

Estate Planning for the Sandwich Generation

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Interviewee

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Interviewer

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Please note, this interview was conducted on April 21, 2026 and edited thereafter.

Section 1: Navigating Delicate Conversations with Aging Parents

Kimberly Hu Amadori: Talking to elderly parents about their wills, powers of attorney, and health complications feels incredibly intrusive. How can adult children start these conversations respectfully without overstepping?

Margaret O'Sullivan: It is a massive challenge because discussing mortality remains a cultural taboo. I advise families to take specific, non-threatening steps:

1. **Start with small steps:** Avoid starting with finances. Focus the initial conversation entirely on healthcare and personal care matters.
2. **Frame it around your own readiness:** Use phrases like, "Mom, if you have a sudden stroke, I need to know who you want making medical decisions so your wishes can be carried out."
3. **Transition to financial issues:** Once personal care issues have been raised, transition to asking if their Power of Attorney for Property is current and the process for accessing it in the event of incapacity, which can then move on to other estate planning issues such as whether their will is up to date.
4. **Utilize modern family meetings:** Family members are often spread geographically. Hosting a formal meeting over digital platforms like Zoom or Microsoft Teams creates an egalitarian, business-like environment that can reduce emotional tension.

Section 2: Legal Capacity and the Pitfalls of Court-Ordered Guardianship

Kimberly Hu Amadori: What happens if an adult child waits too long, and a parent undergoes severe cognitive decline without a valid Power of Attorney already in place?

Margaret O'Sullivan: If a parent is incapable, the default option is an expensive, public, and intrusive court application to appoint a Guardian.

The critical differences between these two pathways include:

- **Power of Attorney:** Simple, inexpensive, and entirely controlled by the person while they are capable.
- **Court-Appointed Guardianship:** Extremely time-consuming, structurally rigid, and requires the guardian be under permanent court supervision, including periodic financial audits of the guardian's accounts by the court at the incapable person's expense.

Kimberly Hu Amadori: How do lawyers and courts determine if a declining parent still possesses the legal authority to sign estate planning documents?

Margaret O'Sullivan: Legal capacity is a fluid spectrum and is a legal determination, not an all-or-nothing medical diagnosis. For example:

- *The capacity to marry is legally lower* than the capacity to make a will.
- *A parent may no longer possess the high-level capacity needed* to execute complex investment trades, yet they may still retain the legal capacity to sign a power of attorney and a will.
- *When a family dispute is anticipated, we proactively bring in the medical profession* to perform a formal capacity assessment to serve as supporting evidence in the event of future litigation.

Section 3: Protecting Inheritances Using Discretionary Trusts

Kimberly Hu Amadori: For the sandwich generation looking to pass down significant family wealth to younger children or grandchildren, what are the primary dangers of a simple, direct inheritance?

Margaret O'Sullivan: Leaving large amounts outright to children who are financially immature is inadvisable. Without trust provisions in a will, several things occur:

- **Court Intervention:** Assets or insurance payouts left directly to minor children who are under 18 must be paid into and managed by the court until the child turns of age unless a legal guardian is appointed by the court to receive the funds.
- **Instant Access at 18:** At age 18, the child gains unconditional, legal control over their inheritance.

Kimberly Hu Amadori: What alternatives do you recommend to protect these inheritances?

Margaret O'Sullivan: Setting up a discretionary trust under the will provides important protections and many tax and non-tax advantages:

- **Deferred Distribution:** You can stagger distributions to more practical milestones like ages 25, 30, or 35, while allowing trustees to distribute funds for the child's benefit including education and other needs. The discretionary trust can have terms to allow it to continue, which has several advantages as described below, and at a mature age the child can be given the power to appoint and replace the trustees.
- **Income Splitting:** A trust functions as a separate taxpayer. It allows before-tax dollars generated by the trust to be split among your children and grandchildren and taxed at their lower tax rates.
- **Capital Succession to Descendants:** If a child inherits wealth directly and passes away, that money often defaults to their surviving spouse. If that spouse remarries, your family wealth can completely bypass your grandchildren. A trust can ensure that upon your child's death, remaining funds in their trust pass down to your grandchildren.
- **Matrimonial Protection:** The trust can provide a certain level of protection, including segregation of inherited property received during marriage, so it continues to be excluded from sharing with their spouse.



Section 4: Navigating Financial Assistance for Children and Family Law Matters

Kimberly Hu Amadori: Housing in metropolitan hubs like Toronto is highly unaffordable, forcing parents to step in. What is the best way to financially assist a child purchasing a home without exposing that money to a future divorce?

Margaret O'Sullivan: Under Ontario law, if a parent provides a **gift** which is used to acquire or contribute to a matrimonial home, the gift loses its status as “excluded property”, because of the special treatment given to a matrimonial home. If the marriage is short-lived, the ex-spouse is legally entitled to half of the value.

To counter this, families can structure the financial assistance they provide as a loan as opposed to a gift:

- *The parent could secure a mortgage* registered against title to the home to evidence the loan.
- *The loan is a personal liability* for the child.
- *If there is a marital breakdown, the value of the loan reduces the value of the child's net worth* and any claim for equalization their spouse may have.

Kimberly Hu Amadori: Does common-law status carry the same asset risks as traditional legal marriage?

Margaret O'Sullivan: Common-law relationships in Ontario do not trigger statutory property division rules under Ontario family law legislation; however, the court has authority to make orders on an equitable basis. Living together for **three consecutive years** (or sooner if a child is born of the relationship) automatically triggers a mandatory **spousal support obligation**. A cohabitation agreement can waive or limit these support obligations before that three-year threshold arrives and should be considered, and as well it can protect against property claims.

Frequently Asked Questions (FAQs)

At what age should parents tell their children about the exact extent of their family wealth or the contents of their will?

There is no perfect universal age; you may view it on a need-to-know basis. If a complex family business succession is involved and children must prepare to take control and perform certain roles, these conversations should start early and while the parents are in good health. If the estate is straightforward, detailed financial information may not be necessary, but it will be important to discuss who the key decision-makers are, such as attorneys for property and personal care and executors of the will, at an appropriate time.

Can adult children sit in on the legal meetings where a parent drafts or updates their will?

Professional practice dictates that lawyers must obtain instructions from a client independently. This is also important to eliminate any future challenges based on “undue influence” and to avoid family disputes. A child's role should generally be limited to initial advisor

introductions and, in some cases, assisting in gathering financial and other information.

How should a trust fund be managed if the chosen trustees disagree on how to spend the money?

Appointing only two trustees creates an immediate risk of deadlock. To avoid deadlock, three trustees can be appointed, and a majority decision clause included (two out of three decide). If desired, you can also grant a specific trustee a veto, who must be part of all decisions or specified ones.

Can a family cottage be fully protected from a child's marital breakdown?

Yes. Ontario caselaw holds that if a matrimonial home, which can include a cottage, is inherited through a trust under a parent's will, rather than by direct individual ownership, it does not meet the definition of a matrimonial home as the child only has a legal interest in the trust, not in the home, and as a result is not subject to equalization and other matrimonial home claims.



The Executor's Immediate "To-Do" Checklist

When a parent passes away, the named executors step into a role with many legal obligations. Use this checklist to manage the crucial first steps of estate administration:

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Secure the Original Will: Locate the latest, physically signed copy of the will and review it carefully to confirm your appointment and immediate instructions.

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Arrange Immediate Property Care: If the deceased lived alone, immediately change the locks, secure any valuables, and contact the home insurance provider to ensure continuous vacancy coverage.

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Gather Critical Financial Documents: Collect all real estate deeds, corporate organization charts, recent investment portfolio statements, and active insurance policies.

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Obtain Death Certificates: Request multiple official funeral director certificates and, in some cases, government-issued death certificates to facilitate account closure.

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Notify Financial Institutions: Send a formal notice accompanied by a copy of the death certificate to all banks, private wealth managers, and investment firms to freeze sole accounts and stop unauthorized withdrawals.

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Apply for Probate (Certificate of Appointment): If needed to administer assets, retain an estate lawyer, to file the probate application with the Ontario court, and who will calculate the Estate Administration Tax (approx. 1.5% of the total asset value).

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Establish a Dedicated Estate Account: Once probate is granted, open a distinct estate bank account to handle all incoming estate funds and systematically pay off legitimate debts and funeral expenses.



Glossary of Canadian Estate Planning Terms

To help readers navigate the technical legal and financial landscape discussed throughout this feature, this quick reference guide has been compiled of estate planning terminology under Canadian and Ontario law:

Attribution Rules

Anti-avoidance rules under the Canadian Income Tax Act that include preventing high-income individuals from shifting investment income to lower-income family members (like spouses or minor children) to pay less tax.

Capacity Assessment

A formal evaluation conducted by a qualified healthcare professional or a designated capacity assessor to determine if an individual is mentally capable of performing certain acts, including management of their property or personal care and making a will or a gift. It can serve as important medical evidence if a will, trust, gift, or power of attorney is later challenged in court.

Certificate of Appointment of Estate Trustee with a Will (Probate)

The official document issued by the Ontario court confirming that a deceased person's will is legally valid and certifying the authority of the named executor(s) (Estate Trustee(s)) to manage and distribute the estate assets.

Cohabitation Agreement

A legal contract signed by couples who live together (or intend to live together) but are not legally married. It can provide how property, assets, debts and support obligations will be handled if the relationship ends, including on death. In Ontario, a cohabitation agreement can convert into a valid Marriage Contract if the couple later marries.

Discretionary Trust

A trust structure where the trustees have total, independent control over when, how much, and to which beneficiaries any income or capital from the trust is distributed. This structure can protect assets from a beneficiary's creditors, marriage breakdown or financial immaturity.

Estate Administration Tax (Probate Fees)

A provincial tax levied in Ontario on the total value of a deceased person's estate payable to probate a will. The tax rate is approximately 1.5% of the estate's gross value.

Excluded Property

Under Ontario family law, specific assets that a spouse receives via third-party inheritance or gift during the marriage, as well as the income and capital gains on them if the deed of gift, trust or will so provide. The value of these assets is excluded from equalization of property on a marital breakdown, provided they are kept separate and identifiable and are not used to acquire or contribute to a matrimonial home.

Joint Retainer

An arrangement where a lawyer is retained to represent two or more clients simultaneously (most commonly a married couple or spouses) on the exact same matter, such as their estate planning. Under a joint retainer, any information must be shared.

Power of Appointment

A legal authority written into a will or trust document that grants a beneficiary of a trust the right to choose or "appoint" who will receive the remaining trust assets. A limited power of appointment can restrict this choice, for example, to lineal descendants.

Power of Attorney (POA) for Personal Care

A legal document in which an individual appoints one or more persons to make personal care decisions, including medical, housing, dietary, and healthcare choices on their behalf if they become mentally incapable of making those choices for themselves.

Power of Attorney (POA) for Property

A legal document that grants one or more persons the authority to manage an individual's property and financial affairs, including such matters as paying bills, managing investments, selling real estate and tax compliance.





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Margaret's practice involves all aspects of trust and estate work for domestic and international private clients, including estate planning; will and trust planning; incapacity planning; estate litigation; advising executors, trustees and beneficiaries and administration of estates and trusts, with a focus on high net worth domestic, cross border and multijurisdictional succession issues.

Margaret is recognized in The Best Lawyers in Canada 2025, Legal Week's Private Client Global Elite 2026 representing the top 250 private client lawyers worldwide, in the 2025 Edition of The Canadian Legal Lexpert Directory as one of the most frequently recommended estate planning lawyers and as a thought leader, in The Who's Who Legal: Private Client 2025 and in The Who's Who Legal: Canada 2025.

She is one of nine top-ranked Band 1 private wealth client lawyers in Canada in Chambers High Net Worth 2026 Guide. Her firm has been selected as one of the "Top 10 Wills, Trusts and Estates Boutiques" by Canadian Lawyer Magazine.

She is the recipient of the 2014 Society of Trust and Estate Practitioners (STEP) Founder's Award for Outstanding Achievement and the Ontario Bar Association's 2013 Award of Excellence in Trusts and Estates Law.

Prior to establishing an independent practice, Margaret was a partner in the Toronto office of the national Canadian law firm Stikeman Elliott where she directed the firm's trusts and estates practice.



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Kimberly Hu Amadori is a Vice President, Investment Counsellor for Guardian Partners, where her expertise is working with ultra-high-net-worth families and institutional clients. Her specialty is in addressing complex wealth management needs, including customized portfolio strategy design and implementation, investment manager recommendations and continuous portfolio oversight.

Previously, Kimberly served as Vice President, Investment Counsellor at BNY Mellon Wealth Management, Advisory Services Inc. (BNY Mellon WMAS), a firm she joined in 2008 as an Investment Analyst. At BNY Mellon WMAS, she was also responsible for oversight and investment management of proprietary funds.

Kimberly received her Bachelor of Commerce (Honours) degree from Queen's University, is a CFA® Charterholder and a member of the Toronto CFA Society. Aside from academics, Kimberly serves as a Board Member and Chair of the Investment Committee of the Canadian Women's Foundation.

Additionally, she has been a major proponent of supporting the financial journey of women through an initiative she co-founded in 2022 called Guardian Women™ and was the recipient of Wealth Professional Canada's Top 50 Leading Women in Wealth award for 2023.



Guardian Women™