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STEP Inside

NEWSLETTER OF THE SOCIETY OF TRUST AND ESTATE PRACTITIONERS (**CANADA**)

STEP Inside

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STEP Inside is published three times a year by the Society of Trust and Estate Practitioners (Canada), an organization of individuals from the legal, accounting, corporate trust and related professions who are involved, at a specialist level, with the planning, creation, management of and accounting for trusts and estates, executorship administration and related taxes. STEP Canada has branches in the Atlantic region, Montreal, Ottawa, Toronto, Winnipeg, Edmonton, Calgary, and Vancouver; and three chapters in London and Southwestern Ontario, the Okanagan Valley, and Saskatchewan.

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Education at STEP Canada

Many professions are involved in the planning, creation, and management of trusts and estates. STEP Canada is committed to providing educational programs that reflect the diverse knowledge required in all segments of this multi-faceted industry. STEP Canada has three educational streams to address the needs of diverse professionals.

Two of these streams, the **STEP Canada Diploma in Trusts & Estates** and the **Essay Program**, lead to the **TEP designation**. The other stream, the **Certificate in Estate and Trust Administration (CETA)**, is designed to enhance the knowledge and performance of many administrative professionals within the industry.

Get Your TEP

The TEP designation formally distinguishes qualified practitioners from non-specialists and offers a competitive advantage in attracting clients in this exceptional age of intergenerational wealth transfer. STEP Canada has two educational streams that allow students to obtain full membership in STEP and confer the right to use the TEP designation.

1. The **STEP Canada Diploma in Trusts & Estates** provides in-depth academic and professional knowledge of trust and estate planning and administration. The common-law program is offered in English, and the civil-law program is offered in French. The curriculum covers law, taxation, administration, and planning in relation to trusts and estates. This program is designed for professionals from all facets of trusts and estate planning and administration, including financial planning, accountancy, law, trusts, corporate succession planning, banking, and insurance.
2. The **Essay Program** allows professionals who hold a recognized qualification and have at least five years' experience (post-qualification) in the trusts and estates industry to obtain full membership in STEP. This educational stream is designed for professionals who are already experts in their field and wish to demonstrate their knowledge through a series of academic essays.

Professional Development for Administrators

The **CETA** program is designed to enhance the knowledge and performance of Canadian estate administrators, trust officers, junior trust officers, retail bankers, law clerks, junior associates, paralegals, wealth management sales representatives, and administrative assistants. As the preferred educational offering of major Canadian trust companies, the program sets an industry standard. The curriculum covers the foundations of trust and estate administration and the taxation of trusts and estates. It does not provide graduates with the credentials necessary to apply for the TEP designation.

What's New in Education at STEP Canada?

STEP Canada is dedicated to meeting the needs of our students. The **STEP Canada Diploma in Trusts & Estates** offers a unique blended program structure that allows students to follow a self-study curriculum, with the option to engage in both synchronous and non-synchronous learning opportunities. With more learning supports, such as on-demand video lectures and practice exams, the updated diploma program is set up for student success.

Synchronous Learning Opportunities

The program curriculum continues to be based on a self-study model that caters to the busy schedules of working professionals; however, with the new synchronous learning opportunities, students can choose to participate in the live-virtual activities to enhance their educational experience.

Peer Learning Sessions — Learning & Connecting

This optional component of the program allows students to join peers from their local branch to collaborate on a case study that will aid in exam preparation. The case studies used in the session are drawn from previous examinations. This is a great opportunity for students to enhance their learning experience and benefit from the diversity of professional experience of their peers, all while making connections.

Instructor-Led Tutorial — Learn from the Expert

The program offers an interactive instructor-led session where students will have the opportunity to ask clarifying questions about the course material. These sessions are often based on practice-exam questions to assist students with exam preparation.

Additional Learning Support

As part of the self-study curriculum, the diploma program has learning resources that students can access at their convenience.

A New Resource for Students without a Law Background

The Law of Trusts course now offers an additional learning module that reviews the basics of how the law will be accessed and used in the course, and a review of a standardized approach to answering case study questions.

On-Demand Video Lectures

A library of video lectures that review key topic areas is available on demand.

Instructor Q&A Forum

An extended instructor forum is available for students to ask clarifying questions about the course material. This is a helpful tool for students who cannot attend the live-virtual instructor session.

Practice Exams

Beyond the practice case questions provided in the live-virtual activities, students can also access a practice exam. Students can check their answers against the suggested answer key and self-assess their learning needs.

What's on the Horizon for STEP Education?

This year, STEP Canada is investing in the enrichment of our diploma program to develop additional practical resources to enhance the learning experience. More information will be available in fall 2023.

Award Winners 2022

Gerald W. Owen Book Prize (STEP Canada)

Sara Halickman, CPA, TEP

Sara started her accounting career as a summer student in 2011. Since then, she has risen through the ranks to become a partner in the Accounting and Assurance department at BDO Canada, leveraging her experience with clients in manufacturing, professional services, real estate, and the not-for-profit sector. Since 2020 she has built and led the firm's Estates & Trusts niche, working to better meet clients' needs in estate planning, administration, and personal and trust tax compliance. Over the course of her career, Sara has earned a reputation with her clients as a problem solver who will go the extra mile. Outside work, Sara is actively involved in several Montreal community organizations and committees.

Law of Trusts

Alex Alberelli, MTax, CPA, CA

Alex is a senior tax manager at KPMG in its Enterprise Tax practice in Vaughan, Ontario. Alex offers guidance and advises owner-managers and high net worth clients on corporate reorganization and estate-planning matters. Alex provides tailored solutions to his clients to help meet their specific needs, incorporating the use of trusts and estates, a cornerstone to successful plans.

Taxation of Trusts & Estates

Michael Earle, CPA, CA, CFP, TEP

Michael graduated from the University of New Brunswick with a Bachelor of Business Administration, specializing in Accounting and Finance (Honours). Following graduation, he obtained his Chartered Accountant (CA) designation (David Hope Honour Roll), Certified Financial Planner (CFP), Chartered Life Underwriter (CLU), and Trust & Estate Practitioner (TEP) designations. Today, Michael is the director of tax and estate planning at Owens MacFadyen Group, where his primary responsibility is to ensure that clients achieve the best possible financial outcomes in wealth, estate, income, taxation, succession, and philanthropic planning. His comprehensive approach to wealth management is rooted in a deep understanding of his clients' unique needs and goals, and he works in collaboration to develop customized solutions that meet their specific requirements.

Wills, Trust & Estate Administration

Sayuri Kagami

Sayuri is a senior trust specialist with RBC Royal Trust's Professional Practice Group, where she provides legal support on estate and

trust account escalations, offers guidance on Indigenous wealth matters, and leads a variety of regulatory and policy initiatives that impact RBC Royal Trust. Sayuri is a regular contributor to publications and speaker about advances in the law. She has presented at STEP conferences on the issue of digital assets in estate administration, and her publications include a co-authored chapter on estate-planning issues for LGBTQ2+ individuals in *LGBTQ2+ Law: Practice Issues and Analysis*, a multidisciplinary book that examines issues related to sexual orientation and gender identity in various areas of law.

Trust & Estate Planning

Alexander Di Lello, CPA, CA, TEP

Alex is a senior manager at RLB LLP, a regional accounting firm that has operated in Guelph, Ontario and the surrounding area since 1951. He thoroughly enjoys connecting with and assisting people inside and outside of RLB, facing new challenges, and helping clients accomplish their goals. Alex is an expert in the intricacies of trust, estate, succession, and tax planning. His specialties also include domestic and cross-border tax and estate planning, merger and acquisition transaction matters, and will and succession planning for business owners and high net worth individuals and their families. His knowledge and experience allow him to help his clients plan for their futures and preserve their assets for generations to come.

Essay Program

Marina Sadovsky, CPA, CA, MTax

Marina is a senior manager with MNP LLP. She has extensive experience in Canadian tax planning, specializing in estate planning and reorganizations for mid-market organizations and their shareholders. As part of the National Tax Services group, Marina assists with writing budget summaries, analyzing technical issues, and providing technical training. Marina is also active in the tax education community; she teaches Taxation I and Taxation II at the University of Guelph-Humber, and is a contributor to a McGraw Hill Canada university textbook entitled *Canadian Income Taxation: Planning and Decision Making*. She is also an experienced presenter and continues to be a long-time facilitator for the CPA Canada In-Depth Tax Program.

CETA Program Award

Alexandra Lyde-Stad

Alexandra (Alli) obtained her paralegal diploma from Capilano College (now Capilano University) in 1995 after graduating from the University of Victoria in 1993 (honours BA in psychology). She has extensive previous paralegal experience in a variety of practice groups in Vancouver including estate planning and estate administration, corporate, and real estate (both residential and commercial). She joined Janine A.S. Thomas Law Corporation in 2008 to focus on both estate planning and estate and trust administration for routine and complex matters. Outside work, Alli spends her time mountain biking, canoeing, and playing bass.

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A Case Study on Capacity

Introduction

As trust and estate practitioners, we know that mental health and mental capacity are essential components of our practice. We must frequently navigate the often blurry and contested boundary between medical diagnosis and legal incapacity in a variety of contexts, such as making wills and powers of attorney, managing property, and making health care decisions. As Canada's population ages, and as life expectancy remains high or even increases, more Canadians may be living longer with cognitive impairments associated with aging.

In the case study that follows, we meet Larry, distraught from the death of his wife, Sally, and showing signs of mental distress. He has recently relocated to Vancouver to live with his daughter Grace. Our contributors highlight the similarities and differences in capacity law across Canada, and the implications for Larry, his business, and his planning. In so doing, our contributors illuminate the complexities arising from a more mobile population, in addition to those associated with an aging population. We also meet Larry's daughter Brenna, who is estranged from the family and dealing with her own struggles. Brenna serves as a reminder that mental health and mental capacity are issues not only for our clients, but also for ourselves and our professional colleagues.

Capacity Fact Pattern

Larry and his wife, Sally, married in 1956, right out of high school. They were together their entire adult lives. Sadly, Sally passed away three years ago. Larry is now 85 years old.

Larry and Sally settled in Ottawa after getting married, where they raised two daughters, Brenna and Grace. Larry started a parts manufacturing business, which he incorporated under Ontario law.

Larry's business thrived, and he soon set up a large manufacturing facility and office across the river in Hull, Quebec. Over the years that followed, he opened operations across Canada. With the success of the business, Larry and Sally decided to buy a vacation home near Southampton, England, not far from where Larry's ancestors lived.

The years passed and their daughters grew to be adults.

Their older daughter, Brenna, initially showed interest in joining the family business, but she hoped for more responsibility than Larry was prepared to share. Unfortunately, this caused friction with Larry and eventually with the rest of the family. Brenna ultimately moved to Alberta, went to law school, and became a litigator focused on estate litigation. Her relationship with the family deteriorated over the years until it was virtually non-existent.

Larry and Sally's younger daughter, Grace, moved to Vancouver and became a nurse. In contrast to Brenna, she maintained a very close relationship with her parents, calling them regularly, visiting twice a year, and helping out as much as she could from a distance.

The years passed and Sally's health started to decline. This prompted Larry and Sally to visit a lawyer in Ottawa, who created simple wills for them. They named each other as executor and left everything to the survivor. Grace was named as the backup executor, and was to receive the entire residue of the estate on the death of the survivor. Because Larry had accumulated land and business assets across Canada over the years, the lawyer also recommended that he have a power of attorney in each of these provinces. Larry followed this advice, naming Sally as his attorney and Grace as the alternate attorney; however, Larry was never quite able to fully trust anyone else, so he created springing powers of attorney where possible, which would be triggered upon a letter from a doctor stating that he lacked the capacity to manage his affairs.

Unfortunately, Sally's health continued to decline, and she passed away some months later. Without Sally, Larry grew lonely, and depression set in. His drinking, which had always been a modest concern to his family,

became more regular and worrisome. He turned over the management of his business to his senior management team, although he remained the sole shareholder and director of the corporation.

Larry began to administer Sally's estate, but she had quite a few bank accounts and other small assets in her own name, and he lost interest, never having made much progress. Unfortunately, Larry and Sally had long ago decided to register the family home in Sally's name alone in case Larry ran into trouble with his business, and title remained in her name. They did, however, register title to their vacation property in England jointly, and so it was thankfully easy to transmit that into Larry's name alone.

Grace eventually convinced Larry to move to Vancouver to be close to her and her kids. She hoped that the change would be good for him. He rented out the Ottawa house and moved in with Grace. Ultimately, however, he could not recover from the loss of Sally.

It has been months now since Larry moved to Vancouver, and Grace has realized that Larry's memory is failing and she questions his decision making.

One day a couple weeks ago, Larry went to the bank to withdraw some cash, and he could not remember his password. When asked by the teller, he also could not remember his phone number. Concerned, the bank decided to freeze his accounts, and suggested that he visit his family doctor and bring in his power of attorney.

Larry was furious, and told Grace all about his experience at the bank. Grace offered to make a doctor's appointment for him, but he refuses to go. He cannot believe that anyone would challenge his capacity. Grace is not sure what to make of this. She sees that he is not himself, but she is not sure if he is simply drinking too much, or if he has truly lost capacity.

Around the same time that Larry had trouble at the bank, one of the managers from Larry's business called Grace to say that they were having trouble reaching Larry on his cell phone and that they needed to have him sign documents as director of the corporation.

The following evening, when Grace arrived home from work, she noticed an envelope and some documents on the dining room table. When she looked at them she realized they were copies of her parents' wills, and what looked like her father's powers of attorney. There was a reporting letter from the Ottawa lawyer who drafted the wills. Grace was relieved to see a comment in the letter confirming that, given Sally's health issues, the lawyer had considered both Larry and Sally's mental capacity, had no concerns, and was confident that they both had the necessary capacity to create the wills and powers of attorney.

The lawyer's reporting letter also reminded Larry and Sally that their wills excluded their property in England, since they had planned to make an English will for that property on an upcoming trip. Unfortunately, Sally's health prevented them from travelling, and they never made the English will. Grace wondered what that meant for the property in England, since her parents had frequently talked about it going to her. She does not know if her father would be able to make a new will. She has done a bit of research online, and has read about statutory wills, but does not know if this would be an option.

To make matters worse, last week Grace decided that she should tell her sister about their father. She had had no contact with Brenna since she called to let Brenna know of their mother's death. Grace told Brenna that their father is struggling emotionally and mentally, and suggested that she may want to visit. Brenna replied angrily that she never wants to see her father again, that he clearly never loved her, and that she will absolutely be taking a good look at his will once he passes away, now that he has moved to British Columbia. Grace was shocked by the intensity of Brenna's anger, and it seemed to Grace that Brenna had been drinking. Although she did not have much of a relationship with her sister, Grace had heard rumours through childhood friends about Brenna's drinking, exacerbated by the stress of her busy litigation practice.

Grace does not know what to make of all this. She decides to consult with professional advisers and is referred to you. She lays all this out for you. What do you recommend?

NOTE FOR READERS: Larry's domicile has changed over the years, and The Quebec Perspective below discusses some of the conflicts of laws issues that are relevant to the fact pattern. This article assumes that the law of the province being discussed applies to the fact pattern, in order to educate the readership about the differences in these laws. Please note that determining the correct provincial law to apply involves a conflicts of laws analysis that is outside of the scope of this article. Professional legal advice is, as always, recommended for any factual situations involving multiple provinces.

Capacity Assessment Triggers: Case Study and Practice Tips

ARLIN PACHET, PhD, R Psych, ABPP
Board Certified in Clinical Neuropsychology
Pachet Assessment & Rehabilitation Services Inc.

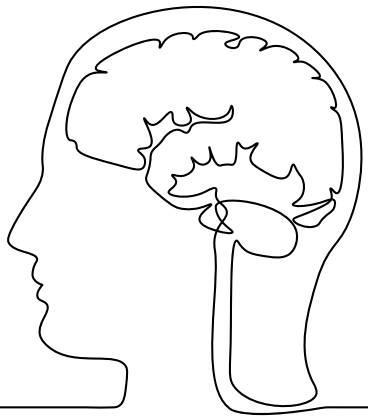
Capacity assessment refers to the evaluation of a person's decisional abilities and takes into consideration their understanding of information and appreciation of the consequences of their choices. A person's ability to follow through with their decisions is also integral. All adults are presumed to have decision-making capacity, and an assessment may be conducted only if the need for it has been established. Capacity can be time-sensitive, meaning that a person may be able to demonstrate their optimal decision-making abilities at certain times of day. Capacity can also be task-specific, meaning that it can vary with the complexity of a decision. For example, a person with moderate cognitive impairment may be able to make decisions related to relatively simple matters, such as the rationale for taking a medication for gout, but could struggle when weighing the pros and cons related to a more complex decision, such as how to proceed with cancer treatment.

Capacity evaluations typically occur in a two-step process: pre-assessment and assessment. Pre-assessment entails verifying that a capacity evaluation is warranted. This is done by identifying the triggers for the assessment and the capacity areas that are being called into question (for example, health care, accommodation, choice of associates, legal matters, or financial matters). Gathering collateral information and establishing medical stability are also core elements of the pre-assessment process. When it comes to the assessment process, the gold standard involves engaging the client in a clinical interview, which may be supplemented with brief cognitive testing.

The case presented in this issue of *STEP Inside* is an example of a common scenario in which an individual is demonstrating threats to capacity and their relative is unsure what the next steps should be.

Larry was born in 1938. In 2020, he was widowed when Sally, his wife of 64 years, passed away. He is now 85 years old. He has two children, Brenna and Grace. Larry is estranged from Brenna, but he has maintained a close relationship with Grace. Larry had previously drafted a springing power of attorney, naming Sally as his attorney and Grace as the alternate attorney. Similarly, his last will and testament named Sally as the executor and sole beneficiary of the residue of his estate, with Grace as the alternate. Following Sally's death, a significant change in Larry's personality was observed. He went from being a business-driven individual, expanding his company and showing a pattern of growing his ventures as the director, to turning over the management of his business to his senior management team. Larry's interaction with the bank teller raised concerns regarding his cognition when he could not remember his password or his phone number. Grace has noticed issues regarding his memory and decision-making skills. Grace also noticed behavioural changes: when she spoke to Larry regarding the challenge to his capacity, Larry responded with anger and refused to see a physician.

While there was no medical documentation available for my review, it was alluded to that Larry had been struggling with depressive symptoms since the death of his wife. Further, it was noted that Larry's drinking habits, which had always been a modest concern to the family, became more regular and worrisome. In my years of involvement in the assessment of neuropsychological function as well as decisional capacity, it has been my repeated experience that alcohol use, both in the acute inebriation state and in a more chronic debilitating condition, has pernicious effects on an individual's behavioural and cognitive functions, the latter pertaining not only to executive functions, attention,



and visuospatial functions, but also to memory. In Larry's case, issues with memory and executive functioning may be threatening his ability to manage his health, finances, and business. It is also possible that disinhibition is perpetuating his behaviour of drinking in excess, and that he is self-medicating a possible mood disorder with the use of alcohol.

The following is an outline of the main capacity-related triggers found for Larry:

- Onset of a possible mood disorder, specifically depression, following Sally's death.
- Alcohol intoxication. Larry's drinking, which had always been a modest concern to family, became more regular and worrisome.
- Change in personality, from being business-driven, expanding, and being the director of his company, to turning over management of his business to his senior management team.
- Cognitive changes, specifically regarding memory and decision making, observed by Grace. Memory issues were also salient during his interaction with the bank teller, which led to the freezing of his bank accounts.
- Behavioural changes, namely, responding with anger regarding the challenge to his capacity and refusing to see a doctor.
- Possible disinhibition perpetuating his drinking in excess.

Following identification of triggers, an individual should be deemed medically stable prior to engaging in a capacity evaluation. A thorough medical assessment is crucial to reveal or rule out possible neurodegenerative changes or potential reversible conditions that are amenable to treatment. For example, Larry may be suffering from a depressive disorder that could benefit from antidepressant medication. Similarly, further elucidation of the extent of his drinking habits and whether he is at risk for any prominent changes in brain structures observed in chronic excessive drinkers would be critical to a thorough medical assessment. Typically, a capacity evaluation should be considered only after a person has been deemed medically stable, and only if triggers remain present following treatment and intervention.

Achieving medical stability in this case may be very challenging, given Larry's refusal to see a physician or to engage in medical assessments. Although an evaluator may proceed with a capacity assessment, there would be significant caveats to the assessor's opinions. Further, in this case, the assessor may want to conduct a collateral interview with a trusted individual, such as Grace and/or Larry's family physician.

If triggers for a capacity assessment have been identified and informal solutions have failed to resolve the areas of concern, proceeding with a formal capacity evaluation would likely be considered. The gold standard for capacity assessments is the completion of a clinical interview with a capacity assessor. During the clinical interview, specific questions would be asked to determine Larry's understanding and appreciation of his circumstances and options. Information regarding his level of insight as well as his willingness to apply compensatory cognitive strategies would be solicited. Cognitive tests may be administered to supplement the interview, though this is not the thrust of the evaluation; cognitive issues do not automatically equate to a lack of capacity. Depending on the results of the capacity assessment and the level of risk posed, and keeping in mind that capacity is a continuum, the step of taking away someone's capacity to make decisions should be considered as a last resort. The least intrusive options must be exhausted first. If informal supports are available, these should be explored.

THE BRITISH COLUMBIA PERSPECTIVE

KATE MARPLES, TEP
Partner, KPMG Law LLP; Member, STEP Vancouver

JENNIFER ESHLEMAN, TEP
Associate, Alexander Holburn Beaudin + Lang LLP; Chair, STEP Okanagan

Our first recommendation to Grace is that Larry consult with his own independent estate-planning lawyer to have his legal capacity assessed in relation to any estate-planning steps that may be available to him. It will be crucial for Grace to understand that, since we have now been consulted by her, we cannot also provide advice to Larry, because doing so could suggest that Grace is influencing Larry's estate planning.

Legal Capacity to Make a Will

Under British Columbia's *Wills, Estates and Succession Act*, SBC 2009, c. 13 (WESA), a person who is 16 years of age or older and who is mentally capable of doing so may make a will.

If Larry consults with his own independent legal counsel and it is determined that he has the requisite legal capacity to make a will, pursuant to the common-law test, he should consider whether his current Ontario will reflects his current testamentary intentions. If it does, the only asset not covered by that will is his UK property. Ideally, Larry would make a will with a UK lawyer to deal with this property and to ensure compliance with local laws, but if travel is difficult and if assessing capacity from a distance is problematic, a BC will could be made to deal with this property. As part of that process, Larry's BC lawyer should consult with a UK lawyer to ensure that the necessary execution and other requirements are met.

If Larry does not have legal capacity to make a will, BC law does not allow for a will to be made for him on his behalf by Grace, as his attorney. Grace may want to consult with a lawyer in the UK to see if there are any options under UK law in these circumstances.

Power of Attorney

Springing powers of attorney are permitted in British Columbia, so the springing powers of attorney that Grace holds for Larry should be reviewed to determine whether the requisite test for capacity is met. If the test requires a letter from a doctor, Grace should continue to encourage Larry to see a doctor and get an assessment. If Larry continues to refuse to see a doctor, Grace will not be able to use the springing powers of attorney.

...a person who is 16 years of age or older and who is mentally capable of doing so may make a will.

We recommend that any powers of attorney that were not springing be reviewed to assess whether their use is restricted to a single province, since powers of attorney executed elsewhere may be valid in British Columbia. Additionally, in recent BC cases the courts have ruled that it is possible to compel an individual to undergo a capacity assessment; however, the process is challenging and strong prima facie evidence of incapacity would be required.

Grace's ability to manage Larry's affairs will be extremely limited if there is no power of attorney under which her powers have been triggered.

Wills Variation in British Columbia

Under BC law, one of the most significant concerns facing Larry is a potential variation claim by Brenna under WESA section 60, which provides as follows:

> [I]f a will-maker dies leaving a will that does not, in the court's opinion, make adequate provision for the proper maintenance and support of the will-maker's spouse or children, the court may, in a proceeding by or on behalf of the spouse or children, order that the provision that it thinks adequate, just and equitable in the circumstances be made out of the will-maker's estate for the spouse or children.

Because Larry's current will makes no provision for Brenna, she will be able to bring a claim against Larry's estate after his death. It should be noted that, unlike dependants' relief legislation in some other provinces, the right to bring a variation claim is not limited to minor children or dependent adult children.

While a court may consider all of a deceased's assets when evaluating a wills variation claim, the ability of the court to vary a will extends only to those assets that pass through the estate. Therefore, to the extent that assets can pass outside the estate, the effects of a variation claim will be mitigated. Typical methods of passing assets outside the estate include making gifts during the transferor's lifetime, transferring assets into joint tenancy, or settling assets into a trust. All three methods require either legal capacity on the part of the transferor or a valid power of attorney with broad powers to support the gift.

Variation Planning Options

If Larry has legal capacity, he may wish to consider settling his assets into an alter ego trust, provided that transferring such assets to a trust will not be considered a fraudulent conveyance under the BC *Fraudulent Conveyance Act*. Holding assets in a trust would put such assets beyond the reach of a wills variation claim.

Transferring assets into an alter ego trust could be done on a tax-deferred basis. While Larry could consider transferring his assets to Grace during his lifetime, or at least transferring them into joint tenancy with her, both options would result in a taxable disposition in the year of transfer if the beneficial interest transfers, which could give rise to a significant tax liability.

If Larry does not have legal capacity, and if Grace becomes Larry's attorney under a triggered springing power of attorney, she may be able to exercise her power as Larry's attorney to settle an alter ego trust on his behalf, provided that the terms of the power of attorney are broad enough. Section 20 of British Columbia's *Power of Attorney Act*, RSBC 1996, c. 370, provides that an attorney may make a gift from the adult's property if the power of attorney permits the attorney to do so, or if (a) the adult will have sufficient property remaining to meet his personal care and health care needs; (b) the adult, when capable, made gifts or loans, or charitable gifts, of that nature; and (c) the total value of all gifts, loans, and charitable gifts in a year is equal to or less than a prescribed value (currently $5,000 per year). Therefore, because Larry's assets likely have a value in excess of $5,000, Grace will be able to settle an alter ego trust only if the power of attorney gives express permission for Grace to do so.

While the case law supports an attorney's power to settle an alter ego trust on terms that mirror the terms of the adult's last will, taking such action can raise the question of whether the attorney is in breach of their fiduciary duty as attorney in making such a transfer of assets. In this case, settling an alter ego trust on the same terms as Larry's will would ultimately benefit Grace as the sole beneficiary of the trust after Larry's death. However, Grace could take the position that because the power of attorney would lapse if Grace predeceased Larry, putting his assets into a trust is necessary to allow for continued administration of the assets (which include his business).

Business Corporations Act (British Columbia) Considerations

Pursuant to British Columbia's Business Corporations Act, SBC 2022, c.57, s. 124, Larry would be immediately disqualified from acting as a director of any corporation which he may have incorporated in British Columbia if a court were to find him to be incapable of managing his own affaris.

THE ALBERTA PERSPECTIVE

SHANNON JAMES, TEP
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Although he is not a resident of Alberta, Larry's apparent deterioration raises concerns in relation to his Alberta interests, including his business operations within the province.

Section 5(1) of Alberta's *Powers of Attorney Act*, RSA 2000, c. P-20, recognizes the validity of "springing" powers of attorney, stating that an enduring power of attorney (EPA) may provide that it comes into effect on the occurrence of some future contingency, including the mental incapacity or infirmity of the donor. Section 5(4) further provides that where the triggering event relates to the donor's incapacity or infirmity, and the document does not name a person for the purpose of bringing the EPA into effect, the contingency will be conclusively deemed to have occurred on the declaration by two medical practitioners that the donor lacks capacity to make decisions of a financial nature.

In Larry's case, the triggering event is the provision of a letter from a doctor stating that Larry lacks the capacity to manage his affairs. Until that occurs, his Alberta EPA is of no effect.

Alberta law places a great deal of importance on personal autonomy. In circumstances like Larry's, where a person appears to be declining and their capacity is in question, interested persons (such as the attorney named in an EPA) are in the difficult position of trying to provide support and assistance without having the authority to intervene in the potentially incapable individual's affairs.

Where an individual refuses to attend for a capacity assessment, an interested party may be forced to bring an application before the Court of King's Bench of Alberta to compel the individual to attend for a capacity assessment. In this case, Grace, as the alternate attorney named in Larry's Alberta EPA, could bring such an application under section 9 of the *Powers of Attorney Act*, which permits the court to give its opinion, advice, or direction on any matter concerning the management or administration of the donor's property.

However, as noted by the court in *Melin v. Melin*, 2018 ABQB 1056, although the Court of King's Bench does have jurisdiction and authority to order a capacity assessment, doing so "should only be a last resort in exceptional circumstances as it seriously impinges upon the individual's

autonomy, respect for the individual's decision-making in matters of fundamental personal importance, and should only be used in the clearest of cases in the interests of and to protect the person subject to the order" (at paragraph 112). If Grace were to bring an application to compel Larry to attend for a capacity assessment, she should do so only on the clearest of evidence. Therefore, she should carefully keep track of her observations with respect to Larry's capacity, and potentially obtain affidavits from others who have observed signs of cognitive decline in Larry.

It is important to note, however, that even if a court orders a capacity assessment, Larry cannot be forced to attend or to meaningfully participate.

In the event of truly urgent circumstances that put Larry in immediate danger of suffering serious financial loss, Grace could consider bringing an application before the Court of King's Bench of Alberta to be appointed as Larry's interim trustee on an urgent basis, pursuant to section 48 of the *Adult Guardianship and Trusteeship Act*, SA 2008, c. A-4.2 (AGTA). An urgent interim trusteeship order could be granted if the court is satisfied that there is some evidence that leads to the conclusion that Larry lacks capacity to make a decision about a financial matter and is in immediate danger of suffering a serious financial loss. The AGTA allows for these orders to be granted without obtaining a capacity assessment report confirming the individual's incapacity. Urgent trusteeship orders are time-limited and must be reviewed within 90 days. This would be a temporary solution, but potentially allows Grace time to try to get Larry's capacity formally assessed and to make alternative arrangements for the protection of Larry's financial and business interests.

Finally, with respect to his business interests, if Larry has incorporated any Alberta corporations to carry on his business activities (including as a subsidiary of his Ontario corporation), his incapacity could result in his being disqualified as a director of that corporation by virtue of section 105(1) of Alberta's *Business Corporations Act*, RSA 2000, c. B-9 (ABCA). In the event that Larry is found to lack capacity, either by way of an Alberta court's declaration of incapacity, or by way of a court order from another jurisdiction declaring him incapable, he would be disqualified as a director of any Alberta corporations. Disqualification would then require the appointment of another person (such as a trusted manager or, if she is able, Grace) to ensure that business operations continue and to protect the interests of the shareholders, including Larry.

> …where a person appears to be declining and their capacity is in question, interested persons are in the difficult position of trying to provide support and assistance without having the authority to intervene in the potentially incapable individual's affairs.

THE SASKATCHEWAN PERSPECTIVE

AMANDA S.A. DOUCETTE, TEP
Partner, Stevenson Hood Thornton Beaubier LLP; Member, STEP Saskatchewan

Given our aging population and the increase in isolation as a result of the COVID-19 pandemic, professionals have increasingly been faced with recognizing and responding to the needs of vulnerable adults in the estate-planning context. Although the proposed fact scenario does not involve persons in Saskatchewan, we know that Larry had opened branches of his business across Canada. Within that context, this article provides an overview of how some of these issues would be addressed in Saskatchewan.

Powers of Attorney

Since Larry executed springing powers of attorney, Grace is not going to be in a position to act as Larry's attorney until such time as she has a letter from a doctor confirming that Larry is not able to manage his affairs. This is problematic, because Larry refuses to see a doctor.

Unfortunately, Saskatchewan's *Powers of Attorney Act, 2002*, SS 2002, c. P-20.3 ("POA Act"), does not offer a clear solution to Grace. Sections 9 and 9.1 of the POA Act address contingent

appointments under an enduring power of attorney, and section 9.2 indicates that if no person is named in the enduring power of attorney to confirm that the specified contingency has occurred, the grantor can be deemed to have a lack of capacity if two members of a prescribed professional group declare in writing that there is a lack of capacity. A list of persons who are included in such a professional group is set out in section 4 of the regulations under the POA Act. Unfortunately, section 9.2 would actually result in a stricter requirement for Larry than the contingency he put in place, because he would now have to be evaluated by two members of the medical community.

> ...it is possible to apply to the court to be appointed as a guardian or co-decision maker for an adult who does not have the capacity to make financial or personal decisions.

The legislation also allows for any "interested person" (which would arguably include Grace) to apply to the court for advice or directions with respect to the enduring power of attorney. Unfortunately, this could be a time-consuming and costly endeavour.

In the event that Grace ends up acting in the role of attorney, it is important for her to be aware of her responsibility to provide a final accounting (in a prescribed form) on the termination of the power of attorney. Prior to that time, Brenna could also request that Grace provide her with an interim accounting (see sections 18 and 18.1 of the POA Act).

Adult Guardianship

In Saskatchewan, it is possible to apply to the court to be appointed as a guardian or co-decision maker for an adult who does not have the capacity to make financial or personal decisions (see *The Adult Guardianship and Co-decision-making Act*). Grace would fall within the category of persons who could make such an application in relation to Larry.

There are advantages and disadvantages to this option. One of the advantages is that it offers the option of being named as a "co-decision-maker," which would allow Larry to participate in decision making (if he is able). There are also provisions permitting an application to be made for a *temporary* order for a specific purpose. Temporary orders are subject to less stringent requirements because they are for a limited time and a specific purpose. However, they still require a court application and the provision of some medical information to the court.

Saskatchewan Business Corporations Act, 2021

With regard to Larry's role as a director of a parts manufacturing corporation, section 9-6(1) of *The Business Corporations Act, 2021*, SS 2021, c. 6, states that a person is disqualified from being a director of a corporation if they have been found by a court to lack capacity.

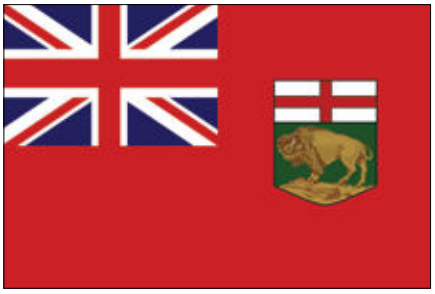
In the event that a court order is not available, shareholders of a corporation may (by ordinary resolution) remove any director from office (see section 9-10(1)). On a vote to remove a director, the number of votes cast in favour of removal must be greater than the product of the number of directors required by the articles and the number of votes cast against the motion.

General Thoughts

Beyond the legal issues involved in this fact scenario, there are a number of "soft" issues. These include Larry's emotional and mental struggles and his reluctance to see a doctor, the tension between Grace and Brenna, the tension between Brenna and Larry, and any personal struggles that Brenna may be experiencing. All of these factors will play a role in the ultimate legal solution(s).

In addition, it is important to remember that, as professionals, we have an obligation to our client. In this case, who is the client—Grace or Larry? What supports need to be put in place to ensure that Larry has the opportunity to receive independent support and advice, and what limitations are there for providing such advice when Larry's mental capacity is in question?

Arguably, the best result for Larry is one that involves him in the decision making. Larry's needs are complex. If possible, it would be preferable to establish a team of supports for Larry, which would include (at minimum) Grace, his family doctor (and any specialist), a lawyer, and someone from the bank. It is important to recognize that Larry's capacity likely falls on a continuum and may not be "all or nothing"; it could be impacted by outside factors such as grief, the move to a new location, and alcohol use. By addressing some or all of these outside factors, it might be possible for Larry to participate more actively in the decision making.



THE MANITOBA PERSPECTIVE

ALEX BAINOV, TEP
Founder, Contrast Law; Member, STEP Winnipeg

Powers of Attorney

Grace will need to review whether Larry made a separate power of attorney in Manitoba. If he failed to do so, section 25 of Manitoba's *Powers of Attorney* Act, CCSM c. P97 ("POA Act"), allows for an enduring power of attorney executed outside the province to be recognized as a valid enduring power of attorney if it is valid according to the law of the place where it was signed, and provides that the power of attorney is to continue in effect despite the mental incompetence of the donor.

If Larry has a valid Manitoba power of attorney and any personally owned assets in Manitoba in respect of which the power of attorney may need to be used, Grace will want to review Larry's Manitoba power of attorney to determine whether it was prepared as an enduring power of attorney. Per section 10(1) of the POA Act, the power of attorney must specifically provide that it is to continue despite the mental incompetence of the donor (that is, Larry in this case). The POA Act allows for springing powers of attorney. If Larry did make one in Manitoba, presumably it has the same trigger as his Ontario power of attorney, namely, a letter from a doctor stating that he lacks mental capacity. If Larry's power of attorney contains a statement that it is to come into effect on his mental incompetence, but does not provide that it is based on a letter from a single doctor, then declarations from two doctors ("duly qualified medical practitioners") would be required for the power of attorney to spring into effect, per section 6(4) of the POA Act. Section 19(1) requires Grace to act for Larry if she knows or ought to know that Larry is mentally incompetent, and the power of attorney has not been terminated by Larry. Section 20 further provides that if an attorney fails to act as required by section 19, such person is liable to the donor for any loss caused by the failure to act. This puts Grace in a difficult position because if she believes that Larry is mentally incompetent to manage his own affairs, it may be necessary to arrange for an involuntary assessment.

If there is any uncertainty regarding the power of attorney being triggered, section 7(1) of the POA Act allows for an application to be made to the court to determine whether the date or contingency specified in the power of attorney has occurred. This application to the court can be made by the attorney (that is, Grace as the alternate attorney since Sally is now deceased) or, in the discretion of the court, any interested person. Section 24(1) provides even broader powers for the court to make any order the court considers appropriate in respect of the power of attorney, including an order providing advice or directions on any matter respecting the management of Larry's estate or a declaration that Larry is mentally incompetent. Section 24(2) allows for an application to be made by (among others) an attorney, the nearest relative of the donor, or, with the approval of the court, an interested person. In these circumstances, Grace is a named attorney, one of Larry's nearest relatives, and (arguably) an "interested person" by virtue of her potentially being the sole residual beneficiary of Larry's estate. If an application is filed by Grace, Larry will need to be served, and he can certainly present his own arguments as to why he believes he is mentally competent to manage his affairs.

If Larry does not have a valid Manitoba power of attorney and his Ontario power of attorney is not recognized in Manitoba, an application may need to be made for an appointment of a substitute decision maker (called a "committee") for the management of Larry's personal property in Manitoba. In that case, affidavits from two doctors would be required describing Larry's mental condition, similar to the requirement under the POA Act. Unfortunately, Grace cannot be appointed to such a position because only persons resident in Manitoba may apply to be appointed as a committee.

Finally, Grace will need to review which of Larry's assets are personally owned and which are owned by the corporation. Since Larry and Sally accumulated many business assets across Canada over the years, many of these assets may be corporately owned. If that is the case, Larry's personal Manitoba power of attorney would not be helpful regarding those corporate assets. Consequently, Grace may need to rely on Larry's general power of attorney, which would also include the ability to hold and manage the shares of the corporation and (in turn) provide the ability to elect capable corporate directors who can address any issues

in respect of corporate assets located in various jurisdictions.

Corporate Issues

Since the corporation was incorporated under Ontario law, *The Corporations Act*, CCSM c. C225, of Manitoba would not apply to the replacement of Larry as a director. Presumably, Larry's Ontario power of attorney would apply in respect of the management of Larry's shares in the corporation. An Ontario lawyer would therefore need to be consulted to determine when Grace may be able to start acting in order to vote the shares held by Larry to elect the new replacement director(s), or to determine whether Grace and the management team may have any other recourse to replace Larry as the director (aside from triggering the Ontario power of attorney).

If, Larry incorporated a Manitoba subsidiary, or for any other reason, Manitoba law applies, Larry would be considered to be failing in his duties to manage the affairs of the corporation, per section 97(1) of *The Corporations Act*. Unfortunately, unless one of Larry's powers of attorney can be triggered and used to vote the shares to elect new director(s), Larry would remain as the incumbent until his successor is elected, per section 101(5) of *The Corporations Act*.

Although it is an issue not specifically related to concerns about Larry's incapacity, Grace will need to review whether the corporation owns any property or otherwise carries on any business in Manitoba. If it does, Grace will need to ensure that the corporation is properly registered extraprovincially in Manitoba, as would be required by *The Corporations Act* in such circumstances.

Estate Administration and Will Challenge Issues

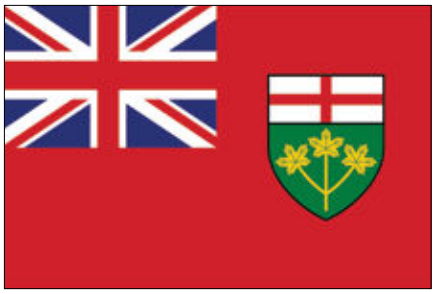
It does not appear that Larry and Sally made separate wills for any assets that they may have had in Manitoba. Sally had quite a few bank accounts and other small assets in her name alone, but it appears that she did not have any immovable property (i.e. real estate) in Manitoba. Consequently, Manitoba estate administration laws should not apply to Sally's estate.

If Sally personally owned any real estate in Manitoba (as the sole owner), her Ontario will would still apply unless the properties were specifically excluded from being governed by such will, as the house in England was. If the Ontario will is found to be invalid, Manitoba administration laws would apply to any real estate in Manitoba solely owned by Sally.

Even if Sally's will was deemed to have been invalid, Larry would be entitled to receive Manitoba assets from Sally's estate, per section 2(2) of *The Intestate Succession Act*, CCSM c. 185. If Larry's will is challenged by Brenna after his death and it is determined to be invalid, the distribution of the Manitoba assets (or, more likely, the proceeds from their sale) that Larry holds at his death would also be governed by *The Intestate Succession Act*. Since Sally predeceased Larry, everything would be distributed to Grace and Brenna in equal shares.

Larry appears to be domiciled in British Columbia now, so it is likely that BC laws would apply to the administration of Larry's estate. Grace will need to consult with a BC lawyer on any concerns for such future administration, because Brenna may have a claim based on Larry's failure to discharge his "moral obligation" to her and adequately provide for her in his will. This would not be a concern for any Manitoba-based estate.

If Larry's Ontario Will is invalid, then the Manitoba assets will comprise part of the general estate which will be distributed in accordance with the applicable intestacy legislation. Grace will have no ability to put a Will in place for her father as Manitoba's *Wills Act* does not allow for statutory wills in the province.



THE ONTARIO PERSPECTIVE

SÉBASTIEN DESMARAIS, TEP
TD Wealth, Wealth Advisory Services; Member, STEP Ottawa

In Ontario, one can give a continuing power of attorney if the individual has reached the age of 18 and has capacity.

The criteria establishing capacity for giving a continuing power of attorney are found in section 8(1) of the *Substitute Decisions Act*,[1] which requires that the grantor

a. knows what kind of property he or she has and its approximate value;
b. is aware of obligations owed to his or her dependants;

1 *Substitute Decisions Act, 1992*, SO 1992, c. 30 (SDA).

c. knows that the attorney will be able to do on the person's behalf anything in respect of property that the person could do if capable, except make a will, subject to the conditions and restrictions set out in the power of attorney;
d. knows that the attorney must account for his or her dealings with the person's property;
e. knows that he or she may, if capable, revoke the continuing power of attorney;
f. appreciates that unless the attorney manages the property prudently its value may decline; and
g. appreciates the possibility that the attorney could misuse the authority given to him or her.

It has been held that section 8(1) of the SDA is construed as a list of necessary abilities and that any finding of capacity, or lack thereof, must be determined on a case-by-case basis depending on the past habits and practices of the grantor.[2] The jurisprudence seems to indicate that the courts rely initially on the presumption of capacity of the grantor. In order for a court to rule that a grantor is incapable of granting a continuing power of attorney, the onus is on the appellant to rebut the presumption of capacity with clear and cogent evidence on a balance of probabilities.[3]

It is worth noting that someone may be capable of giving a power of attorney for property even if he or she is incapable of managing property at that time.[4] There are distinct tests for capacity to grant a power of attorney and capacity to manage one's own property.

What if the Continuing Power of Attorney Is Held to Be Invalid?

Interestingly, if, after executing a continuing power of attorney, the grantor becomes incapable of giving a continuing power of attorney, the document remains valid if the grantor had capacity at the time it was executed.[5]

If the grantor is found to lack capacity to grant the continuing power of attorney (that is, if the grantor lacked capacity at the time of signing), the document is not effective. Such an outcome can be disastrous for the grantor since no one would have the authority to act on his or her behalf as an attorney, leaving no other alternative but for the Office of the Public Guardian and Trustee to act as the default decision maker until a family member proceeds with a guardianship application to become the guardian of property.

The importance for the drafting lawyer to confirm the grantor's capacity to grant a continuing power of attorney cannot be overstated; the validity of the document may ultimately depend on such a finding.

Lawyers Be Advised ...

Ontario lawyers understand that the capacity to grant and revoke a power of attorney is a legal test. It is up to the drafting lawyer to determine the grantor's capacity (and good practice to properly document the discussion with the grantor), prior to drafting and overseeing the execution of the power of attorney.

It is worth noting that lawyers can only act on a capable client's instructions. If a grantor's capacity is questionable, it may be helpful to seek a capacity assessment and add documentary evidence, but lawyers should also be mindful of rule 3.2-9 of the Law Society of Ontario's *Rules of Professional Conduct* concerning clients with diminished capacity. At times, this may feel like a balancing act for the drafting lawyer between respecting the grantor's autonomy and protecting the (potentially) vulnerable grantor. The court is not seeking the "practice of perfection," but due diligence and vigilance from the drafting lawyer is a reasonable expectation.

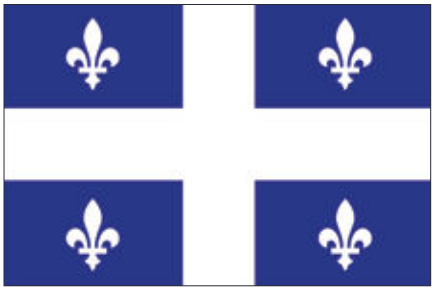
The criteria establishing capacity for executing a continuing power of attorney are not overly complex to interpret, but, when in doubt, the professional adviser needs to confirm the grantor's capacity prior to the execution of the document. The validity of the power of attorney relies on the professional adviser's finding, and an erroneous conclusion can be disastrous to the grantor and family members.

What About Larry?

In Ontario, Larry's power of attorney allows Grace to act as his attorney (since Sally is now deceased) upon production of a doctor's note however, Grace would not be able to administer Sally's estate or make business decisions on Larry's behalf. Indeed, in Ontario, an attorney cannot act as a director of a corporation without

2 *Abrams v. Abrams*, 2009 CanLII 12798 (ON SCDC).
3 *Knox v. Burton* (2004), 6 ETR (3d) 285 (ONSC), at paragraph 26 (cited in *Lewis v. Lewis*, 2019 ONCA 690).
4 Section 9(1) of the SDA.
5 Section 9(2) of the SDA.

first being appointed by the shareholders, nor can an attorney assume the executorship of an estate (which was initially assumed by the grantor). Further, in light of Brenna's potential challenge of the will, Grace would be well advised to seek legal advice as to her fiduciary duties when acting as attorney for Larry. Notable among those duties are her obligation to act diligently, with honesty and integrity and in good faith,[6] and her obligation to keep account of all transactions involving the grantor's property.[7]



THE QUEBEC PERSPECTIVE

TROY MCEACHREN, TEP
Partner, Miller Thomson LLP; Member, STEP Montreal

Capacity in Quebec

Quebec civil law is based on a fundamental principle of recognition of the capacity of persons.[8] Capacity is the rule and incapacity is the exception. Indeed, article 154 CCQ provides:

> In no case may the capacity of a person of full age be limited except by express provision of law or by a judgment ordering the institution of tutorship to a person of full age, homologating a protection mandate or authorizing temporary representation of an incapable person of full age.

Larry has never resided in Quebec. Thus, his domicile is outside the province of Quebec.[9] Since the status and capacity of a person is governed by the law of the person's domicile, foreign law applies where the domicile is not in Quebec.[10] With regard to Larry's business, it was incorporated under the laws of Ontario. The exercise of the activities of this corporation is subject to the law of the place of incorporation (Ontario) and also to the place where those activities are carried out (Quebec).[11] Special rules regarding the activity of legal persons in Quebec exist in different statutes. For example, the *Act respecting the legal publicity of enterprises* requires foreign corporations that carry on activities in Quebec to register with the enterprise registrar and to keep their information up to date.

Power of Attorney

Larry's power of attorney was signed in Ottawa. While Larry has full capacity, his power of attorney is effective in Quebec. If the power of attorney was signed before his lawyer in Ottawa who then confirmed Larry's signature and identity, there is a presumption created by article 2823 CCQ that the power of attorney is valid; there is no need for anyone relying on such powers of attorney to contact the Ontario lawyer to verify the certification.[12] If the power of attorney was not so certified, it would still be valid, but confirmation of the validity of Larry's signatures could be required by a person relying on such powers of attorney in Quebec.[13] However, since Larry has signed a local power of attorney in Quebec, this power of attorney is fully effective for Quebec purposes until revoked.[14]

Springing Power of Attorney

The law of Quebec recognizes a person's autonomy to determine contractually who will make decisions for their person and their property in the event of incapacity. Article 3085 CCQ provides that protective supervision of persons of full age is governed by the law of the domicile of each person subject thereto. Thus, the validity and enforceability of the springing power of attorney will be governed by the law of Ontario.[15]

If Larry's springing power of attorney was signed in conformity with article 2823 CCQ, it would be valid in Quebec with no need for any further confirmation. If it was not signed in conformity with the CCQ, there could be a requirement to prove

6 Section 32(1) of the SDA.
7 Section 32(6) of the SDA.
8 Articles 1 and 4 *Civil Code of Québec*, CQLR c. CCQ-1991 (CCQ).
9 Article 75 CCQ.
10 Article 3083 CCQ.
11 Article 3083(2) CCQ.
12 *Ouelette v. Coppin*, 2010 QCCS 6014.
13 *Rosenberger-Chenonceaux c. Québec (Procureur général)*, 2006 CanLII 76813 (QC TAQ); and *Canadian Car & Foundry Company v. Dumbaze* (1923), BR 281.
14 Article 2130 CCQ.
15 *H.R.*, 2022 QCCS 3578.

The law of Quebec recognizes a person's autonomy to determine contractually who will make decisions for their person and their property in the event of incapacity.

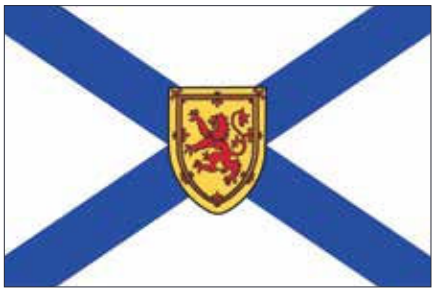
the signatures and identities of Larry and Sally. However, it is possible that if Grace needed to deal with Larry's real property in Quebec, a third party might question the enforceability of the springing power of attorney in Quebec and might require a judgment of the Superior Court recognizing Grace's powers to act on her father's behalf. While technically this should not be required, the Superior Court of Quebec would readily assist Grace by granting a judgment recognizing her status.[16]

It is not recommended that Larry sign a separate protection mandate[17] in Quebec. This is because a protection mandate in Quebec takes effect only if it is homologated by a court.[18] Since the courts of Quebec would not have jurisdiction over Larry because he is not domiciled in Quebec, they would likely refuse to consider the homologation of this protection mandate. Instead, the courts would defer to the legal process in British Columbia, where Larry is domiciled.

Will

Assuming that Larry's will is duly probated in British Columbia, it would be effective in Quebec to transfer any of the property that Larry owned in Quebec. In theory, there is no legal obligation under the law of Quebec to have the BC probated will recognized in Quebec. But since the grant of probate under the common law has no operation or effect outside the jurisdiction of the court, common-law jurisdictions have in place a mechanism for recognition or resealing of the original grant.[19] Thus, any concern over the enforceability of the will can be easily and quickly addressed in Quebec, by requesting the Superior Court of Quebec either to recognize the executor of Larry's estate[20] or to have the probate judgment itself recognized.[21] It is generally recommended to consult with a local Quebec legal adviser to discuss the need to take any of these actions well in advance because there could be significant delays before the courts.

It is generally recommended (but not necessary) to prepare a separate Quebec will for ease of administration of Quebec property, especially if the will is in notarial format. This is because notarial wills do not need to be probated to be effective in Quebec. Assuming Larry has capacity, it is possible for him to sign a notarial will from British Columbia in electronic format.[22]



THE NOVA SCOTIA PERSPECTIVE

SARAH M. ALMON, TEP
Stewart McKelvey
Member, STEP Atlantic

Having prospered over the years, Larry currently holds business assets and personally owned land in Nova Scotia. In this article, we will be looking primarily at the effects of Larry's Nova Scotia springing power of attorney.

With respect to the power of attorney Larry previously executed to deal with his property and finances in Nova Scotia, as long as the conditions for Larry's springing power of attorney have been met, Grace as the duly appointed substitute attorney would be in a position to act as Larry's attorney following Sally's death. A copy of Sally's death certificate would typically need to be attached to the power of attorney document.

Under Nova Scotia's recently expanded *Powers of Attorney Act*, for a power of attorney to be effective even when the donor of the power of attorney has become incapacitated, it

16 Ibid.
17 A protection mandate is the functional equivalent of a springing power of attorney in Quebec.
18 Article 2166 CCQ.
19 J.-G. Castel, *Canadian Conflict of Laws,* 3rd ed. (Toronto: Butterworths Canada, 1994), at paragraphs 352 and 357. See also Eugene A. Haertle, "The History of the Probate Court" (1962) 45:4 *Marquette Law Review* 546-54.
20 Article 3101 CCQ.
21 Article 3155 CCQ.
22 Order number 4841 of the minister of justice, August 24, 2022.

must be an enduring power of attorney.[23] Assuming that Larry's Nova Scotia power of attorney is a validly executed enduring power of attorney, the condition in his springing power of attorney provides that it will be effective only when accompanied by a letter from a doctor stating that Larry lacks the capacity to manage his affairs. Even though Grace has been duly appointed as Larry's substitute attorney, she will not be able to act as his attorney under his Nova Scotia power of attorney without providing the evidence required to trigger the springing condition.

Grace is now questioning Larry's memory and decision-making ability, as are the employees at Larry's bank and a manager at his company; these issues may indeed all be signs of his reduced capacity. However, these observations are not sufficient evidence to trigger a springing power of attorney in Nova Scotia under its terms and the *Powers of Attorney Act*. Further, Larry's history of alcohol abuse may make it more difficult to discern whether his current issues are a result of an actual lack of capacity to manage his affairs, or whether they stem from unwise decision making influenced by alcohol abuse.

Because Larry has refused to attend at his doctor's office for a discussion about his capacity, the usefulness of his Nova Scotia springing power of attorney to Grace is limited, since proof of her authority to act as his attorney hinges on a doctor's note attesting to Larry's inability to manage his affairs. If Grace cannot furnish the proof required in the springing power of attorney by way of a doctor's note that confirms Larry's inability to manage his affairs, her authority as Larry's attorney cannot be exercised. Further, the courts of Nova Scotia will not appoint a legal representative for an adult who has an existing enduring power of attorney that addresses the same area of decision making that is the subject of the application.[24] As a result, in order to meet the springing condition in Larry's power of attorney so that she is able to manage Larry's property and interests in Nova Scotia, Grace will need to have a doctor's note attesting to Larry's inability to manage his affairs. If Larry can no longer manage his affairs but he refuses to voluntarily submit to a capacity assessment, Grace would need to initiate procedures for an involuntary assessment in Larry's home jurisdiction.

> …the courts of Nova Scotia will not appoint a legal representative for an adult who has an existing enduring power of attorney that addresses the same area of decision making that is the subject of the application

The fact that Grace is a nurse by profession is relevant. She should be aware that in Nova Scotia she would not ordinarily be able to act as Larry's attorney, even if the springing condition is met, if she provides health care services or support services to him for compensation. However, her status as Larry's daughter allows her to take advantage of an exception made for immediate family members of the donor.[25]

Finally, assuming that Larry's Ontario will was validly executed under the laws of Ontario while he was resident there, it would be effective to deal with his Nova Scotia property and could be probated in Nova Scotia (either a primary or an ancillary grant could be issued, as needed). However, in view of the relationship between Larry and his daughter Brenna, he may wish to inquire about using a will substitute, including an alter ego trust. A will substitute would provide greater protection from claims made by a child of a testator, including claims made under the *Testators' Family Maintenance Act* against a parent's will, which in Nova Scotia includes consideration of moral claims by non-financially dependent children (similar to the situation in British Columbia).[26]

If Larry has the required capacity to settle a trust, Larry could settle an alter ego trust to hold his Nova Scotia assets; if he does not have the capacity required to settle such a trust, Grace as his attorney could do so, assuming that she had satisfied the springing condition in Larry's power of attorney and that the terms of the power of attorney document permitted such actions. If Larry was able to overcome his trust issues and appoint Grace as the initial trustee of the new trust, that would also allow Grace to manage the trust property for Larry during his lifetime without relying on her authority as Larry's attorney under the springing

23 *Powers of Attorney Act*, RSNS 1989, c. 352 (POAA), section 1A(e).
24 *Adult Capacity and Decision-making Act*, SNS 2017, c. 4, section 27(2)(b).
25 Section 9(1)(e) of the POAA.
26 *Testators' Family Maintenance Act*, RSNS 1989, c. 465.

power of attorney. Larry and/or his attorney would be wise to consult with a local lawyer about his changed life circumstances following Sally's passing.

INCAPACITY, DEATH, AND THE APPLICATION OF THE INDIAN ACT

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Disclaimer: STEP and the author recognize that the terms "Indian" and "reserve" evoke the troubled colonial history of Canada, and are not terms that many First Nations people would use to identify themselves or their lands. Nonetheless, they are used in this article because they have a statutorily defined meaning in the *Indian Act* (Canada), RSC 1985, c. I-5 ("the Act").

Introduction

Larry's daughter Grace faces a difficult situation in the fact pattern: a widowed father suffering from alcohol abuse and declining capacity, an estranged and litigious sister, and one or more springing powers of attorney (which come into effect only if her recalcitrant father is assessed as incapable by a doctor). However, Grace may have felt even more helpless in the situation if the Act had applied to Larry.

The Application of the Indian Act

The Act applies to Indians—that is, persons who pursuant to the Act are registered as Indians or are entitled to be registered as Indians. The provisions relating to succession and mental incapacity of an Indian are set out in sections 42 to 51, and these provisions generally apply to any Indian who ordinarily resides on a reserve or on lands belonging to His Majesty in right of Canada or a province.[27] The Act does not apply to the Inuit[28] or the Métis.

The term "ordinarily resident" has been determined to mean "residence in the customary mode of life of the person, as opposed to special or occasional or casual residence."[29] In *Earl v. Canada (Minister of Indian Affairs & Northern Affairs)*, the court remarked that "the laws governing descent of property should not vary when an individual is required to live off reserve due to illness and residence in a medical facility is not a customary mode of life but rather is a special residence."[30] Temporary residence off reserve for seasonal employment has also been held not to vitiate "ordinary residence" on reserve and the application of the Act.[31] In the case of Larry, if he had been an Indian (within the meaning of the Act) and ordinarily resident on reserve before moving to Vancouver (to be closer to Grace and her children) during a time of grief, it would be arguable that he remained "ordinarily resident" on reserve and that the Act continued to apply to him.

Incapacity

Section 51(1) of the Act vests "all jurisdiction and authority in relation to the property of mentally incompetent Indians … exclusively in the Minister."[32] Section 51(2) further provides that the minister may

a. appoint persons to administer the estates of mentally incompetent Indians;
b. order that any property of a mentally incompetent Indian shall be sold, leased, alienated, mortgaged, disposed of or otherwise dealt with for the purpose of
   i. paying his debts or engagements,
   ii. discharging encumbrances on his property,
   iii. paying debts or expenses incurred for his maintenance or otherwise for his benefit, or
   iv. paying or providing for the expenses of future maintenance; and
c. make such orders and give such directions as he considers necessary to secure the satisfactory management of the estates of mentally incompetent Indians.

The authority of the minister extends to any property of the mentally incompetent Indian situated off reserve, although, pursuant to section 51(3) of the Act, 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

27 Section 4(3) of the Act.
28 Section 4(1) of the Act.
29 *Earl v. Canada (Minister of Indian Affairs & Northern Affairs)*, 2004 FC 897, at paragraph 24, citing *Canada (Attorney General) v. Canard*, [1976] 1 SCR 170.
30 *Earl v. Canada*, supra note 3, at paragraph 24. See also *Dickson Estate, Re*, 2012 YKSC 71.
31 *Canada v. Canard*, supra note 3.
32 If passed, Bill C-38, *An Act to Amend the Indian Act (New Registration Entitlements)* (first reading December 14, 2022), would repeal the definition of "mentally incompetent Indian" and change the terminology to "dependent person," and otherwise update the language of the relevant provisions of the Act in a manner that is more gender-neutral.

property is situated."[33] Effectively, section 51 limits the ability of a person (to whom the Act applies) to make an enduring, durable, or continuing power of attorney—that is, a power of attorney that continues despite the donor's incapacity.

To add jurisdictional complexity to the problem, a "mentally incompetent Indian" is defined in the Act as "an Indian who, pursuant to the laws of the province in which he resides, has been found to be mentally defective or incompetent for the purposes of any laws of that province providing for the administration of estates of mentally defective or incompetent persons."[34] According to the guidelines published by Indigenous Services Canada, a finding of mental defect or incapacity under provincial law must be made by a doctor or other certified health professional, a capacity assessor employed by the province, territory, or country in which the adult resides, or a court of law.[35]

If Larry had been an Indian (to whom the Act applied), Grace would first have to seek a finding of mental defect or incapacity under provincial law, and subsequently apply to be the administrator of Larry's estate pursuant to section 51(2)(a) of the Act. Her appointment otherwise pursuant to any power of attorney that Larry may have signed would have been legally ineffective.

Corporate Matters

Although the corporation was incorporated under the laws of Ontario, if Larry had been an Indian (to whom the Act applied) and Larry had lost capacity, Larry's rights as a shareholder to appoint directors of the corporation would fall under the jurisdiction of the minister pursuant to section 51(1) of the Act.

Will

Pursuant to section 42(1) of the Act (and subject to the provisions of the Act and the applicable regulations), "all jurisdiction and authority in relation to matters and causes testamentary, with respect to deceased Indians, is vested exclusively in the Minister."[36] A person (to whom the Act applies) may make a will;[37] however, the will is of no force and effect unless the minister has approved it or a court has granted probate of it.[38] The minister may declare the will (or part of the will) of an Indian to be void (resulting in an intestacy, in whole or in part) by reason of lack of capacity, duress or undue influence, imposition of hardship on someone for whom the testator had a responsibility to provide, disposition of land contrary to the Act, uncertainty, or the public interest.[39]

If Larry had been an Indian, Grace would be able to seek appointment as executor pursuant to Larry's Canadian will[40] and approval of Larry's Canadian will by the minister.[41] As executor, Grace would likely be obliged to locate Brenna (who would have been a beneficiary under the Act, absent the Canadian will) and provide her with a copy of the Canadian will.[42] Brenna would be able to challenge Larry's Canadian will pursuant to section 46 of the Act. An application under section 46 would be a separate application that would need to be filed if the minister first approved the will.[43] A decision by the minister to appoint an executor pursuant to section 43 or with respect to an application under section 46 may be appealed to the Federal Court within two months from the date thereof.[44]

Conclusion

Most Canadians can freely make decisions with respect to their estate or incapacity planning, subject to issues arising from family property and dependants' relief (with court jurisdiction available to alleviate fiduciary or other wrongdoing). However, the *Indian Act* continues to impose a paternalistic framework on estate and incapacity planning by members of First Nations in Canada, and statutory reform needs to be considered.

33 Such orders have been made in some cases to facilitate personal injury claims for accidents occurring off reserve. See, for example, *Desmoulin v. Blair* (1994), 21 OR (3d) 217 (CA).
34 Section 2(1) of the Act.
35 Indigenous Services Canada, "Estate Services for First Nations" (https://www.sac-isc.gc.ca/eng/1100100032357/1581866877231#chp9).
36 However, the minister has the flexibility under section 44 of the Act to refer a matter to a court that would have jurisdiction if the deceased had not been an Indian.
37 Section 45(1) of the Act.
38 Section 45(3) of the Act.
39 Section 46 of the Act.
40 Section 43(a) of the Act.
41 Section 45 of the Act.
42 Section 8(1) of the *Indian Estates Regulations*, CRC, c. 954 requires notice to be given to any heir. See generally *Earl v. Canada*, supra note 3, at paragraph 2 regarding an executor's sworn undertaking to make reasonable efforts to locate heirs at law.
43 *Thorne v. Canada*, 2017 FC 1116.
44 Section 47 of the Act.

What the Pandemic Taught Us About Well-Being

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Psychotherapist, Wellness Educator, and Former Lawyer

Disclaimer: The following article is an opinion piece that reflects the author's view of lessons to be drawn from the COVID-19 pandemic. The lessons considered here, from a psychotherapist's perspective outside the trust and estate industry, centre on individuals' personal well-being within the workplace, whether in the office or at home. The views expressed in the article are not endorsed by STEP Canada or the *STEP Inside* editorial committee.

The 19th-century German philosopher Friedrich Nietzsche is said to have opined that what doesn't kill you makes you stronger. I don't quite agree with that sentiment, as I've known too many people who went through traumatic events only to persist in "sweating the small stuff." I would, therefore, tweak this perspective as follows: "What doesn't kill you can make you stronger, if you're mindful of the lessons that it has to teach you."

It is with this in mind that, as we pass the three-year mark of the COVID-19 pandemic, I have been reflecting on our individual and collective experiences of this time, particularly as they relate to our mental health and quality of life. This has truly been an impactful and historic period, and it leads me to coin yet another phrase: "Never waste a crisis." If we've been paying attention, there have been numerous lessons available for us to learn in the past three years. These are lessons that have the potential to significantly improve our individual and collective mental health and well-being, if we act upon them.

The first hard-to-miss lesson is that, as human beings, we need other people. We need to touch and be touched. We need to look people in the eyes and feel their energy. Human beings are attachment creatures, drawn to each other for comfort, safety, shared experiences, collaboration, and support. Social distancing during the pandemic was, most of us would agree, prudent and necessary as a public health measure. But it was not without its negative effects. While the data suggest that people were as productive (or even more productive) working alone from home as compared to working at the office, it also suggests that employees working from home suffered from the isolation and blurred work–home boundaries that ensued.

For many, mental health challenges resulted. Some, particularly those more on the extroverted side of the spectrum, felt lonely and starved of social stimulation. While Zoom and other video-conferencing platforms were a miracle of technology

that allowed us to continue doing our work collaboratively, they just didn't cut it for human connection purposes. This was especially so when talking to people whose cameras were off. The loneliness and missed connection led some to suffer clinical depression or anxiety. Many abused substances—particularly alcohol and cannabis—as a means of coping.

It should also be noted that not all of us suffered as a result of the need to work from home. Many on the more introverted side of the spectrum found the opportunity to work without distraction, or to avoid small talk at the proverbial water cooler, to be a relief. They were able to focus, take breaks, and juggle their various life demands without the added stress of managing face time in the office.

And so, one of the takeaways from the pandemic was the realization that there are benefits to tailoring work arrangements to individual team members' styles and needs, when possible. One size does not, in fact, fit all. As well, many organizations encouraged team members to set boundaries around, for instance, when they're available and not available for work, workload management, and communication requirements, including not being expected to send or respond to emails after work hours unless deemed absolutely essential.

One of the other challenges that many experienced during the pandemic was poor communication, not just between colleagues but also between supervisors and supervisees. Workload management was challenging when managers did not have a good sense of team members' schedules and the demands being placed on their time. Also, employees often hesitated to seek guidance or mentorship. Unlike in-person work, where one can simply walk down the hall and pop into an office to ask a quick question, remote work often felt more daunting when managers could not obtain a quick update, or employees had to seek phone, email, or Zoom guidance from supervisors. The pandemic showed that ad hoc communication can be difficult with remote work, and having systems in place to ensure that communication and mentorship are smooth and effective can be helpful.

As a therapist who works with professionals, I find that one trait that comes up in sessions repeatedly is perfectionism. In essence, it is the compulsion to never be satisfied with one's efforts, in the belief that there is always more that can be done to reach some undefined ideal. This trait drives many accountants, lawyers, doctors, and others, who are viewed objectively as professionally successful. They often believe that perfectionism is what got them where they are, but they fail to recognize the negative aspects of perfectionism. When a lawyer client of mine told me that they attained their lofty professional perch as a result of perfectionism, I couldn't help but note that this person was on a stress leave, seeking the assistance of a therapist.

The truth is that perfection does not exist in the human condition. Finding your "good enough" is key to a balanced, sustainable career and life. The pandemic helped remind us of this fact. Many of us had to maintain our work lives from home, while helping young children in another room of the house with their virtual classes, while tending to aging parents, while managing the stress of an actual pandemic with its attendant health risks. We got through it, didn't we?

We got through it because we dialed back the perfectionism and attended to all of the various needs around us as best we could. When perfect was no longer possible, we discovered that we were still able to maintain excellence. That's the goal: excellence, not perfection.

> The healthiest and happiest people are those who are themselves, without apology. They don't seek external validation because they believe in their intrinsic value.

We also learned that we're more resilient than we give ourselves credit for. As much as we sometimes felt overwhelmed by the demands of the past three years, if I had told you in 2019 that a pandemic was coming that would affect our lives in myriad stressful ways, but that we'd manage it and surmount it successfully, you would have thought me daft. But you did it, didn't you? Because you're resilient. That's one of the primary lessons I've taken from the pandemic. People are resourceful, and strong, and resilient. Just because we're also vulnerable and imperfect doesn't mean we aren't awesome. In fact, our vulnerability is part of what makes us awesome.

During the past three years, we were introduced to terms like "quiet quitting" and "the Great Resignation." These phenomena brought to light the fact that the pandemic led to important realizations for a significant number

of people—for example, that time is precious and we need to be intentional about how we spend it. Albert Einstein is rumoured to have said, "Everyone is a genius. But if you judge a fish by its ability to climb a tree, it will live its whole life believing that it is stupid." Whether Einstein said it or not, the truth of the statement is undeniable. Professionals are notorious for their drive to be tough, to surmount obstacles, and to never quit anything. But what if the thing one is doing doesn't serve one's values or passions, or is simply not healthy for the individual?

The healthiest and happiest people are those who are themselves, without apology. They don't seek external validation because they believe in their intrinsic value. And so, if one is engaged in work that is misaligned with one's values or interests, the pandemic taught us that one should, as soon as is practicable, make a change. The fish needs to stop trying to climb the tree and should, instead, go find some water.

And this leads us to yet another pandemic lesson for those who choose to see and embrace it: empathy is an essential human trait. Noting our own and others' vulnerability, and offering compassion and understanding through hard times, has taught us to embrace vulnerability and to learn from it. We're not robots, we're humans, with needs and feelings and traumas and triumphs. While many people gauge their relative success by comparing themselves to friends, colleagues, or individuals they view on Facebook or Instagram, the experience of the pandemic helps us realize that, in many ways, we are all the walking wounded. We all have challenges and they're all different challenges. There is no one way to be successful.

In fact, for those who've been paying attention, the pandemic has taught us that success should ultimately be defined by one's own self-regard. If I am at peace with myself, I can then pursue passions and get better at things, I can strive and grow. But I do this from a place of peace and acceptance, not deficit and inadequacy.

The past three years have been profoundly difficult. We've been tested in so many ways. Those of us who survived—and we must remember that many did not—are positioned to be healthier, happier, and more at peace than we have ever been. We simply need to pay attention to the lessons that recent experiences have taught us, and we need to move forward with confidence and kindness.

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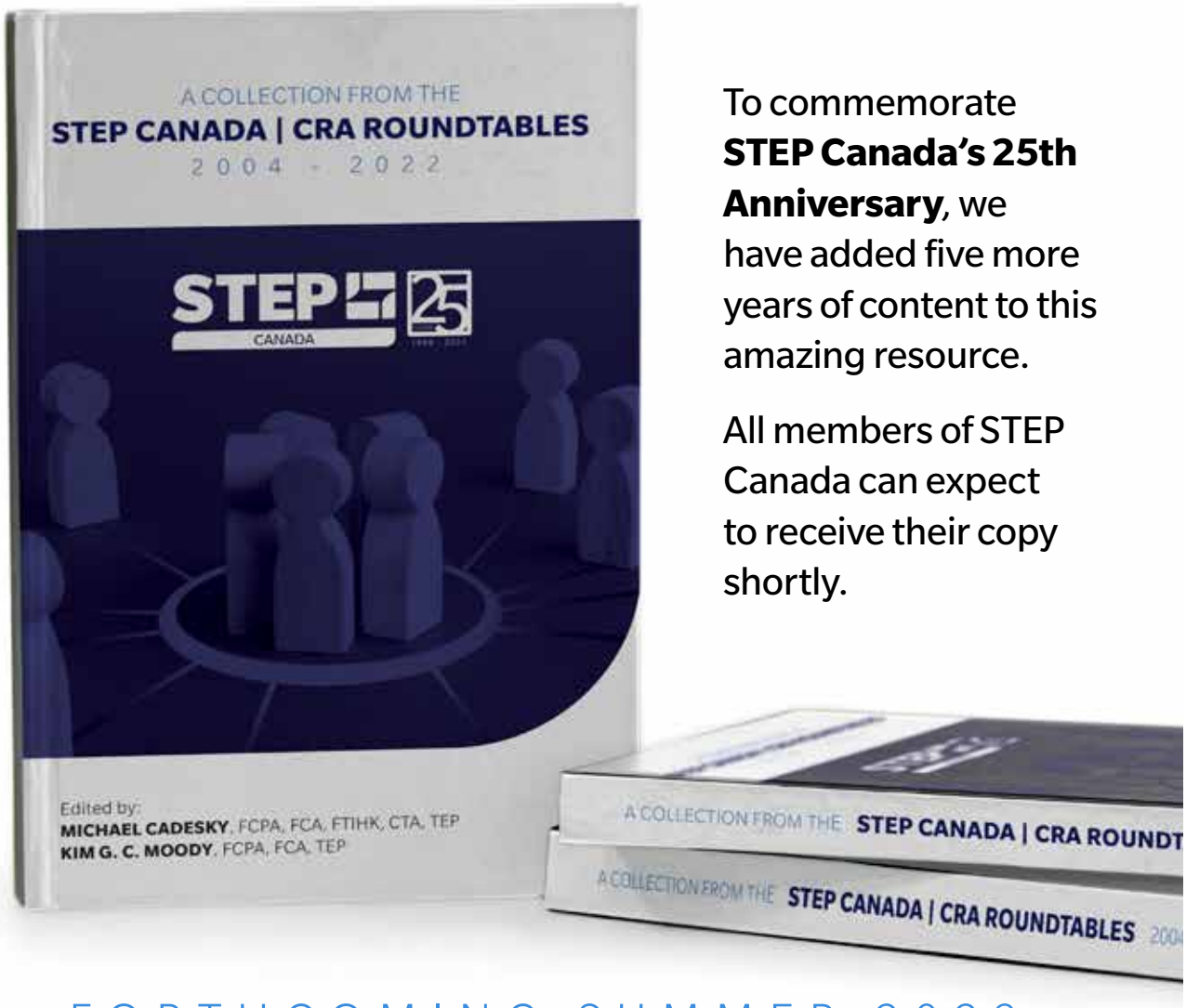

To commemorate **STEP Canada's 25th Anniversary**, we have added five more years of content to this amazing resource.

All members of STEP Canada can expect to receive their copy shortly.

FORTHCOMING SUMMER 2023

CHAIR'S MESSAGE

CHRIS IRELAND, TEP
Member, STEP Vancouver

Welcome et bienvenue to spring and STEP Canada's 25th anniversary! I look forward to celebrating this significant milestone with many of you during our in-person national conference on June 19 and 20 in Toronto. The conference program offers excellent technical content delivered by an exceptional selection of speakers, as well as opportunities for members to network, tour the exhibit hall, and celebrate the achievements of top-scoring students and other award winners. As with each milestone anniversary, we are planning a special evening to celebrate the growth of STEP Canada and the guidance that STEP has provided through thought leadership, education, networking, and public policy for the trust and estate industry in Canada over the last 25 years.

As always, the May issue of *STEP Inside* proudly features the top-scoring students and a list of all the CETA, Essay Program, and Diploma Program graduates. STEP Canada has now seen more than 1,000 practitioners successfully complete its Diploma Program in Trusts and Estates. Congratulations to all for your notable accomplishments—we hope you enjoy a long and engaged membership with STEP as your career flourishes.

With the June 14 STEP Canada annual general meeting, my two-year term as national chair will come to an end. The experience, like all of my experiences in relation to STEP, has been very rewarding. It has been my privilege to work with so many dedicated and talented volunteers whose selfless efforts bring so much value to the STEP community on local, regional, national, and worldwide platforms. Throughout my tenure, I have received incredible support from the national executives, MIchael Dodick and Janis Armstrong, and all of the STEP Canada staff, board members, national committee chairs, my PPI colleagues, and (of course) my family.

When I began my term, I set a goal of focusing on three special initiatives, in addition to overseeing the work of this vibrant organization. I am proud to summarize the initiatives and advancements we have made in the past two years.

Membership Branding and Growth

In September 2021, we announced STEP Canada's 2021-22 board of directors in the print and digital platforms of *The Globe and Mail*, reaching the country's highest readership. We have expanded our activity on LinkedIn, resulting in a 55 percent increase in viewers of original posts, representing about 5,000 people. We have continued awarding prizes to the top-scoring students in a trust course at 13 universities, and we are engaged in conversations to offer STEP ambassadors as guest lecturers on trust and estate topics. With the move to more online meetings, we have been able to make the case for STEP membership in presentations tailored to individual organizations and trust companies, with excellent results. I'm proud to report that over the past two years, STEP Canada has welcomed almost 400 new members, giving us our highest count ever of 3,460 members.

In September 2022, STEP Canada engaged a full-service marketing agency to assist us in developing a new marketing strategy. This strategy fully aligns with our business goals and provides us with a road map for achieving our goals over the next 12-36 months. The valuable feedback provided by the board of directors in a strategy session at our November 2022 retreat enabled us to create a brand messaging platform, including guiding organizational statements for brand values, principles, and purpose (why we exist), approach (the mindset required to live our purpose), and delivery (the services we offer and the value we provide).

Collaboration

The leadership of STEP Canada and STEP Worldwide (SWW) continue to meet regularly to learn from each other, and we look forward to welcoming an SWW board member and senior staff to our conference in June. A big thank you to Mark Walley, CEO of SWW, Brian Walters, Director of Markets for SWW, and Jim Walkinshaw, CFO of SWW, for all of their time spent working with us.

The STEP Canada board of directors was pleased to participate in an SWW focus group, Power of Volunteers, at its June 2022 meeting. STEP Canada was happy to extend the reach of the SWW Digital Assets awareness campaign by using the SWW survey to conduct a North American poll of Canadian

and US citizens. Our Member Services Committee recently completed a full review and edit of all 50+ articles that appear on the public-facing website of Advising Families – Canada, and we look forward to further exploring how we can work together to increase the awareness and enforcement of STEP's continuing professional development policy.

I am also delighted to report that the long-discussed Canada/USA 1½ day conference is coming into focus for October 2024 in Chicago. The conference planning committee, equally represented by STEP members from both countries, has been meeting regularly since October 2022, and a program is starting to take form.

Domestically, I again compliment the branches and chapters of STEP Canada for working together to reach an agreement for presenting in-person and online seminars, a strategy that will provide delivery options for the quality technical content for which we are known. STEP Canada will continue to collaborate in partnerships and events with Family Enterprise Canada (FEA), Advocis, CBA-MB, CPA-BC, CPA-ON, FP Canada, and others, even as we further explore possibilities.

Advocacy and Policy Work

In March 2021, the Public Policy Committee hosted a special symposium on vulnerable clients. The excellent report produced by the committee served as the basis for the *STEP Canada Client Resource Guide – A Guide for Assisting Persons in Vulnerable Situations*, which will be made available to members in the Resources Section of the STEP Canada website at step.ca in mid-June 2023.

The Tax Technical Committee continues to keep members aware of developments important to trust and estate practitioners through their regular and timely eNews communications, and most recently a comprehensive webinar on the 2023 Federal Budget and issues and proposals affecting STEP Canada members.

Another big thank you, this time to Leslie Kellogg, Carol Fitzsimmons, Britta McKenna and Paul Gibney for their time, expertise, and presentation skills in helping us create another STEP Canada first! "Canada/US Cross-Border Estate Planning," a two-day online course with interactive and pre-recorded content from our subject-matter experts, was offered over six cohort dates early in 2023, and was an outstanding success!

In early March 2023, our 2023-24 membership renewal campaign began. So far we are experiencing another successful renewal campaign as we continue to add value, support, networking, and education opportunities to our members.

There are others on the STEP Canada board whose terms are coming to an end in June. On behalf of the executive committee, I wish to express my thanks to Yogesh Bhathella, Kenneth Keung, Harmanjit Mavi, Corina Weigl, Robbie Brown, Ruth Spetz, Tannis Dawson, Elaine Blades, Anne Postlewaite, and Faisal Khorshid for your leadership, support, and commitment to STEP Canada. It has been a pleasure working with all of you, and I look forward to you remaining active in other roles within the STEP family.

Annual meetings of the branches and chapters will take place in May, and the STEP Canada AGM will be held June 14. These meetings will confirm the successors of the individuals just noted.

In closing, I wish to acknowledge all of the committees and individuals who continue to work tirelessly on so many important initiatives for STEP Canada and its members, from the chapters and branches to the national committees, to those serving on STEP Worldwide committees. Your efforts are proving to make our organization so valuable to its members and their practices, and the trust and estate industry.

Thank you all on behalf of the members of the executive committee—Rachel Blumenfeld, Richard Niedermayer, Brian Cohen, Aileen Battye, and Pam Cross—and senior staff Janis Armstrong and Michael Dodick. And finally one more thank you to Rachel, Richard, Brian, Aileen, Pam, Janis and Michael – your support and dedication to our wonderful organization has been outstanding and unwavering!