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**Estate Planning for Beneficiaries with a  
Disability**

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# **Presentation Outline:**

- 1. Welcome & Introduction**
- 2. Disability Planning – Key Considerations**
- 3. Will Planning**
- 4. Trust Planning**
- 5. Consent, Capacity & Legal Decision-Making**
- 6. Tax Considerations**
- 7. The Registered Disability Savings Plan (RDSP)**
- 8. Additional Considerations**
- 9. Next Steps**



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**NOVEMBER IS**  
**MAKE A WILL**  
**MONTH**





# INSPIRING POSSIBILITIES

ESTATE PLANNING **GUIDE**

A TAX, BENEFITS, TRUSTS,  
AND WILLS TOOLKIT  
FOR ONTARIANS WITH  
DISABILITIES



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**Disability Planning**

# Key Considerations

1. Interaction with other components
2. Management of Property
3. Social Assistance



# Interaction with other components

1. RDSP
2. DTC
3. RRSP
4. Tax-free Savings Account
5. RESP
6. Life Insurance
7. Pension

# Management of Property

- **Considerations:** Does the person with a disability require support to manage their property?
- Presumption of Capacity
- Capacity Requirement

# Social Assistance

- **Considerations:** Does the person with a disability receive social assistance?
- If so, protection of the person's social assistance should be included in the estate plan (i.e. using a Henson Trust)



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**Social Assistance** (*provincial supports*)

# Income Support

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## Using ODSP as An Example

- Provincial income support program
- Provides income and employment support to people with disabilities
- 18 to 65 years of age

# Income Support

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## Financial Eligibility – **Income**

- Budgetary requirements must exceed income
- **Non-exempt income**
  - CPP, WSIB, investment income
- **Exempt Income**
  - gifts and voluntary payments is \$10,000 per 12-month period (includes income from trusts)
  - No limit on income for disability-related needs or from the RDSP
  - \$1,000 of employment income/month (25% in excess of \$1000/month)

# Income Support

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## Financial Eligibility – **Assets**

- Non-exempt assets
  - Maximum allowable amount is \$40,000
  - exceeding the limit could result in a suspension of monthly benefits
- Exempt assets
  - include a principal residence, vehicle, RDSP, RESP, Henson Trust, government-regulated trust, segregated fund (up to \$100,000)
- Leaving assets to ODSP recipient in a will can negatively impact benefits and disrupt plan for care

# Income Support

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## Disability Determination

- 18 to 65 years
- Live in Ontario
- Substantial physical or mental disability that:
  - Is expected to last a year or more, and
  - Affects ability to care for oneself, take part in community life or work



# Income Support

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## Income Support

- Amount of income depends on family size, income, assets and housing costs
  1. If person rents or owns a home, support comprised of:
    - basic needs (food, clothing, personal items)
    - shelter allowance (rent, mortgage, utilities, property taxes, home insurance)
  2. If person lives in **board/lodging arrangement** (i.e. with parents who buy and prepare food), person receives board and lodging amount

# Income Support

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- Health (prescriptions, dental, vision)
- Disability-related (assistive devices, hearing aids, mobility devices, guide dogs)
- Employment incentives (training, child care, work-related, extended health, transitional)
- Housing-related (staying in your home/moving, home repairs)



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**Will Planning**

# The Importance of Having a Will

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- **Allows you to appoint:**
  - beneficiaries of your estate
  - People to take care of your affairs (Estate Trustees)
  - Trustees of testamentary trusts
  - Guardian(s) for minor children
- Permits tax planning strategies to maximize value of asset
- Reduces cost of administering an estate
- **Allows you to leave an inheritance without affecting eligibility for social benefits**



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**Trust Planning**

# What is a Trust?

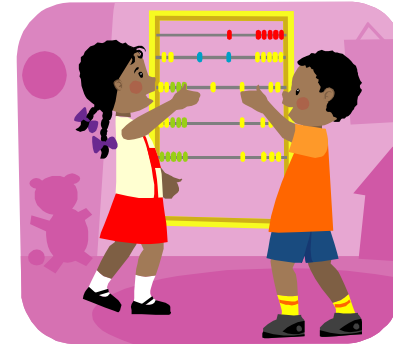
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Settlor



Trustee(s)



Beneficiaries

# Common Types of Trusts

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- Inheritance/Shelter Trust
- Henson Trust
- Qualified Disability Trust
- Lifetime Benefit Trust

# Inheritance Trust (Ontario E.g.)

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- Can be a non-discretionary trust
- Proceeds from estate or life insurance policy of less than \$100,000
- May be set up by beneficiary after person's death
- Funds must be kept in a separate bank account
- Cannot be controlled solely by beneficiary
- Trust agreement is a good idea



# Henson Trust

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- Absolute discretionary trust
- Not considered an asset by ODSP
- No monetary limit applies
- Residual beneficiary(ies) named
- Inter-vivos (living) or testamentary (in a will) trust
- Consider naming multiple trustees

# Qualified Disability Trust

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- Allows income to be taxed at graduated rates
- In order to qualify:
  - Trust be resident of Canada
  - At least one beneficiary must qualify for the DTC
  - Trust capital cannot be paid to non-qualifying beneficiary
- Beneficiary can only benefit from one QDT

# Lifetime Benefit Trust

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- Allows for RRSP/RRIF rollover to trust on tax-deferred basis
- In order to qualify:
  - Beneficiary must be child, grandchild, spouse of common-law partner
  - Child/grandchild must be dependent on deceased at time of death due to mental disability
  - LBT named as annuitant of “qualified trust annuity”

# Trustee Considerations

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- Honest and trustworthy
- Highly involved in beneficiary's life
- Sensitive to beneficiary's needs and wants
- Understands social assistance rules
- Age
- Investments and income tax
- Record-keeping
- Be aware of potential conflicts of interest!



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**Consent and & Legal Decision Making**

# Overview

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1. Is the person “capable” of making the decision?
2. If not, who is authorized to provide consent?

# Capacity...

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- Theme → ability to understand and appreciate
- Tests to determine capacity differs
  - Managing property
  - Consenting to personal care
  - Giving a Continuing Power of Attorney for Property
  - Giving a Power of Attorney for Personal Care
  - Giving instructions for a Last Will & Testament
  - Entering into a contract

# Capacity...

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- **Presumption of Capacity**
  - Unless evidence raises question of capacity AND a decision needs to be made
- **Two broad areas of decision making**
  - Property
  - Personal Care (health care, nutrition, shelter, clothing, hygiene, safety)



# Consent (Ontario E.g.)...

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## Hierarchy of SDM (Property)

1. Guardian
2. Attorney for Property
3. PGT as Statutory Guardian

# Consent (Ontario E.g.)...

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## **Hierarchy of SDM (Health care, Admission to long-term care, Personal Assistance Service)**

1. Guardian
2. Attorney for Personal Care
3. Representative appointed by the Consent & Capacity Board
4. Spouse or partner
5. Child or parent
6. Brother or sister
7. Any other relative

# Consent (Ontario E.g.)...

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## Guardianship

- Person must be found incapable of managing property and/or consenting to personal care matters
- Personal Care → can only be appointed by court
- Property → can be appointed by court or through statutory guardianship process (involved PGT)
- Courts must consider “less restrictive” provision

# Consent (Ontario E.g.)...

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## Continuing Power of Attorney for Property

- Gives someone the authority to act on your behalf while you are alive
- Specifically with matters relating to property (real property, finances, etc.)
- May take effect when grantor is capable
- Continues when grantor is incapable

# Consent (Ontario E.g.)...

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## Continuing Power of Attorney for Property (con't)

- Can name more than one attorney
- “Jointly” or “jointly and severally”
- Attorney(s) must be over age 18
- Can do almost anything except execute a will, appoint a new Power of Attorney or change beneficiaries
- Entitled to compensation

# Consent (Ontario E.g.)...

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## Continuing Power of Attorney for Property: Capacity Requirements

- Knows kind and value of property
- Aware of obligations to dependants
- Knows authority of the attorney
- Knows that attorney must account
- Knows the grantor may can revoke
- Appreciates that value may decline
- Appreciates the attorney could misuse authority

# Consent (Ontario E.g.)...

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## Power of Attorney for Personal Care

- Gives someone the authority to act on your behalf while you are alive
- Specifically with matters relating to health care, medical treatment, shelter, nutrition, hygiene & safety
- Authorizes attorney(s) to act only when you are incapable
- Can name more than one attorney
- Attorney must be over 16 years of age

# Consent (Ontario E.g.)...

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## Power of Attorney for Personal Care: Capacity Requirements

- Ability to **understand** that attorney has genuine concern for person's welfare
- Ability to **appreciate** that attorney may have to make decisions for the person





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**Tax Considerations**

# Tax Considerations:

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- Trust Planning
- Rollover Options
- DTC



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**Disability Tax Credit**

# What is the DTC?

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- Disability Tax Credit
- Canada Revenue Agency – Form T2201
- Qualifies individuals for benefits under the Income Tax Act
- Confirms that individual has “severe or prolonged impairment in physical or mental functions”
- See self-assessment form

# Benefits of the DTC

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- Disability Amount
- Transferring the Disability Amount from a Dependant
- Child Disability Benefit
- Working Income Tax Benefit
- Disability Supports Deduction
- Eligible Medical Expenses
- Registered Disability Savings Plan



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**Registered Disability Savings Plan (RDSP)**

# What is the RDSP?

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## **The Registered Disability Savings Plan (RDSP) is:**

- A long-term savings vehicle designed for persons with disabilities
- One of a range of financial and estate planning tools

# Who can set up a plan?

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## **The “Holder”**

- The person who sets up and manages the RDSP

## ***For Minor Children***

- Parents or legal guardians (parents remain holders once the person becomes an adult)

## ***For Adults***

- A beneficiary
- A person appointed by the beneficiary using a Power of Attorney
- A parent, spouse or common-law partner, or sibling of the beneficiary (**as of June 2023**)
- A person/entity legally authorized to act on the beneficiary's behalf (e.g. Guardian of Property)





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**RDSP Eligibility**

# Eligibility for the RDSP

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## **The “Beneficiary”**

- The person who will benefit from the proceeds in the RDSP

## **Eligible Beneficiaries must:**

- Have a valid Social Insurance Number
- Apply for an RDSP before the end of the calendar year in which they turn age 59
- Be a Canadian resident
- Qualify for the Disability Tax Credit



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**Contributing to the RDSP**

# Private Contributions

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- Anyone may contribute to the plan with the written authorization of the holder
- \$200,000 lifetime contribution limit
- No annual contribution limit
- Contributions are not tax-deductible
- Last contributions have to be made by the end of the calendar year the person turns 59

# Federal Contributions

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## Eligibility

- Beneficiaries may be eligible for:
  - Canada Disability Savings **Grants**
  - Canada Disability Savings **Bonds**
- To receive the maximum Grants/Bonds:
  - File an income tax return for two years prior (2021 tax return for 2023 contributions)
  - Apply for the Canada Child Tax Benefit if the beneficiary is a child
- Grants/Bonds are paid until the calendar year in the which the beneficiary turns age **49** OR maximum amounts have been paid

# Family Contributions

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## Beneficiary's Family Income

Amount of government contributions based on:

- For beneficiaries until the year they turn **18** years of age
  - Net adjusted (after deductions) family income
- For beneficiaries from the year they turn **19** years of age or older
  - The beneficiary's income
  - If married, the beneficiary's net adjusted family income

# Canada Disability Savings Grant

Beneficiary's Family Income (2021)	Grant (2023)	Maximum Annual Grant	Lifetime Maximum
\$106,717* or less	\$3 for every \$1 contributed on the first \$500 (max. \$1,500 in grants)  \$2 for every \$1 contributed on the next \$1,000 (max. \$2,000 in grants)	<b>\$3,500</b> (based on \$1,500 contribution)	The first of \$70,000 OR the beneficiary turning age 49
More than \$106,717* or no tax return	\$1 for every \$1 contributed on the first \$1,000 (max. \$1,000)	<b>\$1,000</b> (based on \$1,000 contribution)	The first of \$70,000 OR the beneficiary turning age 49

\* The beneficiary adjusted family net income thresholds are indexed each year to inflation. The income thresholds shown are for 2023.

# Canada Disability Savings Bond

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- No contributions are necessary but an RDSP must be opened
- Paid out annually by the Federal government
- Up to \$1,000 each year to a lifetime maximum of \$20,000 (or the end of the year the beneficiary turns age 49)

<b>Beneficiary's Family Income (2021)</b>	<b>Amount of Bond \$\$ (2023)</b>
\$34,863* or less	<b><u>\$1,000</u></b>
\$34,863* – \$53,359*	\$1,000 reduced on a pro-rated basis
More than \$53,359*	None

\* The beneficiary adjusted family net income thresholds are indexed each year to inflation. The income thresholds shown are for 2023.



# Carry Forward of Grant & Bond Entitlements

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- Government introduced a “catch up” measure in the 2010 Budget
- Beginning in January 2011 → unused grant and bond entitlements from the past 10 years can be claimed (back to 2008)
- Beneficiary can claim until the end of the calendar year in which they turn **49** years of age



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**Payments & Taxation of the RDSP**

# Payments and Taxation

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- Withdrawals (payments) will result in the repayment of Grants and Bonds received in the last 10 years
- You must repay \$3 to the Government of Canada for every \$1 that is withdrawn, up to the total amount of bonds and grants

# Payments (withdrawals)

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## 1. Lifetime Disability Assistance Payments (LDAP)

- Regularly scheduled periodic withdrawals
- May begin at any age, but must begin by the end of the year the beneficiary turns 60
- Amount determined by LDAP formula
- LDAP formula takes into account the fair market value of the RDSP and the beneficiary's life expectancy

# Payments (withdrawals)

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## 2. Disability Assistance Payments (DAP)

(Unscheduled, lump sum withdrawals)

<b>Primarily Government Assisted Plan (PGAP)</b>	<b>Non-PGAP</b>
<ul style="list-style-type: none"><li>• Government contributions exceed private contributions</li><li>• Can be requested by beneficiary</li><li>• Maximum amount is the greater of 10% of RDSP at beginning of year or amount determined by LDAP formula</li></ul>	<ul style="list-style-type: none"><li>• Private contributions exceed government contributions</li><li>• Requested by holder</li><li>• No maximum payment limit</li></ul>

# Payments (withdrawals)

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## 3. (Terminal Illness) Disability Assistance Payments

- Where a doctor certifies that the beneficiary has five or less years to live
- Amounts may exceed LDAP formula
- 10-year repayment rule does not apply to lump sum withdrawals (up to specified amount)

# Taxation of Payments

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- Earnings grow on a tax-deferred basis
- Grants, Bonds, and growth are taxable upon withdrawal

## Example

- RDSP has \$100,000
  - \$30,000 private contributions (30%)
  - \$60,000 in government contributions (60%)
  - \$10,000 in growth (10%)
- For any withdrawal, **70%** (i.e., government contributions and growth) would be considered taxable income in the hands of the beneficiary

# Transferring Retirement Savings to an RDSP

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- Parent or grandparent of financially dependent child or grandchild can transfer retirement savings to an RDSP upon passing away **tax-free**
- Savings must be in a Registered Retirement Savings Plan (RRSP), Registered Retirement Income Fund (RRIF) or Registered Pension Plan (RPP)
- Maximum transfer is \$200,000 and forms part of lifetime contribution limit
- Note: Government Grants will not be paid on transfers



# Rollover of RESP Investment Income

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- Allow for transfer of RESP earnings to RDSP on tax-deferred-basis
- RDSP & RESP must have common beneficiary and **one** of the following conditions must be met:
  - Beneficiary prevented from attending post-secondary education due to disability
  - RESP opened for at least 10 years and beneficiary is at least 21 and not pursuing post-secondary education
  - RESP opened for at least 35 years
- Rollover forms part of lifetime contribution limit (\$200,000)
- RESP contributions returned to subscriber
- RESP Grants and Bonds are returned to government



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**RDSP & Impact on other Government Programs**

# RDSP & other Government Programs

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**Assets:** Assets in an RDSP may be exempt for determining eligibility of provincial programs

**Income:** Funds received from RDSPs may be subject to provincial/territorial partial or full exemptions under provincial programs

# RDSP & other Government Programs

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## Federal Programs:

The RDSP will not impact the following federal programs:

- Old Age Security (OAS)
- Guaranteed Income Supplement (GIS)
- Canada Pension Plan (CPP)
- GST Benefit



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**Closing the RDSP**

# If the Beneficiary Passes Away

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- RDSP must be closed by the end of the following calendar year
- Any Grants or Bonds received within the last 10 years must be repaid to the government
- Original contributions not taxable
- Remainder taxed to beneficiary's Estate
- Proceeds pass to the Estate of the beneficiary → distributed in accordance with will or intestacy law

# If the Beneficiary Loses DTC Eligibility

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- RDSP does not have to be closed
- The beneficiary will not receive government grants and bonds while DTC-ineligible
- No requirement for medical certification that beneficiary will likely be DTC-eligible in foreseeable future
- Withdrawals will be permitted, but will trigger repayment of the "Assistance Holdback Amount"



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**Additional Considerations**



# Additional Considerations

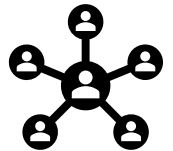
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Life insurance



Home ownership options



Self-directed support organizations (i.e. microboards, etc)



Accessing services & supports



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**Next Steps**

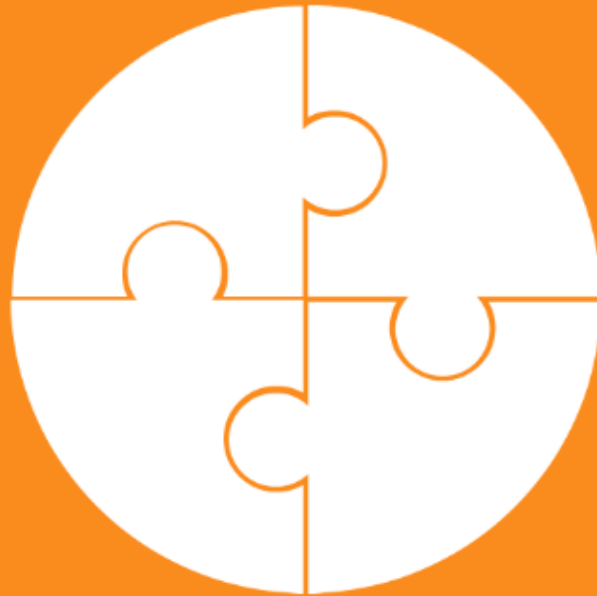
# Next Steps

Step #1

**PRIORITIZE YOUR  
PLANNING**

Step #3

**IDENTIFY YOUR  
PEOPLE**



Step #2

**GATHER YOUR  
INFORMATION**

Step #4

**SELECT YOUR  
PROFESSIONALS**

# Questions?



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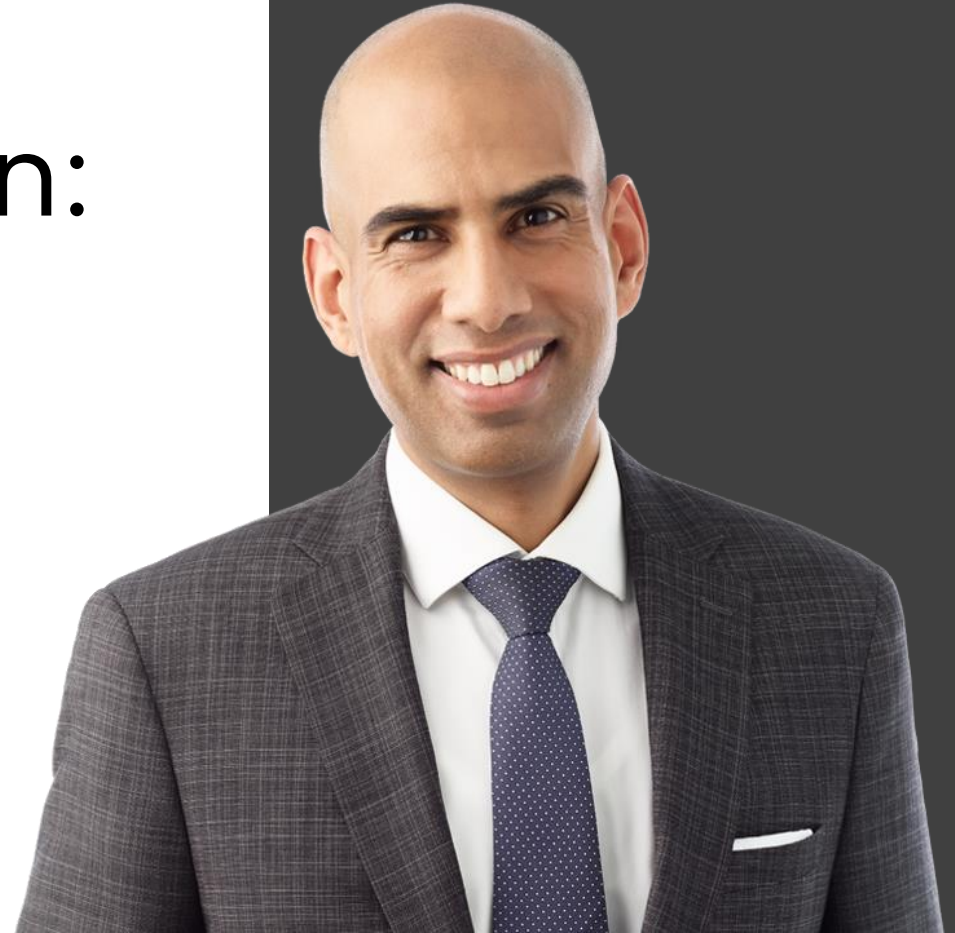
Contact information:

**Brendon Pooran**

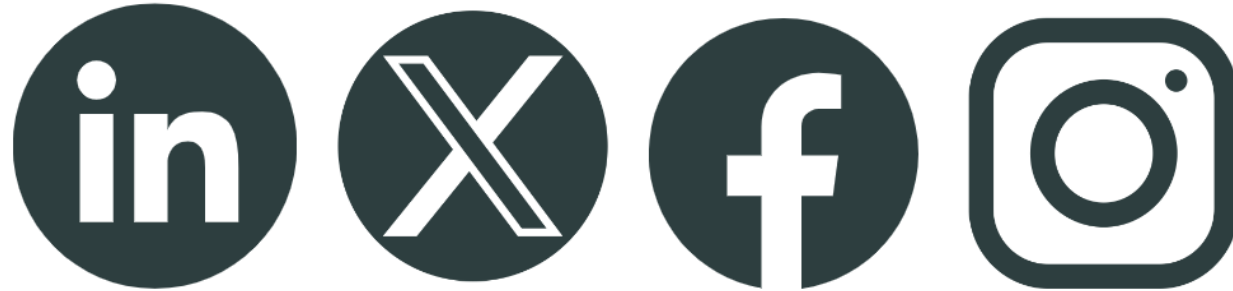
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