indigenous person all of the responsibility for ending ISC's involvement.

If someone declares that an Indigenous adult under ISC property guardianship has regained capacity to manage their property under Ontario law, the Indigenous adult should immediately take the following actions to regain control of their property from ISC.

Give the paperwork saying they are now capable of managing their property to the following organizations:

- ☐ ISC
- ☐ Indigenous adult's Band office
- ☐ Indigenous adult's bank/credit union

Tell ISC to send them all of their money on deposit with ISC

The Indigenous person should send all of the organizations ISC has contacted about the Indigenous adult the paperwork saying that the Indigenous person is now capable of managing their own property.

Tell the organizations that all mail, bills, notices, and money for the Indigenous adult should be sent to the adult and not ISC from now on.

Ask ISC for the following information:

- ✱ All organizations from which ISC is getting mail or money for the Indigenous adult. Also request the contact information for those organizations.
- ✱ All organizations to which ISC is sending the Indigenous adult's money to pay bills and contact information for those organizations.
- ✱ Any bank/credit union accounts ISC has opened or closed for the Indigenous person.
- ✱ Any investments ISC has started, renewed, or ended for the Indigenous adult since the property guardianship began.
- ✱ Complete transaction record of ISC's activities with the Indigenous adult's property since the guardianship began.
- ✱ Copies of all letters ISC has sent about the Indigenous adult's property.

Form F-12

**SECTION 51 OF THE *INDIAN ACT*:
ADMINISTRATION OF A DEPENDENT ADULT'S
PROPERTY AND FINANCES**

Application Package for
Non-Departmental Administrators

Application Package for Non-Departmental Administrators

Why do I submit this Application?

Pursuant to section 51 of the *Indian Act*, the Minister of Indigenous Services Canada (ISC) (the “Minister”) has sole jurisdiction and authority over the property of dependent adults who are registered Indians and ordinarily resident on reserve. As a result, all persons who seek to be appointed as Administrator of the property of an adult must submit a formal application, which must be reviewed and approved by the Minister’s delegate before an Order appointing an Administrator of Property will be made.

This package, together with the [supporting documentation](#) you submit, provides the information that Indigenous Services Canada/Crown-Indigenous Relations and Northern Affairs Canada (ISC/CIRNAC) staff require to evaluate whether or not it is in the best interests of the adult concerned, to have you appointed as Administrator of their property. In some circumstances, Indigenous Services Canada/Crown-Indigenous Relations and Northern Affairs Canada (ISC/CIRNAC) will ask for clarification or additional information in order to complete its review of your Application.

Please note that any personal information you provide to Indigenous Services Canada/Crown-Indigenous Relations and Northern Affairs Canada (ISC/CIRNAC) is protected under the *Privacy Act* of Canada. Information you provide will be collected, used and disclosed in accordance with the *Privacy Act*.

Your application may be circulated to the adult’s next-of-kin and they may be given an opportunity to provide written comments on it prior to the Minister making a decision on your appointment as Administrator.

This Application Package is being provided for informational purposes only, is not to be construed as legal advice and is not intended to be a substitute for legal advice.

What is in this Package?

This package includes the Application form you need to complete in order to apply to be appointed the Administrator of Property for a dependent adult, along with instructions for completing the form.

The Application form consists of the following sections:

- Part A: Affidavit to be sworn by the Applicant(s);
- Part B: Applicant Information;
- Part C: Personal Summary about the Adult;
- Part D: Financial Summary;
- Part E: Proposed Annual Budget (Income and Expenses);
- Part F: Assets and Debts; and

Attachment List that describes the supporting documentation you must submit with the Application

Part A. Affidavit

After you have completed Parts B through F of the Application form, take the entire form to a local lawyer, Notary Public, or Commissioner of Oaths, and have the affidavit sworn or solemnly affirmed by **all Applicants** before sending the Application to our office. Co-applicants may swear or affirm their affidavits separately in the event that they cannot do so together.

Part B. Applicant Information

This section provides Indigenous Services Canada/Crown-Indigenous Relations and Northern Affairs Canada (ISC/CIRNAC) with information about you and your co-applicants, if any.

Part C. Personal Summary about the Adult

This section provides Indigenous Services Canada/Crown-Indigenous Relations and Northern Affairs Canada (ISC/CIRNAC) with information about the adult whose property you are applying to administer. Please complete all sections even if you have provided the department with this information previously.

Part D. Financial Summary

This section provides us with general information on the current financial status of the adult.

Part E. Proposed Annual Budget (Income and Expenses)

In this section, you set out your Proposed Annual Budget (Income and Expenses) for the adult.

Part F. Assets and Debts

In this section, you list the values of the adult's Assets and Debts as of the application date.

Common Questions regarding the Application

1. What documentation do I have to provide?

A list of the documents that you are required to submit with your Application form is on the [Attachment List](#) at the end of the Application form. Contact the local Indigenous Services Canada/Crown-Indigenous Relations and Northern Affairs Canada (ISC/CIRNAC) office if you have any questions or concerns (our contact information is below).

2. Where do I send my completed Application form?

Send your completed Application to: Sue Pilot, Senior Estates Officer
Indigenous Services Canada
101-100 Anemki Place
Fort William First Nation, ON
P7J 1A5

3. I have another question?!

If you have any questions about completing your Application form, please **contact Indigenous Services Canada/Crown-Indigenous Relations and Northern Affairs Canada (ISC/CIRNAC) regional Business Centre office** and ask to speak with **Tarandeep Sabharwal** -Manager – Estates, ON Region, RRBG, GIAGR
Indigenous Services Canada / Government of Canada
195 Henry Street, Unit 6A
Brantford, ON N3S 5C9

tarandeep.sabharwal@sac-isc.gc.ca
Cell: 519-717-4163

APPLICATION TO ADMINISTER THE PROPERTY
OF A DEPENDENT ADULT

PART A: AFFIDAVIT OF APPLICANT(s)

1. I/We solemnly affirm/swear (select solemn affirmation or swearing) that all of _____
_____ 's income and assets will be used for their benefit.
2. I, We will faithfully and completely fulfill the fiduciary duties as (co-)Administrator, including the duties to;
3. file*, and continue to make diligent efforts to file, a true inventory, and report all assets belonging to the client;
4. file timely and accurate reports and accounts, annually or upon request;
5. at all times, protect the interests of the client and to make all decisions based on the their best interest;
6. obey, all orders and rules, pertaining to the administration of the property belonging to **Emma Turtle**;
7. Keep the client's property separate from my personal property;
8. I/We agree to report as required on my/our administration, and to immediately report any significant changes in my/our circumstances and health or those of the adult for whom I/we am/are appointed Administrator(s), including change of residence;
9. I/We swear/make this solemn affirmation conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath;
10. I/We acknowledge it is a serious offence to be untruthful in this sworn/solemnly affirmed document;
11. I/We understand that Indigenous Services Canada/Crown-Indigenous Relations and Northern Affairs Canada (ISC/CIRNAC) may require further information and documentation at its discretion; and
12. The value of _____'s property is over \$6,000 and I/We have obtained a surety OR bond OR I/We agree to co-administer with a departmental administrator.

SWORN/SOLEMNL AFFIRMED BEFORE ME at

_____, Ontario, on

Signature

_____.

Name

A Commissioner for taking Affidavits.

(Second jurat for person seeking appointment as co-administrator, if applicable:)

SWORN/SOLEMNL AFFIRMED BEFORE ME at

_____, Ontario, on

Signature

_____.

Name

A Commissioner for taking Affidavits.

PART B: APPLICANT INFORMATION

The information collected in this Application form will be used by Indigenous Services Canada/Crown-Indigenous Relations and Northern Affairs Canada (ISC/CIRNAC) to determine the administration of property belonging to a dependent adult who is under the Minister of Indigenous Services Canada's (ISC) jurisdiction. The personal information in this Application form is not shared with other government departments. Individuals have the right to protection of and access to their personal information under the Privacy Act <http://lois.justice.gc.ca/en/P-21/index.html>.

Last Name: _____ First Name: _____

Date of Birth: _____ Telephone (day): _____
Day / Month / Year

Telephone (eve): _____

Email: _____ Cell Phone: _____

Street Address: _____

_____ City: _____ Province: _____

Postal Code: _____

Your relationship to the adult whose property you are applying to administer:

If there is more than one applicant, provide the co-applicant's information:

Last Name: _____ First Name: _____

Date of Birth: _____ Telephone (day): _____
Day / Month / Year

Telephone (eve): _____

Email: _____ Cell Phone: _____

Street Address: _____

City: _____ Province: _____ Postal Code: _____

Your relationship to the adult whose property you are applying to administer:

PART B: APPLICANT INFORMATION

The information collected in this Application form will be used by Indigenous Services Canada/Crown-Indigenous Relations and Northern Affairs Canada (ISC/CIRNAC) to determine the administration of property belonging to a dependent adult who is under the Minister of Indigenous Services Canada's (ISC) jurisdiction. The personal information in this Application form is not shared with other government departments. Individuals have the right to protection of and access to their personal information under the Privacy Act <http://lois.justice.gc.ca/en/P-21/index.html>.

Last Name: _____ First Name: _____

Date of Birth: _____ Telephone (day): _____
Day / Month / Year

Telephone (eve): _____

Email: _____ Cell Phone: _____

Street Address: _____

City: _____ Province: _____

Postal Code: _____

Your relationship to the adult whose property you are applying to administer:

If there is more than one applicant, provide the co-applicant's information:

Last Name: _____ First Name: _____

Date of Birth: _____ Telephone (day): _____
Day / Month / Year

Telephone (eve): _____

Email: _____ Cell Phone: _____

Street Address: _____

City: _____ Province: _____ Postal Code: _____

Your relationship to the adult whose property you are applying to administer:

PART C: PERSONAL SUMMARY FOR THE DEPENDENT ADULT

Last Name: _____ First Name: _____

Date of Birth: _____ Indian Registry No. _____
Day / Month / Year

Guardianship of Personal Care/Health Care

Has a Guardian of the Person been appointed? ☐ No ☐ Yes – please provide details below

Name of Guardian: _____ Telephone: _____

Address of Guardian: _____

Physical Residence:

(Name of Care Facility, if applicable): _____

Street Address: _____

City: _____ Province: _____ Postal Code: _____

Telephone: _____

If the adult does not reside in a care facility, please describe their living arrangements (for example, living independently, or living with family member(s) – identify the family member(s)):

--

Next of Kin Information:

Last Name: _____ First Name: _____

Relationship: _____ Telephone (day): _____

Telephone (eve): _____ Cell Phone: _____

Address: _____ City: _____ Province: _____

Postal Code: _____

Last Name: _____ First Name: _____

Relationship: _____ Telephone (day): _____

Telephone (eve): _____

Email: _____ Cell Phone: _____

Street Address: _____

City: _____ Province: _____ Postal Code: _____

(For additional Next of Kin, please attach a separate sheet)

Personal/ Health Issues:

1. Please provide a general description of the adult's current physical and mental health:

2. Does the adult require any special care or services?

☐ No

☐ Yes If yes, please give a brief description below:

3. Are you aware of any other information concerning the adult's personal/health issue that we should know about?

☐ No

☐ Yes If yes, please give a brief description below:

PART D: FINANCIAL SUMMARY

Financial Matters:

1. Have there been any court orders issued concerning the management of the adult's property or person?

☐ No

☐ Yes If yes, please attach a copy of the court order

2. Is the adult involved in any unresolved court cases?

☐ No

☐ Yes If yes, please provide details (include the court file number)

3. Does the adult have a Will?

☐ No

☐ Yes

4. Are you aware of any other financial information we should know about?

☐ No

☐ Yes If yes, please tell us:

PART E: PROPOSED ANNUAL BUDGET (INCOME AND EXPENSES)

Following is the anticipated annual income and expenses of _____ -
_____.

Name of Adult

INCOME

Source	Amount
Total Income:	

EXPENSES

Type of Expense	Amount
Housing <i>(Rent, property insurance, water/sewer/garbage, house repairs)</i>	
Utilities <i>(Heat and electricity, telephone, cable TV, internet connection)</i>	
Household Expenses <i>(Food, supplies, dining out, furniture/equipment)</i>	
Transportation <i>(Public transit, taxis, gas, car insurance, parking, repairs)</i>	
Health <i>(Insurance, medical and dental costs not covered by insurance)</i>	
Personal <i>(Clothing, hair, toiletries, education, entertainment, recreation)</i>	
Children <i>(Child care, clothing, hair care, school fees and supplies, entertainment, recreation, activities and lessons, gifts)</i>	
Debt payments <i>(specify):</i> _____	
Savings <i>(specify type of account, e.g. RESP, RDSP):</i> _____	
Other: _____	
Other: _____	
Other: _____	
Total Expenses:	

PART F: ASSETS AND DEBTS

The assets and debts of _____ as of the date of this
Application are as follows: *Name of Adult*

ASSETS

Type of Asset	Value
Real Estate <i>(land and buildings: on-reserve and off-reserve)</i>	
Vehicles <i>(cars, trucks, boats etc.)</i>	
Financial Assets <i>(bank accounts, term deposits, GIC's, mutual funds etc.)</i>	
Pensions	
Other: _____	
Other: _____	
Total Assets:	

DEBTS

Type of debt	Amount Due
Loans Payable	
Other: _____	
Other: _____	
Other: _____	
Other: _____	
Total Debt:	

ATTACHMENT LIST

General:

Income Tax Returns: Please provide Indigenous Services Canada/Crown-Indigenous Relations and Northern Affairs Canada (ISC/CIRNAC) with copies of the adult's most recent T1 Income Tax Return filed, and Notice of Assessment received, if available.

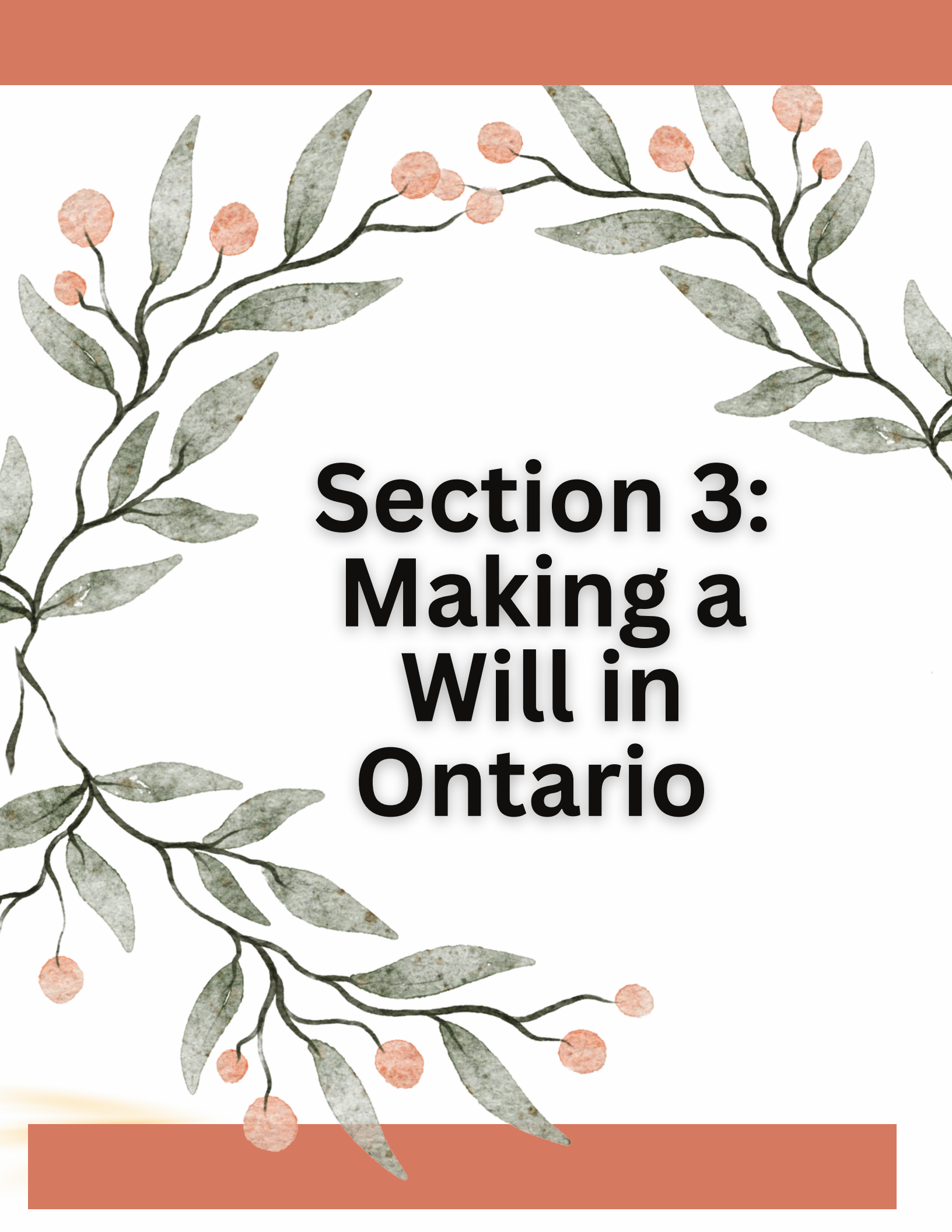
Income and Expenses:

If there is a written agreement or other documentation for any of the adult's major expenses (for example, a care facility contract; a rental agreement), please attach a copy. For the Proposed Annual Budget, the department is looking to see that the planned budget appears to be reasonable in light of the income available to the adult and the adult's needs (which would include the adult's reasonable contribution to the support of any of their children who are under the age of majority, or over the age of majority but disabled or pursuing post-secondary education and in need of parental support).

Assets and Debts:

The documentation required is as follows:

<u>Asset or Liability Type</u>	<u>Documentation Required</u> <u>(Copies, not originals)</u>
Real Estate	Description of the interest in reserve land and any buildings or other improvements to the land. If property is owned off-reserve, the most recent Property Assessment Authority notice.
Vehicles	The most recent insurance documents.
Financial Assets (<i>Bank accounts, Term Deposits, GIC's, Mutual Funds etc.</i>)	Bank or other statement(s) showing the account balances as near to the date of your Application as possible
Pensions	The most recent Pension statement.
Interest in a Trust	If the adult has an interest in a trust, please provide the trust documentation.
Loans and Credit Cards	Credit card statements or a copy of the loan agreement.
Mortgage of Real Estate Off-Reserve	The most recent statement of the mortgage amount owing.
Other Liabilities	Describe the liability and how it arose. If you have confirmation of the amount from independent sources, please send it to us.



Section 3: Making a Will in Ontario

Definitions



The law has definitions for various words that may be different than how we use these words in everyday language. Let's define some of these words related to Wills.

Will: Paper you sign to say what will happen with all of your money and items after you die.

Codicil: Paper you sign to make a minor change to your Will.

Testator: The person who signs a Will and codicil.

Estate: All of the property you have when you die.

Estate Trustee(s)/Executor(s): The person/people you name in your Will to carry out the wishes in your Will.

Administrator(s): Person/people named by Indigenous Services Canada (ISC) or a court to handle the estate of a First Nation member who dies without a Will and or executor.

Estate Administration: The process of wrapping up/settling someone's estate after death.

Intestate: When someone dies with no Will.

Beneficiaries: People or organizations named in Will to receive estate.

Bequest: What each beneficiary receives. There are two types of bequests. A **specific bequest** is giving a person a certain amount of money or a certain item in your will. A **residuary bequest** is giving someone a part of what is left in your estate after your debts and specific bequests are paid.

Heirs: People who get the estate of someone who died without a Will.

Ordinarily Resident on Reserve: A First Nations person who usually lives on a reserve. They may still be considered "ordinarily resident on reserve" if they are living off reserve because they need services that are not available on reserve, such as health care or education.

Overview of Wills in Ontario



What is a Will?

- Paper saying what you want done with your property when you die
- Does not take effect until you die
- Rules for Wills are determined by the *Succession Law Reform Act* (an Ontario law) except for Indigenous people ordinarily resident on reserve. The process and requirements for their wills are found in the *Indian Act*.

Parts of a Will that are the same in *Indian Act* and Ontario Law

1. Statement it is a Last Will and Testament: Say that you are writing this paper to tell people your wishes for your property after you die and that the paper is your last Will and testament

2. Revocation/Cancellation of Previous Wills: Even if you never have done a Will, you should say you are cancelling all previous Wills you did to make sure people know this paper is your one true Will

3. Name Beneficiaries and Bequests

- Will says people and or organizations who will get your property -- they are called beneficiaries and what you give them is called a bequest
- Can put conditions on beneficiary getting bequest – usually happens when a trust fund is created for a beneficiary. For example, Will says beneficiary does not get their trust fund until they are a certain age

4. Name Estate Trustee(s)/Executor(s): Your Will names the person(s) you want to carry out the wishes in the Will. They are called “Estate Trustee/Executor”

- Should say that you want the estate trustee(s)/executor(s) to collect your property and pay your debts and bequests
- If pick estate trustee/executor outside Ontario, they might have to get a surety bond (a type of insurance)
- If name only one estate trustee/executor, should name a back up in case person you picked can't or won't deal with your Will
- If name more than one estate trustee/executor, they must do everything together. You don't have the option to let them do things separately. If name more than one state trustee/executor, should say process to break ties between them, such as naming another person to break ties, so they do not have to go to court if they cannot agree on a decision/action

Overview of Wills in Ontario Continued



What is Needed for a Valid Will -- Ontario Law



- Must be in writing and dated
- Must be signed at the end by the testator (the person making the Will)
- Must be signed by two witnesses to the testator's signature
- Witnesses cannot be beneficiaries or spouses of beneficiaries
- Testator is at least 18 years old and of sound mind



NOTE: some people do not have to follow these rules

- people under age 18 can make a Will in some circumstances
- are special rules for Wills made by people in the military
- if signature is not at the end, does not invalidate whole Will



Holograph Wills (handwritten) are valid:

- whole Will must be in testator's handwriting -- cannot type any part of the Will
- must be signed by testator and should be dated
- must have all the parts of a Will listed on the previous page

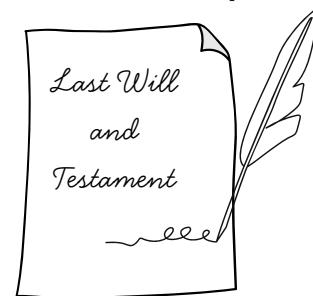


What is Needed for a Valid Will -- Indian Act

Rules for a valid Will are same under the *Indian Act* as Ontario law **except** witnesses are not needed for Wills under the *Indian Act*.

How to Make a Will

Do not need a lawyer unless you want witnessing of your signature to happen over video. You can buy Will kits to make your own Will. Steps to Justice website has a pathway for making a Will.



<https://stepstojustice.ca/guided-pathways/wills-and-powers-of-attorney-for-making-a-will/>

Storage of Will

Remember to tell executor where to find the Will

There is no central database for storing Wills. Keep original in a safe place (such as home safe or lawyer's office).

An original Will can be stored with the Ontario Superior Court of Justice if a fee is paid of on or about \$30.00. The executor can get the Will from the court when the testator dies if the executor takes proof of the death of the testator to the courthouse.

The only people who can get the Will from the courthouse while the testator is still alive is the testator and the testator's guardian or attorney for property.

Overview of Wills in Ontario

Continued



Choosing an Estate Trustee/ Executor

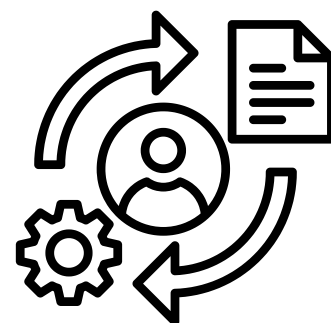
Estate Trustee/Executor is a very important job and should be chosen carefully. This is a hard job, and not a position of honour. The executor/estate trustee must do a lot of paperwork and handle forms and money. Their duties include: sell property, complete tax returns, and keep detailed financial records.

Considerations when picking an Executor/Estate Trustee:

- Someone who has the skill, integrity, and judgment for the role
- Don't choose person who would be in conflict of interest – such a choice can create distrust and arguments that harm families
 - Example: if you choose the child who lives with you as the executor they will have a conflict of interest dealing with your house
- Choosing one beneficiary as executor could harm family relationships if other beneficiaries are upset they were not chosen and do not agree with the way the executor is handling the estate
- There are advantages and disadvantages to naming more than one executor. Pros and cons of naming more than one attorney for property or personal care discussed in section 1 of this guide also apply to naming more than one executor
- Pick someone you trust to follow your wishes to be executor if you have certain ideas for your funeral because courts have said executors do not have to follow testator's wishes for their funeral
- Consider naming a professional to be executor who is not a beneficiary. Some trust companies and lawyers will be executors. Cost will not always be higher to have estate handled by a professional. All executors can get on or about 5% of the estate as payment for handling the estate

Updating a Will

Situations change in families over time as children and grandchildren grow up. A Will made 20 years ago might not make sense at the time of death. The Will should be reviewed regularly to make sure it still makes sense in the person's life situation now. A new Will should be done if it does not make sense with the person's life now. For example, a beneficiary might have died and should be changed.



Dealing with Personal Items in a Will

1

Say nothing

If you say nothing in your Will about dealing with your personal items, such as clothing and furniture, then your executor must work with the residuary beneficiaries of your estate to figure out what to do with your personal items. Your beneficiaries might fight about what should happen with your personal items and your executor must decide what to do with the items to end the arguments.

2

Give executor instructions for dealing with arguments

You could say nothing in your Will about what will happen with your personal items but tell your executor how to deal with disagreements about your personal items in the Will. For example, your Will could say that if two or more beneficiaries want the same item, the executor should flip a coin to decide who gets the item. Giving instructions to your executor for dealing with arguments about items can make the executor's job easier because beneficiaries will not get angry at the executor if the executor is just following your instructions.

3

Say who gets personal items in the Will

You can say in your Will who gets your personal items. For example, you could say all of your furniture goes to your oldest grandchild. However, writing this information in the Will can make your Will long and complicated.

4

Write a memorandum

You can write a list saying what you want to happen with your personal items when you die. Say in the Will that your personal items should be handled based on the attached memorandum and attach your list to the Will. Your executor must then follow the list. If you do not mention the list in the Will, then the executor does not have to follow the list.

5

Put labels on items with names of beneficiaries

You can say in the Will that you have put labels on your personal items saying who should get them when you die. However, there is a risk someone else could change your labels.

Looking After Children in a Will



People with custody/legal decision-making rights for a child's care can name a decision-maker for the **child's well-being** in their Will

- Decision-making **only lasts 90 days** -- decision-maker named in the Will must go to court to get decision-making rights past 90 days

Anyone may **leave money to a child** in their Will

- Children automatically get money left to them in the Will when they turn age 18 **unless** Will says something different
- If Will delays payment until children are older than age 18, children can still get money at age 18 unless Will names back up beneficiary if child dies before the age they are supposed to get the money
- **Money left to a child in a Will can be given to their parent** if amount is under \$35,000. If over \$35,000, someone must go to court to be named guardian of property for the child to handle their inheritance if the Will does not set up a trust fund to keep the child's money until they are adults. If a trust fund is set up for a child's money, the executor of the Will is usually the trustee of the child's trust fund and manages their money until they are old enough to inherit it under the Will and manage it themselves

Rules about managing money and making decisions for well-being of children in Wills **apply both ON and OFF reserve**

- ISC has no power to make decisions about well-being of children – that power can only be given to another person or to a child welfare organization under Ontario law
- ISC has the power under the *Indian Act* to take control of money left to a child with Indigenous status but does not have to take control of the child's money even if the child ordinarily lives on reserve. ISC can allow the child's parents or someone else to become guardians of the child's inheritance under Ontario law. ISC must only take control of managing money for someone not capable of managing their own money if the person is age 18 or older and ordinarily lives on a reserve. The *Indian Act* does not require ISC to manage the money of Indigenous children living on or off reserve.



Taxes When People Die

Someone who inherits money does not pay tax on the money, including money received from life insurance unless some of the cash value of the life insurance policy was given to the person who bought the policy before the policyholder died. However, there are **two types of taxes that must be paid by the estate** when someone dies before any money is given to the beneficiaries or heirs **if the person who died was not exempt from paying taxes due to Indigenous status.**

i) **Estate Administration Tax:** 1.5% over \$50,000.00

- charged when the executor asks for a certificate from the court saying they have legal authority to handle the instructions in the Will
- usually need to get this certificate if testator owned land or buildings, had a lot of money at a bank, or had investments, like stocks
- no estate administration tax is paid if a certificate is not needed from the court to handle the estate
- no estate administration tax is paid on estates worth less than \$50,000.00

ii) **Income Tax**

- assets are considered sold on the date the person died and income tax is payable by the estate on the capital gain (the increase in value of the assets between the date they were bought and the date the person died) – there might be exceptions to the capital gains tax that the estate can claim that lower the tax owed, such as the exception for capital gains on the house where a person lives, called the principal residence exemption
- income tax must be paid on the income the person earned for the calendar year up until the day they died and any tax they owe on income for years before their death that they did not file their income tax return – all income tax returns not done by the person who died must be filed after death
- income tax must also be paid on Registered Retirement Savings Plan (RRSP) money unless the person named their married or common law spouse as beneficiary of the RRSPs at the bank where the RRSPs are held

Taxes When People Die Continued



Estate administration tax, income tax, and any tax owing on life insurance because some of the cash value was withdrawn from the insurance when the policyholder was still alive are **paid by the estate**, not the beneficiaries or heirs. However, taxes paid by the estate lower the amount of money available to give to beneficiaries/heirs. These **taxes can be avoided by giving assets away outside of the estate**.

Examples: give things away while still alive, add people to ownership of your items, and name beneficiaries on life insurance policies, pensions, RRSPs, and other registered investments like Tax Free Savings Accounts.

There are **risks to adding people to ownership of your items** (called joint ownership)

- Joint owner can take control of the item while you are still alive
- If joint owner owes people money, the people they owe money can force you to sell your item to pay the joint owner's debt

Canada Pension Plan (CPP) Death Benefit

The CPP death benefit is \$2500.00 the government pays if the deceased person paid the amount of money to CPP during their life needed to qualify for the benefit. Up to an additional \$2500.00 are available if the deceased person died in January 2025 or later, never got any money from CPP, and has no married or common law spouse to get a CPP survivor pension.

The executor/estate trustee named in the will or the administrator named by the court or ISC to administer the estate applies for the CPP death benefit. If there is no executor/administrator, whoever paid/is paying for the funeral can apply for the benefit. If no one is applying for the benefit to cover funeral costs, a married or common law spouse of the deceased person may apply for the benefit. If there is no spouse or person who must be paid for the funeral, next of kin can apply for the benefit. Contact Service Canada at 1-800-277-9914 to find out how to apply for the CPP death benefit.

Whoever gets the CPP death benefit – the deceased person's estate or a living individual -- **must pay income tax** on the benefit.



Section 4: Inheritance OFF Reserve

What Happens If There Is No Will?



The rules below do **not** apply to Indigenous people ordinarily living on reserve. These rules only apply **off** reserve.

Dying without a Will is called dying intestate. Since there is no Will, there is no one named as executor of the person's estate. Someone can apply to court to manage the estate. This could be someone the person would not want handling their estate, including the PGT's office. There will be delays and more costs to wrap up the estate if the person died without a Will and someone must go to court to ask to handle the estate.

If someone dies without a Will, their property is given away according to a formula in law.

- Married spouse gets everything if no children (note: common law spouses get nothing)
- Married spouse gets \$350,000 if there are children (gets \$200,000 if spouse died before March 1, 2021) – spouse also gets some of the rest of the money depending on the number of children
- If no married spouse, property divided equally among children – share for deceased child goes to their children
- If no spouse or children, property goes to first person alive in this list: parents, siblings, nieces and nephews, next of kin – property divided equally at each level among the living, only passes to children of deceased for siblings
- If is no living relative, government gets the person's property

NOTE: If married spouses separated starting after January 1, 2022, the living spouse does not inherit any money. The following conditions must be met to be considered separated.

- Living separate and apart at time of death due to breakdown of marriage

PLUS one of:

- o Lived separate and apart due to marital breakdown for three years right before death **or**
- o Entered valid separation agreement under *Family Law Act* **or**
- o Court or arbitrator gave an Order related to breakdown of the marriage, such as spousal support Order

What To Do When an Indigenous Person Dies



The first step when an Indigenous person dies is to determine if ISC will take charge of the deceased person's estate. ISC might take charge of the estate depending on the details of the deceased person's situation even if they are living off reserve.

If there is a Will, the executor of the Will should contact ISC to ask if ISC is taking charge of the estate. If there is no Will, or if there is no executor named in the Will, then the deceased person's next of kin should contact ISC. ISC should be contacted by email to report the person's death and ask if ISC will be taking charge of the estate: aadnc.estates-successions.aandc@canada.ca.

Effect of Marriage, Separation, and Divorce on Dealing with an Estate – Living OFF Reserve



Dealing with the estate could be complicated depending on the deceased person's marital status. If a **married** spouse is not happy with what the spouse got in the Will, the spouse can ask for the amount of money from the estate the spouse would have gotten in a divorce instead of the money left to the spouse in the Will. The married spouse has six months after the death to decide which way they want to get money (from the Will or as if they divorced).

If a Will is written before spouses divorce or separate, and they divorce or separate after January 1, 2022 as discussed on the previous page, any bequest for the spouse in the Will is cancelled and the naming of the spouse as executor/estate trustee is also cancelled unless the Will says otherwise. This rule does not apply to naming a spouse as beneficiary on life insurance, pension, or registered investments. Spouse still gets money from life insurance, pension, or registered investments if they were named beneficiary before divorce or separation unless new beneficiary is named before testator dies.

Getting married does not affect a Will. The law does not make any automatic changes to a Will after someone gets married.

These rules do NOT apply to Indigenous people usually living on reserve.

Steps To Handle An Indigenous Person's Estate in Ontario When ISC Is Not Involved

IF ISC NOT IN CHARGE & THERE IS A WILL

The estate must be handled in accordance with Ontario law. The executor's next steps depend on the type and amount of the deceased person's assets. If the deceased person owned land or buildings, the executor must usually take proof of the death and the original Will to the Superior Court and ask the court to give the executor a paper called a Certificate of Appointment of Estate Trustee (CAET) or a Small Estate Certificate (SEC).

The executor can get a SEC if the total value of the estate is under \$150,000. There are certain forms that must be completed to get a CAET or a SEC. The forms to get a SEC are simpler than the forms to get a CAET. However, a CAET gives more powers than a SEC, so an executor might still prefer to get a CAET even if the estate is under \$150,000. Estate administration tax will have to be paid to get the SEC or CAET if the estate is worth more than \$50,000.

An executor might have to get a surety bond (a type of insurance) to receive a SEC or a CAET if the executor lives outside Ontario. The executor can ask the court to waive the demand for a bond. The SEC and CAET applications must be given to the Superior Court that serves the area where deceased person lived at time of death.

IF ISC NOT IN CHARGE & THERE IS NO WILL

The estate must be handled in accordance with Ontario law. Someone must apply to Superior Court for a CAET or SEC. The married or common law spouse of the deceased person is the court's first choice when naming someone to be administrator of the estate. If the deceased person's spouse does not want to be administrator, the court will name the deceased person's next of kin unless there is a situation leading the court to decide that someone else should handle the estate.

Only people who live in Ontario can apply for a SEC or CAET when there is no Will or there is a Will with no executor named. The applicant for the SEC or CAET will have to get a surety bond to get the SEC/CAET unless they can convince the court that they should not have to get a bond.

See Resource Page at the end of this book for more information about SECs & CAETs.

A watercolor illustration of a branch with green leaves and orange berries, positioned on the left side of the page. The branch starts from the bottom left and extends upwards and to the right. It has several elongated green leaves with visible veins and small orange berries. The background is white, and the text is centered on the right side.

Section 5: Inheritance ON Reserve

STEPS to Handle an Indigenous Person's Estate in Ontario Living On Reserve

Step 1: Determine if there is a Will

IF THERE IS A WILL



The executor/estate trustee must contact Indigenous Services Canada (ISC) and ask if ISC will take charge of the estate. The deceased person's Band office will hopefully know the ISC estates officer assigned to the deceased person's band and can give the executor the contact information for the estates officer. If not, the executor should contact ISC by email at aadnc.estates-successions.aandc@canada.ca. If there is a Will, but no executor is named in the Will, the beneficiaries in the Will should contact ISC.

IF THERE IS NO WILL



Someone must contact ISC to ask if ISC will take charge of the estate. Unless the deceased person's Band has named someone to contact ISC when members of the Band die, the deceased person's family will have to contact ISC. The deceased person's Band office will hopefully know the ISC estates officer assigned to the deceased person's Band and can give the family the contact information for the estates officer. If not, the family should contact ISC by email at:
aadnc.estates-successions.aandc@canada.ca.

Is ISC supposed to be in charge of the estate under the *Indian Act*?



If an Indigenous person dies who is ordinarily a resident of a reserve, ISC must approve the Will and the executor named in the Will. ISC must name someone to handle the estate if there is no Will or the Will does not name an executor.

Someone is ordinarily resident on reserve if they qualify for Indigenous status under the *Indian Act* and usually live on a reserve. An Indigenous person is still considered ordinarily resident on reserve if they are living off the reserve at the time of their death to get services they cannot get on the reserve, such as health and education.

ISC only has jurisdiction of Indigenous lands in Canada. They can not make decisions on Indigenous lands in the United States.



Steps To Handle An Indigenous Person's Estate in Ontario Living On Reserve Continued

IF ISC IS IN CHARGE OF THE ESTATE AND THERE IS A WILL



The estate must be handled in accordance with the *Indian Act*. ISC will give papers to the executor to apply to ISC for the Will to be approved and the executor to be named to handle the deceased person's estate. The death certificate and original Will must be given to ISC with this paperwork.

If the executor is appointed by ISC, the executor must give copies of the Will to everyone who would have the right to inherit the estate under the *Indian Act* if there were no Will. If someone disagrees with the naming of the executor or the validity of the Will, they can complain to ISC about the Will and or executor. ISC can say the Will is invalid and the executor is not suitable to be executor in response to complaints.

An executor must follow the rules and processes established by ISC for handling the estate, including advertising for creditors and seeking approval from ISC for any transfers of land on reserve discussed in the Will.

If there is a Will but there is no executor named in the Will, anyone can apply to ISC to be approved to handle the estate, including one of the beneficiaries.



IF ISC IS IN CHARGE OF THE ESTATE AND THERE IS NO WILL

The estate must be handled in accordance with the *Indian Act*. The deceased person's property must be given to the people listed in the *Indian Act*. Anyone can contact ISC and get papers to fill out to be named the administrator of the estate.

The applicant should include a nomination form signed by all heirs in support of the application. If ISC does not get nomination forms with the application, ISC will send all heirs a letter telling them about the application and asking if they agree with the application. ISC will approve the application if ISC does not have concerns about the application, and none of the heirs disagree with the application in writing within 30 days of getting ISC's letter.

Heirs may complain to ISC about the administrator's handling of the estate. ISC can cancel the administrator's authority if ISC determines that the administrator is not doing the administrator's job correctly. ISC will handle the estate if there is no one else available and willing to deal with the estate or considered suitable by ISC to deal with the estate.



What Happens If There Is No Will under the *Indian Act*?



If someone dies without a Will, **their property is given away according to a formula in the *Indian Act* if they were ordinarily resident on reserve when they died.**

The deceased person's property is inherited in the following way under the Indian Act **except for land and buildings**. There are special rules for inheriting land and buildings on reserve that will be discussed on the next page.

- Married or common law partner gets everything if no children
- Married or common law partner gets \$75,000 if there are children and also gets some of the rest of the property depending on the number of children
- **The formula of how the estate is divided if there is a married/common-law partner and there is only 1 child:** the first \$75,000.00 goes to the married/common-law partner plus $\frac{1}{2}$ of the remaining estate. The remaining $\frac{1}{2}$ of the estate goes to the living child.
- **The formula of how the estate is divided if there is a married/common-law partner and there are 2 or more children:** the first \$75,000.00 goes to the married/common-law partner plus $\frac{1}{3}$ of the remaining estate. The remaining $\frac{2}{3}$ of the estate is then divided equally among the living children.
- If there is no married or common law partner, the money is divided equally among the children – if a child has died, their children will inherit their share equally
- If there is no married or common law partner and no children, property is equally divided between deceased person's parents
- If deceased person's parents have both died, property is divided equally among the deceased person's siblings – if one of the deceased siblings has already died, their share is divided equally among the sibling's living children
- If there are no siblings, property goes to nieces and nephews equally
- If there are no nieces or nephews, money goes to closest next of kin equally

Inheriting Land and Buildings on Reserve

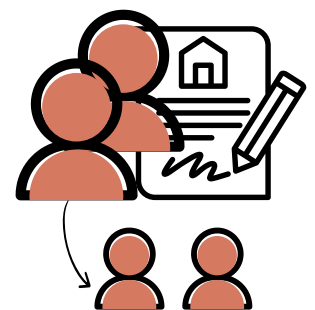


Only Band members can inherit land and buildings on reserve. Therefore, if someone wants to choose who gets their land and buildings in a Will, they must leave them to a member of the Band.

If the person who died left their land and buildings to someone in their Will who is not a member of the Band, that part of their Will won't be followed. Their land and buildings on reserve will be inherited according to the following formula in the *Indian Act* when someone dies without a Will.

- Married or common law partners of the deceased person have certain rights to land and buildings if they are Band members (see “matrimonial property law and inheritance” on pages 49-52)
- If there is no married or common law partner, then land and buildings go to the deceased person's children
- If there are no children, the land and buildings go to the deceased person's parents
- If the deceased person's parents have died, the land and buildings go to the deceased person's siblings
 - The most distant relative that can inherit land if there is no Will is a sibling
- If the deceased person has no siblings or closer living relatives, and they had no Will, their land goes to the Band
 - The land is divided equally among all heirs as a tenancy in common

Tenancy in Common: When one person dies whose name is on the land, their share of the land goes to their heirs, not to the other people who have their names on the land.

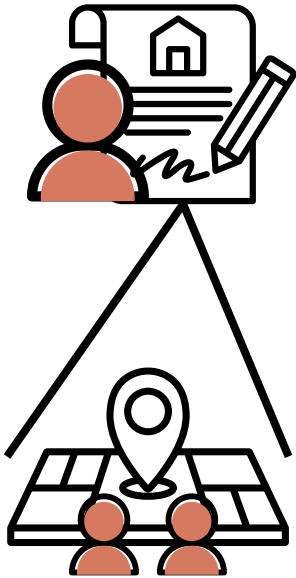


Joint Tenancy: Another option for having more than one person with their name on land is a joint tenancy. When one person dies in a joint tenancy, all the other people whose names are on the land will inherit that person's share of the land equally. The last person listed on the land who dies is able to pass the land on to their heirs.





Inheriting Land and Buildings on Reserve Continued



If a deceased person had land on reserve that they had jointly with other people, the other landholders will get the land upon the person's death. The land is not part of the deceased person's estate that is inherited under the Will or under the *Indian Act* formula if there is no Will

When more than one person has their name on a piece of land, what they share is a right to, and interest in, the whole plot of land, not a certain part of the land. If many people have their names on a piece of land, they all have rights to, and interests in, the whole land, not just a part of the land, unless the Band agrees to divide up the land into smaller pieces for each of them to have their own piece of the land.

If someone leaves a piece of land to many people in their Will, each person has a right to, or interest in, the whole piece of land. **A Will cannot be written to give people certain amounts or parts of a piece of land unless that change to the land is approved by the Band before the person dies.**



Inheriting Land off Reserve

If someone ordinarily resident on reserve owns land off-reserve when they die, that land would be handled the same as on-reserve land if the land is in a joint tenancy with other people: the other people named on the land as joint tenants inherit the land upon the death of the other landowner.

If the person owned land off-reserve in only their name or with other people as tenants in common, the land must be handled in accordance with the Will.

There are not restrictions on who can inherit land off-reserve in a Will.

If a person ordinarily resident on reserve owns land off-reserve in only their name or with other people as a tenant in common and had no Will, the land must be handled in accordance with the rules in Ontario law for inheriting property when there is no Will discussed in section 4 of this guide ("inheritance off reserve").

Matrimonial Property Law and Inheritance

Rights of a Living Spouse/Common Law Partner on Reserve

A **common-law partner** under the Indian Act is someone living with another person in a conjugal relationship for at least one year. Two people are living together in a conjugal relationship if they share social activities, services, financial support, and or children.

The sexual and or personal behaviour of the couple towards each other, and the way the community sees the couple, are also factors in determining if the relationship is conjugal. None of these factors alone determine whether a relationship is conjugal. All factors must be considered based on the couple's specific situation.

Married spouses and common law partners have **three options** for determining their inheritance upon the death of their spouse/partner who is ordinarily resident on reserve.



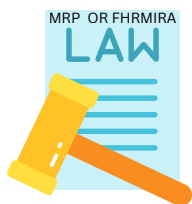
1. Inherit under the Will

If the living spouse/partner is given items or money in the Will, then accepting what is given to them in the Will could be the best option for the living spouse/partner.



2. Inherit under an intestacy

If the spouse/partner who died had no Will, the living spouse/partner could accept the part of the estate they are entitled to under the *Indian Act* when someone dies without a Will and has a living spouse/partner. Depending on the size of the estate, the spouse/partner could inherit the whole estate or most of the estate.



3. Inherit under family law

First Nations in Canada have the right to pass laws for the First Nation determining what happens when married spouses/common law partners break up or one of them dies. If the deceased person's First Nation has not passed its own law dealing with these issues, then the rights of the living spouse/partner upon the death of their spouse/partner are determined by the *Family Homes on Reserves and Matrimonial Interests or Rights Act* (FHRMIRA) passed by the Canadian government.



Matrimonial Property Law and Inheritance Continued



Rights of a Living Spouse/Common Law Partner on Reserve Continued

Under the FHRMIRA, a living spouse/common law partner usually has a right to 1/2 of the value on the day before the death of the home where the couple lived. This **right to half the value of the couple's home** is for living spouses/partners who are members of the deceased person's Band **and** living spouses/partners who are not members of the deceased person's band.

The living spouse/common law partner **is also usually allowed to have** the following **IF they are a member of the deceased person's Band** (the "structures" mentioned below do not include the home where the couple lived):

- **half of the value** on the day before the death of rights or interests the deceased person got to land and structures on reserve **during** the marriage/common law relationship;
- **half of the value** on the day before the death of rights or interests the deceased person got to land and structures on reserve **before** the marriage/common law relationship began that the deceased person got **because** the deceased person knew the marriage/relationship was going to begin;
- **money still owed** the day before the death **for a loan the living spouse/partner** got **during** the marriage/relationship to improve land and structures that the deceased person had on reserve before the marriage/relationship started that did **not increase in value** during the marriage/relationship; and,
- **Whichever is more money of these two situations:**
 - i) **half of the increase in value** between the date the marriage/common law relationship started and the day before the death of rights or interests the deceased person had to land and structures on reserve before the marriage/common law relationship began
 - or**
 - ii) **money still owed** the day before the death for a loan the living spouse/partner got during the marriage/relationship to improve land and structures that the deceased person had on reserve before the marriage/relationship started that **increased in value** during the marriage/relationship.

A living spouse/partner who is **not a member of the deceased person's Band** has all of the rights in this list about **structures on reserve**. A living spouse/partner has **only one right related to land on reserve** if the living spouse/partner is not a member of the deceased person's Band: the living spouse/partner can have the money the living spouse/partner still owes on the day before the death for a loan the living spouse/partner got during the marriage/relationship to improve the deceased person's land.



Matrimonial Property Law and Inheritance Continued



Rights to Live in the Couple's Home

The living spouse/partner may stay living in the couple's home for up to 180 days after the other spouse/partner died if the living spouse/partner does not have a legal right to have the couple's home.

This right to live in the home for **180 days** after the spouse/partner's death **is the same** for living spouses/partners **who are members** of the deceased person's band and for living spouses/partners who are **not members** of the deceased person's band.

For example, if the deceased spouse/partner gave the home where the couple lived, and the land on which the home is located on reserve, to the couple's children in their Will, the living spouse/partner may stay living in the home for 180 days after their spouse/partner's death.

The living spouse/partner might be able to negotiate with the children that they can stay longer than 180 days but the spouse/partner has no right to stay after 180 days.

This example **is the same** if the living spouse/partner **is** a member of the deceased person's band and if the living spouse/partner **is not** a member of the deceased person's band.

How to Handle Estate When There is a Living Spouse/Partner

If the deceased person had a spouse/partner at the time of their death, the executor/administrator cannot make payments to heirs/beneficiaries **until** one of the following things happens:

1. The living spouse/partner agrees **in writing** to the executor/administrator's plans for handling their rights to the estate. Courts will say the agreement made must be followed if the living spouse/partner freely made the agreement, was informed of their rights when they made the agreement, and the agreement does not exploit the living spouse/partner.
2. The **date has passed for the living spouse/partner to go to court** about their rights to the estate and they have not given papers to the court to ask the court to help them with the estate. The living spouse/partner has 10 months after their spouse/partner's death to ask the court for help unless they ask the court for more time to give the court papers and the court gives them more time.
3. The living spouse/partner asked the court to help with their rights to the estate and the **court made a final decision** about their rights.

Although the whole estate cannot be given out until one of these three situations happens, the executor/administrator can give some money to people who relied on the deceased person financially if they need money to pay their bills, such as young children, adult children with disabilities, and the living spouse/partner.

How to Handle Estate When There is a Living Spouse/Partner Continued



If the living spouse/partner is a member of the deceased person's Band, their rights to the value in the deceased person's rights and interests to land and structures on reserve can be addressed by giving them a share of the deceased person's rights and interests.

If the living spouse/partner is not a member of the deceased person's Band, their rights to the value in the deceased person's rights or interests to structures on reserve can only be addressed through money paid in a lump sum or in a payment plan over time.

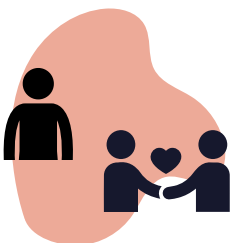
Rights of Separated Spouse/Partner After Death



If the living spouse/partner and the deceased person were in the **middle of a court case** about the end of their marriage/relationship when one spouse/partner died, the executor/administrator of the deceased person's estate can continue the court case on the deceased person's behalf.



Spouses/partners who have separated due to breakdown of their marriage/relationship before one spouse died, **might be entitled to some money** from the estate if they are **left nothing in the Will** depending on the situation. Someone who is legally married to, but separated from, a person ordinarily resident on reserve when that person dies should **talk to a lawyer** about their possible rights to the deceased person's estate.



Someone who ended a common law relationship with the deceased person **less than three years before the death should also talk to a lawyer** about their possible rights to the estate. If the deceased person was separated from their spouse but not yet divorced, and had a common law partner, **both the spouse and the partner could have rights to the deceased person's estate**. If so, the common law partner gets paid before the spouse.

Dealing with the Deceased Person's Creditors



Executors/administrators must post an advertisement asking for information from creditors: people and organizations who are owed money by the deceased person.

The advertisement must request delivery of information about the deceased person's debts to the executor/administrator by **mail or in person**. The advertisement for creditors **must be posted** in the following places:

- 
- The deceased person's Band office
 - The post office for the deceased person's Band
 - All meeting places or public places where notices are usually posted for, or given to, the deceased person's Band

The advertisement must give creditors a deadline to give the executor/administrator notice of a debt **eight weeks** after the advertisement is first posted. Creditors must give the executor/administrator proof that the deceased person owed the creditors money.

Proof must be given to the executor/administrator within **fifteen days** after the creditor gives the executor/administrator notice of the debt.

The rules for dealing with creditors are not this strict under Ontario law. Executors/administrators handling an estate under Ontario law rather than under the *Indian Act* are permitted to advertise for creditors only online, using websites such as NoticeConnect and Estateably. There are not specific ways the creditors must give information to the executor/administrator and there are not specific time periods required for dealing with creditors.

The usual practice for Ontario estates is to advertise for creditors for thirty days and to give them more time to provide proof of their debt as long as they provide a notice of debt during the thirty days the debt advertisement is active.

Template Notice to Creditors



NOTICE TO CREDITORS AND OTHERS IN THE Estate Of *[insert name of person who died]* late of *[insert place where the deceased person lived]*,
Ontario, Canada

All claims against the estate of *[insert name of person who died]*, late of *[insert place where the deceased person lived]*, Ontario, Canada, who died on or about *[insert date of death]*, must be filed with the undersigned in person or by mail not later than *[insert date eight weeks after the date this notice is posted]*.

Thereafter, the undersigned will distribute the assets of the estate having regard only to the claims then filed.

DATED *[date this notice posted]*

[insert name of executor/administrator], executor/administrator of the estate
of *[insert name of person who died]*
[address of executor/administrator]
[phone number of executor/administrator]
[email of executor/administrator]

(If a lawyer is assisting the executor/administrator, then the name of the lawyer assisting with the estate and the lawyer's contact information would be given after the name of the executor/administrator as shown below instead of the executor/administrator's contact information as shown above.)

[insert name of executor/administrator], executor/administrator of the estate
of *[insert name of person who died]*

By his solicitors *[insert name of lawyer and or law firm]*
[address of lawyer/law firm]

Attention: *[insert name of person at the lawyer's/law firm's office who will get the information about the debts against the person who died]*
[phone number of person receiving debt information at lawyer's/law firm's office]

[email of person receiving debt information at lawyer's/law firm's office]



Indigenous Services Forms

There are a few forms that might have to be completed and given to ISC depending on the situation

These forms are:

- **Application for Approval of a Will:** To be used when there is a Will naming an executor.
- **Application for Administration with Will Annexed:** To be used where there is a Will but no executor or the named executor is unable or unwilling to act as executor.
- **Application for Administration:** To be used when there is no Will.
- **Renunciation by Executor/Administrator:** To be used by an executor named in a Will who does not wish to be appointed as executor **or** to be used by an executor, administrator or administrator with Will annexed who had been appointed by the Indigenous Services Minister but does not want to continue in that role.
- **Common-Law Partner Statutory Declaration 1:** To be used by the person claiming to be common-law partner of the deceased person.
- **Common-Law Partner Statutory Declaration 2:** To be used by a witness to the common law relationship with the deceased.

See next page for more instructions on Common-Law Partner forms and the Application for Administration and Application for Administration with Will Annexed

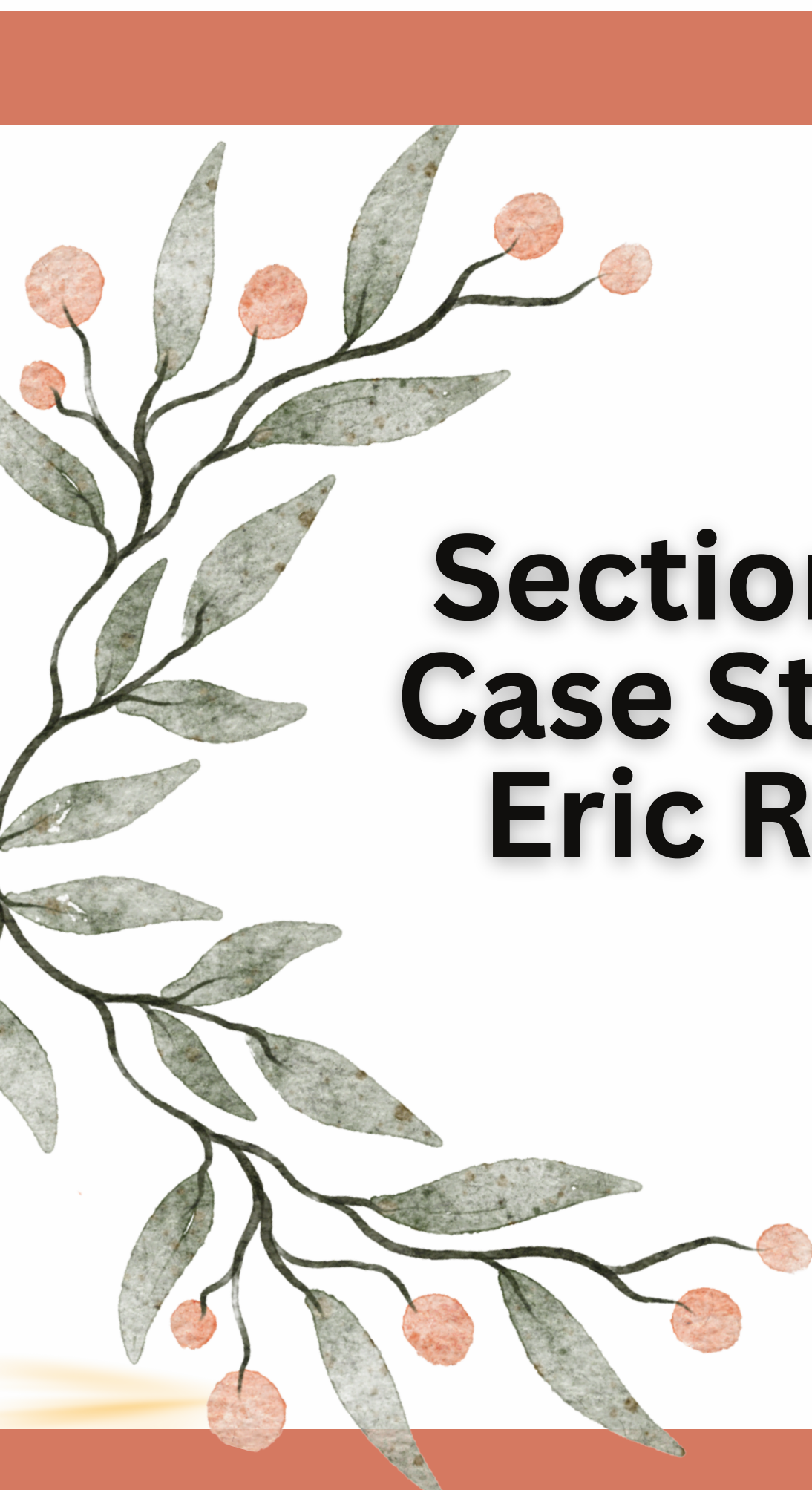
Tip for All Forms: Use full legal name for all details requiring a name.

Indigenous Services Forms Continued

Common-law relationship form for third party to attest to common-law relationship – This form is to be completed in case the common law relationship is challenged by potential heirs. ISC requires three copies of form:
2 from family members of the deceased
1 from a person of authority (Chief of the First Nation, Clergy, etc.)

Application for Estate Administration and Application for Administration with Will Annexed – Might also need Nomination Form

- How the Administration Application is completed, and if the Nomination Form is needed, depends on the number of heirs
- **If there are only two legal heirs**, and one is applying to administer the estate, the other heir can fill out section 3 of the Administration Application. Nomination Form is not needed. The heir applying to administer the estate completes sections 1, 2, and 5 of the Administration Application
- **If there are more than 2 heirs to the estate**, and one is applying to administer the estate, then the other heirs should fill out the Nomination Form, not section 3 of the Administration Application. Sections 1, 2 and 5 of the Application for Administration must be filled out by the applicant's heir who is willing to administer the estate
- **If there is only one legal heir** and they don't want to administer the estate, heir should complete section 3 of the Administration Application and the person applying to administer the estate would complete sections 1, 4 and 5 of the Administration Application
- **If there is more than one heir who wants to administer the estate**, each heir must fill out a separate Administration Application completing sections 1, 2, and 5 even if they are willing to administer the estate together. If there is only one other heir, that heir should complete part 3 on all Administration Applications for people they want to administer the estate. If there is more than one other heir, other heirs should fill out the Nomination Form for each heir they want to administer the estate instead of part 3 on Administration Application

A watercolor illustration of a branch with green leaves and red berries, positioned on the left side of the page. The branch starts from the bottom left and curves upwards and to the right. It has several elongated, pointed green leaves with visible veins. Interspersed among the leaves are several round, red berries. The style is soft and artistic, with a slight glow around the text.

Section 6: Case Study Eric Red



Case Study: Details for Eric Red

Eric Red, was a 50 year old, status First Nation man living on the reserve. He had three sons; Joshua White (age 30), Ryan Red (age 20) and Levi Red (age 17). Eric had two siblings: Ken Red and Rita Blue. He was close with both siblings and they were active in his life and his children's lives.

Eric was known to enjoy the outdoors. He had a few prized possessions: an ATV, camper trailer, 16 foot fishing boat and a small collection of 4 hunting riffles.

Eric worked as a teacher at the local school board for most of his career and had made his way into an administrative role in the school board earning a salary of \$93,000 a year. He was known to be fairly responsible with his money and had on or about \$15,000 of debt and had plans to retire in the next 5 years.

Joslyn White was Eric's college girlfriend. Eric and Joslyn lived together briefly but parted ways amicably when their son, Joshua, was 2 years old. They have remained good friends.

Eric was legally married to Ryan and Levi's mother, Samantha Black. They legally divorced 10 years ago.

Eric is the only person named on his certificate of possession (CP) for his property on reserve. Sales of homes/CP on his reserve average \$150,000.

Eric had been living with his long time girlfriend, Angelique Green in his home for the last 7 years. Angelique is status First Nation to the same reserve that Eric is from. They had no children together and were never legally married.

Angelique and Joshua have somewhat of a strained relationship and don't always agree on things. But, they have always been cordial to each other for Eric's sake.

Eric had a Will drawn up March 15, 2016 in which he named all of his sons as beneficiaries of his estate and his older brother Ken Red as his executor.

Eric also had POAs for property and personal care that named both Angelique and Joshua as attorneys to act jointly.

Eric was in a car accident on March 1, 2025. The accident left him in a coma for several months. Eric died from his injuries on May 12, 2025.

Eric Red's Power of Attorney for Personal Care

POWER OF ATTORNEY FOR PERSONAL CARE

THIS POWER OF ATTORNEY FOR PERSONAL CARE is given by Eric Red of Colourful Lake First Nation Reserve No. 35 in the Province of Ontario.

APPOINTMENT

1. I, Eric Red, revoke any previous power of attorney for personal care made by me and I APPOINT my common law spouse, Angelique Green, and my son, Joshua White, to be my attorneys for personal care jointly in accordance with the *Substitute Decisions Act, 1992*.

SUBSTITUTION

2. None.
3. I give my attorneys the AUTHORITY to make any personal care decision for me that I am mentally incapable of making for myself, including the giving or refusing of consent to any matter to which the *Heath Care Consent Act, 1996*, applies, subject to the *Substitute Decisions Act, 1992*, and any instructions, conditions or restrictions contained in this form. It is my expectation that my attorneys will exercise these powers for my benefit to maximize my personal comfort and well-being.

4. Conditions and Restrictions: None.

5. Instructions: None.

Executed at Colourful Lake First Nation Reserve No. 35 in the Province of Ontario this 12th day of June, 2020, in the presence of two (2) witnesses, both present at the same time.

Eric Red
Signature

June 12, 2020
Date

30 Owl Point Rd Colourful Lake FN Ont N0H 5T2
Address

Make this statement even if you have never done a POA previously. This will ensure no one can claim a POA without your knowledge.

Making no substitutions: means if the people named do not want to act, there is no back up.

Making no conditions or restrictions means the person named in the POA can make all decisions about your personal care. The powers of an attorney for personal care are outlined on pages 6-8 and 12-14.

Making no instructions: means you have given no instruction for your care, such as when to remove life support, where to receive care etc.

Eric Red's Power of Attorney for Personal Care

Witness 1:

J Pascal
Signature

June 12, 2020
Date

Joss Pascal
Name (please print)

943 3rd Ave West Owen Sound ON
Address

Witness 2:

Angela Benson
Signature

June 12, 2020
Date

Angela Benson
Name (please print)

943 3rd Ave West Owen Sound ON
Address

*There must always be two
witnesses to the grantor
signing the power of
attorney.*



Eric Red's Power of Attorney for Property

CONTINUING POWER OF ATTORNEY FOR PROPERTY

THIS CONTINUING POWER OF ATTORNEY FOR PROPERTY is given by Eric Red of Colourful Lake First Nation Reserve No. 35 in the Province of Ontario.

APPOINTMENT

1. I, Eric Red, revoke any previous power of attorney for property made by me and I APPOINT my common law spouse, Angelique Green, and my son, Joshua White, to be my attorneys for property jointly. I authorize my attorneys to do, on my behalf, any and all acts which I could do if capable, subject to any conditions and restrictions contained herein.

SUBSTITUTION

2. None.
3. Should any of the above-named attorneys not be residing in the Province of Ontario, it is not necessary for any of them to post a bond or any other type of security because I trust each of them completely. To post a bond or any other type of security would be an unnecessary expense.
4. I AUTHORIZE my attorneys for property to do on my behalf anything in respect of property that I could do if capable of managing property, except make a Will, subject to the law and to any condition or restrictions contained in this document. This includes full power and authority to manage, administer, sell, transact, delete, gift, and otherwise give directions for, any and all digital or electronic property, assets, or information contained in electronic form that belongs to me, over which I have access privileges, or which contain information about me, including but not limited to passwords, account information, social media webpages, internet domain name registrations, electronic accounts, emails and any other digital property or information that may be stored on servers that do not belong to me but that relate to me whether directly or indirectly.

Make this statement even if you have never done a POA previously. This will ensure no one can claim a POA without your knowledge.

Making no substitutions means if the people named in the POA do not want to act, there is no back up.

When an acting POA lives outside Ontario, banks might require the POA to post a bond (a form of security) to act as your attorney.

This outlines what you are allowing the person named in the POA to do with your property.

Eric Red's Power of Attorney for Property

5. I confirm that my attorneys may exercise the powers outlined above even if I am mentally incapable. It is my expectation that my attorneys will exercise these powers for my benefit to maximize my comfort and well-being and my financial solvency.
6. I declare that, after due consideration, I am satisfied that the authority conferred on the attorneys named in this power of attorney is adequate to provide for the competent and effectual management of all my property should I become a patient in a psychiatric facility and/or be certified as not competent to manage my property under the *Mental Health Act*, R.S.O. 1990. I therefore direct that in the event of the aforementioned, the attorneys named in this power of attorney may retain this power of attorney for the management of my property, and that the Public Guardian and Trustee shall not become the statutory guardian of my property as would otherwise be the case under the *Substitute Decisions Act*, S.O. 1992.
7. It is my intention and I so authorize my attorneys that this authority shall be exercised during any incapacity on my part to manage my property, pursuant to section 7(1)(b) of the *Substitute Decisions Act*, 1992.
8. Conditions and Restrictions: None

Effective Date

9. This continuing power of attorney for property comes into effect in the event that I am incapable of managing my property.

Compensation

10. My attorneys are authorized to take annual compensation from my property in accordance with the fee scale prescribed by regulation for the compensation of an attorney for property pursuant to Section 90 of the *Substitute Decisions Act*, 1992.

This sets out the expectation the attorney you named will act in your best interests.

This is your statement that the POA paperwork matches the legal frameworks for substitute decision-makers in Ontario.

POAs for property start right away unless you say it does not and say when and why it will start.

This POA starts only if Eric is not capable of managing his own property.

The law says that a person named in a POA for Property gets paid to be your attorney. You can change this by saying in your POA the person will not get paid.

Eric Red's Power of Attorney for Property

Executed at First Nation Reserve 4445 Grover Point No. 35 in the Province of Ontario this 12th day of June 2020 in the presence of two (2) witnesses, both present at the same time.

Eric Red June 12, 2020
Signature Date

30 Owl Point Rd Colourful Lake FN Ont N0H 5T2
Address

Witness 1:

J Pascal June 12, 2020
Signature Date

Joss Pascal 943 3rd Ave West Owen Sound ON
Name (please print) Address

Witness 2:

Angela Benson June 12, 2020
Signature Date

Angela Benson 943 3rd Ave West Owen Sound ON
Name (please print) Address

There must always be two witnesses to the grantor signing the power of attorney.



Eric Red's Will

LAST WILL AND TESTAMENT OF ERIC RED

THIS IS THE LAST WILL AND TESTAMENT of me, Eric Red, of Colourful Lake First Nation Reserve No. 35, in the Province of Ontario.

This cancels any Wills made before, even if you can't find past Wills.

1. I CANCEL all former Wills made by me.
2. I NAME my brother, Ken Red, the Executor and Trustee of this my Will.
3. I DECLARE that the words "my Trustee" henceforth shall refer to my Executor and Trustee.
4. I GIVE all of my property of every kind to my Trustee in trust as follows:

- (a) My Trustee shall have the power to sell, call in and change to money any part of my estate not consisting of money as required, or to postpone such changes for as long as he thinks best. My Trustee may keep any part of my estate in the form it may be in at my death (even if it is not in the form of an investment in which Trustees may invest trust funds, and even if there is a liability attached to any such part of my estate) for as long as my Trustee thinks best, and my Trustee shall not be held responsible for any loss that may happen to my estate as a result.

These words give the executor/estate trustee the power to handle all of the testator's money and other assets when the testator dies. The words in paragraphs (b) and (c) on the next page are also needed to give the executor/estate trustee power to handle the testator's money and assets.

Page 1 of 5

AB JP ER

Eric Red's Will

- (b) To pay out of my estate my legal debts, funeral expenses, and all estate inheritance fees and taxes, or any fees and taxes in connection with any life insurance I may hold, or in connection with any gift that I gave during my lifetime, or by survivorship, or by my Will. My Trustee may pay these fees or taxes at my death or any time afterward. My Trustee may prepay these fees or taxes. This direction does not apply to any fees or taxes that may be payable by a buyer of property sold to that buyer after my death.
- (c) To have full power and authority to manage, administer, sell, transact, delete, gift, and otherwise give directions for, all digital or electronic property, assets, or information contained in electronic form that belongs to me, over which I have access privileges, or which contain information about me, including but not limited to passwords, account information, social media webpages, internet domain name registrations, electronic accounts, emails and any other digital property or information stored on servers that do not belong to me but relate to me directly or indirectly.
- (d) To divide the rest of my estate into three equal shares and give one share to each of my sons, Joshua White, Ryan Red, and Levi Red. If any of Joshua White, Ryan Red, and Levi Red dies before

*Joshua, Ryan, and Levi
are all residuary
beneficiaries. They get
whatever is left after
Eric's debts and bills are
paid.*

Page 2 of 5

AB

JP

ER

Eric Red's Will

the thirtieth (30th) day after my death, then their share shall be distributed in equal shares to their children. If any of Joshua White, Ryan Red, and Levi Red die before the thirtieth (30th) day after my death and has no children, their share of my estate shall be divided equally among the survivors of them.

- (e) If any child under age eighteen (18) inherits a portion of my estate, then I direct my Trustee to hold the child's portion of my estate in trust until each child becomes entitled to all the capital of his or her share of the rest of my estate, to pay to or to apply for his or her benefit the whole or such part of the net income from his or her share of the rest of my estate left in trust, and the part of the capital of my estate, as my Trustee thinks best. If in any year any part of this net income is not paid to or applied for the benefit of the child, this part shall be added to the capital of each child's share of my estate, as long as that after the end of the maximum period allowed by law for the accumulation of income, if my Trustee is then holding the rest of my estate or any part of it in trust, my Trustee shall then pay to or apply for the benefit of each child the whole of the net income taken from his or her share of the rest of my estate. When each child reaches the age of

This can be any amount of days after your death. If a beneficiary dies before the set amount of time, their share of the inheritance will be divided equally among the surviving beneficiaries.

These words mean that the beneficiary cannot have the inheritance until they turn age 18. The words saying the capital and interest can be used for the child's benefit mean that the executor/estate trustee can take money out of the inheritance and any interest earned on the inheritance to pay for things the executor/estate trustee thinks the child needs before they turn age 18 and can spend their inheritance themselves.

Page 3 of 5

AB JP ER

Eric Red's Will

eighteen (18) years, then each child's share or the remaining part shall be paid to them as set out above.

(f) I want to be cremated and have my ashes scattered in Lake Erie.

4. I DECLARE that my Trustee may make any investments my Trustee thinks best, and my Trustee shall not be responsible for any loss that may happen to my estate in connection with any investment my Trustee makes in good faith.

5. ANY benefit, either income or capital or both, shall not become part of any community of property between any of my beneficiaries and their spouses, and shall not form part of my beneficiaries' net family property for any purpose of the *Family Law Act* in the Province of Ontario, any changes to that Act, or any successor Act.

6. Pronouns: In this Will, words importing the singular include the plural and vice versa, and words importing gender include all genders and gender identities. Without limiting the generality of the foregoing, pronouns "they",

It can take months or sometimes years for an estate to be settled. This wording allows your executor/trustee to invest your estate during this time. These words also protect the executor/trustee them if the investments do not do well or money is lost because of the investment.

This section protects the inheritance your beneficiaries get from going to their spouse under Ontario law if their marriage ends. Such wording is not needed for estates inherited under the Indian Act because the Indian Act says money inherited does not go to the spouse if a marriage or common law relationship ends.

This wording means inheritance is not affected if someone changes the pronouns they use after the Will is written.

Page 4 of 5

AB JP ER

Eric Red's Will

"them", and "their" may be used as both singular and plural pronouns, as the context requires, notwithstanding that a plural verb form is used.

This is my Last Will and Testament, written on this and on four (4) other pages of paper, which I have signed on March 15, 2016.

SIGNED by the Testator, as his Last Will and Testament, in front of both of us at the same time, and signed by both of us as witnesses at the same time, in front of him and in front of each other, at his request.)

) *Eric Red*
ERIC RED

<u><i>Joss Pascal</i></u>	<u>943 3rd Ave West Owen Sound ON</u>	<u>Community Legal Worker</u>
WITNESS	ADDRESS	OCCUPATION

<u><i>Angela Benson</i></u>	<u>943 3rd Ave West Owen Sound ON</u>	<u>Lawyer</u>
WITNESS	ADDRESS	OCCUPATION

 This Will is signed by two witnesses so the Will meets the requirements of Ontario law. Witnesses are not needed for a Will to be valid under the Indian Act. It is best to have two witnesses so the Will is valid under Ontario law even if the testator ordinarily lives on reserve when the Will is done in case the testator moves off reserve after the Will is made.

Filling Out Indigenous Services Forms

Eric had a Will and it named an executor. This is the form you would use to have Indigenous Services approve the Will with an executor.

 Government of Canada / Gouvernement du Canada

PROTECTED B (when completed)
Page 1 of 2

APPLICATION FOR APPROVAL OF WILL

(To be used where there is a will naming an executor)

Privacy statement
The collection, use and disclosure of personal information by the Indigenous Services Canada/Crown-Indigenous Relations and Northern Affairs Canada Estates program is authorized under the [Indian Act](http://laws-lois.justice.gc.ca/eng/acts/I-5/FullText.html) (http://laws-lois.justice.gc.ca/eng/acts/I-5/FullText.html), and is in accordance with the requirements of the [Privacy Act](https://laws-lois.justice.gc.ca/eng/acts/P-21/index.html) (https://laws-lois.justice.gc.ca/eng/acts/P-21/index.html). Information collected will be used exclusively to approve a will pursuant to section 43 of the *Indian Act*. Your application cannot be considered without your personal information. Personal information will be retained pursuant to the *Privacy Act* and its *Regulations*. The collection of information is described in the Personal Information Bank PPU 105 located in the departmental Info Source publication online at <https://www.sac-isc.gc.ca/eng/1353081939455> or <https://www.caanc-cimac.gc.ca/eng/1353081939455>. Individuals have the right to the protection of, access to and request the correction of their personal information under the *Privacy Act*. If you require clarification concerning the Privacy Notice Statement, please contact the Departmental Access to Information and Privacy Office at 1-819-997-8277 or by email at uovp-ppu@sac-isc.gc.ca. For more information on privacy issues, your right to file a complaint and the *Privacy Act* in general, you can consult the Privacy Commissioner at 1-800-282-1376.

1. Details of the deceased

Name Eric Red Registration number (10 digits) 1234567890

First Nation / Band name Colourful Lake First Nation No. 35

Ordinarily resident at Colourful Lake First Nation Province/Territory Ontario
Town/Reserve

Date of birth 1975/04/01 Date of death 2025/05/12 Date of last will 2016/03/15
(YYYYMMDD) (YYYYMMDD) (YYYYMMDD)

VALUE OF ESTATE (Do not include insurance payable to a named beneficiary or the value of assets held in joint tenancy while one of the owners is still alive, e.g., joint bank accounts, joint bonds and investments or joint tenancy property.)

Personal property, e.g. vehicles and bank accounts	<u>97,000.00</u>
On-reserve real property, i.e. land and buildings	<u>150,000.00</u>
Off-reserve real property, i.e. land and buildings	<u>0.00</u>
TOTAL VALUE OF ESTATE	<u>247,000.00</u>

BENEFICIARIES NAMED IN THE WILL (Attach a separate page if necessary) ☐ Page attached

1. Name	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)
<u>Joshua White</u>	<u>123 Somewhere St. Ottawa ON J8M 1H9</u>
2. Name	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)
<u>Ryan Red</u>	<u>321 Somewhere else Ave. Owen Sound ON N4K 1R4</u>
3. Name	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)
<u>Levi Red</u>	<u>321 Somewhere else Ave. Owen Sound ON N4K 1R4</u>
4. Name	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)
5. Name	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)
6. Name	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)
7. Name	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)
8. Name	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)

INTRIA 83-074E 2024-11-21



To be used where there is a Will naming an executor

Tip: This can be an estimate of all property owned by the deceased.

Reminder: Property are things like: vehicles, personal possessions like clothes, bank accounts, investments etc.

In this scenario we estimated:

ATV at \$5,000
trailer at \$15,000
boat at \$12,000
hunting items at \$5000
truck at \$60,000

What else could we have included in this estimate?

Bank accounts, any investments or other possessions of value.

Reminder: Beneficiaries are those who are named in the Will to receive something from the deceased.

Filling Out Indigenous Services Forms

Page 2 of Application for Approval from Indigenous Services

Tip: The person named in the Will as the executor would complete this form and would sign.

Tip: Sign this in front of the commissioner. Do **not** sign before seeing the commissioner.

 Government of Canada / Gouvernement du Canada		PROTECTED B (when completed) Page 2 of 2
2. Affidavit of executor		
I, <u>Ken Red</u> , the executor named in the will of <u>Eric Red</u>		Name of testator
this <u>12</u> of <u>June</u> , 2025		Day Month Year
, make oath or solemn affirmation and say:		
1. I am the executor named in the will.		
2. I have attained the age of majority.		
3. I have identified the attached will (and codicils) and know of no subsequent will or codicil.		
4. I will faithfully administer the estate according to law and render a just, full and true account of my administration when lawfully required.		
5. The information contained in the application is true to the best of my knowledge and belief.		
6. I undertake to make all reasonable efforts to locate the heirs at law (those who would inherit if the deceased did not have a will) and to provide them with a copy of the will.		
SWORN/AFFIRMED BEFORE me		
at <u>Colourful Lake First Nation</u>		A Commissioner for Oaths in the
in the province/territory of <u>Ontario</u>		province/territory of <u>Ontario</u>
this <u>12</u> of <u>June</u> , 2025		My commission expires (YYYYMMDD) <u>2030/06/12</u>
Signature of executor <u>Ken Red</u>		Signature of Commissioner for Oaths <u>Conner Ashioner</u>
Address of executor (number / street / apartment / P.O. box, city or town, province/territory, postal code) <u>123 3rd Ave East Owen Sound ON, N4K 2C5</u>		Telephone number <u>123-456-7890</u>
Relationship to the deceased		
FOR DEPARTMENTAL USE ONLY		
I, recommend that the will of _____, this _____ of _____, _____		
Name of testator Day Month Year		
be approved pursuant to section 45(3) of the <i>Indian Act</i> .		
☐ I am not aware of any reasons why _____ should not be appointed as the executor of the will.		
Name of executor		
OR		
☐ I do not recommend that _____ be appointed for the following reasons:		
Name of executor		
(Provide reasons why the executor is not competent to administer the estate.)		
Signature		Date (YYYYMMDD)

INTRA 83-074E 2024-11-21

Canada

Note: Item 6 of oath on the form: Providing a copy of the Will to any one who would have inherited under an intestacy is a requirement specific to Indigenous Services Canada. Follow the same rules to find heirs as advertising for creditors.

Filling Out Indigenous Services Forms

Let's change one detail. Let's say that Ken, the named executor, is in poor health and doesn't feel like he can act effectively as the executor. There is no substitute named in the Will. **Or** Eric made a Will and did not name anyone as his executor. The family then has to decide who they want to act as administrator of Eric's Will.

Let's say Eric's children want Eric's sister, Rita, to act as the administrator and she agrees. The form to use with Indigenous Services Canada in this situation is the **Application for Administration with Will Annexed**.

 Government of Canada / Gouvernement du Canada

PROTECTED B (when completed) Clear data Page 1 of 4

APPLICATION FOR ADMINISTRATION WITH WILL ANNEXED
(To be used where there is a will but no executor or the named executor is unable or unwilling to act.)

Privacy statement
The collection, use and disclosure of personal information by the Indigenous Services Canada / Crown-Indigenous Relations and Northern Affairs Canada Estates program is authorized under the *Indian Act* (<http://laws-lois.justice.gc.ca/eng/acts/i-5/FullText.html>), and is in accordance with the requirements of the *Privacy Act* (<https://laws-lois.justice.gc.ca/eng/acts/p-21/index.html>). Information collected will be used exclusively to appoint an administrator pursuant to section 43 of the *Indian Act*. Your application cannot be considered without your personal information. Personal information will be retained pursuant to the *Privacy Act* and its *Regulations*. The collection of information is described in the Personal Information Bank PPU 105 located in the departmental Info Source publication online at <https://www.sac-isc.gc.ca/eng/1353081939455> or <https://www.rcaanc-cimac.gc.ca/eng/1353081939455>. Individuals have the right to the protection of, access to and request the correction of their personal information under the *Privacy Act* and its *Regulations*. If you require clarification concerning the *Privacy Notice Statement*, please contact the Departmental Access to Information and Privacy Office at 1-819-997-8277 or by email at upvp-ppu@sac-isc.gc.ca. For more information on privacy issues, your right to file a complaint and the *Privacy Act* in general, you can consult the Privacy Commissioner at 1-800-282-1376.

1. Details of the deceased

Name of deceased **Eric Red** Registration number (10 digits) **1234567890**

First Nation / Band name **Colourful Lake First Nation**

Ordinarily resident at **Colourful Lake First Nation** Province/Territory **ON - Ontario**

Date of birth **1975-04-01** Date of death **2025-05-12** Date of last will **2016-03-15**

VALUE OF ESTATE (do not include insurance payable to a named beneficiary or the value of any jointly held assets if one of the holders is still alive, e.g. joint bank accounts, joint bonds and investments or joint tenancy of property.)

Personal property, e.g. vehicles and bank accounts	\$97,000.00
On-reserve real property, i.e. land and buildings	\$150,000.00
Off-reserve real property, i.e. land and buildings	\$0.00
TOTAL VALUE OF ESTATE	\$247,000.00

BENEFICIARIES NAMED IN THE WILL (Attach a separate page if necessary.) Attachment

1 Name of beneficiary Joshua White	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code) 123 Somewhere St. Ottawa ON J8M 1H9
2 Name of beneficiary Ryan Red	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code) 321 Somewhere Else Ave Owen Sound, ON N4K 1R4
3 Name of beneficiary Levi Red	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code) 321 Somewhere Else Ave Owen Sound, ON N4K 1R4
4 Name of beneficiary	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)
5 Name of beneficiary	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)
6 Name of beneficiary	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)
7 Name of beneficiary	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)
8 Name of beneficiary	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)

[+] Add a person

INTRNA 83-006E 2024-12-23 

To be used where there is a Will but no executor or the named executor is unable or unwilling to act.

Tip: This can be an estimate of all property owned by the deceased.

Reminder: Property are things like: vehicles, personal possessions like clothes, bank accounts, investments etc.

In this scenario we are using the same estimate as the previous form.

Reminder: Beneficiaries are those who are named in the Will to receive something from the deceased.

Filling Out Indigenous Services Forms

Application for Administration with Will Annexed can be completed in two ways:

Scenario A: If Rita is applying herself to administer Eric's estate, she would only have to complete Parts 1, 2 & 5.

Scenario B: If one of the beneficiaries, such as Joshua, is nominating his Aunt Rita, he will complete Parts 1& 3. Joshua will then have Rita complete Parts 4 & 5.

See below page 2 of Application for Administration with Will Annexed

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PROTECTED B (when completed)
Clear data Page 2 of 4

Select one of the following two options:

☐ I am applying to administer the estate ☐ I am nominating someone else to administer the estate

If you are applying to administer the estate, complete sections 2 and 5 of this application.

OR

If you are nominating someone else to administer the estate, complete section 3 of this application.

The person you are nominating must then complete sections 4 and 5 of this application.

2. Affidavit of individual applying to administer the estate

I, Rita Blue, in this application for
Name of applicant - proposed administrator
Eric Red
Name of deceased

for appointment as administrator of the estate with will annexed make oath or solemn affirmation and say:

1. I have attained the age of majority.
2. I have identified the attached will (and codicils) and know of no subsequent will or codicil.
3. I will faithfully administer the estate according to law and render a just, full and true account of my administration when lawfully required.
4. The information contained in the Application is true to the best of my knowledge and belief.
5. I undertake to make all reasonable efforts to locate the heirs at law (those who would inherit if the deceased did not have a will) and to provide them with a copy of the will.

SWORN/AFFIRMED BEFORE me

at Colourful lake First Nation, A Commissioner for Oaths in the
in the province/territory of Ontario province/territory of Ontario
Date (YYYYMMDD) My commission expires (YYYYMMDD) 2030/06/12
this 12 of June 2025
Day Month Year

Signature of individual applying to administer the estate
Rita Blue

Signature of Commissioner for Oaths
Connor Ishioner

3. Nomination of administrator by beneficiary

I, Joshua, (son), do not wish to apply to administer the estate personally.
Name and relationship to deceased

Instead, I wish to nominate Rita Blue to administer the estate.
Name of nominee

Signature of beneficiary
Joshua White

INTRA 83-006E 2024-12-23 Canada

Be sure to indicate what scenario is applicable.

Parts are identified like this:

Scenario A:
Rita completes this section.
Rita **cannot** sign until she sees the commissioner of oaths.

Scenario B:
Any or all beneficiaries can nominate someone.
See "Nomination to Administer An Estate" form on page 73 to be used if there is more than one nominator.

Note:

If all beneficiaries nominate the same person, ISC does not have to see if there are any objections to the nomination.

Filling Out Indigenous Services Forms

See below page 3 of Application for Administration with Will Annexed

Scenario A: If Rita is applying herself to administer Eric's estate, she would only have to complete Parts 1, 2 & 5.

Scenario B: If Joshua is nominating his Aunt Rita, he will complete Parts 1 & 3. Joshua will then have Rita complete Parts 4 & 5.

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PROTECTED B (when completed)
Page 3 of 4
[Clear data](#)

4. Affidavit of nominee

I, Rita Blue, a nominee of
Name of proposed
Joshua White in this application for approval of the will of
Name of proposing beneficiary
Eric Red Date (YYYYMMDD)
Name of deceased this 15 of March, 2016
Day Month Year

and this application for appointment as administrator with will annexed make oath or solemn affirmation and say:

1. I am the nominee of a beneficiary named in the will.
2. I have attained the age of majority.
3. I have identified the attached will (and codicils) and know of no subsequent will or codicil.
4. I will faithfully administer the property of the deceased according to law and render a just, full and true account of my administration when lawfully required.
5. I undertake to make all reasonable efforts to locate the heirs at law (those who would inherit if the deceased did not have a will) and to provide them with a copy of the will.

SWORN/AFFIRMED BEFORE me

at Colourful Lake FN, A Commissioner for Oaths in the
in the province/territory of Ontario province/territory of Ontario
Date (YYYYMMDD) My commission expires (YYYYMMDD) 2030-06-12
this 12 of June, 2025
Day Month Year

Signature of
Rita Blue

Signature of Commissioner for Oaths
Connor Ishioner

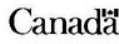
5. Details of applicant

Address (number / street / apartment / P.O. box, city or town, province/territory, postal code) Telephone number
457 21st Lion's Head On NOH 3TO 519-555-1339

FOR DEPARTMENTAL USE ONLY

I recommend that _____ Name of proposed administrator
be appointed administrator with will annexed to the estate of Eric Red
Name of deceased
pursuant to section 45(3) of the *Indian Act*.

The beneficiaries of the deceased have been notified of the proposed appointment of
_____ to make written representations on the proposed appointment.
Name of proposed administrator

INTR 83-006E 2024-12-23 

Scenario B:
Rita signs in front of a commissioner of oaths. Commissioner needs to see her sign. Rita **cannot** sign until she sees the commissioner.

Scenario A & B:
Rita's address and phone number

Note Item 5 of Oath of Affidavit:
Providing a copy of the Will to any one who would have inherited under an intestacy is specific to Indigenous Services Canada and not required by Ontario law. Follow same rules to find heirs as advertising for creditors discussed on page 53.

Note: Page 4 is continued department use only

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PROTECTED B (when completed)
Page 4 of 4
[Clear data](#)

Check one only
☐ Attached are the objections received
☐ No objections have been received on the proposed appointment

Signature of estates officer _____ Date (YYYYMMDD) _____

Filling Out Indigenous Services Forms

If all of Eric's sons want to nominate their Aunt Rita to administer Eric's estate, they should each fill out one of the **Nomination** forms below. Just Rita completes the Application for Administration with Will Annexed. None of Eric's sons fills out Part 3 of the Application for Administration with Will Annexed if more than one of them wants to nominate her. Part 3 of the Application for Administration with Will Annexed is just filled out if there is only one nominator.

Nomination to Administer an Estate
Complete if you are nominating someone to administer this estate

Details of the Deceased:

Name: _____

Band Name: _____ Band No: _____

Address: _____
Street/Box City/town Postal Code

Date of Death: _____

Nomination by Heir/Beneficiary:

I wish to nominate: _____

His/her address: _____
Street/Box no. City Postal Code

His/her phone number: () _____

Name: _____
Please Print

Address: _____
City/Province/Postal Code

Signature: _____
Heir/Beneficiary

Date: _____

Please have your nominee complete the Application for Administration form

Privacy Act Statement

The information you provide in this document is collected under the authority of the *Indian Act* for the purpose of supporting the administration of estates of First Nation individuals. Information on individuals is used by employees of the Indian and Northern Affairs Canada Estates program who need to know the information in order to respond to the program requirements. We do not share the personal information. The personal information will be retained for 30 years after the last administrative action and then records are transferred to Library and Archives Canada (LAC) to be stored as archival records. Individuals have the right to the protection of and access to their personal information under the *Privacy Act* <http://lois.justice.gc.ca/en/P-21/index.html>.

Eric's information

Name of the person the heirs would like to nominate.

Heir/ beneficiary signing the nomination form puts their information here.

Filling Out Indigenous Services Forms

Let's change another detail. Let's say that Eric died without a Will.

The family then has to decide who they want to act as Eric's administrator of his estate. Let's say Eric's sons ask Eric's sister, Rita, to act as the administrator and she agrees. The form for this situation is the **Application for Administration**.

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PROTECTED B (when completed)
Page 1 of 4

APPLICATION FOR ADMINISTRATION

(To be used where there is no will)

To be used when there is no Will

Privacy statement
The collection, use and disclosure of personal information by the Indigenous Services Canada/Crown-Indigenous Relations and Northern Affairs Canada Estates program is authorized under the [Indian Act](https://laws-lois.justice.gc.ca/eng/acts/I-5/FulText.html) (https://laws-lois.justice.gc.ca/eng/acts/I-5/FulText.html), and is in accordance with the requirements of the [Privacy Act](https://laws-lois.justice.gc.ca/eng/acts/P-21/index.html) (https://laws-lois.justice.gc.ca/eng/acts/P-21/index.html). Information collected will be used exclusively to consider your application to administer an estate pursuant to section 43 of the *Indian Act*. Your application cannot be considered without your personal information. Personal information will be retained pursuant to the *Privacy Act* and its *Regulations*. The collection of information is described in the Personal Information Bank AANDC PPU 105 located in the departmental Info Source publication online at <https://www.sac-isc.gc.ca/eng/1353081939455> or <https://www.rcaanc-cimac.gc.ca/eng/1353081939455>. Individuals have the right to the protection of, access to and request the correction of their personal information under the *Privacy Act*. If you require clarification concerning the Privacy Notice Statement, please contact the Departmental Access to Information and Privacy Office at 1-819-997-8277 or by email at upvp-ppu@sac-isc.gc.ca. For more information on privacy issues, your right to file a complaint and the *Privacy Act* in general, you can consult the Privacy Commissioner at 1-800-282-1376.

1. Details of the deceased

Name Eric Red Registration number (10 digits) 1234567890

First Nation / Band name Colourful Lake First Nation

Ordinarily resident at Colourful Lake First Nation Province/Territory Ontario
Town/Reserve

Date of birth 1975/04/01 Date of death 2025/05/12
(YYYYMMDD) (YYYYMMDD)

The following persons are heirs to the estate when there is no will according to Section 48 of the *Indian Act*:

Name	Relationship to the deceased	Registration number (10 digits)	Date of birth (YYYYMMDD)	Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)
Joshua White	son	12345678901	1995/07/23	123 Somewhere St. Ottawa ON J8M 1H9
Ryan Red	son	12345678902	2005/08/30	321 Somewhere else Ave. Owen Sound ON N4K 1R4
Levi Red c/o Samantha Black	son	12345678903	2008/03/04	321 Somewhere else Ave. Owen Sound ON N4K 1R4
Angelique Green	Common-law partner	1236549872	1975/05/04	35 Owl point rd Colourful Lake First Nation

VALUE OF ESTATE (do not include insurance payable to a named beneficiary or the value of any jointly held assets if one of the holders is still alive, e.g. joint bank accounts, joint bonds and investments or joint tenancy of property.)

Personal property, e.g. vehicles and bank accounts	\$	97,000.00
On-reserve real property, i.e. land and buildings	\$	150,000
Off-reserve real property, i.e. land and buildings	\$	0
TOTAL VALUE OF ESTATE	\$	247,000.00

INTR 83-019E 2023-05-05

Canada

Reminder: Intestacy is what the estate is called when there is no Will

Reminder : Heirs are people legally entitled to inherit the property when someone dies without a Will.

Tip: This can be an estimate of all property owned by the deceased.

Reminder: Property are things like: vehicles, possessions like clothes, bank accounts, investments etc.

In this scenario we are using the same estimate as on previous forms.

Filling Out Indigenous Services Forms

Page 2 of Application for Administration from Indigenous Services

Scenario A: If Rita is applying to administer Eric's estate personally, she would complete Parts 2 & 5.

Scenario B: If one of the heirs, such as Joshua, is nominating his Aunt Rita, he would complete Part 3. His Aunt Rita completes Parts 4 & 5.

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PROTECTED B (when completed)
Page 2 of 4

Select one of the following two options:

☒ I am applying to administer the estate ☐ I am nominating someone else to administer the estate

If you are applying to administer the estate, complete sections 2 and 5 of this application.

OR

If you are nominating someone else to administer the estate, complete section 3 of this application.

The person you are nominating must then complete sections 4 and 5 of this application.

2. Affidavit of individual applying to administer the estate

I, Rita Blue, in this application for appointment as administrator
Name of applicant - proposed administrator

in the estate of Eric Red
Name of deceased

make oath or solemn affirmation and say:

1. I am an heir to the deceased.
2. I have attained the age of majority.
3. I have made a careful search and inquiry for a will or other testamentary paper and none could be found and I believe that no will or testamentary paper was left by the deceased.
4. I will faithfully administer the estate according to the Distribution of Property on Intestacy provisions in Section 48 of the *Indian Act*, and render a just, full and true account of my administration when lawfully required.

SWORN/AFFIRMED BEFORE me

at Lion's Head, A Commissioner for Oaths in the
in the Province/Territory of Ontario, Province/Territory of Ontario
this 12 of June, 2025
Day Month Year
My commission expires (YYYYMMDD) 2025/06/2030

Signature of individual applying to administer the estate
Rita Blue

Signature of Commissioner for Oaths
Connor Ashioner

INTRA 83-019E 2023-05-05

Canada

Parts are identified like this:

Be sure to indicate what scenario is applicable.

Scenario A:
Rita completes this section. She **cannot** sign until she sees a commissioner of oaths.

Filling Out Indigenous Services Forms

Page 3 of Application for Administration from Indigenous Services

Scenario A: If Rita is applying to administer Eric's estate personally, she would complete Parts 2 & 5.

Scenario B: If one of the heirs, such as Joshua, is nominating his Aunt Rita, he would complete Part 3. His Aunt Rita completes Parts 4 & 5.

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PROTECTED B (when completed)
Page 3 of 4

3. Nomination of administrator by heir

I, Joshua White do not wish to apply to administer
Name and relationship to deceased

the estate personally. Instead, I wish to nominate Rita Blue to administer the estate.
Name of nominee

Joshua White
Signature of heir

4. Affidavit of nominee

I, Rita Blue, a nominee of Joshua White
Name of nominee Name of proposing heir

in this application for appointment of administrator of the estate of Eric Red
Name of deceased

make oath or solemn affirmation and say:

1. I am the nominee of an heir to the estate.
2. I have attained the age of majority.
3. I have made a careful search and inquiry for a will or other testamentary paper and none could be found and I believe that no will or testamentary paper was left by the deceased.
4. I will faithfully administer the estate according to the Distribution of Property on Intestacy provisions in Section 48 of the *Indian Act*, and render a just, full and true account of my administration when lawfully required.

SWORN/AFFIRMED BEFORE me

at Colourful Lake First Nation,
in the Province/Territory of Ontario,
this 12 of June, 2025
Day Month Year

A Commissioner for Oaths in the
Province/Territory of Ontario
My commission expires (YYYYMMDD) 2023/06/12

Rita Blue
Signature of nominee

Conner Ashioner
Signature of Commissioner for Oaths

5. Details of applicant

Address (number / street / apartment / P.O. box, city or town, province/territory, postal code) 457 21st Lion's Head ON N0H 3T0

Telephone number 519-555-1339

Scenario B:
Any or all heirs can nominate someone to be administrator.

Scenario B :
Rita completes this section. She **cannot** sign until she sees a commissioner of oaths.

Scenarios A & B:
Rita's address and phone number

INTRA 83-019E 2023-05-05

Canada

Note:

If all people with the right to inherit under an intestacy nominate the same person, ISC does not have to see if there are objections to the nomination.

Note: Page 4 is: department use only

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PROTECTED B (when completed)
Page 4 of 4

FOR DEPARTMENTAL USE ONLY

I recommend that _____ be appointed administrator of the estate of _____
Name of proposed administrator Name of deceased

pursuant to section 43 of the *Indian Act*.

The heirs of the deceased have been notified of the proposed appointment of _____
to make written representations on the proposed appointment. Name of proposed administrator

Check one only
☐ Attached are the objections received ☐ No objections have been received on the proposed appointment.

Signature of estates officer _____ Date (YYYYMMDD) _____

Filling Out Indigenous Services Forms

If all of Eric's sons want to nominate their Aunt Rita to administer Eric's estate, they should each fill out one of the **Nomination** forms below. Just Rita completes the Application for Administration. None of Eric's sons fills out Part 3 of the Application for Administration if more than one of them wants to nominate her. Part 3 of the Application for Administration is just filled out if there is only one nominator.

Nomination to Administer an Estate
Complete if you are nominating someone to administer this estate

Details of the Deceased:

Name: _____

Band Name: _____ Band No: _____

Address: _____
Street/Box City/town Postal Code

Date of Death: _____

Nomination by Heir/Beneficiary:

I wish to nominate: _____

His/her address: _____
Street/Box no. City Postal Code

His/her phone number: () _____

Name: _____
Please Print

Address: _____
City/Province/Postal Code

Signature: _____
Heir/Beneficiary

Date: _____

Please have your nominee complete the Application for Administration form

Privacy Act Statement

The information you provide in this document is collected under the authority of the *Indian Act* for the purpose of supporting the administration of estates of First Nation individuals. Information on individuals is used by employees of the Indian and Northern Affairs Canada Estates program who need to know the information in order to respond to the program requirements. We do not share the personal information. The personal information will be retained for 30 years after the last administrative action and then records are transferred to Library and Archives Canada (LAC) to be stored as archival records. Individuals have the right to the protection of and access to their personal information under the *Privacy Act* <http://lois.justice.gc.ca/en/P-21/index.html>.

Eric's information

Name of the person the heirs would like to nominate.

Heir/ beneficiary signing the nomination form puts their information here.

Filling Out Indigenous Services Forms

Renunciation by Executor/Administrator has two uses:

Scenario C: If someone is named in a Will as an executor but does not want to act as executor & has not been appointed yet as executor by ISC.

Or

Scenario D: If someone was approved as executor or administrator of an estate by ISC and does not want to act as executor/administrator anymore.

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Page 1 of 1

RENUNCIATION BY EXECUTOR / ADMINISTRATOR

Privacy statement
The collection, use and disclosure of personal information by the Indigenous Services Canada / Crown-Indigenous Relations and Northern Affairs Canada Estates program is authorized under the *Indian Act* (<http://laws-lois.justice.gc.ca/eng/acts/I-5/FullText.html>), and is in accordance with the requirements of the *Privacy Act* (<https://laws-lois.justice.gc.ca/eng/acts/P-21/index.html>). Information collected will be used exclusively to consider the removal of an estate administrator pursuant to subsection 43(a) of the *Indian Act*. Your renunciation cannot be considered if you do not provide your personal information. Personal information will be retained pursuant to the *Privacy Act* and its *Regulations*. The collection of information is described in the Personal Information Bank PPU 105 located in the departmental Info Source publication online at <https://www.sac-isc.gc.ca/eng/1353081939455> or <https://www.rcaanc-cirnac.gc.ca/eng/1353081939455>. Individuals have the right to the protection of, access to and request the correction of their personal information under the *Privacy Act*. If you require clarification concerning the Privacy Notice Statement, please contact the Departmental Access to Information and Privacy Office at 1-819-997-8277 or by email at upvp-ppu@sac-isc.gc.ca. For more information on privacy issues, your right to file a complaint and the *Privacy Act* in general, you can consult the Privacy Commissioner at 1-800-282-1376.

In the matter of the *Indian Act*, R.S.C. 1985, C. I-5 and amendments thereto and in the matter of the estate of

Eric Red, registration number (10 digits) 1234567890
Name of deceased

of the Colourful Lake First Nation No. 35 First Nation / Band.

☐ Individual named in a will but does not wish to be appointed ☐ Executor, administrator or administrator with will annexed who had been appointed by the Minister

Complete PART I if you have been named as executor by the deceased in the will but have not yet been appointed by the Minister of the department.
OR
Complete PART II if you have been appointed as executor, administrator or administrator with will annexed by the Minister of the department and wish to renounce your right and title to administer the estate.

PART I (To be used by an executor named in a will who does not wish to be appointed.)

I, Ken Red, named as executor in the will of Eric Red, dated 2016 03 15, do not wish to be
Name of deceased Date of will (YYYYMMDD)

appointed as executor and hereby renounce all my right and title to the probate and execution of the will of the deceased.

SIGNED this 12 of June, 2025 Ken Red
Day Month Year Signature of executor

PART II (To be used by an executor, administrator or administrator with will annexed who had been appointed by the Minister.)

I, Rita Blue, was appointed as executor/administrator on June 1 2025, and do hereby renounce all my right and probate and execution of the will/to
Date of appointment by Minister (YYYYMMDD)

the administration of the property of the deceased.

SIGNED this 12 of June, 2025 Rita Blue
Day Month Year Signature of executor

WITNESSED BY

Tyler Tallman this 12 of June, 2025 T Tallman
Name of witness Day Month Year Signature of witness

Brighton George this 12 of June, 2025 Brighton George
Name of witness Day Month Year Signature of witness

Addyson Keeshig this 12 of June, 2025 Addyson Keeshig
Name of witness Day Month Year Signature of witness

INTRA 83-076E 2024-11-14



Be sure to indicate what scenario is applicable.

Scenario C: Ken was named executor in the Will but does not want to act as executor. He would complete Part I of this form

Scenario D: Rita was appointed administrator and does not want to act anymore. She would complete Part II of this form

Filling Out Indigenous Services Forms

Common-Law Partner Statutory Declarations

Declaration 1: To be filled out by the surviving common law partner.

Declaration 2: To be filled out by a witness of the common law relationship:
Someone who can say they knew about the common law relationship.

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COMMON-LAW PARTNER STATUTORY DECLARATION 1
(To be used by the person claiming to be the common-law partner.)

Privacy statement
The collection, use and disclosure of personal information by the Indigenous Services Canada / Crown-Indigenous Relations and Northern Affairs Canada Estates program is authorized under the [Indian Act](http://laws-lois.justice.gc.ca/eng/acts/I-5/FullText.html) (http://laws-lois.justice.gc.ca/eng/acts/I-5/FullText.html), and is in accordance with the requirements of the [Privacy Act](https://laws-lois.justice.gc.ca/eng/acts/P-21/index.html) (https://laws-lois.justice.gc.ca/eng/acts/P-21/index.html). Information collected will be used exclusively to determine your relationship to the deceased pursuant to section 2 of the *Indian Act*. Your relationship to the deceased cannot be considered if you do not provide your personal information. Personal information will be retained pursuant to the *Privacy Act* and its *Regulations*. The collection of information is described in the Personal Information Bank PPU 105 located in the departmental Info Source publication online at <https://www.sac-isc.gc.ca/eng/1353081939455> or <https://www.ccaanc-cinac.gc.ca/eng/1353081939455>. Individuals have the right to the protection of, access to and request the correction of their personal information under the *Privacy Act*. If you require clarification concerning the Privacy Notice Statement, please contact the Departmental Access to Information and Privacy Office at 1-819-997-8277 or by email at upvp-ppu@sac-isc.gc.ca. For more information on privacy issues, your right to file a complaint and the *Privacy Act* in general, you can consult the Privacy Commissioner at 1-800-282-1376

In the matter of the *Indian Act*, R.S.C. 1985, C. I-5 and amendments thereto and in the matter of the estate of

Eric Red	registration number (10 digits)	1234567890	of the First Nation / Band
Name of deceased			
Colourful Lake First Nation No. 35			
First Nation / Band name			

STATUTORY DECLARATION

I, Angelique Green, surviving common-law partner of Eric Red
Name Name of deceased

35 Owl point rd Colourful Lake First Nation
Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)

DO SOLEMNLY DECLARE THAT:

1. Eric Red died at Owen Sound Ontario
Name of deceased City/Town

Province/Territory on the 12 of May, 2025 and was ordinarily resident of
Day Month Year

Colourful Lake First Nation No. 35 at the time of death.
Town/Reserve

2. At the time of her/his death, I was cohabiting with Eric Red
Name of deceased

in a conjugal relationship, having so cohabited for a period of at least one year immediately preceding and at the date of death.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the *Canada Evidence Act*.

SWORN/AFFIRMED BEFORE me

at <u>Colourful Lake First Nation No. 35</u>	A Commissioner for Oaths in the
in the province/territory of <u>Ontario</u>	province/territory of <u>Ontario</u>
on the <u>12</u> of <u>June</u> , <u>2025</u>	My commission expires (YYYYMMDD) <u>2030 06 12</u>
Day Month Year	
Signature of common-law partner	<u>Conner Ashioner</u>
<u>Angelique Green</u>	Signature of commissioner for oaths

INTRIA 83-092E 2024-12-09



Declaration 1: To be used by the person claiming to be common-law partner.

Commissioned:
Needs to be signed in front of person who is able to commission documents.

Filling Out Indigenous Services Forms

Common-Law Partner Statutory Declarations

Declaration 1: To be filled out by the surviving common law partner.

Declaration 2: To be filled out by a witness of the common law relationship:
Someone who can say they knew about the common law relationship.



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[Clear data](#)

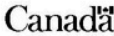
COMMON-LAW PARTNER STATUTORY DECLARATION 2

Privacy statement
The collection, use and disclosure of personal information by the Indigenous Services Canada / Crown-Indigenous Relations and Northern Affairs Canada Estates program is authorized under the [Indian Act](http://laws-lois.justice.gc.ca/eng/acts/I-5/FullText.html) (http://laws-lois.justice.gc.ca/eng/acts/I-5/FullText.html), and is in accordance with the requirements of the [Privacy Act](https://laws-lois.justice.gc.ca/eng/acts/P-21/index.html) (https://laws-lois.justice.gc.ca/eng/acts/P-21/index.html). Information collected will be used exclusively to determine the deceased's relationship at the time of death pursuant to section 2 of the *Indian Act*. Your relationship to the deceased cannot be considered if you do not provide your personal information. Personal information will be retained pursuant to the *Privacy Act* and its *Regulations*. The collection of information is described in the Personal Information Bank PPU 105 located in the departmental Info Source publication online at <https://www.sac-isc.gc.ca/eng/1353081939455> or <https://www.rcaanc-cirnac.gc.ca/eng/1353081939455>. Individuals have the right to the protection of, access to and request the correction of their personal information under the *Privacy Act*. If you require clarification concerning the Privacy Notice Statement, please contact the Departmental Access to Information and Privacy Office at 1-819-997-8277 or by email at upvp-ppu@sac-isc.gc.ca. For more information on privacy issues, your right to file a complaint and the *Privacy Act* in general, you can consult the Privacy Commissioner at 1-800-282-1376.

In the matter of the *Indian Act*, R.S.C. 1985, C. I-5 and amendments thereto and in the matter of the estate of
Eric Red, registration number (10 digits) **1234567890**
Name of deceased
of the **Colourful Lake First Nation No 35** First Nation/Band.

STATUTORY DECLARATION
I, **Rita Blue**, of
Name
457 21st St Lion's Head On N0H 3T0
Address (number / street / apartment / P.O. box, city or town, province/territory, postal code)
DO SOLEMNLY DECLARE THAT:
1. a) State deponent's relationship to **Eric Red**
Name of deceased
b) State basis of deponent's knowledge of the common-law relationship
2. I verily believe that at the time of **Eric Red** death on the
Name of deceased
Date (YYYYMMDD) **2025-05-12** **12** of **May**, **2025**
Day Month Year
Angelique Green was cohabiting with the deceased in a conjugal relationship, and had so cohabited
Name of common-law partner
for a period of at least one year immediately preceding and at the date of
Eric Red's death.
Name of deceased
AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the *Canada Evidence Act*.

SWORN/AFFIRMED BEFORE me
at **Colourful Lake FN**, A Commissioner for Oaths in the
in the province/territory of **ON - Ontario**, province/territory of **ON - Ontario**
this Date (YYYYMMDD) **2025-06-12** My commission expires (YYYYMMDD) **2030-06-12**
on the **12** of **June**, **2025**
Day Month Year
Signature of deponent *Angelique Green* Signature of commissioner for oaths *Connor Ishioner*

INTRA 83-093E 2024-12-10 

Declaration 2: To be used by a witness who can confirm there was a common-law relationship.

In this case, Eric's sister Rita confirmed that Angelique and Eric were living in a common-law partnership.

Commissioned: Needs to be signed in front of person who is able to commission documents.

Administering Eric Red's Estate



Once Rita was appointed Administrator of Eric's estate, she determined Eric's bank account has \$2000 and his investments came to \$100,000.

We noted previously on the ISC forms that Eric had the following property: ATV at \$5,000, trailer at \$15,000, boat at \$12,000, hunting items at \$5000, truck at \$60,000, and rights of possession in land and a house on reserve worth \$150,000.

In the space below, calculate how Rita would be administering Eric's estate in accordance with his Will and as if Angelique made a claim under FHRMIRA.

Total of Eric's Estate:

Angelique's inheritance:

Joshua's Inheritance:

Ryan's Inheritance:

Levi's Inheritance:

What if Eric had no Will?

Total of Eric's Estate:

Angelique's inheritance:

Joshua's Inheritance:

Ryan's Inheritance:

Levi's Inheritance:

Administering Eric Red's Estate – Answer

Total of Eric's Estate to be given away: **\$334,000.00**

In accordance with the Will and Angelique's FHRMIRA claim

Angelique's inheritance: \$75,000.00

Joshua's Inheritance: \$86,333.33

Ryan's Inheritance: \$86,333.33

Levi's Inheritance: \$86,333.33

Total value of Eric's estate before debts would be \$349,000.00. The remaining value after subtracting his \$15,000 debt would be \$334,000.00.

Eric had a Will signed on March 16, 2016 that left his estate to be divided equally among his 3 sons.

Because Angelique lived common law with Eric, she can make a claim under FHRMIRA. This gives her 50% of the value of the land and building where she and Eric lived. The value of the land and building where she and Eric lived is \$150,000, making Angelique's payment \$75,000.00.

The remaining estate after subtracting Angelique's \$75,000.00 payment is \$259,000.00.

The remaining \$259,000.00 would be divided equally among Eric's sons, giving each of them \$86,333.33.

In accordance with an intestacy

Angelique's inheritance: \$161,333.33.

Joshua's Inheritance: \$57,555.55

Ryan's Inheritance: \$57,555.55

Levi's Inheritance: \$57,555.55

Total value of Eric's estate before debts would be \$349,000.00. The remaining value after subtracting his \$15,000 debt would be \$334,000.00.

If Eric had a no Will, this means Angelique could inherit under an intestacy as Eric's common law partner. Angelique would get the first \$75,000.00 of Eric's estate.

The remaining estate after subtracting Angelique's \$75,000.00 payment would be \$259,000.00.

Angelique would also get an additional $\frac{1}{3}$ of the remaining \$259,000.00. This would be \$86,333.33, making Angelique's total payment under the intestacy \$161,333.33.

The remaining \$172,666.66 would be divided equally among Eric's sons, giving each of them \$57,555.55.



Section 7: Resources



Did you know?

Test your knowledge about Wills & Powers of Attorney according to the *Indian Act* and Ontario Law

1. T F Wills determine what happens to your money while you are still alive
2. T F There are two types of Powers of Attorney (POA) in Ontario
3. T F The same legal test is used to determine if someone is capable of signing a POA for property and capable of managing their property
4. T F An attorney for property can start managing the property of the grantor as soon as the POA paper is signed unless the POA paper says otherwise
5. T F An attorney for property can make a Will for the grantor
6. T F Mental capacity of Indigenous adults to manage their own property is determined by provincial law
7. T F The Canadian government has authority to manage property of Indigenous adults mentally incapable of managing their property
8. T F Substitute decision-makers for personal care decisions for Indigenous people are determined by provincial law
9. T F An attorney for personal care can always use force to move the grantor from one place to another
10. T F An attorney for personal care cannot make decisions for the grantor unless the grantor is incapable of making personal care decisions
11. T F A person's capability to make decisions about their personal care is always determined by a doctor
12. T F A non-relative who is a paid caregiver for someone can be their attorney for personal care
13. T F The law says that the Office of the Public Guardian and Trustee must investigate concerns that an attorney for personal care or property is abusing their power
14. T F An attorney for personal care or property can only be removed as attorney by court Order

Test your knowledge continued

- 15. T F A Will must be updated every 10 years
- 16. T F If an Indigenous person dies in Canada, Indigenous Services Canada (ISC) must be told about the death as soon as possible
- 17. T F Rules for a Will to be legally valid are less strict for Indigenous People living on a reserve than other people in Ontario
- 18. T F All parents have the right to name someone in their Will to have decision-making authority for their children's well-being until their children are adults
- 19. T F If an Indigenous person dies without a Will, the Canadian government gets all their money and their land
- 20. T F If an Indigenous person living off reserve dies, the Canadian government cannot get involved in their estate
- 21. T F An Indigenous person must live on a reserve at the time of their death to be considered "ordinarily resident on reserve"
- 22. T F An Indigenous person has less freedom to decide what happens with their property after they die than other people in Canada if the Indigenous person lives on reserve or has property on reserve
- 23. T F ISC has the power to decide if someone named as executor of a Will written by an Indigenous person is capable to be executor
- 24. T F A beneficiary concerned about how the executor of the Will is handling the estate of an Indigenous person can always complain to ISC about the executor
- 25. T F It is not possible to appeal a decision about a Will made by ISC



Did you know?

Test your knowledge answer key & explanation

1. T ☒ F **Wills determine what happens to your money while you are still alive.**
Wills say what happens to someone's money and possessions when they die.

2. ☒ T ☐ F **There are two types of Powers of Attorney (POA) in Ontario**
Powers of Attorney (POAs) are papers that name someone to help you make decisions if you get sick and need help to make decisions while you are still alive. There are two kinds of POAs in Ontario: property and personal care. "Property" means possessions and money. "Personal care" means decisions about the clothing you wear, food you eat, where you live, your activities of daily living (such as dressing and bathing), what is needed to keep you safe, and your health care. Health care includes at least three things: treatment you get, if you should live in a long term care home, and help with activities of daily living you need if you live in a long term care home or a retirement home.

A long term care home is a place people live that gets money from the government to help people with activities of daily living. A retirement home is a place that helps people with laundry, meals, cleaning and activities of daily living depending on the services the person is paying the home to give them. Retirement homes do not get government funding.

3. T ☒ F **The same legal test is used to determine if someone is capable of signing a POA for property and capable of managing their property.**
The law makes different tests to determine if someone understands POA papers and if they understand what they need to do to handle their money and possessions. Therefore, it is possible to be capable to sign a POA for property but not capable of handling your property yourself.

4. ☒ T ☐ F **An attorney for property can start managing the property of the grantor as soon as the POA paper is signed unless the POA paper says otherwise.**
The law says that a POA for property comes into effect as soon as it is signed. That means that the person named as the attorney can start managing the grantor's property right away unless the POA papers say that the attorney only has authority to manage the grantor's property if the grantor is incapable of managing their property.

answer 4 continued on next page

4. ☒ T ☐ F
Continued

If the grantor wants the POA papers to come into effect only if the grantor is not capable of managing their property, then the grantor should say who will decide if they are incapable of managing their property. For example, the grantor might say a doctor would determine if they are capable of managing their property. If the grantor does not say in the POA papers who will determine if they are incapable of managing their property, then someone called a designated capacity assessor must be hired to determine if the grantor is incapable of managing their property to put the POA papers into effect. Designated capacity assessors usually charge at least \$1000 for an assessment.

5. ☐ T ☒ F **An attorney for property can make a Will for the grantor**

The law does not allow someone to make a Will for another person. The attorney can do anything else with the grantor's property that the grantor could do with their property themselves unless the grantor adds information to the POA papers limiting the attorney's powers.

6. ☒ T ☐ F **Mental capacity of Indigenous adults to manage their own property is determined by provincial law**

The *Indian Act* says that an Indigenous person's capability to manage their property is based on the definition of incapacity to manage property under the law of the province in which the Indigenous person lives. That means an Indigenous person living in Ontario would be incapable of managing their property if they meet the definition of being incapable in Ontario law.

7. ☒ T ☐ F **The Canadian government has authority to manage property of Indigenous adults mentally incapable of managing their property**

The *Indian Act* says that the Minister in charge of Indigenous services for Canada must manage the property of all Indigenous adults who are ordinarily resident on reserve and are not capable of managing their own property. The *Indian Act* also allows the Minister to manage the property of Indigenous adults who live off reserve who are not capable of managing their own property. Since the Minister does not have to manage the property of Indigenous adults living off reserve, ISC usually only manages the property of Indigenous adults not capable of managing their own property who ordinarily live on reserve.

8. ☒ T ☐ F **Substitute decision-makers for personal care decisions for Indigenous people are determined by provincial law**

The *Indian Act* does not discuss decision-making for personal care for Indigenous people. That means Ontario law about substitute decision-making for personal care applies to Indigenous people who live in Ontario.

9. T **F** **An attorney for personal care can always use force to move the grantor from one place to another**

An attorney for personal care cannot physically force the grantor to go somewhere they do not want to go unless the POA papers say that the attorney is allowed to use force. For example, if the grantor has Alzheimer Disease and cannot make their own decisions, and their attorney for personal care signs papers to move them to a long term care home, the attorney cannot physically drag the grantor to the long term care home unless the POA papers say the attorney can use force with the grantor. If the attorney cannot use force, the attorney must persuade the grantor to go to the long term care home.

10. T **F** **An attorney for personal care cannot make decisions for the grantor unless the grantor is incapable of making personal care decisions**

An attorney for personal care only has authority to make decisions for the grantor if the grantor is not capable of making their own decisions.

11. T **F** **A person's capability to make decisions about their personal care is always determined by a doctor**

The law says who determines capability to make health care decisions.

- Treatment: Capability determined by the professional suggesting the treatment. For example, a doctor suggesting that the grantor take a medicine determines if the grantor is capable to make decisions about taking the medicine

- Moving to a long term care home: Capability to decide if the grantor should move to a home is determined by an evaluator. Any of these professionals can be evaluator: audiologist, speech language pathologist, doctor, occupational therapist, nurse, physiotherapist, dietitian, psychologist or social worker.

- Personal assistance services (bathing, dressing, etc.) received in a long term care or retirement home: Capability to make decisions about getting these services is determined by an evaluator (the same list of professionals who can determine capability to move to a long term care home).

The law says that capability to make all other personal care decisions (shelter, safety, hygiene, clothing, and nutrition) is decided by the grantor's attorney for personal care unless the POA papers say otherwise. Sometimes people write in the POA papers that they want someone else, such as a doctor, to determine if they are capable of making these personal care decisions. If the grantor says nothing in the POA papers about who will determine their capability to make decisions about their shelter, safety, hygiene, nutrition, and clothing, then the attorney decides when the grantor is no longer capable to make their own decisions about these issues and the attorney can start making decisions for them.

12. T **F** **A non-relative who is a paid caregiver for someone can be their attorney for personal care**

The law says that the grantor's relatives can get paid to look after the grantor and still be the grantor's attorney for personal care. Someone getting paid to look after the grantor who is not a relative cannot be the grantor's attorney for personal care.

The logic behind this law is that someone getting paid to look after the grantor is in a conflict of interest if that person is the grantor's attorney for personal care. Someone getting paid to look after the grantor might make decisions for the grantor to get treatments or stay living at home based on the caregiver's wish to keep their job looking after the grantor instead of making decisions based on what is best for the grantor. The law assumes that relatives getting paid to look after the grantor would not be impacted by a conflict of interest and would be able to make decisions that are best for the grantor regardless of the impact of the decision on the caregiver financially.

13. T **F** **The law says that the Office of the Public Guardian and Trustee must investigate concerns that an attorney for personal care or property is abusing their power**

The laws says the Office of the Public Guardian and Trustee (OPGT) must investigate concerns about the well-being of an adult in Ontario if two conditions are met.

- i) The adult might be incapable of making decisions for themselves
- ii) Serious adverse effects are happening or may happen as a result of the adult's incapability

Serious adverse effects for property are loss of a significant part of the adult's property or the adult not getting necessities of life, such as food, for themselves or anyone dependent on them, such as children.

Serious adverse effects for personal care are serious illness or injury or loss of freedom and personal security.

The OPGT will only investigate concerns about the actions of an attorney for property or personal care if the grantor does not seem capable of making their own decisions and the attorney's actions have, or could, cause serious adverse effects. If these conditions are not met, the OPGT does not have the power to investigate concerns that an attorney for care or property is abusing the grantor.

14. T **F** **An attorney for personal care or property can only be removed as attorney by court Order**

An attorney's authority can be ended if the attorney resigns or if the grantor changes the POA papers. As long as the grantor still understands the POA papers, the grantor can change their POA at any time.

15. T **F** **A Will must be updated every 10 years**

Wills do not expire. As long as the will was written in accordance with the law in place at the time the Will was written, the Will is still valid. However, the Will might not make sense when the testator dies if the Will was written many years ago. For example, people named as executors or beneficiaries might have died or had an argument with the testator and are no longer part of the testator's life. If the testator's social and financial circumstances are significantly different than at the time the Will was written, the testator should update their Will. The testator should read their Will at least every five years to make sure the Will still makes sense in their life circumstances and should change the Will if it does not fit with their situation now.

16. T **F** **If an Indigenous person dies in Canada, Indigenous Services Canada (ISC) must be told about the death as soon as possible**

ISC must be told as soon as possible when an Indigenous person dies. The *Indian Act* says that the staff working for the Minister in charge of Indigenous services must take charge of the estates of Indigenous people when they die if they were ordinarily resident on reserve. The Minister's staff may handle estates of Indigenous people when they die if they lived off-reserve. ISC's practice is only to take charge of estates for people who ordinarily lived on reserve unless the person lived off reserve but had land on reserve. However, since the Minister of Indigenous services technically has the authority to take control of the estates of all Indigenous people, ISC must be told when an Indigenous person dies so ISC confirms if they are taking charge of the estate.

If ISC takes charge of an estate, the staff at ISC usually lets the person named as executor in the Will handle the estate. If the person who died did not have a will, ISC can name a family member to handle the estate. The staff at ISC try to avoid handling the estate themselves. ISC prefers to name the deceased person's family members to pay their bills and give out any money left over to beneficiaries/heirs.

17. **T F Rules for a Will to be legally valid are less strict for Indigenous People living on a reserve than other people in Ontario**

The *Indian Act* does not have as many rules for a Will to be valid as Ontario law. Under Ontario law, a will must have two witnesses who meet certain conditions who see the testator sign the Will unless the will is completely handwritten by the testator in the testator's own handwriting. The *Indian Act* says that a Will is valid if it meets three simple conditions:

- it is written somehow (typed or handwritten)
- it is signed by the testator
- it says that the testator is giving instructions for what happens with their property when they die.

18. **T F All parents have the right to name someone in their Will to have decision-making authority for their children's well-being until their children are adults**

The *Indian Act* does not address decision-making for children in Wills. For this reason, all Indigenous people in Ontario are under Ontario law when naming decision-makers for their children's well-being in their Will. Decision-making authority for children was called "custody" in Ontario law in the past. Decision-making authority for the well-being of children includes decisions about the child's health, education, significant extra-curricular activities, culture, language, and religion/spirituality. Parents only have authority to name a decision-maker for their children's well-being in the parent's Will if the parent has decision-making authority/custody for their child at the time of the parent's death. Parents who only have a right to spend time with the child (called a right of access), and do not have decision-making authority for the child's well-being, do not have the right to name a decision-maker for their child's well-being in their Will.

The decision-maker for the child named in the Will only has decision-making authority for the child for 90 days after the parent dies. The person named as decision-maker in the Will must go to court to get decision-making authority for more than 90 days. People not named as decision-makers for the child in the Will may also ask the court to name them as decision-makers for the children after the decision-making period in the Will ends 90 days after the parent's death.

19. T F **If an Indigenous person dies without a will, the Canadian government gets all their money and their land**

The *Indian Act* has a formula for who gets the Indigenous person's money if the person dies without a Will. The money is given out as follows.

- \$75,000 goes to the married or common law spouse
- Any money above \$75,000 is divided between spouse and children
- If there is no spouse, the money is divided equally among the children – if a child has died, their children will inherit their share equally
- If there is no spouse or children, money is equally divided between deceased person's parents
- If deceased person's parents have both died, money is divided equally among the deceased person's siblings – if one of the deceased siblings has already died, their share is divided equally between the sibling's living children
- If there are no siblings, money goes to nieces and nephews equally
- If there are no nieces or nephews, money goes to closest next of kin equally

The rules are different under the *Indian Act* for inheriting land on reserve. Only Band members can inherit land on reserve. The most distant relative that can inherit land if there is no Will is a sibling. If the person who died had land on reserve, had no Will, and had no spouse, children, parents, or siblings alive when they died, the land goes to the Band.

These rules only apply to people who die without a Will when ISC takes charge of the estate. If ISC does not take charge of the estate, and the person who died had no Will, their estate is given out according to the formula in Ontario law. There are four major differences between the inheritance rules under Ontario law and under the *Indian Act* as outlined below.

Indian Act inheritance if no Will

- Spouse gets first \$75,000
- Spouse includes both married and common-law spouses
- Siblings are the closest relatives to the deceased who can inherit land on reserve
- Law assumes is always next of kin to get the money

Ontario law if no Will

- Spouse gets first \$350,000
- Only married spouses inherit - common-law spouses get nothing
- Nieces, nephews and more distant relatives can inherit land if they are the closest living relatives to the deceased person
- Law states that if there is no next of kin, estate goes to Ontario government

20. T **F** **If an Indigenous person living off reserve dies, the Canadian government cannot get involved in their estate**
The Canadian government Minister responsible for Indigenous services has the right to take charge of the estate of any Indigenous person who dies in Canada. However, the Minister's staff do not usually get involved in the estates of Indigenous people who die if the Indigenous person did not have land on reserve and did not ordinarily live on reserve.
21. T **F** **An Indigenous person must live on a reserve at the time of their death to be considered "ordinarily resident on reserve"**
A person is considered ordinarily resident on reserve if the person is only living off the reserve at the time of their death because they had to leave the reserve to get services, such as health care or education.
22. T **F** **An Indigenous person has less freedom to decide what happens with their property after they die than other people in Canada if the Indigenous person lives on reserve or has property on reserve**
Under Ontario law, a person can leave their land and buildings to anyone in their Will. Indigenous people can only leave their land on reserve to Band members.
23. T **F** **ISC has the power to decide if someone named as executor of a Will written by an Indigenous person is capable to be executor**
ISC has the power to decide an executor named in a Will is not suitable to be executor. The department can refuse to let the executor start handling the estate and can stop the executor from handling the estate once they have started managing the estate. An executor cannot do anything with an estate unless the executor is approved by ISC. However, these powers only apply if ISC uses their legal power to be in charge of the estate. If ISC does not use their power under the *Indian Act* to handle the estate, and tells the executor to handle the Will under Ontario law, then ISC has no power over the activities of executors.

24. T **F** **A beneficiary concerned about how the executor of the Will is handling the estate of an Indigenous person can always complain to ISC about the executor**
- If ISC did not take charge of the estate and said the estate must be handled under Ontario law, then the beneficiaries must start a legal case at the Superior Court in Ontario if they have concerns about the executor's handling of the estate. If ISC did take charge of the estate, approved the Will and allowed the executor to handle the estate, then ISC is supposed to follow up concerns from beneficiaries about the executor's handling of the estate.
25. T **F** **It is not possible to appeal a decision about a Will made by ISC**
- An Indigenous person who is unhappy with a decision about a will made by the Canadian government department responsible for Indigenous services can ask the department to change the decision. If the decision is not changed, the person can go to the federal court and ask the court to review the decision.

Resources for Wills and POAs in Ontario

- Call the PGT's office for information about hiring a capacity assessor: 1-800-891-0504
- Further information is available about the process to obtain a CAET or a SEC here:
 - <https://stepstojustice.ca/questions/wills-and-powers-of-attorney/ive-been-named-estate-trustee-in-a-will-how-do-i-apply-for-a-certificate/>
- Indigenous Services Canada (ISC): Land & Estates Department:
 - Wills : aadnc.estates-successions.aandc@canada.ca
 - Other inquiries: ONestateservices-ONservicesdadmindessuccessions@sac-isc.gc.ca
- Steps to Justice: Guided Pathway to making a will:
 - <https://stepstojustice.ca/guided-pathways/wills-and-powers-of-attorney-for-making-a-will/>
- *To Find Legal Help*
 - Call Legal Aid Ontario (LAO): 1-800-668-8258
 - You can also search for community legal clinics online at www.legalaid.on.ca/legal-clinics
 - Lawyer Referral Service: 1-855-947-5255
 - Find a local law association: www.fola.ca/associations/
Contacting the local law association might help find a Will.
Upon request, local law associations will send emails to their members asking if anyone has a Will for someone who has died.

**Let us know what you think about this information guide by completing this short survey:
Your feedback is greatly appreciated!**





Sample Letter to Minister of Indigenous Services

[insert organization's letterhead or individual contact information for person sending letter]

[insert date]

[insert method of delivery: regular mail or email to mandy.gull-masty@parl.gc.ca]

The Honourable Mandy Gull-Masty

Minister of Indigenous Services, House of Commons

Ottawa, ON K1A 0A6

Dear Honourable Mandy Gull-Masty,

RE: Estates services provided by Indigenous Services Canada ("ISC")

[name of person or organization sending letter] is/are writing to you to express our concerns about the estates services provided by ISC. As you know, all authority vests with you under the federal *Indian Act* over the estates of deceased "Indians" ordinarily resident on reserve. The *Indian Act* also gives you authority as the Minister of Indigenous Services over the estates of "mentally incompetent Indians" ordinarily resident on reserve. Therefore, you are ultimately responsible for the estates services provided by ISC.

In my/our experience, Indigenous Peoples wait a long time to receive information from ISC about administering the estates of deceased individuals. This delay can lead to deterioration in assets and loss of productivity as land, buildings, and money cannot be distributed to the heirs/beneficiaries.

ISC is often unresponsive to requests for information from Indigenous Peoples and or social service and health care organizations working with them about the estates of Indigenous Peoples still alive but incapable of managing their own property. This unresponsiveness causes missed bills, social service overpayments, and lack of funds for people to meet their basic needs, such as food.

ISC does not provide the people for whom they are guardian of property with any support to resume managing their own property if they regain capacity to manage their property. ISC does not take responsibility for redirecting mail, payments, or bills to the Indigenous person although ISC no longer has legal authority to retain documentation and money for Indigenous Peoples once Indigenous Peoples regain capacity to manage their own property.

We demand immediate action either to improve the estates services provided by ISC or to change the *Indian Act* to give Bands the authority and resources to provide estates services for their members ordinarily resident on reserve. If you choose the former option, you must resource ISC to provide estates services that are responsive to the needs of Indigenous Peoples and establish legally binding standards through the *Indian Act* for ISC's estates services.

We look forward to receiving your feedback to our concerns as soon as possible.

Sincerely,

[signature]

[insert name and title if applicable]