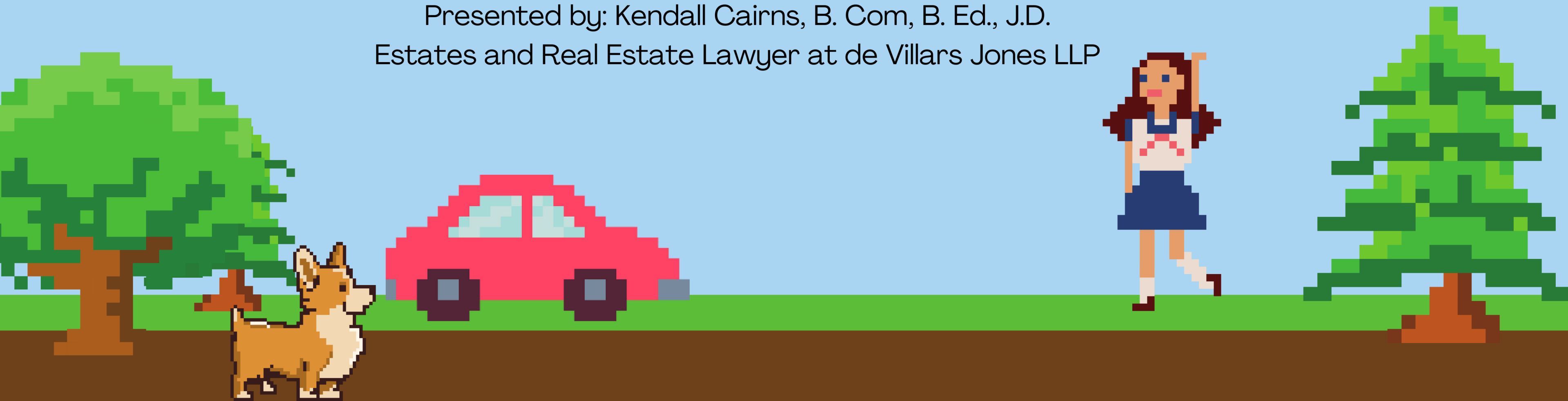


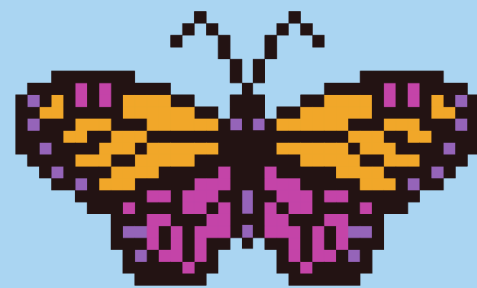


UNLOCKING ESTATE ADMINISTRATION SUCCESS: INSIGHTS FOR TESTATORS & EXECUTORS IN ALBERTA

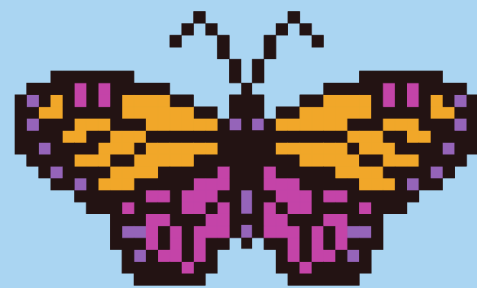
Presented by: Kendall Cairns, B. Com, B. Ed., J.D.
Estates and Real Estate Lawyer at de Villars Jones LLP



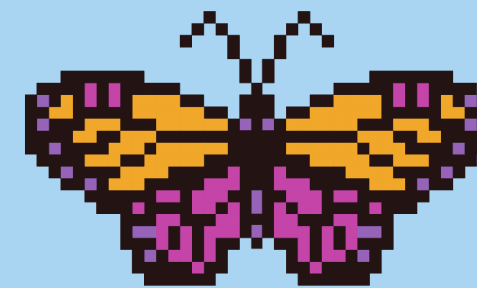
OUTLINE



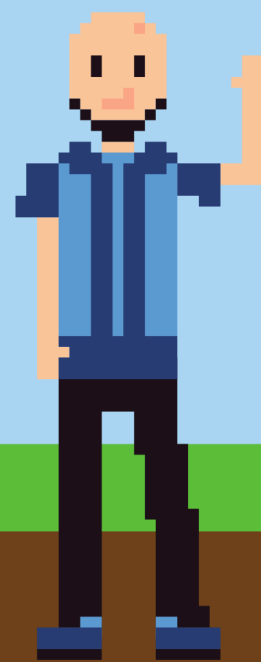
ESTATE
PLANNING 101



GENERAL
EXECUTOR
DUTIES

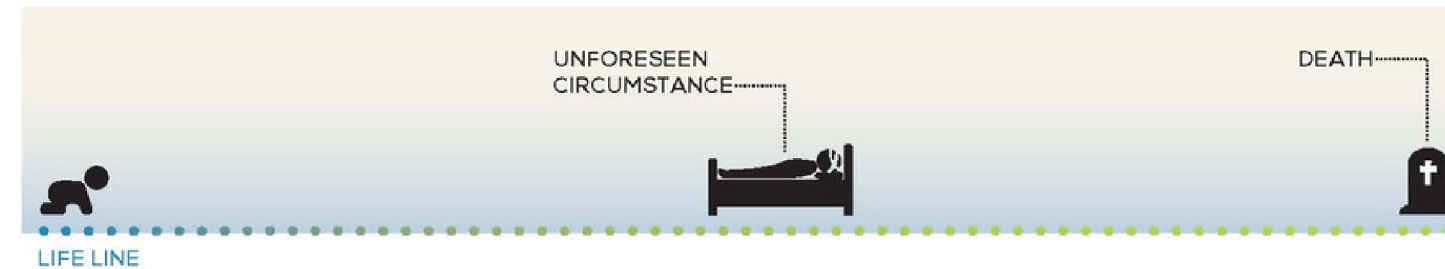


Q&A



LIFE

be proactive, be prepared



WILL

ESTATE ADMINISTRATION

PROACTIVE

WHO TAKES CARE OF MY ESTATE & KIDS?

EXECUTORS

The names of persons or institutions to carry out the instructions in the will.

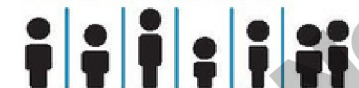
GUARDIANS

The names of the persons who are chosen to care for your children. (Also include in your personal directive.)

DIVISION OF ESTATE



BENEFICIARIES



The names of the persons or organizations who are to receive your estate.



TRUSTS

Trusts may be set up for minors or adults, if they need a Trustee to handle their finances.



BEQUESTS

If you wish to make specific gifts of family keepsakes, money or property in the will, describe the gifts and the names of the recipients.

BE PREPARED; BE ACTIVE

WILL (testate)

If will, then obtain grant of probate for:

- Land Titles Office
- Financial institution(s)
- Contentious estate matters (i.e. dispute about the estate)
- Executor's "peace of mind"

NO WILL (intestate)

If no will, then obtain grant of administration for:

- Land Titles Office
- Financial institution(s)
- Bill of Sale
- Contentious estate (litigation)
- Administrator's "peace of mind"

RESPONSIBILITIES OF THE PERSONAL REPRESENTATIVE (non-exhaustive list)

- ✓ Always act with neutrality on behalf of the estate;
- ✓ Find and follow the will & codicil, if any. Follow intestate law if no valid will;
- ✓ Direct all mail to your address;
- ✓ Change the locks to protect the assets / Notify the landlord of the death;
- ✓ Notify all creditors - may possibly need to advertise to creditors;
- ✓ Consider purchasing executor's insurance;
- ✓ Consider delegating some tasks: accounting / book keeping; estate lawyer if needed (These costs are estate expenses and may be payable from the estate - or reimbursed if paid out of pocket!);
- ✓ File the terminal taxes and obtain a tax clearance certificate;
- ✓ Confirm tax liability before transferring funds to beneficiaries...

YOUR PROACTIVE CHECKLIST:

ESTATE PLANNING:

- ☐ Will
- Executor and Alternates
- Beneficiaries and Trusts
- ☐ Personal Directive
- ☐ Enduring Power of Attorney

ESTATE ADMINISTRATION:

- ☐ Find the will & collect / secure estate property
- ☐ Grant required or not? Consult lawyer if needed
- ☐ Deal with taxes, creditors
- ☐ Notice to beneficiaries

This slide deck, and associated presentation, does not constitute legal advice.

All situations should be thoroughly reviewed with counsel before measures are taken.



THE RULES: LEGISLATION AND CASE LAW

WILLS AND
SUCCESSION ACT

ESTATE
ADMINISTRATION
ACT

SURROGATE
RULES

and schedules

TRUSTEE ACT
INCOME TAX ACT
(FEDERAL)

DOWER ACT

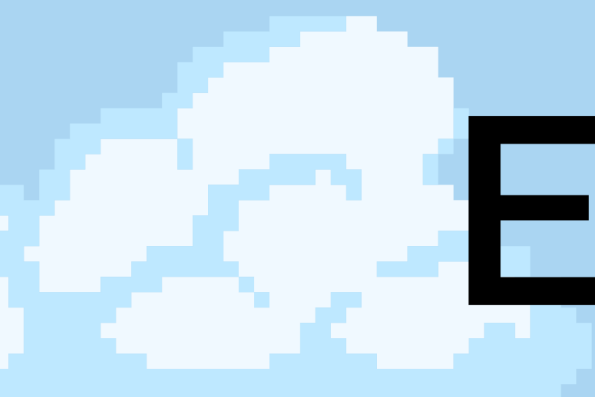
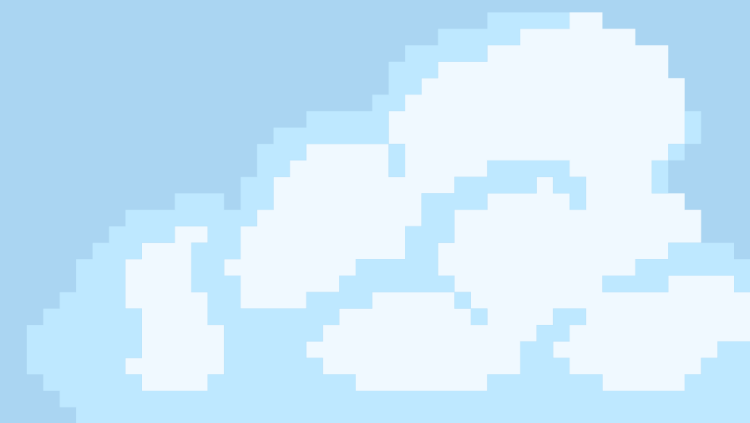
FAMILY PROPERTY
ACT

ADULT
INTERDEPENDENT
RELATIONSHIPS ACT

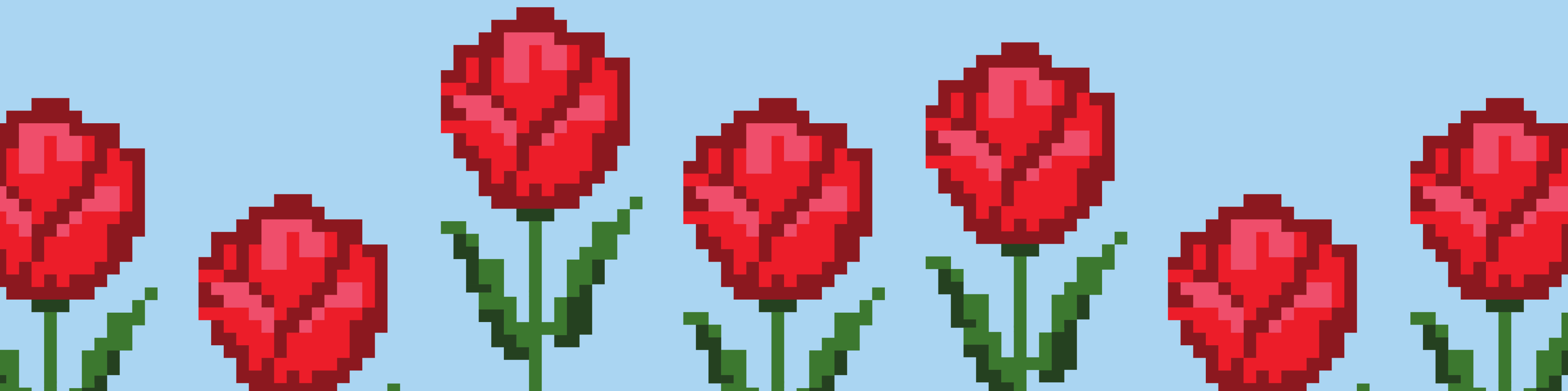
POWERS OF
ATTORNEY ACT

PERSONAL
DIRECTIVES ACT

MINOR'S
PROPERTY ACT



ESTATE PLANNING 101



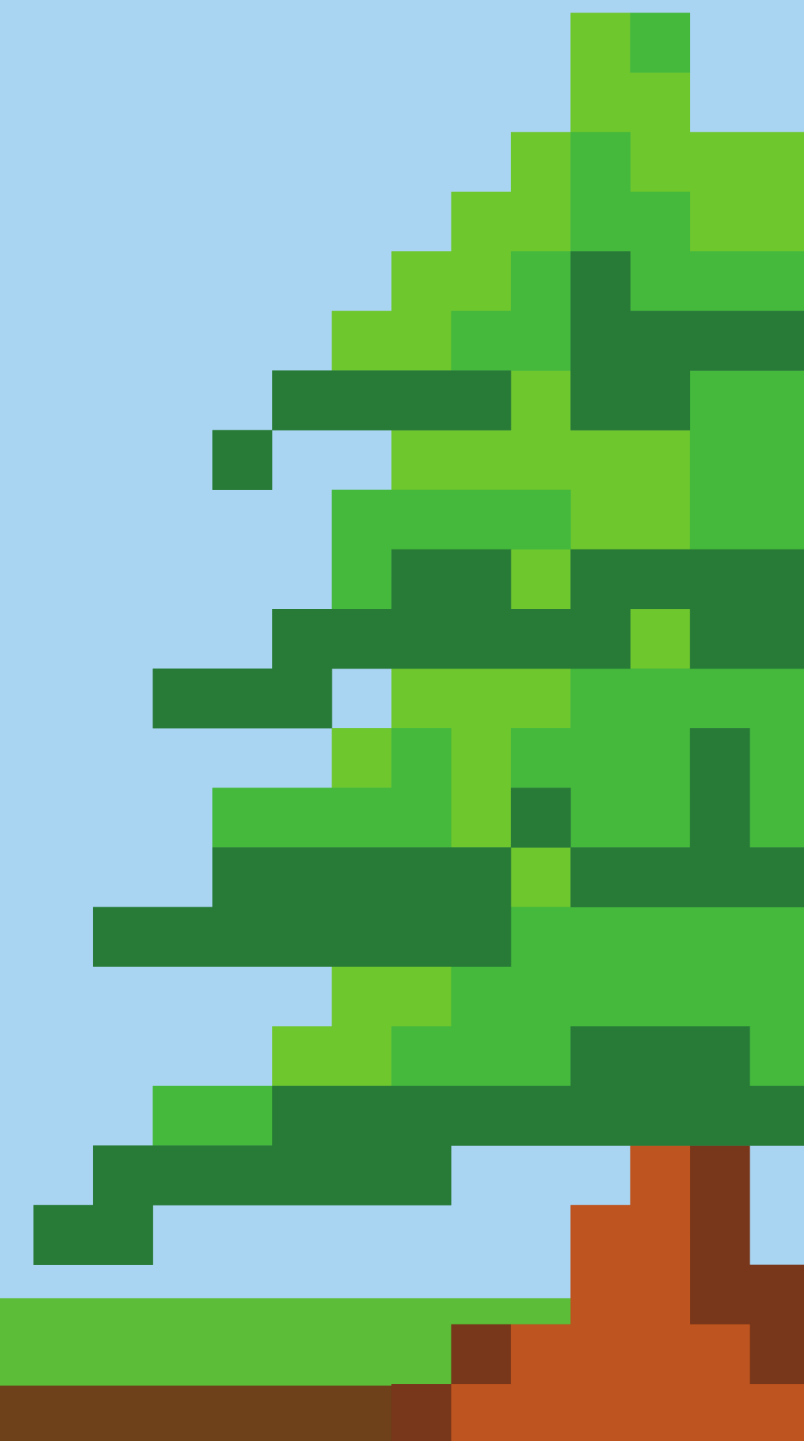


TOPIC NO.1

PLAN OR *DON'T* PLAN

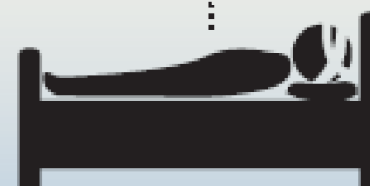
Estate planning: More than writing a will

- Keep everything organized - because someone will need to go through your files after your death.
- Structure and document personal and any corporate assets.
- Keep updated, and review as needed when your circumstances change.





UNFORESEEN
CIRCUMSTANCE



DEATH





PLAN OR *DON'T* PLAN:

Will or No will

Testate: Having a valid will.
Grant of Probate may or may not be required.

Intestate: Having died *without* a will, or
without a valid will.
Grant of administration may or may not be
required.





ESTATE PLAN: THE PLAYERS

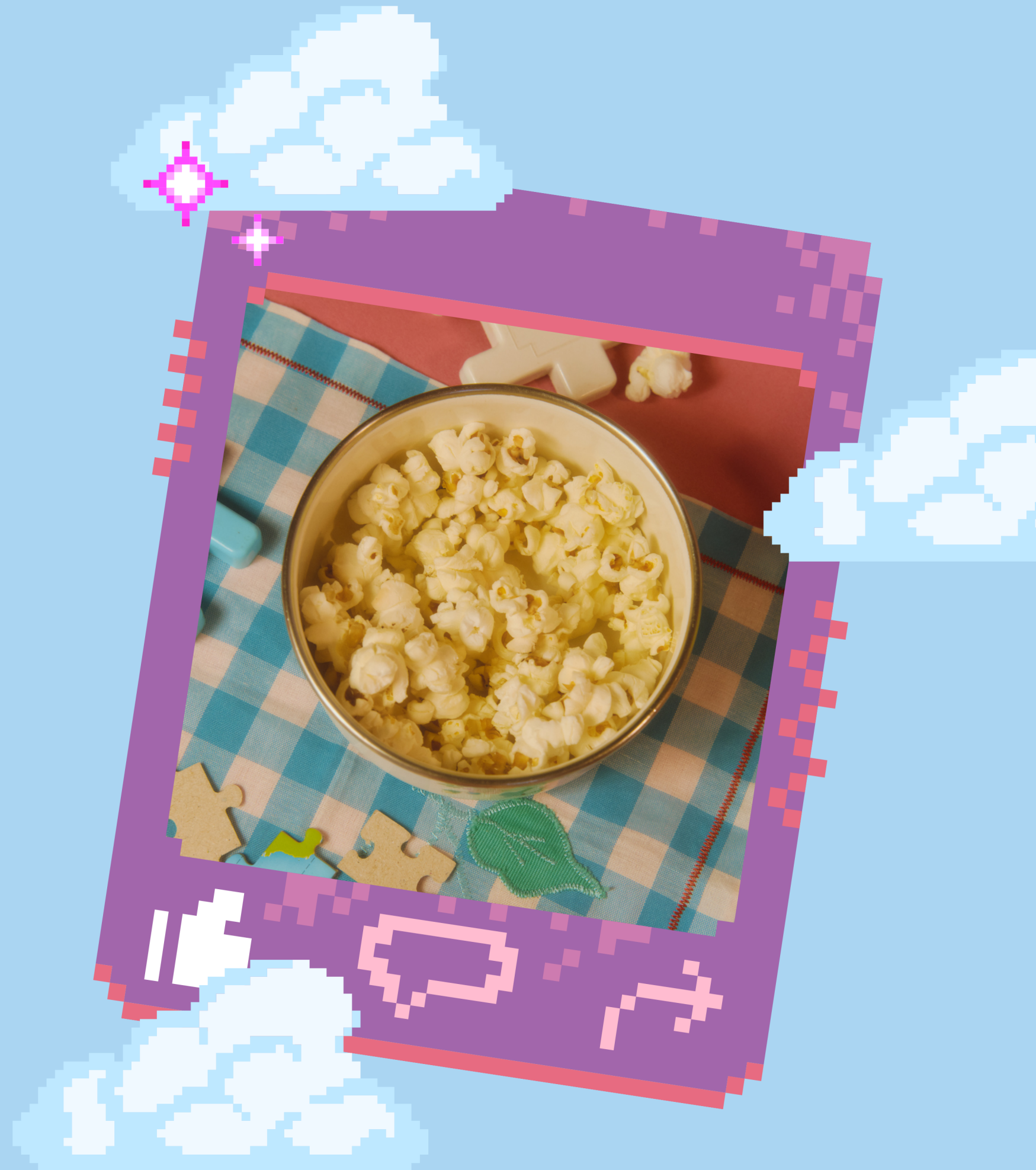
Testator/testatrix (aka will-maker): The person making a will.

Personal representative (aka **executor** / **trustee**): The person or trust company named within the will to carry out the administration of the estate.

Beneficiary(ies): Who inherit the estate.

- Might inherit a specific gift, legacy (\$), or residue;
- Might be bound by trust conditions.
- Might offer tax benefit to estate

Trustee(s): A person designated to administer specific trusts within a will. *May be the same person as the executor, or different person.*





PLAYER SELECTION

Executor aka Personal Representative or Administrator

YOU SELECT

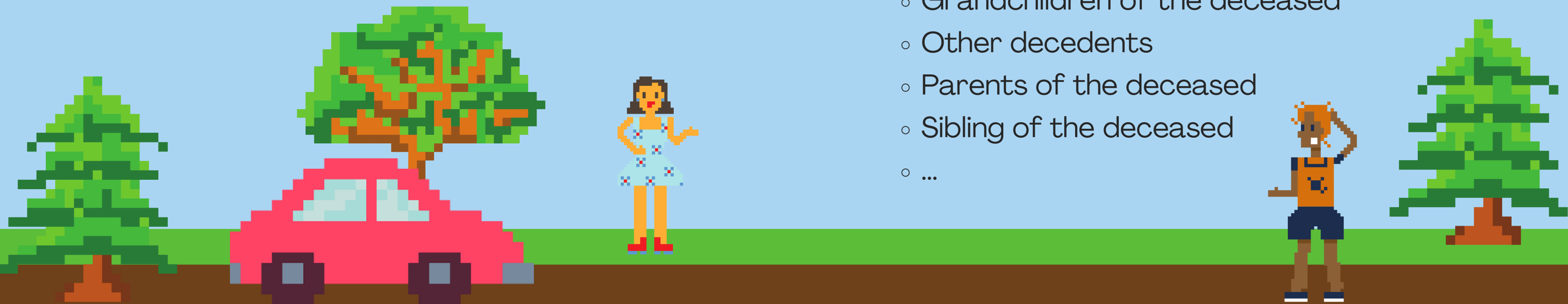
OR

THE LAW SELECTS FOR YOU

Consider what is important to you
when selecting your own executor.

S. 13(1)(b) of Estate Administration Act

- In order of priority:
 - Surviving spouse / AIP
 - Child of the deceased
 - Grandchildren of the deceased
 - Other decedents
 - Parents of the deceased
 - Sibling of the deceased
 - ...





PLAYER SELECTION

Beneficiary+ / Heirs

YOU SELECT

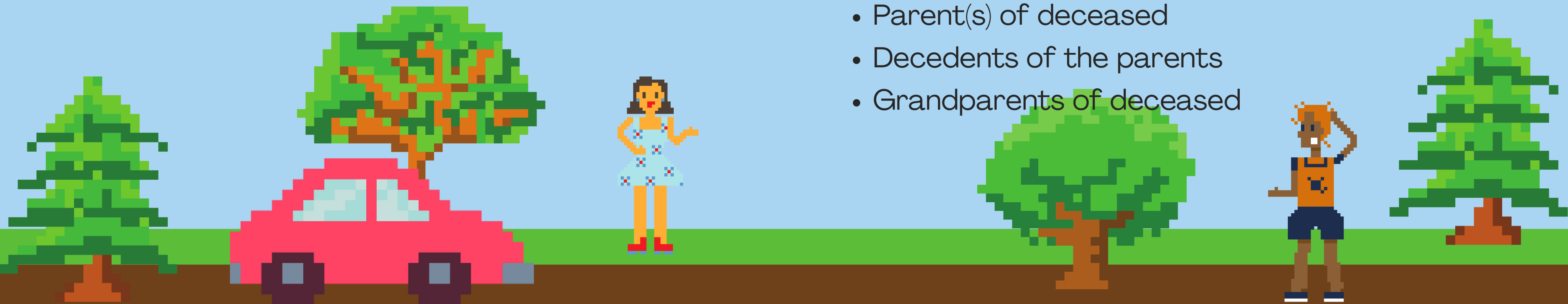
OR

THE LAW SELECTS FOR YOU

Consider who and what is important to you when naming who should inherit your property.

Part 3 of Wills and Succession Act

- Surviving spouse / AIP (or share of)
- Decedent of deceased (or share of)
- Parent(s) of deceased
- Decedents of the parents
- Grandparents of deceased





WILLS AND SUCCESSION ACT NO HEIRS

69 SUBJECT TO SECTION 11 OF THE PUBLIC TRUSTEE ACT, IF THERE IS NO INDIVIDUAL ENTITLED TO RECEIVE AN INTESTATE ESTATE UNDER THIS PART,

(A) THE UNCLAIMED PERSONAL PROPERTY AND VESTED PROPERTY ACT APPLIES TO THE INTESTATE ESTATE, AND

(B) FOR GREATER CERTAINTY, SECTION 67(2) DOES NOT AFFECT THE RIGHT OF AN INDIVIDUAL TO MAKE A CLAIM UNDER PART 6 OF THE UNCLAIMED PERSONAL PROPERTY AND VESTED PROPERTY ACT.



CHOOSE YOUR PLAYER(S) WISELY

Personal Representative (*PR*)

Residency: Does the candidate live within Canada? If not, potentially invalid.

Age of candidate: Typically, it is less ideal to pick a candidate who is quite young (under 25 – 30 years) or elderly.

Experience or willingness to delegate. If they have already acted as executor, do they want to do it again?

Lifestyle. Are they retired – residing, where? Do they have time to perform duties? Do they have flexibility with work and home life – signs that they might not be willing to take on the responsibility?

Ability to perform objectively: Will the person treat all interested persons and beneficiaries equally? Difficult relationship(s) with other estate players?



TALK TO YOUR PR





TOPIC NO.2

PR DUTIES

Let's gain a better understanding of what is involved with such an important role.





WHAT'S THE PR'S ROLE?

General Duties of the Personal Representative

Estate Administration Act

5(1) A personal representative must

- (a) perform the role of personal representative
 - (i) honestly and in good faith,
 - (ii) in accordance with the testator's intentions and with the will, if a valid will exists, and
 - (iii) with the care, diligence and skill that a person of ordinary prudence would exercise in comparable circumstances where a fiduciary relationship exists, and
- (b) distribute the estate as soon as practicable. [...]





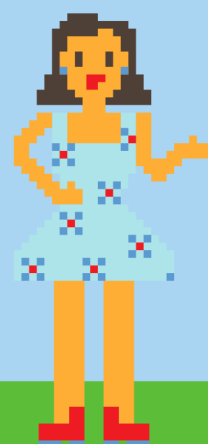
WHAT'S THE PR'S ROLE?

General Duties of the Personal Representative

Estate Administration Act

Disposition of human remains

6 The Funeral Services Act and the Cemeteries Act and the regulations under those Acts apply to the determination of who has the authority to control and give instructions for the disposition of human remains and the making of funeral arrangements.





WHAT'S THE PR'S ROLE?

General Duties of the Personal Representative

Estate Administration Act

Core Tasks

7(1) The core tasks of a personal representative when administering an estate are

- (a) to identify the estate assets and liabilities,
- (b) to administer and manage the estate,
- (c) to satisfy the debts and obligations of the estate, and
- (d) to distribute and account for the administration of the estate.

(2) The core tasks referred to in subsection (1) may include, but are not limited to, the activities set out in the Schedule.





STEP-BY-STEP

Non-comprehensive.

Depends on the facts of the estate.

IMMEDIATE

- Maintain / secure the assets, deal w/perishables;
- Locate the will & determine immediate responsibilities (organ donation, burial);
- Review mail & mail fwding;
- Insurance;
- Note any time limitations;

- Make arrangements for pets;
- Prepare inventory with values (FMV, ACB);
- Apply for grant if needed;
- Locate tax docs;
- Track debts due to the deceased, and owing to;

TAXES / FINAL DISTRIBUTION

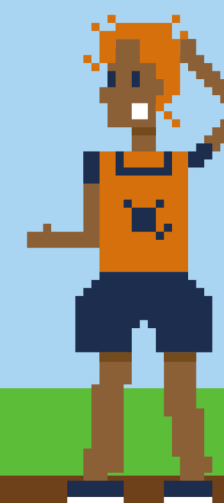
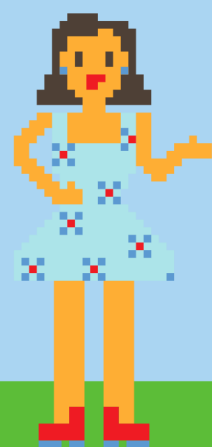
- Manage / close social media accounts;
- Advertise to creditors if needed
- Close bank accounts;
- Transmit property; Sell;
- Prepare estate accounting;

- File the terminal taxes; Pay;
- If interim distribution - holdback for estimated tax liability, PR comp.; legal bills;
- Obtain final tax clearance certificate;
- Final distribution



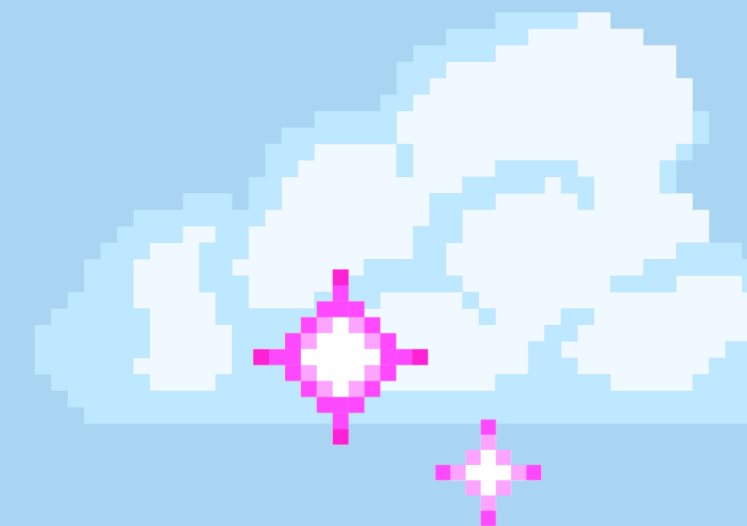
"EXECUTOR FEES"

- Taxable as income to the PR – so beware of your annual tax brackets.
- PR compensation may be set out in the will.
- PR requests compensation from the estate by asking the beneficiaries or the court.





SURROGATE RULES




Schedule 1

Personal Representatives' Compensation

Factors to be considered

2 The following factors are relevant when determining the compensation charged by or allowed to personal representatives:

- (a) the gross value of the estate;
- (b) the amount of revenue receipts and disbursements;
- (c) the complexity of the work involved and whether any difficult or unusual questions were raised;
- (d) the amount of skill, labour, responsibility, technological support and specialized knowledge required;
- (e) the time expended;
- (f) the number and complexity of tasks delegated to others;
- (g) the number of personal representatives appointed in the will, if any. [...]



SURROGATE RULES COMMITTEE FEE GUIDELINES]PR COMPENSATION

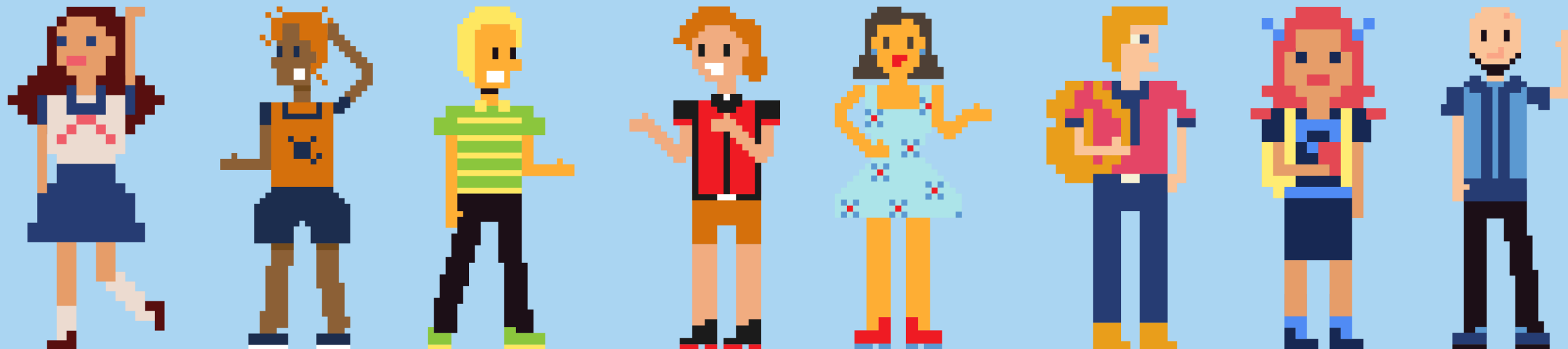
- Simply *guidelines* based on gross value of estate;
- Review the will;
- Review the estate work involved, and complexity;
- Cannot take fee without approval.



ESTATE ADMINISTRATION: TIMELINE TBD

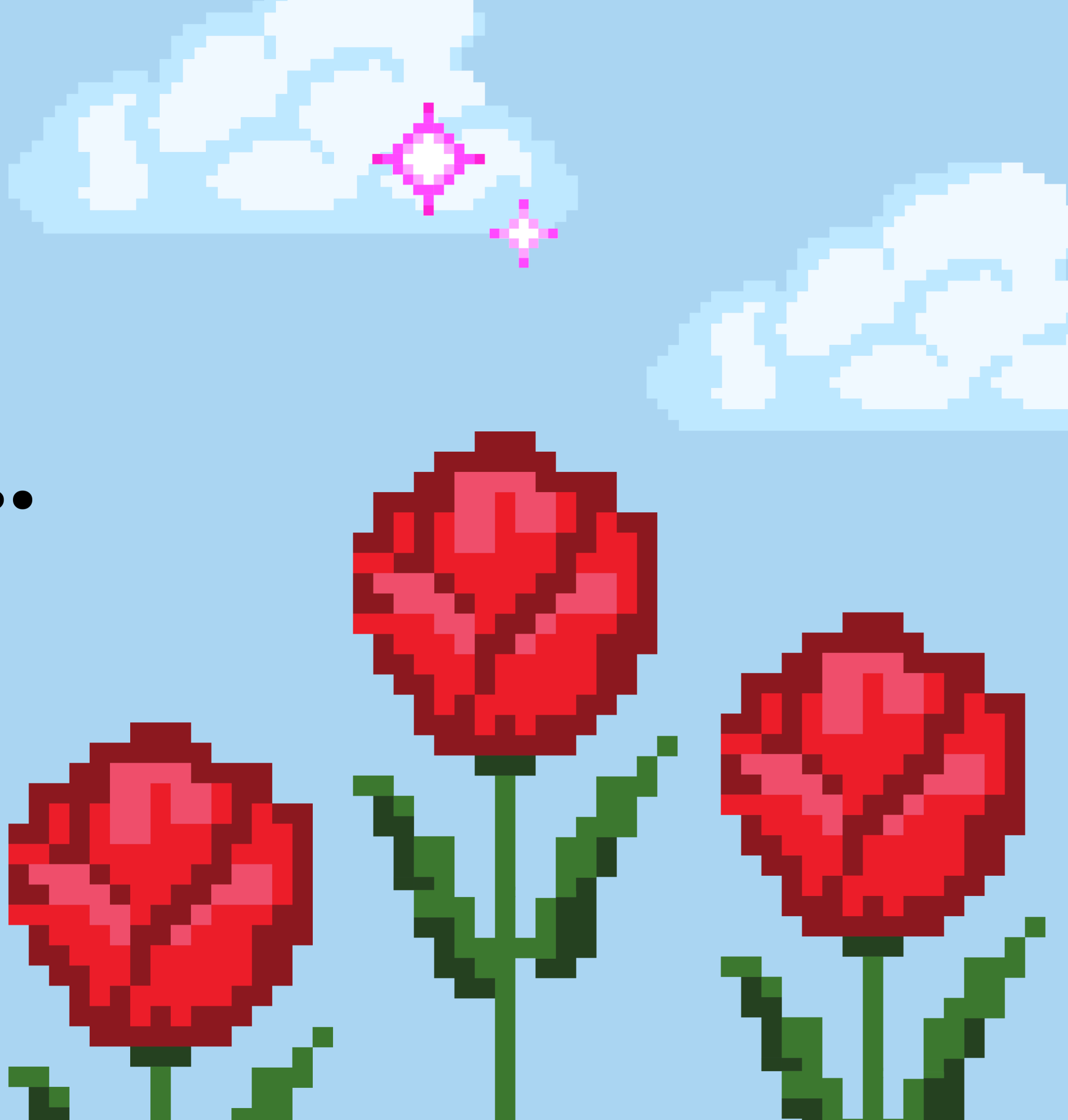
Many individual timelines involved:

PRs; Trustees; beneficiaries / heirs; other family members; employers; funeral homes; cemeteries; bookkeepers / accountants; financial advisors; CRA; legal counsel – family, corporate and estate; banks; financial institutions; creditors; courthouses; Land Titles Office; Personal Property Registry; Trustees offices (for minors, represented adults, and bankrupt estates); ...





THIS TOO
SHALL PASS...





THANK YOU FOR LISTENING!

Kendall Cairns, lawyer at de Villars Jones LLP

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