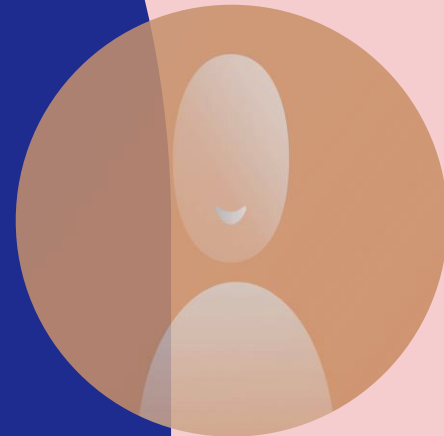


FAMILY AS PARTNERS YEAR 3

Nov. 19, 2025



WELCOME!

This Family as Partners Group was established in September 2023. I am still excited about my role as the Parent Lead of this group, especially since I get to work closely with Wendy Holliday! Wendy is now in her 41st year as an employee of CLAPW. She has worked tirelessly in many roles, including Emergency Response. Her knowledge and hands-on experience is of immense importance, but it's her unwavering Love for the work that she does that is most valuable.

Not everyone chooses to come to our meetings; some prefer to look at what our meeting postings are online, some participated virtually and some just look at emails that I send out. We also have a Family Group Tab on the CLAPW Webpage.

It is to everyone's advantage for this group to grow. A family does not need to be connected to CLAPW in order to participate, so if you know of anyone in the Durham Region that you want to reach out to, please feel free to do so.

Family Group

Our Vision

The Community Living Family Group will enable family members of youth, adults, and seniors, who have an intellectual disability explore options for creating a good life in the community.

Members of the group will hear from guest speakers including parents from across the province who have established unique and creative support options.

Members of the group will learn about available community resources, supports, and will be supported through exploring options for their loved ones.

The family members participating in this program will learn about available community resources and planning tools and techniques available to support their loved ones. This information will be shared by a variety of sources including other parents and caregivers who have planned successfully for their family member.

We want to empower families to seek information and explore creative options for helping their loved ones to be fully engaged in the life of the community whether that is through work, recreation, or home life.



Family Law and Estates Considerations for Families with Special Needs

An Overview



Presenters:



Lidia Benoji

Estates Law



Melissa Belliveau

Family Lawyer

Family Law: Methods of Resolution

Parties as decision maker:

- Mediation
- Collaborative Law
- Traditional Negotiation

Third party decision maker:

- Arbitration
- Court

Family Law: Decision Making

- Decision making authority - what does this even mean? Sole vs. Joint
- Why this matters so much more for our families
- Interplay between “custody” or “decision making” and issues of capacity and guardianship
- Impact of living arrangements on support issues - as well as benefits and credits

Family Law: Support

- Child Support Guidelines-
 - what are they?
 - Do they apply to adult dependants? Impact of ODSP
- Section 7 expenses
 - therapy , residential care etc.
- How is income calculated... how might that change for us? Grants, funding etc.

Intersection of Family Law and Estates Law

- Wills and Powers of Attorney
 - Why is this super important for us?
 - Are you in a common law relationship?- even more important!!!
 - No automatic right to property division
- Outdated beneficiaries on certain assets ie. RRSPs and life insurance
- What happens if you haven't properly wrapped up a family law issue? How do you do this?

GUARDIANSHIP AND HENSON TRUSTS

Protecting Vulnerable Beneficiaries in Ontario Estates

WHAT IS GUARDIANSHIP?

- Court-appointed authority allowing someone to make **personal or financial decisions** for a person who cannot manage them.

Two Types:

- Guardian of the Person – decisions about health, care, housing.
- Guardian of Property – decisions about finances, assets, income.

WHEN IS GUARDIANSHIP NEEDED?

Guardianship is typically required when:

- The person is mentally incapable under the *Substitute Decisions Act, 1992*.
- There is no valid Power of Attorney for an incapable person.
- Third parties (banks, institutions) require a guardian for transactions.

HOW GUARDIANSHIP IS DETERMINED

Capacity Assessment:

Medical or professional evaluation confirming incapacity.

Court Application:

- Affidavit evidence
- Management plan (for property)
- Proposed guardian's suitability

Court Review:

Judge determines if the person applying for guardianship is the most suitable person.

DUTIES OF A GUARDIAN

Guardians must:

- **Act in the incapable person's best interests**
- **Keep detailed records**
- **Avoid conflicts of interest**
- **Seek Court approval for major decisions**
- **File annual accounts when required**

Breach of duty may result in removal or personal liability.

COMMON ISSUES IN GUARDIANSHIP CASE

- Family disputes about who should act
- Concerns about misuse of funds
- Capacity disagreements
- Conflicts with existing Powers of Attorney
- Need for Court intervention in major decisions



WHAT IS A HENSON TRUST?

A Henson Trust is an absolute discretionary trust for a person with disabilities, where the beneficiary has no claim to the assets, keeping them exempt from ODSP asset rules.

Key points:

- Beneficiary cannot demand payments
- Assets remain "invisible" to ODSP while in trust
- Trustee has full discretion over payments

TYPES OF HENSON TRUSTS

There are two types of Henson Trusts:

1. Testamentary Henson Trust

- Created in a Will.
- Takes effect after the settlor's death.
- Commonly used by parents planning for a child with disabilities.

2. Inter Vivos (Living) Henson Trust

- Created during the settlor's lifetime by a trust deed.
- Can be funded and used immediately.
- Useful when support is needed while the settlor is alive.

DEFINING FEATURES OF A HENSON TRUST

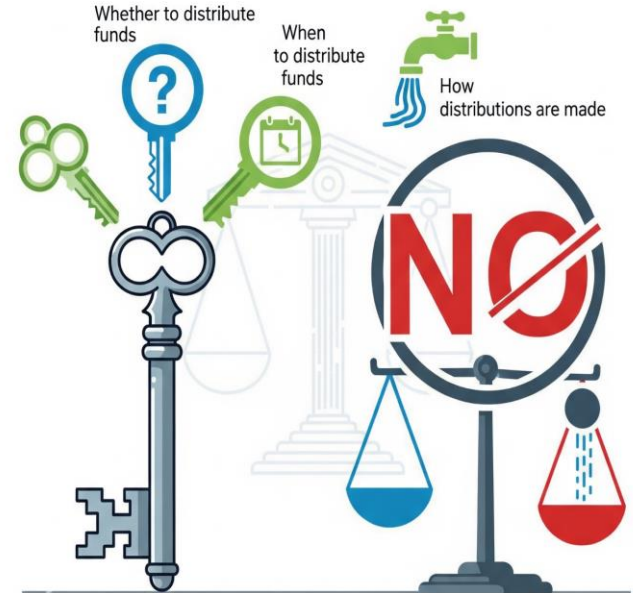
1. Absolute Discretion

Trustee has complete authority over:

- Whether to distribute funds
- When to distribute funds
- How distributions are made

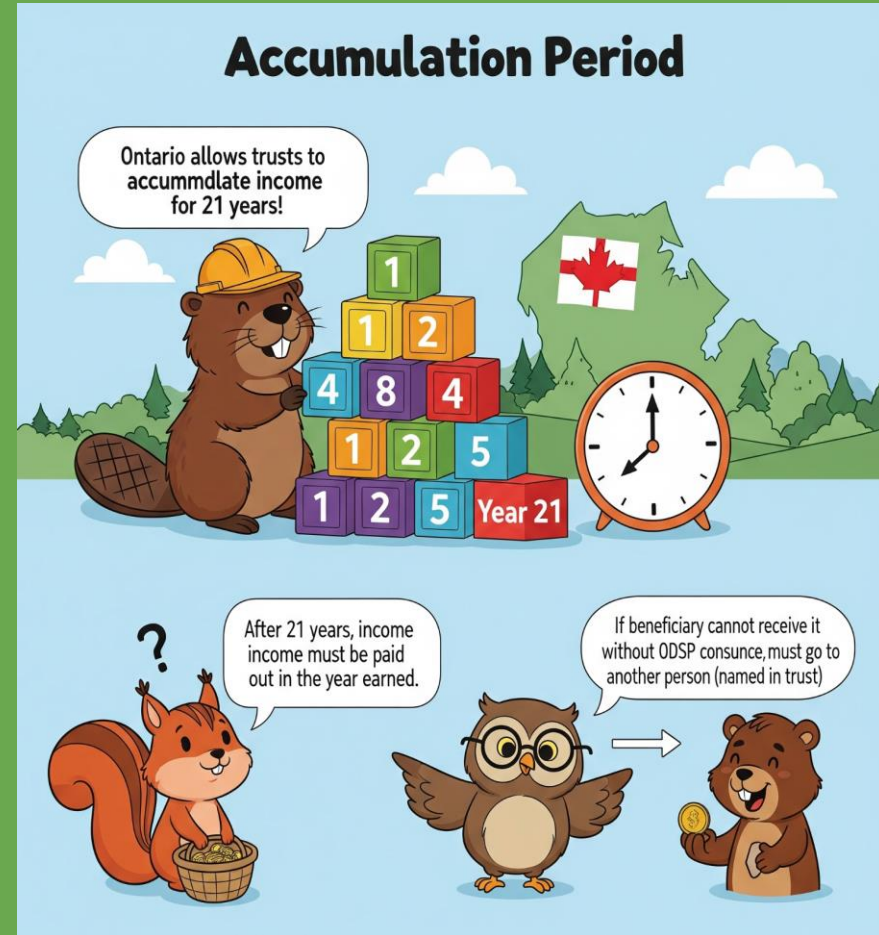
Any requirement or obligation to make payments would give the beneficiary a legal right, jeopardizing ODSP eligibility.

A TRUSE'S ABSOLUTE DISCRETION



2. Accumulation Period

- Ontario allows trusts to accumulate income for 21 years.
- After 21 years, income must be paid out in the year earned.
- If beneficiary cannot receive it without ODSP consequences, income must go to another person (named in trust).



3. Distribution on Death of the Beneficiary

A valid Henson Trust must specify who receives remaining assets when the beneficiary dies. Failure to do so can make the trust count as the beneficiary's asset.

Sam is 28 and receives ODSP. His parents create a Henson Trust for him in their Wills. They forget to specify who gets the remaining trust assets after Sam dies.

Result:

When ODSP reviews the trust, they determine that without named remainder beneficiaries, the assets could flow back to Sam's estate — meaning Sam is treated as having a “beneficial ownership interest.” ODSP counts the trust as Sam's asset, risking his ODSP eligibility.

How to Choose a Trustee for Henson Trust

- **Financially**
(organized, good with budgeting, manages records **responsible** well)
- **Understands**
(payments must remain discretionary; must avoid jeopardizing **ODSP** rules eligibility)
- **Acts**
(empathetic, in patient, fair, **beneficiary's** able to say **best** "no" when **interests** needed)
- **Appropriate**
(trustee should **age** ideally **&** be **long-term** available for **availability** decades)
- **Willing**
(lawyers, **to** accountants, **consult** investment **professionals** advisors)
- **Option:**
(e.g., family member + professional trust company) **Use** **Co-Trustees**

Trustee Compensation

Unless the trust specifies compensation:

- The Trustee Act applies → "reasonable compensation"
- Courts consider:
 - Value of trust assets
 - Complexity of administration
 - Time and skill required
 - Degree of success

The usual tariff may be inadequate, and courts may award higher compensation.

Why the Usual Tariff Is Problematic

Standard estate/trust compensation (“the Tariff”) is based on a percentage of the trust value.

For Henson Trusts, this can be unfair because:

- administrative work is often high
- trust value may be low to moderate
- workload can be disproportionate to asset value

Key Takeaways on Henson Trusts

- **Protect ODSP eligibility by removing beneficiary control**
- **Require absolute trustee discretion**
- **Must plan for 21-year accumulation rules**
- **Must specify distribution on beneficiary's death**
- **Trustee selection is critical—knowledge, commitment, and impartiality**
- **Professional and multi-trustee structures improve oversight**

Thanks!

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THANK YOU !

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