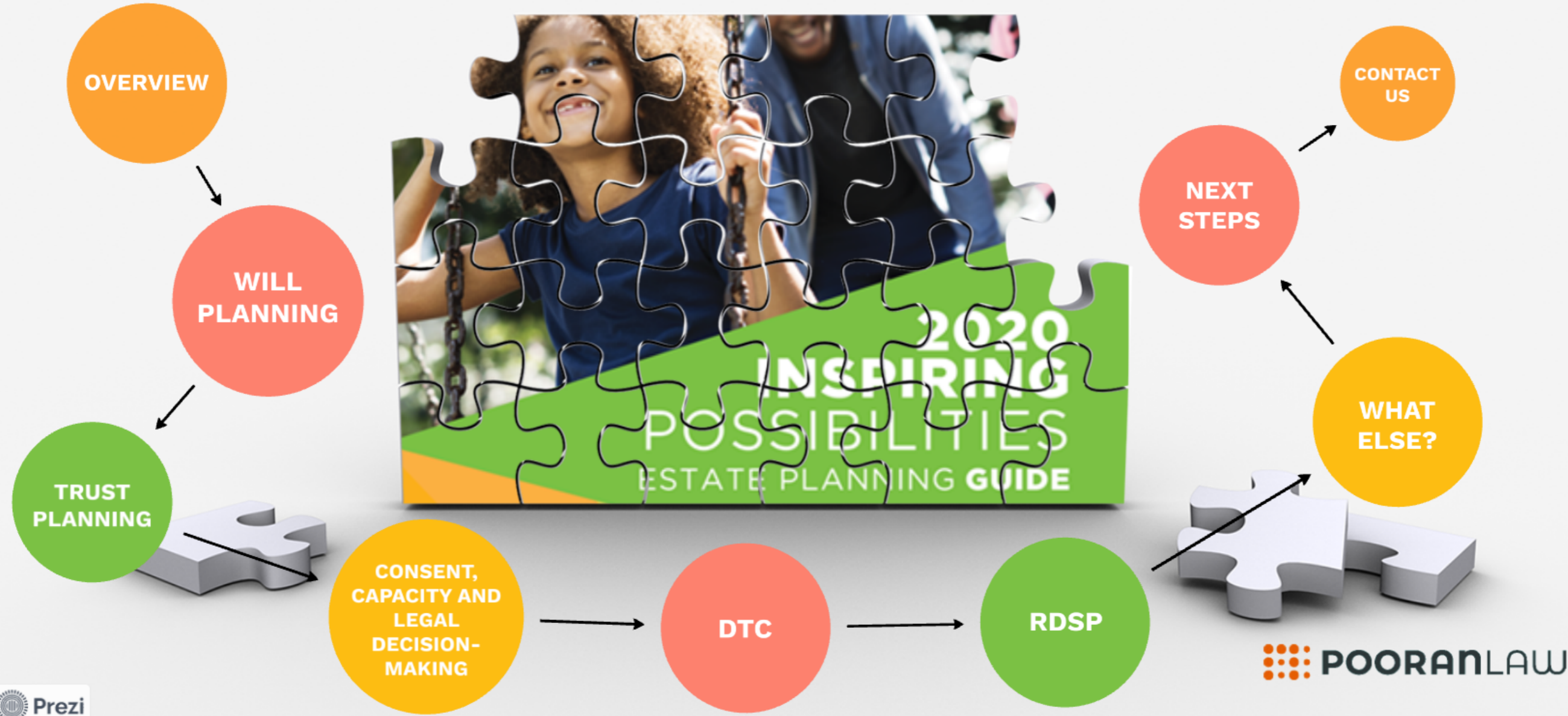


Estate Planning for People with Disabilities & Their Families



Disclaimer

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Estate Planning: KEY ELEMENTS

What do I need from my lawyer?

Will



Trust



Henson Trust, Inheritance Trust, etc.

Powers of Attorney



Advance Directives, Representation Agreements, etc.

Your Estate Plan

Considerations:

- Interaction with other Components
- Management of Property
- Social Assistance



Interaction with other Components




 **Consideration:** What are the other components of your estate plan?




 Registered Disability Savings Plan (RDSP)

 Disability Tax Credit (DTC)

 Registered Retirement Savings Plan (RRSP)

 Tax-Free Savings Account

 Registered Education Savings Plan (RESP)

 Life Insurance

 Pension

Management of Property



Consideration: Does the person with a disability require support to manage their property?

Presumption of Capacity

Capacity requirements:

- Ability to **understand** the information relevant to making a decision
- Ability to **appreciate** the reasonably foreseeable consequences of a decision or lack thereof

Social Assistance



Consideration: Does the person with a disability receive social assistance?

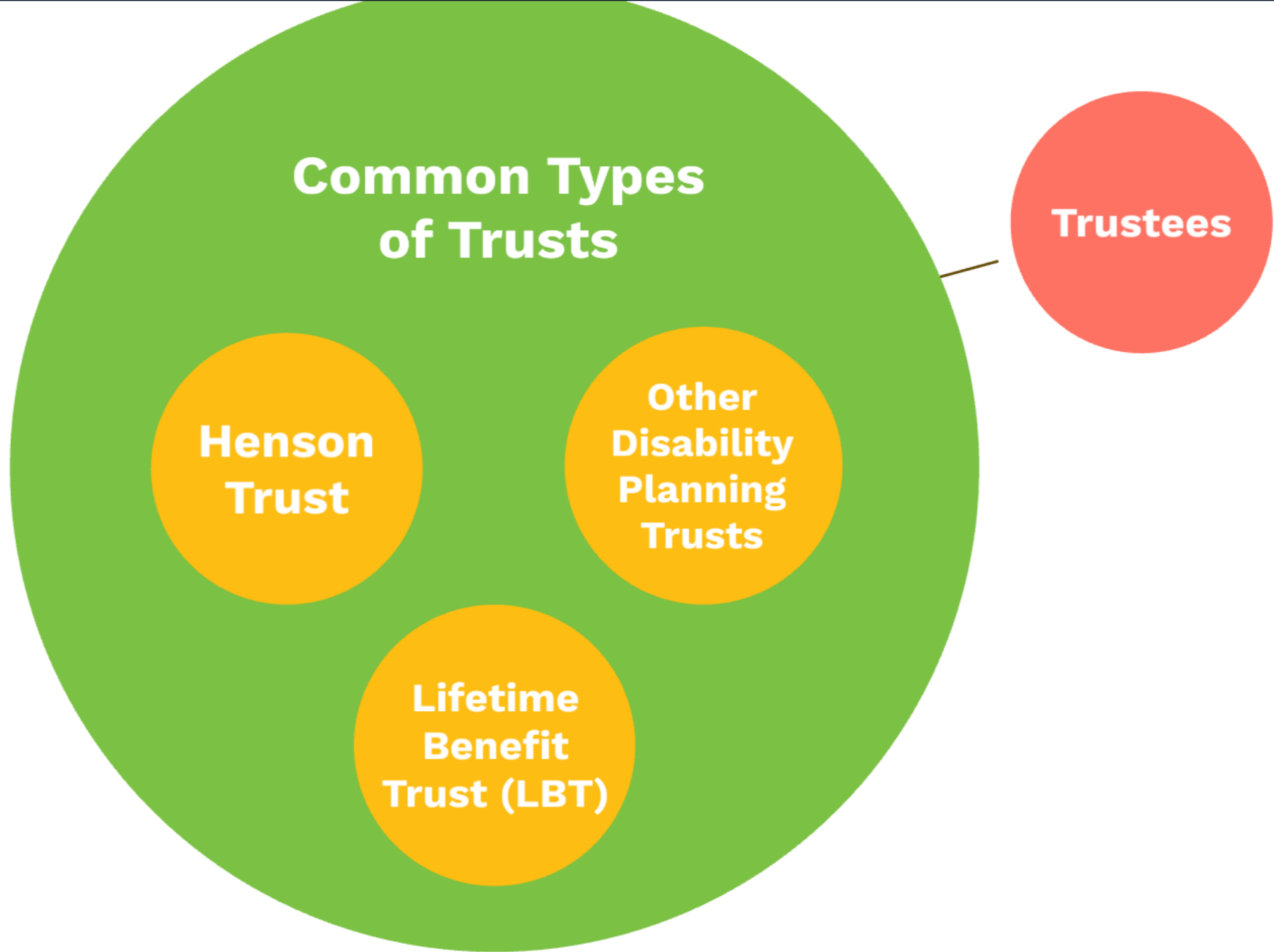


If so, protection of the person's social assistance should be included in the estate plan i.e. using a Henson Trust

The Importance of Having a Will



- **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 estate
- Allows you to leave an inheritance without affecting eligibility for social assistance



Common Types of Trusts

Henson Trust

Other Disability Planning Trusts

Lifetime Benefit Trust (LBT)

Trustees

Henson Trust

- Absolute discretionary trust
- Not considered an asset for social assistance purposes
- No monetary limit applies
- Residual beneficiary(ies) named
- Inter-vivos (living) or testamentary (in a Will) trust
- Consider naming multiple trustees

Qualified
Disability
Trust

Qualified Disability Trust (QDT)

- Allows income to be taxed at graduated rates
- In order to qualify:
 - Trustee must 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 (LBT)

- 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

- 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!

Consent, Capacity, and Legal-Decision Making

You

**Your
Family
Member**

Powers of Attorney/ Advance Directives

Property

Personal Care

Disability Tax Credit (DTC)

- Disability Tax Credit Certificate
- Qualifies individuals for benefits under the Income Tax Act
- Confirms that individual has “severe or prolonged impairment in physical or mental functions”
- Canada Revenue Agency - Form T2201 (Available online)

Benefits

Available Benefits

- Registered Disability Savings Plan (RDSP)
- Qualified Disability Trust (QDT) Designation
- Child Disability Benefit
- Child Care Expenses
- Home Buyers Tax Credit
- Home Accessibility Credit
- Attendant Care Expenses

Registered Disability Savings Plan (RDSP)

- Long-term savings plan
- Beneficiaries entitled to up to \$4,500 in government contributions per year (to a lifetime maximum of \$90,000)
- Retroactive to past ten years
- Exempt asset/income under ODSP
- **To be eligible, you must:**
 - Have the Disability Tax Credit (DTC)
 - Be under the age of 60
 - A Canadian resident
 - Have a valid Social Insurance Number (SIN)

Additional Considerations



Life insurance



Home ownership options



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



Accessing services and supports

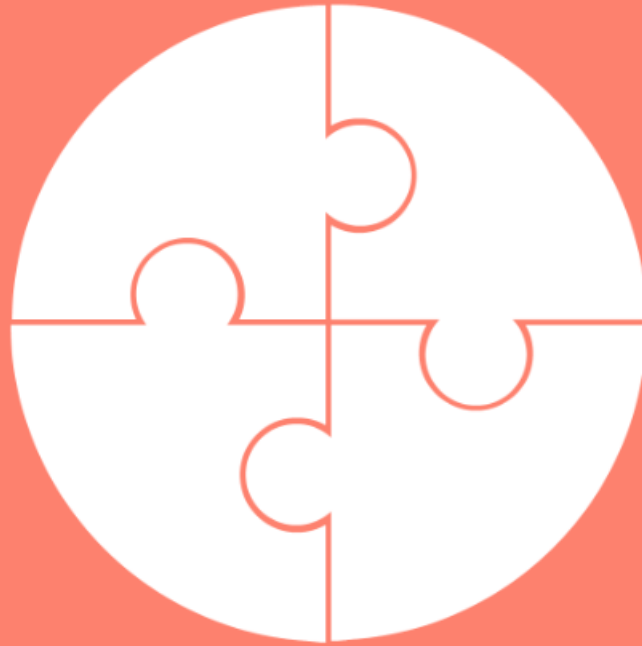
Next Steps

Step #1

**PRIORITIZE YOUR
PLANNING**

Step #3

**IDENTIFY YOUR
PEOPLE**



Step #2
**GATHER YOUR
INFORMATION**

Step #4
**SELECT YOUR
PROFESSIONALS**

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