

But for the Plan

Guardianship Application Required if there are No Powers of Attorney

One of the best estate planning tools is to have properly drafted and signed Powers of Attorney, for both Personal Care and Property. These two documents ensure that someone is authorized to make health care and/or financial decisions on your behalf while you are alive, should the need arise (e.g., mental incapacity).

If you do not have a Power of Attorney when you need it, it is very likely that one of your relatives or friends will need to start a court application to be appointed as your guardian. And one or more of them may disagree as to who should be appointed!

Here is an example from our Brampton Staff Office:

Carlton's father, Phillip (not their real names), was admitted to a long-term care facility due to his dementia. Phillip had not signed any Powers of Attorney. Uh oh...

Carlton was advised by his accountant that, because Phillip did not have a Power of Attorney for Property, and was no longer capable of authorizing anyone to file taxes on his behalf, someone was going to have to be appointed as his guardian before his tax return could be filed. The long-term care facility also told Carlton that Phillip was eligible for a discounted monthly rate, but that an election was going to have to be made on Phillip's tax return first before the discount could be applied.

Carlton had heard that a court application to appoint a guardian was not necessarily an easy or inexpensive process. A lawyer will need to gather all of the information and then prepare appropriate documentation to formulate the best explanation for why the applicant is the best suited person to be appointed as the guardian. Once the application is submitted, a court date is required, and the lawyer appears at a hearing in front of a judge who makes the final decision on whether to grant the appointment. Preparation is required to anticipate and answer questions from the judge.

Carlton called the Unifor Legal Services Plan to see if we could help. We quickly got him appointed as the guardian for his father's property and health care, and most of the cost was covered by the Plan benefit.

But for the Plan, Carlton may not have acted as quickly to hire a lawyer, which could have led to extra expenses (e.g., late income tax filing penalties; delayed discounted rate at the long-term care facility), and he may have spent considerably more for the same services.