

WILLS & ESTATES FOR INDIGENOUS PEOPLE - PART 1:

Advance Planning Off-Reserve and Non-Status

APRIL 30TH, 2024 | 10AM - 11:30 AM PST
FREE ONLINE WEBINAR VIA ZOOM

REGISTER FREE ONLINE AT:
WWW.LEARNINGCIRCLE.UBC.CA



UBC
Learning
Circle



First Nations Health Authority
Health through wellness



THE UNIVERSITY
OF BRITISH COLUMBIA
Centre for Excellence in
Indigenous Health



Wills and Estates

For Indigenous People - Part 1:
Off-Reserve and Non-Status

Catharine Schlenker and Chris Heslinga



Content Warning

This presentation covers content around death and dying, as well as end of life planning and includes terms such as “capacity” and “trustee”, which I acknowledge can be traumatic for some people and has been weaponized by people with power against those without power.





Agenda

Introduction

Advanced Planning Options:

- Wills
- Power of Attorneys
- Representation Agreements
- Advanced Directives

Resources and Referrals



Acknowledgement

I would like to acknowledge that I am coming to you from the territory of the Ləkʷəŋən (Songhees and Esquimalt) Peoples and I want to thank them, for their incredible stewardship of these lands. I also acknowledge Indigenous Legal Orders of the Ləkʷəŋən and W̱SÁNEĆ Peoples, whose historical relationships with the land continue to this day. My focus in this presentation on the colonial legal system is not meant to detract from the legitimacy of the Indigenous Legal Orders of any individual or nation/band.



Who we are



Catharine Schlenker
Seniors First B.C,



Elder Dennis
Xwechtaal Joseph
Squamish Nation



Chris Heslinga
Law Centre





Advanced Planning Options:

While Alive:

- Power of Attorney
- Representation Agreement
- Advanced Directive

After Death:

- Will
- Trusts (will not be covering)





“Capacity”

- Ability to understand and appreciate the nature and consequences of one’s decisions
- All adults (age 19+) are presumed to have mental capacity unless it is established otherwise, usually by a medical opinion or judge’s decision
- Loss of mental capacity can be sudden and can vary day to day
- Capacity is required for all advanced planning documents





Wills





What is a Will?

- Written document that assigns someone to manage and distribute your assets/possessions according to specific instructions in the Will
- Person assigned is called an “executor” or “trustee”
- Wills can be changed, as long the person has capacity
- ONLY effective after death





Who to choose as an Executor/Trustee?

- Someone you **trust** who understands and respects your **values, wishes and beliefs**
- Who understands the responsibilities and will protect your assets
- Is available to assist and good at record keeping



Requirements for a Valid Will



Capacity

- Adults are **presumed** to have capacity
- Can be challenged, which might require a *court order* or *medical evidence* to prove

In Writing

- Best to have it prepared by a lawyer, but many people use Will kits
- “oral wills” are not accepted as valid

Signed

- Must be signed by the Will maker AND 2 witnesses
- Witnesses only need to see the signing

Clear

- Instructions should be simple to follow
- Complicated instructions are likely to lead to disputes

Genuine

- No “undue influence” or “duress”



Why should I make a Will?

- Ensures your wishes are clear to your loved ones
- Chooses someone you trust to carry out your wishes
- Reduces conflict between your loved ones about what you would have wanted
- Keep government involvement in your life to a minimum





What assets are NOT part of a Will

- Assets held in **joint ownership**
 - Automatically belongs to the other joint owners (“right of survivorship”)
- Life Insurance policies, Registered Retirement Saving Plans (RRSPs), and Pensions
 - The money from these assets are distributed according to the contracts/documents that created them
 - Check with your life insurance company, bank or pension provider to see who the “designated beneficiaries” are for these assets





Will Clauses/Terms

- Can include **specific items** to specific people, but this gets very complicated
 - Must exhaustively describe item, include terms if its lost/damaged/destroyed, and consider possible unintended consequences
- Best to make instructions as **simple**, and easy to follow, as possible
 - ‘**percentage distribution**’ is the easiest and simplest way (ex. “50% to each of my two children”)





Will Clauses/Terms

- Can include terms for the care and maintenance of dependents, but this gets complicated when there is a divorce/parenting arrangements in place
- Children and spouses should be included in the Will as ‘beneficiaries’/people who will get something from the estate
 - s.60 of the Wills, Estates and Succession Act states that a Will maker’s spouse and children must be “adequately” provided for in the Will, or the court will do so





Including Status

- This is my last Will and Testament. I am (name) of (address), in the Province of British Columbia, (postal code).
- I am of the (your band name) and my membership number is (number).

- Will-maker should use the name of their children as they appear on their status card.
- Compare names on the BCID and status card for everyone you name in the document





Changing a Will

- The most recent valid Will applies
- Individuals should review their will if there has been a major change in their life (e.g., change in marital status, children, or assets)
- Best practice is to draft a new will if there are changes being made, to avoid confusion with a “codicil”





Power of Attorney





What is a Power of Attorney?

- A written document, selecting one or more people to make financial and (some) legal decisions for you
- Must be in writing and signed





Types of Power of Attorney

- Springing: effective when a specific event happens
- Enduring: effective as soon as it is signed and continues to be effective when you lose **capacity**





Amount of Power Given

- General: person(s) selected are given as much power as you would have
- Limited: person(s) selected is only given a certain amount of power to do certain tasks or handle certain accounts





Bank's Power of Attorney

- Each bank may have their own 'power of attorney' document for you to use, but it will only be effective for that bank
- **WARNING**: it may revoke/cancel other power of attorney documents





Who to choose as an ‘Attorney’?

- Someone you **trust** who understands and respects your **values, wishes and beliefs**
- Who understands the responsibilities and will protect your assets
- Is available to assist and good at record keeping





Representation Agreement





What is a Representation Agreement?

- A written document, selecting one or more people to make health/personal care decisions for you
- Must be in writing and signed





s.9 Representation Agreement (Health Care Only)

- Can include ALL major/minor health care and personal care decisions
- Can include day-to-day decisions
- Needed for senior housing
- Representative can request or refuse certain treatments
- Often combined with enduring Power of Attorney





s.7 Representation Agreement (Financial + Health Care)

- **Routine** management of financial affairs
- **Routine** management of legal affairs
- **Routine** minor and major health care decisions
- Is not accepted for moving into Long Term Care or Assisted Living facilities.





s.9 vs. s.7 Representation Agreements

- s.9 Representation agreements do **NOT** include power to make financial decisions, but they can make much more serious decisions
- s.7 Representation Agreements include **some financial decisions**, but only **simple or routine** financial (and health care) decisions
- There is a **lower capacity** requirement to complete a s.7 Representation Agreement





Who to choose as a Representative?

- Someone you **trust** who understands and respects your **values, wishes and beliefs**
- Someone who is available locally to assist you
- Can assist in making personal and health care decisions on your behalf





Advanced Directive



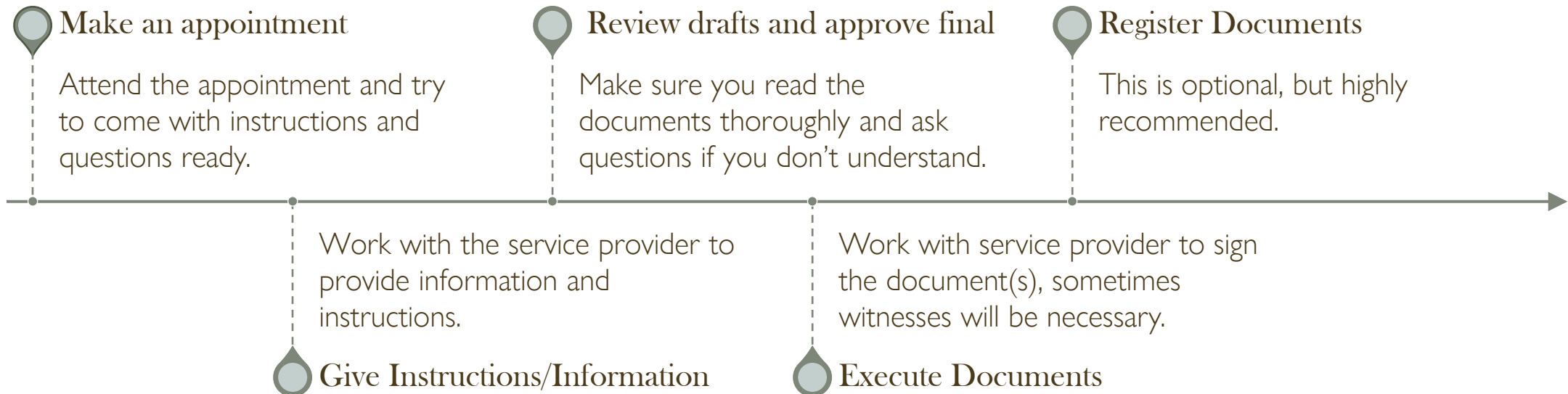


What is an Advanced Directive?

- Written instructions giving or refusing consent to health care treatment when health care is needed, but a person is not capable of communicating your wishes otherwise
- Should be **specific** about treatment type



Process for Drafting Advanced Planning Documents



Summary



Will

- Effective after death ONLY
- Must be in writing and signed
- Picks someone to handle estate
- Tells loved ones what you want done with your stuff

Power of Attorney

- Effective while alive ONLY
- Must be in writing and signed
- Picks someone to handle legal and financial matters
- Can be limited

Representation Agreement

- Effective while alive ONLY
- Must be in writing and signed
- Picks someone to handle health and/or personal matters

Advanced Directive

- Effective while alive ONLY
- Must be in writing and signed
- Tells health care providers your wishes on **specific medical procedures**



Resources

- Seniors First BC
 - Telephone: 604-437-1940
 - Toll-Free: 1-866-437-1940
 - Website: <http://seniorsfirstbc.ca/>
 - Provides services to people aged 45 and over

- The Law Centre (University of Victoria)
 - Telephone: 250-385-1221
 - Website: www.uvic.ca/law/about/centre
 - Law students providing free legal help to low-income individuals





Resources

- **Law Students' Legal Advice Program (LSLAP)**
 - Telephone: 604-822-5791
 - Website: www.lslap.bc.ca
 - Free legal assistance through appointments for low-income individuals in the Greater Vancouver area, including representation, document drafting, summary advice, and referrals
- **Access Pro Bono's Lawyer Referral Service**
 - Telephone: 604-687-3221
 - Toll-Free: 1-800-663-1919
 - Website: <https://www.accessprobono.ca/our-programs/lawyer-referral-service>
 - Consultation with a lawyer for up to 15 minutes for free, during which time fees are negotiated for further consultation, but a few well-organized questions can be answered





Thank you



Chris Heslinga
Director, The Law Centre

Catharine Schlenker
Advanced Planning Clinic Program
Manager and Staff Lawyer

Upcoming UBC Learning Circles:

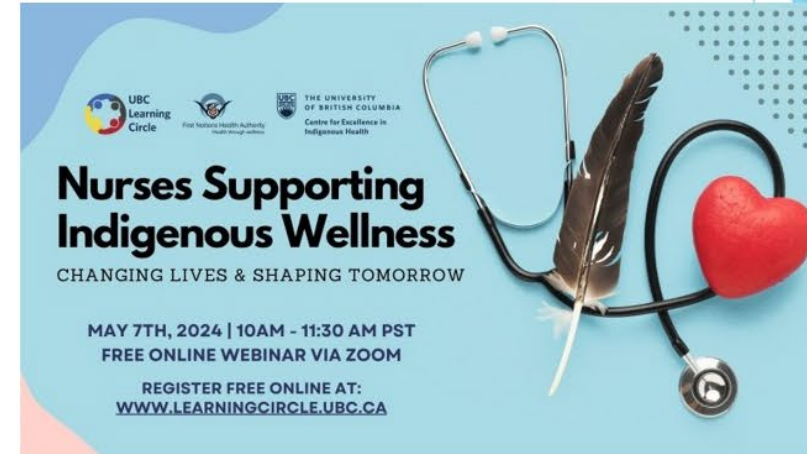


WILLS & ESTATES FOR INDIGENOUS PEOPLE - PART 2:
Advance Planning On-Reserve/Nation lands for Status Band Members

MAY 2ND, 2024 | 10AM - 11:30 AM PST
FREE ONLINE WEBINAR VIA ZOOM

REGISTER FREE ONLINE AT:
WWW.LEARNINGCIRCLE.UBC.CA

UBC Learning Circle, First Nations Health Authority, THE UNIVERSITY OF BRITISH COLUMBIA Centre for Excellence in Indigenous Health



UBC Learning Circle, First Nations Health Authority, THE UNIVERSITY OF BRITISH COLUMBIA Centre for Excellence in Indigenous Health

Nurses Supporting Indigenous Wellness
CHANGING LIVES & SHAPING TOMORROW

MAY 7TH, 2024 | 10AM - 11:30 AM PST
FREE ONLINE WEBINAR VIA ZOOM

REGISTER FREE ONLINE AT:
WWW.LEARNINGCIRCLE.UBC.CA



HEALING INNER VOICES

MAY 14TH, 2024 | 10AM - 11:30AM PST
FREE ONLINE WEBINAR VIA ZOOM
REGISTER FREE ONLINE AT: WWW.LEARNINGCIRCLE.UBC.CA

STIGMA won't live in my world

drawing wisdom.ca, INSPIRIT FOUNDATION, INSPIRIT, REACH, UBC Learning Circle, THE UNIVERSITY OF BRITISH COLUMBIA Centre for Excellence in Indigenous Health



UBC Learning Circle, First Nations Health Authority, THE UNIVERSITY OF BRITISH COLUMBIA Centre for Excellence in Indigenous Health

Cultural Safety in Healthcare:
Past, Present, and Future Perspectives

Featuring guest speaker: Simon Brasscoug

May 16th, 2024 | 10am - 11:30 am PST
Free online webinar via Zoom

Register free online at:
www.learningcircle.ubc.ca



Services for Children and Youth with Support Needs:
Emergent Themes and Concepts from Ongoing Engagement and Research

Sept 5th, 2024 | 10am - 11:30 am PST
Free online webinar via Zoom

Register free online at:
www.learningcircle.ubc.ca

Featuring guest speakers:

Danielle Smith, Executive Director, Inclusion Policy, Communications, and Engagement Branch
Molly Fredeen, Senior Policy Analyst, Early Years and Inclusion Policy, Communications and Engagement

BRITISH COLUMBIA, UBC Learning Circle, First Nations Health Authority, THE UNIVERSITY OF BRITISH COLUMBIA Centre for Excellence in Indigenous Health

Sign up online at: www.learningcircle.ubc.ca