

# Where there's a Will:

*Plan ahead to prevent estate problems*

By Pat M. Irwin,  
BA (Econ), AICB

In my last article in the winter issue of *Solutions*, I introduced you to the Johnsons: Mr. Jack Johnson; his wife, Frieda; and his sons, Bob and Steve. After suspecting his son Bob was misusing their joint funds, Jack had replaced Bob as his power of attorney for property and for personal care with Steve, his older son who lived in Newfoundland. Both parents had stored their Wills with Bob who, despite the estrangement caused by the power of attorney change, kept the Wills—the only copies.

When a stroke summoned Steve to his dad's bedside, he felt it was time to clarify all arrangements such as care directives, estate and funeral plans. He searched through the desk and contacted his father's lawyer, but there was no sign of a Will. Did his brother, Bob, have the only copy?

When he failed to find a Will, Steve was concerned that Bob, given his stewardship of their parents' account and his still being their mother's power of attorney, might be inclined toward further abusing any inheritance. Could Jack

make a new Will now?

Making a new Will was possible, but although he had not previously suffered from dementia, Jack did suffer a stroke that hindered his speech and left him terribly weak. After a short visit with Jack, his lawyer decided that a capacity assessment was required to confirm Jack's ability to understand what was being asked and to communicate his wishes.

## Tip: Think ahead when storing your Will.

Store it with the lawyer who prepared it, and keep a copy at home with your other important documents. Do not store the Will in a bank's safety deposit box unless the location and key is readily accessible to the estate trustee. You may ask the lawyer to file the Will at the Superior Court of Justice (however, in practice this is rarely done); to obtain a photocopy of a filed Will, visit [www.attorneygeneral.jus.gov.on.ca/english/courts](http://www.attorneygeneral.jus.gov.on.ca/english/courts).

A Capacity Assessor was located via the Attorney General's office (in Ontario, visit [www.attorneygeneral.jus.on.ca](http://www.attorneygeneral.jus.on.ca) and click on Capacity Office, or call 1-866-521-1033). An assessor will determine whether the person's understanding of the issues is factually accurate, including whether the person can accurately identify his or her income, assets, debts, and financial involvements; retain, interpret and manipulate that information; realize the consequences of these choices, and explain the basis for them. Assessors do not infer incapacity simply because the person's choices are extremely unusual or appear to be against his or her own interests or welfare. The only relevant issue is the person's level of cognitive functioning and ability to reason and process information, not the merits of the choices he or she makes.





## Tip: Don't postpone making a Will.

If you are unsure about what to include in a Will, an experienced wills and estates lawyer will guide you through the process. A basic Will preparation usually costs \$500 to \$700. Will kits, available on-line or in stationary stores, are often not detailed enough to prevent confusion and problems later on. Hologram Wills, handwritten and signed Wills, require no witnesses. They are usually acceptable, but must be in longhand, not typewritten or printed.

In Jack's case, his fatigue and inability to speak resulted in the assessor's decision that he was unable to participate in rational decision-making on his own behalf. Steve's lawyer explained that, if no Will were found after Jack's death, he would be deemed "intestate," and his estate would be divided per the Succession Law Reform Act of 1990, which defines a spousal share of \$200,000 ahead of all other beneficiaries if death occurred in Ontario. (Visit [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca) for legislation for other provinces.)

Two weeks after Steve's visit, Jack died peacefully. Steve's status as power of attorney ceased with Jack's death, and the governing document now became the elusive Will. Sure enough, Bob produced the Will—dated 1972—wherein Jack

## Tip: Review your Will regularly, especially after a change in family circumstances.

Ideally, Jack would have altered his Will after Frieda's diagnosis to ensure a more appropriate estate trustee was appointed. He also neglected to make any changes after appointing a new power of attorney, probably thinking—wrongly—that this change would automatically continue after his death. In fact, powers of attorney cease at death and have no bearing on estate administration.

left everything to his wife Frieda, and made her its estate trustee (formerly termed "executor"). However, Frieda had been diagnosed with dementia two years before and was unable to assume these duties. Fortunately, the two sons

had been named alternate estate trustees—actually, joint trustees. Given their relationship, was this a workable arrangement?

After the funeral, Bob and Steve consulted with their own lawyers. They were surprised to learn that the duties of an estate trustee cannot be delegated, and if more than one trustee is named, they must act unanimously. If trustees cannot agree, any one of them may apply to the court to have a trustee removed, and others may apply to the court to be appointed. Steve's concern that Bob would squander his mother's inheritance, using his power of attorney for property, was not assuaged by his lawyer's advice that he could apply for guardianship of his mother or that he could potentially sue his brother for mismanagement of his mother's assets after her death.

## Tip: Choose your estate trustee carefully.

The trustee will be responsible for administering the Will, including distribution to, and being accountable to, the beneficiaries—even if they themselves are also beneficiaries. This requires a fiduciary responsibility to act on another's behalf, in their best interest. Be sure the person has the knowledge, time and willingness to perform the task. Name an alternate trustee in case the original trustee becomes unwilling or unable to carry out the duties. A trust company or lawyer may be named as an alternate. If an alternate trustee dies, his or her estate trustee will "inherit" trustee duties for the estate. Visit [www.canlii.com](http://www.canlii.com) for specific legal information by province.

Wills instructions are often termed a "ruling from the grave." Although a thousand miles apart, Steve and Bob were given the same advice by their lawyers: to rise to the occasion, play by the rules, and learn to trust each other. While both brothers eventually worked through their differences to resolve their father's estate, their father could have saved the family a lot of trouble by consulting with a lawyer and properly preparing his Will. ●

*Acknowledgement: The author is grateful to Mary Balfour, BA, LLB, lawyer in estates and Will planning, for her advice and assistance.*

*Pat M. Irwin is president and founder of ElderCareCanada. Visit [www.eldercarecanada.ca](http://www.eldercarecanada.ca).*

"The formula for success: Underpromise and overdeliver."

Tom Peters



## 5 tips for better dental care

1. Book regular appointments to make dental hygiene part of your overall health care.
2. Bring to your appointment a list of medications and information on recent surgeries so the dental team knows how to customize your treatment. Some medications could make certain freezing products less effective.
3. People who have head or neck cancer tend to experience dry mouth; fortunately, this condition can be treated. When people have dry mouth, they tend to suck on mints or candies with sugar. Now there are saliva substitutes, gum, rinses, and even diabetic candies that have less sugar, thereby reducing the chance for tooth decay.
4. Easy-to-use tools for oral care are readily available. Power brushes with ergonomic handles make it easier for someone to hold the brush and let the tool do the work. A vibrating flosser called "Hummingbird" controls plaque. And many types of toothpaste have fluoride.
5. Ask your dental professional about options for special needs care. Some offices have wheelchair access or even portable equipment, making it easier to provide comfortable treatment.

Your health routine may include regularly scheduled doctors' visits and treatments. But what about regularly caring for your teeth and gums as part of your wellness program? Brushing, flossing, rinsing and receiving dental care goes beyond wanting a nice smile and fresh breath: it can contribute to your health.

# Open wide:

## Oral care can improve your health

By Victoria M. Ryce

People who don't regularly go to a dental office may visit when they have a toothache, sore mouth or notice their gums bleeding, but by then, there is already a problem. "Bleeding gums indicate trouble," says Michelle Clement, President of the Ontario Dental Hygienists' Association. "Blood means inflammation, which could indicate a more serious overall health problem." So what can go wrong?

### Risks of poor oral care

Plaque buildup increases the chance for cavities to form, depending on your diet and medications. And cavities result in tooth problems that could make it harder to chew. This could mean moving to softer or puréed foods instead of eating whole foods, especially raw carrots and apples—the "detergents" that scrub teeth and gums.

Sore teeth or gums can also make it difficult to eat; as a result, you may be receiving less nutrition due to the pain of eating. By cleaning and fixing teeth and gums, you increase your options for nutrition.

People who have dry mouth or trouble swallowing tend to drink carbonated drinks, fruit juices, and pop with sugar—choices that contribute to tooth decay. Water is the best cleanser for the

mouth, and tea is the second choice.

Studies have shown that people with gum disease face an increased risk for heart disease. And while we all have bacteria in our mouth, some bacteria are linked to pneumonia. As well, low-grade infections can impact other conditions such as diabetes since infections affect blood sugar levels. And any infection impacts your immune system.

### Visit your dentist

A regular visit to a dental office can help you prevent future health problems. The dental team will peer intensively



into your mouth in search of a low-grade infection, bleeding gums, a smell that indicates a more serious health problem, or any other warning signs. Dental professionals also check for cancer under the tongue and are trained to know when to refer you to another expert.

A dental team that sees you regularly will notice changes developing over time that are undetectable to the untrained eye.

Having a clean mouth is good preventive medicine. So visit your dentist, open wide, and say "ahhhhh" to better health. ●

Victoria M. Ryce is a writer based in Picton, Ontario.