CLEO Connect
Training and tools for community workers

# Estate planning for Indigenous Peoples living on reserve

Speaker: Angela Yenssen, Staff Lawyer, Grey-Bruce CLC

Joss Ann Johnston, Community Legal Worker, Grey-Bruce CLC

Friday, November 28 from 12 p.m. to 1:30 p.m.

Brought to you by: CLEO

# Land Acknowledgement

CLEO acknowledges that our office is located on the traditional territory of many nations, including the Mississaugas of the Credit, the Chippewa, the Haudenosaunee, and the Wendat. This land is now also home to many diverse First Nations, Inuit, and Métis peoples. Today this area of Tkaronto, also known as Toronto, is covered by Treaty 13 between the Mississaugas of the Credit and the British Crown.

We acknowledge the ongoing impacts of colonization, anti-Indigenous racism, white supremacism, and anti-Black racism on which this city and our legal system are built. We are all Treaty people and we commit to working in solidarity towards truth and reconciliation. We also remember those who were brought to this land involuntarily, particularly those who came as a result of the trans-Atlantic slave trade. So we also honour and pay respect to the ancestors of African origin and descent.

# What can you expect today?

- 90 minutes with 2 Q and A periods.
- The webinar may contain legal information. As a reminder, this is not legal advice. The information is current as of today's date, November 28, 2025.
- Links to the recording, slides, and handout will be sent by email to all registrants within a few days.
- ASL interpretation is available today. Subtitles (closed captioning) have also been enabled.

The Law Foundation of Ontario

Department of Justice Canada

# Speaker Introductions

**Angela Yenssen**

Staff Lawyer, Grey-Bruce Community Legal Clinic

**Joss Ann Johnston**

Community Legal Worker, Grey-Bruce Community Legal Clinic

# ESTATE PLANNING FOR INDIGENOUS PEOPLES LIVING ON RESERVE


PRESENTED BY :
ANGELA YENSSEN: GBCLC STAFF LAWYER
&
JOSS ANN JOHNSTON: GBCLC COMMUNITY LEGAL WORKER



**Elder Law Project**

The Law Foundation of Ontario
*Advancing access to justice*

GBCLC

Legal Aid Ontario
Aide juridique Ontario

# WHAT OUR TIME TOGETHER WILL LOOK LIKE

- UNDERSTANDING WHO WE ARE SERVING
- DECISION-MAKING CAPACITY: WHERE ONTARIO LAW MEETS THE INDIAN ACT
- QUESTIONS & COMMENTS
- WILLS, OR NO WILLS: ON OR OFF RESERVE
- THERE'S A FORM FOR THAT: ISC ESTATE ADMINISTRATION
- TOOLS TO BUILD COMMUNITY CAPACITY
- QUESTIONS & COMMENTS

# UNDERSTANDING WHO WE ARE SERVING

Canada's Colonial agenda:
Indian Act

Indian Residential schools

Indian Day school

Child Welfare systems

Justice systems

Class actions

Higher education

Assets acquired on and off reserve

Communities have varied outcomes to wealth generation

Identity is being reclaimed and rebuilt

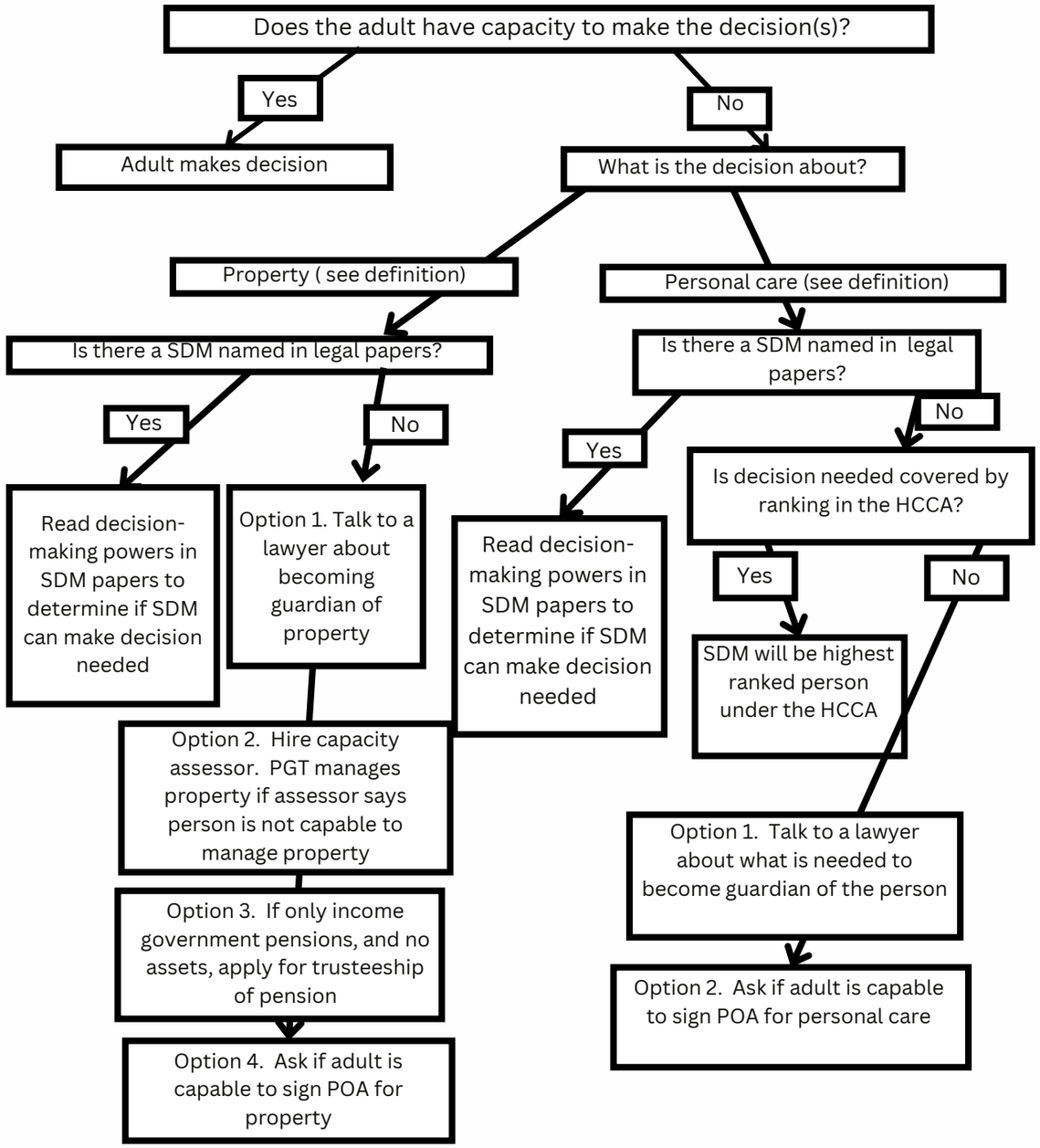
Outcomes we see today

Mistrust in systems becomes mistrust in people

Severe gaps in services federally and provincially

# BUILDING COMMUNITY CAPACITY

- Making information accessible
- Using various ways of delivery
- Simplifying to give a foundation to build on




**Pg 16 of hand book**

# ASSESSING CAPACITY TO MANAGE PROPERTY

**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.

**Mental ability to make property decision**

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

# WAYS TO BE FOUND INCAPABLE

## Substitute Decisions Act, 1992

### Section 9

Activating continuing power of attorney for property under Mental Health Act or through designated capacity assessor

### Section 15

P.G.T. becomes statutory guardian of property through the Mental Health Act

### Section 16

P.G.T. becomes statutory guardian of property through designated capacity assessor

Continuing power of attorney for property can terminate statutory guardianship if signed before statutory guardianship created and other conditions are met

### Section 25

Court order

# THE INDIAN ACT

**Let's simplify some definitions....**

***Indian:*** **Means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian**

**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.**

## Section 4(3)

**Application of Act**

Sections 114 to 117 and, **unless the Minister otherwise orders, sections 42 to 52** do not apply to or in respect of any Indian who does **not ordinarily reside on a reserve** or on lands belonging to Her Majesty in right of Canada or a province.

## Section 42(1)

**Descent of Property**

Subject to this Act, all jurisdiction and authority in relation to matters and **causes testamentary**, with respect to deceased Indians, is **vested exclusively in the Minister** and shall be exercised subject to and in accordance with **regulations of the Governor in Council**.

## Section 51

**Mentally Incompetent Indians**

(1) All jurisdiction and authority in relation to the property of mentally incompetent Indians is **vested exclusively in the Minister**.

(3) The Minister may order that **any property situated off a reserve** and belonging to a mentally incompetent Indian shall be dealt with **under the laws of the province** in which the property is situated.

# SUBSTITUTE DECISION-MAKING ON RESERVE

**Starting a Guardianship of Property with ISC**

- ISC **must** manage the property of an Indigenous adult ordinarily resident on reserve and incapable of managing property
- BUT ISC only takes jurisdiction when ISC is told an Indigenous person is incapable of managing their property by the P.G.T.

**Communicating with ISC**

- ISC does not consistently give incapable Indigenous adults a contact person to ask questions about their property
- If an Indigenous adult is not getting information from ISC about their property, they should:
  - Ask their Band office for contact information for estates officer at ISC assigned to the Band
  - Estates officer will not be managing the property but will be able to tell the person who is managing their property
- If Band does not know their estates officer, contact ISC and ask for estates officer assigned to the Band
  - ONestateservices-ONservicesdadmindessuccessions@sac-isc.gc.ca

**Communication should always be in writing- keep a record**

# SUBSTITUTE DECISION-MAKING ON RESERVE

## How to End ISC Guardianship of Property

1. Get an official paper saying the adult is now capable of managing their property

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

## Challenges in Process and Advocacy

- Indian Act does not create service standards for guardianship of adult's property. ISC has a manual for property guardianship services that is not publicly available. Conversely, Ontario law says guardians and attorneys must fulfill certain duties. Is reasonable to hold ISC to standards for property guardianship under Ontario law

- Indigenous adults may ask ISC for updates about management of their property. Find legal help if not satisfied with services

# ANY QUESTIONS SO FAR?

# WILLS: INDIAN ACT VS ONTARIO LAW

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

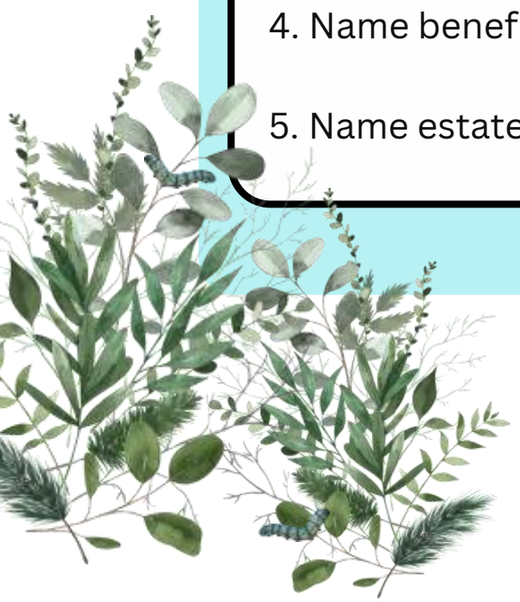
1. In writing, signed and dated

2. Statement it is a last Will and testament

3. Revocation/cancellation of previous Wills

4. Name beneficiaries and bequests

5. Name estate trustee(s)/executor(s)



### What is Needed for a Valid Will -- Indian Act only

Witnesses are not needed

Inheritance of reserve land is subject to several considerations:

- Beneficiary of land must be member of the Nation where the land is registered
- Are matrimonial property rights for married/common-law relationships
- Type of tenancy of land possession is relevant
- Cannot divide up land in a Will

### What is Needed for a Valid Will -- Ontario Law only

Signed in the presence of two witnesses unless Will is completely handwritten by the testator

# INHERITANCE ONTARIO LAW VS INDIAN ACT: NO WILL

**Myth: If an Indigenous person dies without a will, the Canadian government gets all their money and their land**

**Ontario law inheritance 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

**VS**

**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 – if not closer relative, goes to Band
- Law assumes is always next of kin to get the money

# ADMINSTRATION OF ESTATE: ON VS OFF

**Step one: Find out if there is a will**

**Step two: Who has jurisdiction?**

**Ontario Jurisdiction**

**Follow provincial process to administer estate**

**ISC Jurisdiction**

**Follow Indigenous Services Canada (ISC) process to administer estate**

# INDIGENOUS SERVICES CANADA (ISC) FORMS

Various forms might have to be completed and given to ISC depending on the situation

- **Application for Approval of a Will:** There is a Will naming an executor

- **Application for Administration with Will Annexed:** There is a Will but no executor or the named executor is unable or unwilling to act

- **Application for Administration:** Used when there is no Will

- **Renunciation by Executor/Administrator:** An executor is named in a Will who does not wish to be appointed as executor **or** an executor or administrator had been appointed by the Indigenous Services Minister but does not want to continue in that role

- **Common-Law Partner Statutory Declaration 1:** Used by the person claiming to be common-law partner of the deceased person

- **Common-Law Partner Statutory Declaration 2:** Used by a witness to the common law relationship with the deceased

Government of Canada / Gouvernement du Canada

PROTECTED **B** (when completed)
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# APPLICATION FOR ADMINISTRATION

(To be used where 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* (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 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-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.

**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 (Town/Reserve) — Province/Territory: Ontario

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

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

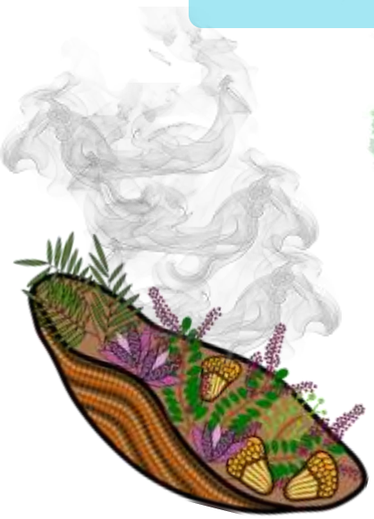
| Name | Relationship to the deceased | Registration number (10 digits) | Date of birth (YYYYMMDD) | Address (number / street / apartment / P.O. box, city or town, province/ territory, postal code) |
|---|---|---|---|---|
| Joshua White | son | 12345678901 | 1995/07/23 | 123 Somewhere St. Ottawa ON J8M 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 |
| Anglique 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 |



**Pg 74 of hand book; “case study”**



# DISPUTE RESOLUTION: ISC VS ONTARIO

**What happens if there is a dispute about the Will? Or if there are problems with an executor or administrator?**

## Ontario Jurisdiction

**Follow provincial court process for estate disputes**

## ISC Jurisdiction

**Indigenous Services Canada is responsible to provide a process for estate disputes**

# WHAT IS HELPFUL?

- **Building capacity in advocacy**
- **Demanding accountability in service delivery**
- **Amplifying Indigenous voices**

[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 Ac*t 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]

Pg 95 of hand book

# QUESTIONS?

## AND HOPEFULLY ANSWERS...

519-370-2200, ext. 33

angela.yenssen@gbclc.clcj.ca

www.gblegalclinic.com/elder-law-project/

**Elder Law Project**

The Law Foundation of Ontario
*Advancing access to justice*

GBCLC

Legal Aid Ontario
Aide juridique Ontario

# CLEO Resources

Steps to Justice  & Guided Pathways

- stepstojustice.ca
- stepstojustice.ca/guided-pathways-home/

CLEO Connect recorded webinars

- cleoconnect.ca/webinars

# Community and legal resources

- Public Guardian and Trustees Office: 1-800-891-0504
- Indigenous Services Canada (ISC):

  Land & Estates Department:

  Wills: aadnc.estates-successions.aandc@canada.ca

  Other inquiries: Onestateservices-ONservicesdadmindessuccessions@sac-isc.gc.ca
- Find your community legal clinic or call 1-800-668-8258
- Legal Aid Ontario: How do I apply for Legal Aid? 1-800-668-8258
- Lawyer Referral Service: 1-855-947-5255

# Resources

Wills and Powers of Attorney guidebook for Indigenous Peopls living in Ontario

Estate services for First Nations - Government of Canada

Wills and Estate Planning for Indigenous Peoples in Canada

Tip sheets – Preparing your will and powers of attorney

What is a will and what happens if I die without making one?

What do I need to think about when making a will?

What can I do if someone died and I do not agree with what I'm getting from the estate?

I've been named an estate trustee in a will. What do I have to do?

My loved one died without a will. Can I apply to be their estate trustee?

# CLEO Connect Webinars

Guided Pathway to make a will

Guided Pathway to make a power of attorney

Part 1: Power of Attorney for Personal Care - Webinar

Part 2: Power of Attorney for Property - Webinar

Power of Attorney for Personal Care: Safeguard wishes and take steps to prevent abuse - Webinar

Capacity to make decisions about property in Ontario - Fact Sheet

Capacity to make decisions about personal care - Fact Sheet

Ontario's Health Care Consent Act - Fact Sheet

Legal duties of Attorneys for personal care in Ontario - Fact Sheet

Legal duties of attorneys for property in Ontario - Fact Sheet

# Thank you for joining us!

Subscribe to CLEO Connect for updates on new legal information and upcoming webinars.

**QUESTIONS or COMMENTS?**

Contact info@cleoconnect.ca